

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 17 MAY 1994

Chairman: Mr. A. Constantinescu (Romania)

1. The Committee on Customs Valuation met on 17 May 1994.
2. The following agenda was adopted:

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A. Election of Officers

3. The Committee elected Mr. A. Constantinescu (Romania) Chairman, and Mr. M. Trainor (New Zealand) Vice-Chairman for 1994.

B. Status of acceptances of the Agreement

4. The Chairman stated that Colombia had accepted the Agreement on 2 August 1993, and had started applying it on a provisional basis (VAL/51). In addition, Colombia had invoked the provisions of paragraphs 1 and 2 of Article 21, and paragraphs 4 and 5 of Section I of the Protocol. He, then drew the Committee's attention to document VAL/52 which notified Peru's acceptance of the Agreement on 2 March 1994. Peru had invoked the provisions of Article 21 and paragraphs 3,4 and 5 of Section I of the Protocol.

5. The representative of Peru stated that the Agreement which his country had accepted on 2 March 1994, had entered into force on 1 April 1994. His authorities had been convinced of the need to have clear rules which would facilitate export as well as import operations. For this reason, and even before Peru's formal acceptance of the Agreement, his authorities had incorporated in the legislation the principles and rules of GATT on customs valuation, and had been applying these rules consistently on a substantial sector of trade. With Peru's acceptance of the Customs Valuation Agreement, these rules would now extend to all of Peru's trade. Peru, as a developing country, had invoked the provisions of special and differential treatment. This included the five-year delay period related to the application of the Agreement's provisions, and also the additional grace-period of three years related to the application of Article 1:2 (b) (iii) and Article 6. In addition, his country had made the reservations permitted under paragraphs 3, 4 and 5 of Section I of the Protocol. In order to facilitate the implementation of the Agreement by Peru, the GATT Secretariat had been requested to provide technical assistance. His delegation intended to participate as constructively as possible in the Committee's work.

6. The representative of Turkey recalled that on 5 February 1986 Turkey had accepted the Agreement on Customs Valuation, subject to ratification. At the time of acceptance, Turkey had invoked the provisions of paragraphs 1 and 2 of Article 21, and paragraphs 4 and 5 of Section I of the Protocol. Turkey had ratified its acceptance of the Agreement on 13 January 1989, and the Agreement had thereby entered into force on 12 February 1989. On 12 February 1994, Turkey had started applying the Agreement, with the exception of paragraph 2 of Article 21, which would be applied in 1997. Legislation pertaining to customs valuation was, accordingly, modified. Turkey's new legislation clearly stated that for the determination of customs value the customs authorities had to apply the GATT Agreement

on Customs Valuation. A regulation concerning the new customs valuation system, which was almost identical to that applied by the European Communities, had been published in Turkey's Official Bulletin. He believed that the new regulation, which was in the process of being translated, would become available to the Committee by the summer.

7. The Committee **took note** of the statements made.

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, Mr. Hadjiyiannis, a report on the Twenty-Seventh Session of the Technical Committee on Customs Valuation held from 21 to 25 March 1994. The report of the session had been circulated in CCC document 38.800.

9. In connection with **intersessional developments**, the Technical Committee had been informed that the Final Act comprising the results of the Uruguay Round had been adopted on 15 December 1993 and that it would be signed at the Marrakesh Ministerial Meeting on 15 April 1994. The contents of the Final Act included the Agreement establishing the World Trade Organisation (WTO) and the Ministerial Decisions relating to Customs Valuation, i.e. the decision regarding cases where customs administrations have reasons to doubt the truth or accuracy of the declared value and the texts on minimum values and on imports made by sole agents, sole distributors and sole concessionaires.

10. The Technical Committee and, in particular, observers had been informed that the results of the Uruguay Round would have important consequences for CCC members, particularly with regard to customs valuation. Membership of the WTO involved the automatic acceptance of a number of GATT Agreements, including the Agreement on the Implementation of Article VII of the GATT. As a result, it was very likely that the GATT Valuation Agreement would be applied by over ninety countries in the near future and membership of the Technical Committee would increase accordingly. Observers from developing countries had been advised that consideration should be given to invoking Article 21.1 which gave a five-year delay period before the application of the Agreement.

11. The Technical Committee had also noted that the CCC Secretariat had issued a questionnaire which dealt with various aspects concerning the implementation of the Agreement by signatories, and that the Eleventh Amending Supplement to the Compendium "Customs Valuation - GATT Agreement" had been issued in December 1993.

