

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 12 OCTOBER 1993

Chairman: Mr. R. Tam (Hong Kong)

1. The Committee on Customs Valuation met on 12 October 1993.
2. Regarding the status of Yugoslavia, it was **agreed** that the following Decision taken by the Council at its meeting of 16 June 1993 would apply to the Committee on Customs Valuation:

"The Council considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the contracting party status of the former Socialist Federal Republic of Yugoslavia in the GATT, and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for accession to the GATT and that it shall not participate in the work of the Council and its subsidiary bodies. The Council further invites other committees and subsidiary bodies of the GATT, including the Committees of the Tokyo Round Agreements and the Committee on Trade and Development, to take the necessary decisions in accordance with the above" (C/M/264).

3. The following agenda was adopted: Page
 - A. Request by Chinese Taipei for observer status in the Committee. 3
 - B. Status of acceptances of the Agreement. 3
 - C. Report on the work of the Technical Committee. 4
 - D. Information on implementation and administration of the Agreement: 10
 - (i) Argentina 10
 - (ii) Mexico 11

	<u>Page</u>
E. Technical Assistance	13
F. Thirteenth annual review of the implementation and operation of the Agreement; annual report (1993) to the CONTRACTING PARTIES.	13
G. Other business.	14
(i) Panel candidates for 1994	14
(ii) Date and agenda of the next meeting.	14

A. Request by Chinese Taipei for Observer Status in the Committee

4. The **Chairman** drew the Committee's attention to a request made by Chinese Taipei to be represented as an observer at the meeting of the Committee on Customs Valuation. The letter which contained the request was circulated in document VAL/W/58 and stated that as Chinese Taipei "... is in the process of negotiating its accession to the General Agreement on Tariffs and Trade,... it is very important... to follow very closely the activities of the GATT standing bodies as well as all the Committees established under certain Arrangements and MTN Codes." The Chairman recalled that the GATT Council at its meeting of 29 September 1992 had invited Chinese Taipei, following its request for accession to the GATT, "to attend future meetings of the Council and of other GATT bodies as an observer during the period when the Working Party was carrying out its work"(C/M/259). The Chairman pointed out that at its first meeting held on 13 January 1981, the Committee had agreed that "Observers may participate in the discussions but decisions shall be taken only by signatories" and that "The Committee may deliberate on confidential matters in special restricted sessions" (VAL/M/1, Annex I). The Chairman then proposed that the Committee grant observer status to Chinese Taipei. The Committee **agreed** to the Chairman's proposal.

5. The Chairman welcomed Chinese Taipei as an observer to the Committee. He stated that the Committee appreciated the interest shown by Chinese Taipei to follow the work of the Committee in an observer capacity and understood the importance of this request in view of Chinese Taipei's present accession negotiations to the GATT. He encouraged Chinese Taipei to provide the Committee from time to time with reports on any reform process as it related to matters covered by this Agreement.

B. Status of acceptances of the Agreement

6. The **Chairman** drew the Committee's attention to document VAL/49, which notified the acceptance of the Agreement by Morocco. Morocco had invoked the provisions of paragraphs 1 and 2 of Article 21, and paragraphs 4 and 5 of Section I of the Protocol. Under the terms of Article 24, the Agreement entered into force for Morocco on 4 July 1993.

7. The representative of **Morocco** stated that with a view to harmonizing his country's customs legislation and procedures with international instruments, Morocco had notified its acceptance of the Agreement with the reservations indicated in its notification of acceptance. He added that Morocco was working towards the definitive implementation of GATT's customs valuation system, but that the reservations had been included in order to permit a progressive application of the Agreement without

causing serious financial repercussions. Morocco's current national customs valuation system was based on three methods: the comparative method; the deductive method; the minimum value method. He added that his authorities would, in the near future, submit a detailed notification regarding Morocco's current valuation legislation.

C. Report on the work of the Technical Committee

8. The observer from the **Customs Co-operation Council (CCC)** presented, on behalf of the Chairman of that Body Mr. Hadjiyiannis, a report on the Twenty-Sixth Session of the Technical Committee on Customs Valuation held from 4 to 8 October 1993. The report of the session had been circulated in CCC document 38.480.

