

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

VAL/Spec/38

1 July 1993

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 5 MAY 1993

Chairman: Mr. R. Tam (Hong Kong)

1. The Committee on Customs Valuation met on 5 May 1993.

2. The following agenda was adopted:

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A. Election of Officers

3. The Committee **elected** Mr. R. Tam (Hong Kong) Chairman, and Mr. E. Kim (Republic of Korea) Vice-Chairman for 1993.

B. Status of acceptances of the Agreement

4. The **Chairman** stated that Bolivia had accepted the Agreement on 27 January 1993, subject to ratification (VAL/45).

5. The representative of **Bolivia** noted that her country had during its accession process to the General Agreement undertaken a commitment to accede to the Customs Valuation Agreement. The acceptance of the Valuation Agreement on 27 January 1993 thus indicated a strengthening of Bolivia's commitment to the multilateral trading system. The economic policy followed since 1985 had allowed Bolivia to enjoy stable economic growth which in turn had made it possible to accept the Agreement after just two years of GATT membership. She informed the Committee that according to domestic law any international agreement signed by the Government had to be approved by the national Congress. The Agreement had been submitted to Congress and was presently under review. In light of the time required for its national administration to adapt the present customs valuation system to that contained in the Agreement, Bolivia had invoked Article 21 of the Agreement.

6. The **Chairman** drew the Committee's attention to documents VAL/46 and VAL/47, which notified the acceptance of the Agreement by the Czech Republic and the Slovak Republic, respectively. He added that no objections had been received regarding the advanced date of entry into force¹ of the Agreement for the two Republics.

¹1 May 1993.

7. The representative of the Slovak Republic thanked the Committee for its flexible and pragmatic approach regarding his country's acceptance of the Agreement, to which the former Czech and Slovak Federal Republic had been a signatory. He expressed his country's commitment to elaborate laws, regulations and administrative procedures in conformity with the provisions of the Agreement, and to abide by those rules.

8. The representative of the Czech Republic thanked the Committee for having accepted the accelerated procedure relating to the date of entry into force of the Agreement for his country. He stated that under a reception clause, his country had in fact inherited the legislation that was applied in the former Czech and Slovak Federal Republic. The commitments resulting from the Agreement were now reflected in the Czech Republic's customs legislation.

C. Report on the work of the Technical Committee

9. The observer from the Customs Co-operation Council (CCC) presented, on behalf of the Chairman of that body Mr. T. Lobred, a report on the twenty-fifth session of the Technical Committee on Customs Valuation held from 29 March to 2 April 1993. The report of the session had been circulated in CCC document 38.130.

10. With respect to election of officers, the Technical Committee had elected Mr. C.M. Hadjiyannis (Cyprus) Chairman of the Technical Committee, and Mr. J.S. Milnes (Canada) and Mr. J.K. Batra (India) as Vice-Chairmen.

11. In connection with intersessional developments, the Technical Committee had been informed that the Republic of Côte d'Ivoire had decided to adopt the GATT Valuation Agreement by a law of 23 December 1992. The instrument of acceptance would be deposited with the GATT Director-General in accordance with Article 22 of the Agreement, in the near future.

12. The CCC Secretariat had received information that the Members of the Cartagena Agreement (also known as the Andean Pact) would be adopting the GATT Valuation Agreement. One of the Members, Bolivia had just accepted and the others, Colombia, Ecuador, Peru and Venezuela, would soon follow.

13. The Technical Committee had been informed that the Council had initiated a new service, the Electronic Bulletin Board (CCCEBB), which had become operational on 18 September 1992 with the assistance of the U.S. Customs Administration. Members and international organizations would henceforth be able to download documents from the CCCEBB and in particular, documents from the Valuation Directorate of the CCC. They would also be able to load their own files onto the Bulletin Board, thus permitting an exchange of messages not only with the CCC but with other Members.