12. With respect to **administrative measures for introduction and application of the Valuation Agreement**, the CCC Secretariat, in accordance with the decision of the Technical Committee at its Twenty-Sixth Session, had sent out a revised questionnaire to obtain information on the legislation, regulations and administrative practices of signatories to the Agreement. Countries which were not signatories to the Agreement had also been invited to comment on the contents of the questionnaire. The study, it was recalled, had been made at the request of one of the members of the CCC to examine issues of revenue considerations or possible revenue loss in accepting the GATT Agreement. Twenty-two signatories (representing thirty-three countries) had submitted replies and fourteen non-signatories had provided comments on the contents of the questionnaire. The CCC Secretariat had prepared two papers contained in Annexes I and II of document 38.631 to assist the Technical Committee's examination of the study. Annex I included a detailed analysis of all the responses received, and Annex II contained a synopsis of the conclusions resulting from the study. After a lengthy discussion, the Technical Committee had adopted its revision of Annex II which was going to be submitted to the Policy Commission of the CCC in June 1994.

13. The Technical Committee's conclusions on the study contained a number of recommendations about the types of legislative and administrative structures which complemented implementation of the GATT valuation system. The Technical Committee had considered that the document would provide some assistance to those countries moving towards implementation of the Agreement. Regarding the economic aspects of accession to the Agreement, the Technical Committee had noted that only two of the respondents had identified a loss of customs revenue following implementation of the Agreement. Loss of revenue in both cases had resulted from a breakdown in administration leading to an increase in fraudulent activities by importers. Nevertheless, due to the interplay of a variety of factors, the Technical Committee had felt that the revenue implications of adopting the Agreement could not be conclusively established. It had recognised that any perceived or actual loss of revenue should not be considered in isolation, and that adoption of the Agreement provided a number of significant benefits for Governments and the trading community. The Technical Committee had concluded that these benefits weighed in favour of adopting the Agreement. The Technical Committee had decided to publish the CCC Secretariat's analysis and the conclusions in the future.

14. With regard to **technical assistance**, the Technical Committee had taken note of document 38.672 which provided updated information on seminars and training courses on the GATT Agreement and the activities of the CCC in this area. A workshop which dealt in part with the GATT Valuation Agreement had been held in Karachi, Pakistan, from 23 to 27 January 1994. The valuation aspects of the workshop had been dealt with by an Australian customs representative on behalf of the CCC. A seminar on Customs Valuation had been held in Jerusalem, Israel, from 31 January to

6 February 1994. The seminar had been conducted in English by two officials from the Valuation Directorate of the CCC. A seminar on Customs Valuation had also been organized in Delhi by the Indian Customs Administration. This seminar had brought together thirteen signatories and non-signatories to the Agreement. The seminar was also attended by representatives from the CCC. The seminar was unique in that the initiative for organizing it had been taken by the Indian Customs Administration in order that the participants could exchange experiences on the administration of the Valuation Agreement. This not only benefited the parties to the Agreement, but also those countries which would soon be adopting the GATT Agreement.

15. 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, at its Twenty-Seventh Session, a **commentary on the scope of the expression "right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1(c)**. As amended, the commentary now dealt solely with the meaning of the phrase "right to reproduce the imported goods". Those sections of the draft commentary which had examined the valuation treatment of payments for the right to reproduce had been deleted and would be included in a new document relating to the valuation treatment of such payments which would be considered by the Technical Committee at its Twenty-Eighth Session.

16. The commentary which was adopted provided guidance on the types of activities which would be covered by the phrase "right to reproduce". The commentary concluded that the phrase referred not only to the physical reproduction of the imported goods, but also to the right to reproduce an invention, creation, thought or idea incorporated in the imported goods. A number of examples were also provided.

17. 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 1.1 (b) and Article 8.1(c): case study

18. This topic had involved consideration of an actual case brought before the Technical Committee at the request of the Hungarian Administration. During the intersession, however, the Hungarian Administration had informed the Technical Committee that it wished to discontinue discussion of the case study. The Technical Committee had agreed to the request and had removed the case study from its programme of future work. However, responding to the request of an observer, the Technical Committee had decided to reconsider this topic in the future, based on a different set of facts.

Application of Article 8.1: two draft case studies

19. The Technical Committee had made substantial progress in its consideration of the two case studies related to issues linked to assists and royalties. The Technical Committee had agreed to specific modifications in the analysis of the first case study and had instructed the CCC Secretariat to harmonize the analysis of the second case study with the agreed text in first case study. The Technical Committee had decided to re-examine the texts of both case studies at its Twenty-Eighth Session.