9. In connection with **intersessional developments**, the Technical Committee had been informed that at its Eighty-First and Eighty-Second Sessions in Arusha (Tanzania) held from 5 to 7 July 1993, the Council had approved the Report of the Technical Committee and the Commentary on the relationship between Articles 8.1 (b) (ii) and 8.1 (b) (iv) which was annexed to that Report. The Council had also agreed to send back to the Technical Committee for further consideration the case study on the application of the price actually paid or payable, as had been requested by the GATT Committee on Valuation.

10. The Technical Committee had also noted the decision taken by Côte d'Ivoire to apply the Agreement with effect from 1 January 1994, without requesting the five-year delay period reserved for developing countries.

11. The CCC Secretariat had informed the Technical Committee that it had asked those members which were not contracting parties to either of the two internationally recognized valuation conventions to inform the CCC Secretariat of the system applied in their country. The objective was to obtain a better understanding of valuation practices around the world. Out of the sixteen countries which had replied, seven of them had stated that they followed the principles of the GATT Agreement. This information, if complete, would be extremely useful for addressing technical questions.

12. Regarding other developments the observer from the CCC pointed out the fact that the issue of preshipment inspection had been discussed between the CCC and the World Bank with a view to determining the impact of private inspection entities not only on valuation but on the whole trading environment and specifically on the traditional functions of customs. The CCC Secretariat had decided to take action which involved all the CCC Directorates and Committees.

13. The Director of the Valuation Directorate had attended a symposium in Washington from 22 to 23 September 1993. It had been organized by the United States Customs with a view to enabling its headquarters and field personnel to be updated on the goals of management with respect to developments on valuation in the United States, and information to be exchanged on new initiatives aimed at improving administration and control within the programme.

14. Finally, the Technical Committee had been informed that the Amending Supplement No. 11 to the Valuation Compendium would be published shortly and that the spanish version of the second edition of the Customs Valuation Training Course was now available. In addition, the Technical Committee had been informed that the Directorate had held its usual meeting with the International Chamber of Commerce (ICC) on 8 September 1993.

15. With respect to **administrative measures for introduction and application of the Valuation Agreement**, the observer from the CCC stated that in accordance with the Decision of the Technical Committee at its Twenty-Fifth Session, the CCC Secretariat had sent out during the intersession, the revised questionnaire to contracting parties to obtain information on the legislation, regulations and administrative practices relating to the GATT Valuation Agreement. Non-contracting parties had also been invited to comment on the contents of the questionnaire. Only eleven contracting parties had answered the questionnaire and three non-contracting parties had forwarded comments. Based on these figures, the Technical Committee had been of the opinion that the number of replies received was insufficient to draw general conclusions.

16. Consequently, the Technical Committee had urged those contracting parties which had not responded to the questionnaire, especially those from developing countries which were applying the Agreement, to forward their replies by 15 November 1993. A revised document would then be prepared by the CCC Secretariat for review at the Technical Committee's next session. The conclusions of the Technical Committee would then be submitted to the Policy Commission for its June 1994 meeting.

17. On the subject of **technical assistance**, the observer from the CCC reported that the Technical Committee had taken note of information document 38.392 which contained updated information on seminars and training courses organized on the GATT Agreement and the activities of the CCC in this area.

18. From 7 to 15 April 1993, a programme which consisted of a discussion on valuation issues including national practices and problems had been carried out in Tokyo (Japan) for customs officers

from Korea, Mongolia, Myanmar, Saudi Arabia and Cuba. A member of the CCC Secretariat had given presentations on customs valuation in general, the Brussels Definition of Value (BDV) and the GATT Agreement in particular. The programme had been wholly financed by the Japanese Administration.

19. A training course on the GATT Valuation Agreement had been held in french in Abidjan (Côte d'Ivoire) from 6 to 17 September 1993. It had been organized by the Ivorian Administration in collaboration with the French Administration and the CCC. Thirty-four officials from Côte d'Ivoire, one from the Central African Republic and one from Comoros had attended the course. Two officials from the CCC and one from France had given presentations covering the technical provisions of the Agreement, comparing the BDV and the GATT Agreement and reviewing Valuation Control Operations. These presentations had been supplemented by substantial practical exercises. The high level of interest shown by participants could be attributed to the fact that Côte d'Ivoire had decided to apply the Agreement with effect from 1 January 1994.

20. 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**. The observer from the CCC recalled that the GATT Committee on Customs Valuation, at its last meeting, had decided to send back this case study to the Technical Committee for further consideration.

21. The dispute had originated in CCC document 36.663 which dealt with the relationship between the Interpretative Note to Article 1 and paragraph 8 of the Protocol. This document had been elaborated to prove that no contradiction existed between those two provisions of the Agreement.