14. A senior official from the Valuation Directorate had visited Senegal, Côte d'Ivoire, Gabon and Cameroon from 19 November to 5 December 1992 in order to assess first-hand the valuation situation in those countries. Discussions on valuation issues, in particular on the adoption of the Agreement, had been undertaken with the Directors-General of the various customs services. These administrations had expressed satisfaction with the results achieved in the Uruguay Round, namely the ad referendum decisions taken on the burden of proof, minimum values and sole agents, distributors and concessionaires. This, in their view, had made the Agreement more acceptable to their administrations and they were prepared to consider accession, subject to the assistance of the CCC in the implementation of the Agreement. Senegal wished to take a final decision after consultation with other members of the regional customs union, the West African Economic Community (CEAO). Cameroon and Gabon had requested that a seminar on the Agreement be held within the framework of the Central African Customs and Economic Union.

15. A senior official from the Valuation Directorate had visited the administrations of the Union of Myanmar and the Philippines. In Myanmar,

the official had conducted a two-day workshop on valuation. That administration had, however, only just begun to examine valuation matters in the context of developing its customs practices for the conduct of international trade. In the Philippines, the official had held discussions with both the customs authorities and the Ministry of Finance. The Philippines was in the process of changing its valuation system from one based on the home consumption value (i.e. the value of the goods in the country of exportation) to one which would adopt the basic principles of the GATT Valuation Agreement and which would provide for the preshipment inspection of imported goods by private companies.

16. The observer from the CCC pointed out the fact that the use of preshipment inspection by private companies, not bound by Governments to adhere to international agreements, could lead to the lack of uniformity in the application of the GATT Valuation Agreement. He added that this situation was not unique to the Philippines and might need to be considered by this Committee.

17. Officials from the Valuation Directorate had also given a number of presentations on valuation to visitors to the Council, and had accepted a candidate from Rwanda as part of the Council's fellowship programme.

18. Finally, the Technical Committee had been informed that the tenth amending supplement to the Customs Valuation Compendium had been distributed at the end of 1992.

19. With respect to administrative measures for introduction and application of the Valuation Agreement, the observer from the CCC recalled that the Policy Commission and the Council in June 1992, had instructed the CCC Secretariat to consider the feasibility of carrying out a study on legislations, regulations and administrative practices of Parties applying the Agreement. That study was intended to examine how best to accommodate the concerns of developing countries relating to revenue considerations when applying the GATT Valuation Agreement.

20. As instructed, the CCC Secretariat had prepared a draft questionnaire and at the Technical Committee's twenty-fifth session, amendments to this questionnaire had been made to render it comprehensive and easy to answer. The Technical Committee had urged administrations to send their final remarks in time to allow the CCC Secretariat to complete the analysis and issue the study to the Parties in order to receive written comments for consideration at the next session.

21. On the subject of technical assistance, the observer from the CCC reported that the number of requests for technical assistance continued to increase. To cope with this expansion in training activities, the Valuation Directorate would need to rely more on the Parties to the Agreement and international organizations to provide assistance in the form of human and financial resources.

22. The Technical Committee had taken note of information document 37.038 which contained updated information on seminars and training courses organized on the GATT Agreement and the activities of the CCC in this area. In this context, it was worth noting that the Valuation Directorate had published the second edition of the Training Course on Customs Valuation in English and French. The Spanish version was at the printing stage.

23. A customs valuation seminar had been held in French from 23 to 27 November 1992, in Bamako, Republic of Mali. The seminar, which had been financed by the EEC, had been organized by the West African Economic Community (CEAO) and the Malian Administration. Twenty officials from Benin, Burkina Faso, Côte d'Ivoire, Mali, Mauritania, Niger, Senegal and the CEAO had attended the seminar. Papers, presented by a GATT official and two members of the CCC Valuation Directorate, had covered the multilateral trade negotiations, the technical provisions of the GATT Valuation Agreement and the two international valuation systems. The participants had shown a high level of interest and participated actively in the work.

24. A seminar on customs valuation had been organized in Yogyakarta, Indonesia from 11 to 21 January 1993 with the financial support of the Japanese Customs Administration. Forty-two participants from nineteen countries in the Asia/Pacific Region had attended the seminar. Officials from the Valuation Directorate had given presentations consisting of a brief description of the provisions of the GATT Valuation Agreement and a comparison of existing international systems, organizational requirements, valuation control and fraud. In addition, delegations had given presentations on the valuation systems currently practised in their respective countries.