20. The case studies emphasized the need for a thorough examination of the rights obtained by an importer under a licence agreement. Often the right or rights obtained involved the acquisition of items which were provided to the seller free of charge. The Technical Committee believed that in certain circumstances these types of payments might be more appropriately considered under Article 8.1(b) of the Agreement rather than under Article 8.1(c).

Related-person transactions, sole agents, sole distributors and sole concessionaires: information document

21. At its Twenty-Sixth Session, the Technical Committee had instructed the CCC Secretariat to prepare a draft study proposal on related-party transactions which would include issues such as transfer pricing and importation by sole agents, sole distributors and sole concessionaires.

22. The Technical Committee had examined an information document (CCC document 38.600) which had been circulated by the CCC Secretariat. It had noted that the issues contained in the draft document were of particular concern to developing countries. The Technical Committee had also felt that the CCC Secretariat had attempted to cover too many issues, and had instructed it to prepare two separate information documents for the Twenty-Eighth Session. One document would deal with related-person transactions, sole agents, sole distributors and sole concessionaires and would be based on an actual situation encountered by a developing country. The second document would examine transfer pricing in relation to the Agreement.

23. With respect to its **programme of future work**, the Technical Committee continued to have a full programme of work. At its Twenty-Eighth Session it would continue examination of the application of Article 8.1, the valuation treatment for the right to reproduce and the issue of related-person transactions, sole agents, sole distributors and sole concessionaires. Members had been asked to propose new topics for inclusion in the Technical Committee's programme which would be based on actual problems or cases encountered in implementing the Agreement. The Technical Committee also

anticipated a significant increase in workload resulting from the conclusion of the Uruguay Round and the subsequent rise in membership of the Agreement on Customs Valuation.

24. The Technical Committee's Twenty-Eighth Session would take place from 3 to 7 October 1994.

25. The representative of the European Communities welcomed the report presented by the observer from the CCC and in particular the study on the implementation and the administration of the Agreement by the contracting parties. The analysis had been based on a full study and survey of the actual practices of signatories, and in this respect it was an extremely useful piece of work. His delegation had benefited from participating in that study and looked forward to its publication. The study would be all the more useful, in view of the expected rise in the number of signatories to the Agreement following the establishment of the World Trade Organization. Regarding work on the draft commentary related to the interpretation of the phrase "right to reproduce the imported goods", the Technical Committee had completed the first half of what, his delegation, considered to be a joint piece of work. The Technical Committee had been obliged to leave out some important paragraphs from the commentary which was adopted in March 1994, on the understanding that these paragraphs relating to the valuation treatment of payments for the right to reproduce would be considered again during the Twenty-Eighth Session. The discussion during the Twenty-Eighth Session on this matter would thus benefit from the availability of both parts of this work. In view of this, he suggested that the Technical Committee, not reconsider the adopted commentary, but bring it forward at the same time as the second part of this work to the Twenty-Eighth Session.

26. The representative of the United States supported the suggestion made by the representative of the European Communities.

27. The observer from the CCC stated that the Technical Committee had adopted this commentary at its Twenty-Seventh Session, and it was to be presented for approval to the Council of the CCC at its Eighty-Third/Eighty-Fourth Session. However, a procedure existed which enabled the GATT Committee to request the reconsideration or further consideration of any matter covered in a given report. He would bring this request to the attention of the Council, and bring forward the commentary to the Technical Committee's Twenty-Eighth Session.

28. The Committee took note of the report on the work of the Technical Committee, and agreed to request the Technical Committee to bring forward the commentary on the "right to reproduce" to the Technical Committee's Twenty-Eighth Session. The Committee expressed appreciation for the continued valuable work of the Technical Committee.

D. Information on Implementation and Administration of the Agreement

29. The **Chairman** informed the Committee that the entire Customs Code and the relevant articles and annexes from the Customs Code implementing provisions had been notified by the European Communities in accordance with paragraph 2 of Article 25 of the Agreement recently. These texts would be circulated in document VAL/1/Add.2/Suppl.13.

30. The **Chairman** recalled that at the last Committee meeting, parties had been invited to provide by 14 January 1994, 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 not received any questions on the Argentinian legislation. Questions on the Mexican legislation from Australia, Canada, United States and Hong Kong together with the responses had been circulated in documents VAL/W/60 and VAL/W/60/Add.1.