22. The case study described a situation where an importer purchased at a price of 10.000 c.u., a highly specialized machine which required an operation course prior to its sale at the premises of the seller. That course amounted to 500 c.u. However, three different situations had been identified in the contract leading to their respective valuation treatments:

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

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

Situation 2: The payment for the course was required by the seller even if the buyer decided not to attend the course.

Situation 3: An obligation was 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 formed part of the customs value of the machine because it was a condition of sale.

23. At the Twenty-Sixth Session, the US delegation had objected to the conclusion reached in situation 1 (paragraphs 6 to 8 of the aforementioned case study) arguing that only charges and costs specifically referred to in the Interpretative Note to Article 1, provided they were distinguishable, could be deducted from the overall price actually paid or payable by the buyer to or for the benefit of the seller for the imported goods. The US delegation was concerned that importers would avail themselves of the case study to list separately and exclude from the customs value various items that made up the price actually paid or payable.

24. Other delegations, on the contrary, had felt that the conclusion reached in situation 1 was appropriate. However, in an effort to arrive at a suitable compromise, a text modifying paragraphs 3, 4 and 10 of the case study had been proposed.

25. The suggested modifications made to the initial case study appeared as follows:

- Instead of a single invoice mentioning both the payment for the course and the price of the machine, there were now two documents; an invoice reflecting the price of the machine and a separate bill indicating the charge for the training course. This would prevent Customs Administration from presuming that inclusion in the same invoice of the two prices meant that the transaction between the parties related both to the machine and to the course.
- The invoice reflecting the price of the machine was now to be presented prior to customs clearance and no longer at customs clearance.

- To reflect the right of the importer, recognized by many contracting parties, to be informed prior to the customs clearance procedure, paragraph 4 would begin by stating "The importer, being uncertain".
- Paragraph 10 of the case study would be amended to incorporate the separate billing referred to in paragraph 4.

The proposal had been approved by all delegations and the case study had been finally adopted as amended.

26. The Technical Committee had also concluded its examination of the **draft advisory opinions illustrating the application of Article 8.1 (c)** and particularly the terms "condition of sale" and "related to the imported goods". The Technical Committee had adopted all the seven draft advisory opinions subject to the introduction of certain final amendments, as a balanced package consisting of four dutiable advisory opinions and three non-dutiable ones.

27. 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:

Correlation between Article 8.1 (b) and 8.1 (c): draft case study.

The Technical Committee had continued to tackle the question of the links between these two provisions on the basis of two actual cases forwarded by an administration. The royalty was first dealt with because that was the origin of the entire case; the existence of the assist had emerged only at a later stage during the investigation. The Technical Committee had agreed on specific modifications to the facts of Case Study No. 1 as well as minor spelling and wording amendments. Finally, the CCC Secretariat had been instructed to redraft the two case studies in collaboration with the Australian Administration on the basis of the comments made.

Application of Article 1.1 (b) and Article 8.1 (c)

The Technical Committee had concluded its examination of the case study intended to indicate the proper valuation treatment to be applied to five separate licensing agreements which involved certain tobaccos and tobacco-related products as well as counterpurchase

operations. Based on the facts presented, the CCC Secretariat had concluded that the payment for the royalty would be dutiable because it was a condition of sale of the imported goods and was related to the imported goods. However, discussions held under this topic had proved that most of the delegates did not support the conclusions reached in the draft case study because although the payment for the royalty was a condition of sale of the imported goods, it derived from the application of a trademark on a substantially transformed product after importation; consequently the payment was not related to the imported goods. The delegate from Hungary had requested the Technical Committee to postpone further discussion on this issue in order to enable his administration to decide on its position during the intersession. The Technical Committee had agreed to that request and the CCC Secretariat had been asked to follow up this question with the Hungarian Administration.

Scope of the expression "right to reproduce the imported goods within the meaning of the interpretative note to Article 8.1 (c)"

At the suggestion of one delegation, the Technical Committee had decided to postpone discussion of this agenda item until the next session.

28. In its **programme of future work**, the Technical Committee had agreed to a proposal made by the Director of Valuation to include an item on sole agencies, sole distributors and sole concessionaires which appeared as Item 5 in Part III of the conspectus. This issue would be examined in a wider context i.e. related party transactions which would also include transfer pricing. A preliminary project proposal for the study would be circulated during the intersession to be examined and approved, as appropriate, at the Technical Committee's Twenty-Seventh Session.