25. A customs valuation course had been held in French from 1 to 12 February 1993 in Casablanca, Morocco. This country had been studying the possibility of adopting the GATT Valuation Agreement. Eighteen participants from Morocco, Algeria and Tunisia had attended the course. Provisions of the GATT Agreement had been presented in detail by instructors from the Valuation Directorate and from the French Administration. This training course had been followed by an Instructional Techniques programme from 15 to 19 February 1993.

26. On the basis of identified needs expressed by the CCC Members with respect to valuation, the CCC Secretariat had decided to place more emphasis on the practical administration of valuation in developing countries.

27. Finally, the Technical Committee had been informed of the technical assistance activities planned for the fiscal year 1993/94 which included:

- A training course in Côte d'Ivoire, as a result of its recent decision to accept the GATT Valuation Agreement;
- A regional seminar in Central Africa where no substantial activity had been undertaken on valuation for some time;

- A seminar in East and Southern Africa to allow countries not applying the Agreement to take advantage of the accumulated experience of the Parties in that region.

28. With regard to technical issues in respect of which an instrument had been adopted, the observer from the CCC reported that the Technical Committee had adopted a Case Study illustrating the application of the "price actually paid or payable".

29. The facts of the Case Study had been amended several times before the Technical Committee had finally adopted them in the following manner:

An importer purchases at a price of 10,000 c.u. a highly specialized machine which requires an operation course costing 500 c.u. prior to the sale and at the premises of the seller. Three situations could be identified in the contract leading to the following valuation treatments:

Situation 1: Buyer has the option to attend the course.

The machine can be purchased without paying for the course, the two elements being separable. Thus, the payment for the course is not part of the customs value because it is not a condition of sale.

Situation 2: The payment for the course is required by the seller even if the buyer does not attend the course.

Situation 3: An obligation is imposed on the buyer by the seller both to attend and to pay for the course.

In the last two cases, the payment for the course forms part of the customs value of the machine because it is a condition of sale.

30. With respect to technical issues currently being considered, the observer from the CCC stated that the Technical Committee's programme of work included the following topics:

- **Application of Article 8.1 (c).** In its process of illustrating the application of Article 8.1 (c) which dealt with royalties and licence fees, the Committee had continued to examine the seven draft Advisory Opinions submitted by administrations. Substantial amendments had been made to ensure that the facts of each case reflected the commercial reality. To meet the criteria required by the concept of royalties and licence fees, broad views had been exchanged on such elements as the rights conferred by the contract, the payments made in respect of these rights, the relationship between the payment and the imported goods, the existence of a condition of sale, etc. The interaction between Article 8.1 (c) and other provisions of the Agreement had also been examined. The approved Advisory Opinions would therefore be brought forward for the next session and reviewed as a package to ensure a balanced approach.

- **Scope of the expression "right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1 (c).** Since its twenty-first session, the Technical Committee had been developing a Commentary which sought to provide guidance on the types of activity intended to be covered by the phrase "right to reproduce the imported goods", and the valuation treatment intended to be applied to the charges for that right. The Technical Committee had concluded that further modifications would be required in the draft Commentary. The document would be reissued during the intersession and considered further at the twenty-sixth session.

- **Application of Article 1.1 (b) and Article 8.1 (c).** In accordance with the decisions taken by the Technical Committee at its previous session, the CCC Secretariat had redrafted a Case Study which had sought to indicate the proper valuation

treatment to be applied to transactions subject to counterpurchase operations and licensing agreements concerning certain tobaccos and tobacco related products, imported into a country. The redrafted document had been amended at the twenty-fifth session to take into account certain suggested changes. But considering the importance of its decision, the Technical Committee had decided to postpone its discussion in respect of key points, notably:

- the influence of relationship on the negotiated prices;
 - the condition or consideration for which a value can or cannot be determined;
 - the dutiability of the payments.
- **Correlation between Article 8.1 (b) and 8.1 (c).** The problem had arisen during the discussion on draft Advisory Opinion 4.8 concerning the application of Article 8.1 (c) of the Agreement. A delegate had indicated that according to his administration a payment called a royalty and complying with the definition of a royalty except that it would not be a condition of sale, might nevertheless be included in the transaction value as an assist under Article 8.1 (b). At the Technical Committee's request, that administration had submitted two draft Case Studies for the Technical Committee's consideration at its twenty-fifth session. Discussions had been held and various amendments had been made to further clarify the issue. The CCC Secretariat had been instructed to redraft the Case Studies in collaboration with the administration.

31. The observer from the CCC stated that under **other business** the Technical Committee had decided that a presentation on the deductive value method would be given by Austria. A technical officer from the CCC

Secretariat had also given a brief overview of the Electronic Bulletin Board.

32. The Technical Committee's twenty-sixth session would take place from 4 to 8 October 1993.

33. The representative of the United States drew the Committee's attention to the Case Study contained in Annex III of CCC document 38.130 which had been elaborated to illustrate the application of the "price actually paid or payable". His delegation considered the Case Study to be seriously flawed and recommended that it be sent back to the Technical Committee for further review. His delegation felt that there should be a strict adherence to the provisions contained in the Interpretative Note to Article 1 relating to costs and charges that should be excluded from the customs value; otherwise the danger would exist to draw on the "what the goods would fetch" principle of the Brussels Definition of Value. More specifically his delegation objected to the conclusion reached with respect to situation 1 of the Case Study. Under the Interpretative Note to Article 1 of the Agreement the "price actually paid or payable" for the imported merchandise "is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods". In addition, the Note provided the conditions under which certain costs and charges could be excluded from the customs value, including technical assistance undertaken after importation. In situation 1 of the Case Study where the machine could be purchased without paying for the course, the payment for the course did not form part of the customs value because it was not a condition of sale. His authorities felt that the charge being excluded was not one of the charges listed as acceptable under the Interpretative Note to Article 1, and should not be excluded from the custom value. Such an interpretation was contrary to the letter and spirit of Article 1 of the Agreement, and could create a troublesome precedent especially with respect to customs officials who were often confronted by importers wishing to exclude various charges.

34. The observer from the CCC noted the concerns raised by the representative of the United States. He stated that the conclusions set out in that particular Case Study had been reached with difficulty, but that the Case Study had been adopted by the Technical Committee at its twenty-fifth session.

35. The Committee took note of the report on the Technical Committee's work and the statements made, and after an exchange of views agreed to send the Case Study back to the Technical Committee for further consideration. It expressed appreciation for the continued valuable work of the Technical Committee.

D. Information on Implementation and Administration of the Agreement

(i) Argentina

36. The Chairman recalled that at its last meeting held on 3 November 1992, the Committee had agreed to revert to this legislation at its next meeting. The texts of the various decrees, laws and regulations which were contained in document VAL/1/Add.22/Suppl.2 had been translated into English as requested and circulated in document VAL/1/Add.22/Suppl.2/Rev.1. He informed the Committee that the European Communities had submitted a number of questions on this legislation, to which the Argentine delegation had provided written responses. The questions and answers had been circulated on an informal basis at the present meeting.

37. The representative of the European Communities thanked the Argentine delegation for having responded so quickly to the recently submitted questions and added that the answers had allayed most of his authorities' concerns. His delegation had sought some clarification on the issue of "test values", specifically at whose request such "test values" could be used? While no explicit mention had been made in the legislation regarding this point, which had given rise to some ambiguity, his delegation was satisfied with the written response confirming the fact that pursuant to

Article 1.2 (c) of the Agreement the "test values" were to be applied at the initiative of the importer.

38. His delegation was also pleased to note that Resolution No. 2779/90 had been repealed. His delegation had had a general concern with respect to this Resolution stemming from the fact that in parts I and II of Article 1, reference had been made several times to the concept of "economic reality", and to the fact that the values and prices declared would perhaps not correspond to "economic reality" or to the values of other consignments. The Agreement focused on the actual merits of the transaction, that is to say the price actually paid, which would explain why signatories to the Agreement had avoided making references in their legislations to the term "economic reality" and to what might be an acceptable economic price apart from the "price actually paid or payable".