29. The observer from the CCC stated that under **other business**, the Technical Committee had been informed that during the intersession the CCC Secretariat had received a notice from the Austrian Administration stating that due to unforeseen circumstances, this delegation would not be in a position to make the presentation on the deductive value method as had been planned.

30. The Technical Committee's Twenty-Seventh Session would take place from 21 to 25 March 1994.

D. Information on Implementation and Administration of the Agreement

31. The **Chairman** recalled that at the last Committee meeting parties had been invited to provide by 30 June 1993, to the extent possible, advance written notice through the Secretariat of any questions they might wish to raise on any of the notified legislations. To date the Secretariat had received questions from the Australian delegation on the Mexican legislation.

(i) **Argentina**

32. The **Chairman** recalled that the legislation of Argentina was contained in document VAL/1/Add.22/Suppl.2, and that the English translation of the legislation had been circulated in document VAL/1/Add.22/Suppl.2/Rev.1. At the last meeting of the Committee, an in-depth discussion of this legislation had been held with clarifications provided on a number of issues including on whose initiative "test values" were to be applied, the factors to be taken into account in connection with a relationship, and the concept of "control" in a relationship (VAL/M/31, paragraphs 36 to 49). As promised at that same meeting, and in accordance with paragraph 2 of Article 25 of the Agreement, Argentina had notified additional legislative texts pertaining to customs valuation. Those texts had been circulated in document VAL/1/Add.22/Suppl.3.

33. The representative of the **United States** welcomed the additional legislative information provided by Argentina, and stated that this information would be circulated among his country's various Ministries and customs experts. He hoped to submit written questions in the near future.

34. The representative of the **European Communities** thanked the Argentinian delegation for having submitted the additional information, contained in document VAL/1/Add.22/Suppl.3. His authorities had no questions for the moment, but had noted that this document contained a number of operational instructions and guidelines for customs officers dealing with customs valuation. In this connection, his authorities had noted three elements in this text which might need to be reviewed at a future date, if it were to appear that in practice these elements were causing problems. The three aspects related to: 1) the necessity to deposit a security for a period of 180 days with the possibility of this period being extended for a further 180 days; 2) the indicated accelerated value determination to be made by the authorities which would probably not allow a great deal of time for the importer to be involved in any consultative process; 3) the apparent retention of operational criteria which dealt with economic reality and references to the valuation of other importations.

35. The representative of Argentina stated that the concerns voiced by the representative of the European Communities had been taken note of, and would be communicated to his authorities.

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

(ii) Mexico

37. The Chairman recalled that in 1992 Mexico had notified to the Committee legislative amendments that had been made to various provisions, more specifically to Articles 48 to 59, of Mexico's Customs Law. This notification had been circulated in document VAL/1/Add.25/Suppl.1, and its English version in document VAL/1/Add.25/Suppl.1/Rev.1.

38. The representative of the United States said that his authorities had already communicated in writing a large number of specific questions to the Mexican delegation.

39. The representative of Australia stated that his authorities had submitted written questions to the Mexican delegation, and in addition had sent a copy of those questions to the Secretariat. He added that it would be a useful process for written answers to be provided to those questions and to any others that might be raised on this legislation. However, his authorities hoped to receive the written answers in adequate time before the Committee next met so as to enable them to study the responses carefully. Such a procedure would facilitate the work in terms of domestic preparation and would avoid the need for delegations to come back to the next meeting of the Committee with perhaps more questions.

40. The representative of Canada informed the Committee that her authorities, in addition to submitting a list of questions and comments on the Mexican legislation, had also requested Mexico to table the relevant regulations accompanying that legislation.

41. The representative of Hong Kong stated that his Government had been informed that in an Official Journal dated 4 August 1993, the Treasury Minister of Mexico had issued a list of reference prices in US dollars to be used as the basis for the application of import duties. The list covered a number of manufactured goods including notably electronics, textiles, apparel and shoes. Examples of such reference prices included 3.66 US\$/kg for silk waste (HS No. 5003.1001); 104.64 US\$/kg for silk yarn not for retail sale (HS No. 5004.001); 82.51 US\$/kg for silk yarn for retail sale (HS No. 5006.0001). He added that he would welcome clarification from the Mexican delegation on

essentially the following two points: (i) what basis was used to compile the reference prices?; (b) whether the reference prices were applied selectively to imports from the South East Asian Region, and if so, which countries were affected?.