39. He explained that the questions his delegation had concerning Annex VI of Resolution No. 2778/87 related to points (b) and (c) of the **second part** of the Annex and not the **first part**. Consequently, he would welcome some clarification on certain aspects of the factors to be taken into account in connection with a relationship. In the view of his delegation point (b) appeared to cover a special situation not referred to in the Agreement, and point (c) appeared to exceed the powers recognized for customs authorities in the Agreement.

40. The representative of Argentina noted that the responses provided by his delegation had addressed most of the concerns of the European Communities, with the exception of questions relating to Annex VI, and more specifically to the factors to be taken into account in connection with a relationship. He stated that points (b) and (c) of the second part of Annex VI were not intended to introduce any special relationships or indeed grant any special powers to customs administration. Under Article 15.4 of the Agreement persons were deemed to be related only under certain conditions and these provisions which established the legal basis for recognized relationships had been reproduced in part one of

Annex VI. The second part of this Annex did not have a modifying function; on the contrary, it merely elaborated the contents of the first part of the Annex. It set out the different ways in which a legal relationship could be determined, and in fact provided guidelines which could be used by customs authorities to confirm a certain relationship. Furthermore, it should be noted that Annex VI was part of a Resolution, which meant that it did not have the same legal force as for example a decree. It could be viewed as a tool to be used by customs officials and trade operators to determine a legally recognized relationship. As to the authority to examine the documentation provided by the importer for the sake of proving a relationship between the partners involved, this was provided for in Article 17 of the Agreement. This article established that "nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.". He confirmed the fact that Resolution No. 2779/90 had been completely repealed, and requested his colleague from the national customs administration to provide more information in this regard.

41. The representative from Argentina's national customs administration stated that far-reaching market opening measures had been introduced by his Government. In an effort to achieve a more effective service, increase transparency and competitiveness and greatly promote international trade, his authorities had introduced certain changes to the customs legislation with respect to selectivity in import control and the a **posteriori** valuation of merchandise (i.e. after the entry of the merchandise). For these reasons and also because valuation was now carried out on a single specific basis throughout the country, it had been possible to repeal Resolution No. 2779/90. The Customs Co-operation Council's procedure manual had been taken into account in bringing about these changes. He added that these modifications would be notified to the Committee for their consideration in the near future.

42. The representative of the United States expressed appreciation at the explanations provided by the delegation of Argentina, particularly with respect to Resolution No. 2779/90, which he was happy to note had been repealed. Nevertheless his delegation had two points which remained to be clarified. The Preamble and parts I and II of Article 1 of Resolution No. 2779/90 contained many references to the term "economic reality" and to how one determines the transaction value of an imported good. Those provisions were considered troublesome as the Agreement did not make any references to the determination of the "economic reality" of a good. His delegation had been concerned that Argentina was in fact attempting to implicitly set up a system of minimum values, a practice that was specifically prohibited under the Agreement. The second point on which clarification was sought related to whether or not Argentina's legislation contained provisions which corresponded to Article 1.2 (a) of the Agreement. This provision allowed for the examination of the circumstances surrounding the sale so as to determine whether the relationship had influenced the price.

43. In response to the first point raised by the representative of the United States, the representative of Argentina stressed that the legislation did not contain any provisions on the system of minimum prices or values; this system had long been abolished. In fact, Argentina when it had accepted the Agreement had not made use of the possibility to retain such a system as provided for in the Protocol to the Agreement. References to the term "economic reality" could not be viewed as constituting a system of minimum prices for the purpose of valuation of imported merchandises. Imported goods were valued by applying the method set out in Article 1 of the Agreement, namely the transaction value. He emphasized the fact that his Government neither established on a unilateral basis values for goods, nor did it apply arbitrary and fictitious values. Regarding the second point, he requested the United States representative to submit his queries in writing, as this would enable his delegation to provide a more detailed answer. In this context, he urged those delegations seeking more detailed responses to submit the questions in writing.

44. The representative of the United States took note of and expressed appreciation at the information provided by the representative from Argentina that the system of minimum values did not exist in Argentina. He expressed his intention to submit the remaining question in writing.

45. The representative of the Republic of Korea observed that Resolution No. 2778/87 contained elements that were not provided for in the Agreement. He drew the Committee's attention to the first sentence of Article 6 of Resolution No. 2778/87 which stated that the "price paid or payable corresponds to the payments made or to be made at the time of the customs valuation". In fact the Agreement did not deal with the question of timing of the payment. In his delegation's view, in the majority of cases valuation for customs purposes would take place at the time of arrival of the goods, and the price would be paid or payable just after the arrival of the goods. So introduction of a time factor in this provision appeared a bit curious. The subsequent sentences in Article 6 which his delegation found acceptable stated that "If payments have been made in the form of advances prior to the time of valuation, they shall be included for the purposes of determining the customs value. The aforementioned shall not imply that the transaction value, where appropriate, should not be accepted". While his delegation did not have a problem in general with Article 6, it would be interesting to know the purpose behind the inclusion of the time element in this provision, and if there were any specific cases to which this provision would apply?

46. He added that in Annex VI of Resolution No. 2778/87, it was stated that "One person shall be deemed to control the other when **de facto** or by law that person is in a position to impose restrictions or give instructions to the other.". The concept of "control" was very controversial and unclear for the purposes of customs valuation, and Argentina had given in this instance a definition which could go beyond the limits of the Agreement. As in the previous case, he wondered if this provision had a specific purpose and if there was any specific situation to which this provision would apply?

47. The representative of Argentina stated that Article 6 of Resolution No. 2778/87 did not contain rules above and beyond that which was contained in the Agreement. It merely elaborated on what constituted the "price paid or payable" which was the value of the imported goods, in other words the transaction value. The price for the imported good could be paid prior to, at the time of, or subsequent to customs valuation or the moment of importation. The time factor was not important; what mattered was the "price paid or payable". Furthermore, these rules were to be used at an operational level. They established guidelines to be followed by customs officials when proceeding with valuation.

48. With respect to the question on "control", he stated that his authorities had tried to put down in figurative language a concept which was ambiguous, and which was not dealt with in a clear manner in the Agreement. Control would be manifested between two people if one of the persons exercised or imposed some type of restriction or gave instructions to the other so as to set the guidelines for the conduct of that person. Once again this provision was intended to clarify the provisions of the Agreement and to act as a tool to guide customs officials.

49. The Committee took note of the statements made and agreed to revert to this agenda item at the next meeting.

(ii) Romania

50. The Chairman recalled that at the last meeting of the Committee, the representative of Romania had provided clarifications on certain issues which had been raised with respect to Article 8 of the Romanian Government Decision No. 673/1991 which related to the determination of customs value for imported goods. This Article was to be found in document VAL/1/Add.8/Suppl.2.

51. The Committee agreed to conclude its examination of this legislation.

(iii) Mexico

52. The Chairman stated that as requested at the last Committee meeting, Mexico's implementing legislation had been translated into English and circulated in document VAL/1/Add.25/Suppl.1/Rev 1.

53. The representative of the United States said that his delegation would submit certain technical questions in writing to the Mexican delegation.

54. In this regard the Chairman requested delegations having questions on implementing legislations currently under examination, to forward the questions in writing to the concerned delegations with copies to the Secretariat before 30 June 1993.

55. The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

E. Other Business

(i) Panelists

56. The Chairman stated that at the last meeting of the Committee and in accordance with paragraph 2 of Annex III of the Agreement, Parties had been invited to nominate persons available for panel service in 1993 or to confirm existing nominations. Parties wishing to confirm or modify previous nominations and Parties not having made nominations had also been requested to communicate this information in writing to the Secretariat. The Secretariat had thus far not received any such communication. In view of the importance of maintaining an updated list of persons available for panel service, he strongly urged Parties to

transmit this information in writing to the Secretariat as soon as possible.

(ii) Derestriction of documents

57. The Chairman stated that the documents listed in VAL/W/57 had become derestricted as of 10 March 1993.

(iii) Date and agenda of the next meeting

58. The Chairman proposed that the next meeting of the GATT Committee be held the week after the twenty-sixth session of the Technical Committee. The exact date would be set bearing in mind the time required by the CCC Secretariat to prepare its report. He also suggested that he fix the agenda of the next meeting in consultation with interested delegations. It was so agreed.