42. The representative from Mexico stated that his authorities had received specific written questions from Australia, Canada and only very recently from the United States. The questions and comments that were expressed had been studied and would be taken into account in the forthcoming modifications to be introduced into Mexico's legislation. Nevertheless, written answers had been prepared and would be made available almost immediately to those delegations having submitted written questions. In this connection, he added that at a first glance it would appear that many of the questions put forward by the United States were very similar to those that had been provided by Canada, and he suggested that the United States review the answers that had been prepared for Canada. For those points that were not covered, his delegation would be pleased to provide written responses to the United States before the next meeting.

43. Regarding the questions raised by Hong Kong, the representative from Mexico's customs administration recalled that her Government had recently implemented customs valuation legislation which was in conformity with the GATT Customs Valuation Code; as of January 1994, all imports would be subject to the provisions of the Code. In the meantime, her authorities had noticed that for certain imported goods there existed some significant and alarming differences between the declared price and the price actually paid or payable for such goods. Her authorities had thus been obliged to establish a system of surety in order to counter the failure of importers to pay the appropriate amount of duty for such goods. She pointed out that the provisions of Article 13 of the Customs Valuation Code authorized a country to require the payment of a deposit to cover final customs duties levied in order not to delay the entry of the imported goods, and a lot of countries had already put into place such a system. It was not her Government's intention to subject all transactions to the payment of a surety or guarantee, only those which frequently faced this problem of underbilling. For this reason and to expedite customs clearance her authorities had carried out an analysis to discover the areas where underbilling occurred the most. It was the estimated price of such goods that had been published in this list; a list which was limited and periodically reviewed. This measure was not intended to represent a burden on importers which explained why not all imports were subject to it, only those which were of significant fiscal importance. It was also to be noted that the price estimates used for setting the guarantee were in no way related to customs valuation, as the customs value had not been established by the customs authorities at the time the surety was fixed.

44. With regard to Hong Kong's first question, the basis for setting the estimated prices was a database containing reference prices from different sources, i.e. average prices declared by importers, international prices, price lists and weighted average prices on the international market. With respect to Hong Kong's second question, she stated that the measure was not applied according to the country of origin or country of export; it was an across-the-board measure.

45. The representative from **Hong Kong** thanked the representative from Mexico's customs administration for having provided such a detailed explanation on the reference price system. His delegation intended to submit the queries in writing and looked forward to written replies.

46. The **Chairman** hoped that the future modifications which Mexico intended to introduce to its customs valuation legislation would be notified to the Committee as soon as possible. In addition, he requested delegations having questions on any of the notified legislations currently under examination, or any other legislation which might be notified before the Committee's next meeting to provide such questions in writing to the concerned delegations with copies to the Secretariat before 14 January 1994. He requested delegations to whom the questions were addressed to submit their responses in writing and to provide a copy of the written answers to the Secretariat. He pointed out that this request was being made so that the questions and answers could be circulated to other Committee members thereby facilitating the Committee's work and increasing transparency.

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

E. Technical assistance

48. The Committee **took note** of the most recent information concerning technical assistance which was contained in document VAL/W/29/Rev.8.

F. Thirteenth annual review of the implementation and operation of the Agreement; Annual Report (1993) to the CONTRACTING PARTIES

49. The Committee **conducted** its annual review of the implementation and operation of the Agreement on the basis of a Secretariat background note VAL/W/59. The Committee **agreed** that the Secretariat issue a revised document in the VAL/- series to take account of the comments made during that review, and the work of the Committee at the present meeting.

50. In response to a question raised by the representative of Mexico, the **Chairman** stated that the fact that the Mexican legislation had been examined at the present meeting would be adequately reflected in the revised report to be issued in the L/- series.

51. The Committee **adopted** its annual report to the CONTRACTING PARTIES.

G. Other business

(i) Panel candidates for 1994

52. The **Chairman** recalled that in accordance with paragraph 2 of Annex III of the Agreement, Parties would be expected to nominate persons available for panel service in 1994 or confirm existing nominations. He urged all Parties to communicate in written form the relevant information to the Secretariat as soon as possible.

(ii) Date and agenda of the next meeting

53. The **Chairman** suggested that the next meeting of the GATT Committee be held the week after the Twenty-Seventh Session of the Technical Committee, if possible. 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**.