(i) Argentina

31. The **Chairman** recalled that at the last Committee meeting, some preliminary discussion had been held on additional legislative texts submitted by Argentina in accordance with paragraph 2 of Article 25. This information had been circulated in document VAL/1/Add.22/Suppl.3.

32. The representative of **Korea** referred to Annex XIII of document VAL/1/Add.22/Suppl.2/Rev.1 which stated that: " In all cases where contracts provide for the payment of royalties or licence fees or the return of the proceeds of resale, or the deduction system has to be applied, determination of the customs value shall be deferred and the documents shall be transmitted to the Technical Secretariat, Technical Department of Nomenclature and Values, Valuation Division." So, if the royalty or licence fee was included in the customs value of the imported good, Argentina's customs authorities would defer the determination of the customs value. This provision could thus lead to a delay in the release of the goods and complicate their clearance. At the same time, he had noted Annex VII which stated that: "Where significant differences are noted between a particular importation and documents relating to other imports under similar circumstances (for example origin, quantity, commercial level, quality, etc.), the Technical Secretariat, Technical Department of Nomenclature and Values, Valuation Division, shall be informed, in accordance with Article 17 of the Agreement, without affecting the course of the clearance procedure". Provisions existed, therefore, which indicated an intent not to affect the course of the clearance procedure. There appeared to be a contradiction, and he sought clarification from the delegation of Argentina.

33. The representative from Argentina's Public Revenue Department stated that the representative of Korea was right in that there was a difference between the provisions contained in Annex VII and Annex XIII. The difference stemmed from the absence in the latter of a reference to the clearance procedure. Annex XIII dealt with particular types of transactions, the customs value of which required adjustments which depended on subsequent operations. As the value of these adjustments could only be known at a later date, determination of the customs value at the time of importation would be difficult, and would have to be postponed. However, none of this meant that the customs clearance procedure had been modified, or that goods would not be delivered within the time period specified in the contract. Article 13 of the Customs Valuation Agreement provided for situations set out in Annex XIII where if final determination of customs value had to be delayed, goods could nevertheless be released. Depending on domestic legislation, the importer might at the same time have to provide sufficient guarantee in the form of a surety or deposit covering the ultimate payment of customs duties for which the goods may be liable. Annex XIII therefore did not imply in any way a delay in the customs clearance procedure or the delivery of the goods, only a postponement of the final determination of the customs value.

34. The representative of the United States informed the Committee that her authorities had submitted very recently a number of technical questions in writing to the Argentinian delegation.

35. The representative of Argentina pointed out that at the last meeting and as indicated in document 1054, Parties had been requested to submit written questions on any notified legislations by 14 January 1994. In view of the very recent receipt of questions from the United States, his delegation would not be in a position to respond to those questions during the present meeting. However, his authorities had every intention of providing detailed written responses to the United States, with copies to the Secretariat so that these answers could be circulated to other Committee members. In any case, a number of the questions raised by the United States had already been dealt with at the Committee meeting of 5 May 1993 (VAL/M/31). At that meeting, the representative from Argentina's national customs administration had informed the Committee of the general change that was being introduced into Argentina's customs system. These adjustments implied certain modifications to the current legislation and in some cases replacement of existing provisions by new provisions.

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 at the last Committee meeting, some discussion had been held on Mexico's legislation circulated in document VAL/1/Add.25/Suppl.1. Questions and answers had been circulated in document VAL/W/60 and VAL/W/60/Add.1. As promised at that meeting and in accordance with paragraph 2 of Article 25, Mexico had notified additional legislative texts which had been circulated in document VAL/1/Add.25/Suppl.2.

38. The representative of Mexico pointed out that, in addition to the legislative amendments contained in document VAL/1/Add.25/Suppl.2, further amendments had been introduced to three articles in Mexico's customs legislation, namely Article 49.1(d), Article 50.2(b) and Article 55.2(d). These changes, which would be circulated to Committee members soon, essentially transformed the Mexican customs valuation system from a free-on-board (f.o.b.) to a cost-insurance-freight (c.i.f.) basis of valuation. It was his understanding that the use of the c.i.f. system of valuation was provided for in Article 8.2 of the Customs Valuation Code. This Article permitted a signatory to include or exclude in whole or in part: transport charges of the imported goods to the port or place of importation; loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and insurance charges.

39. The representative of the European Communities welcomed the comprehensive written responses supplied by Mexico, and stated that many of his delegation's doubts had stemmed from translation difficulties. He took note of the changes to be introduced to Mexico's customs legislation, in particular Article 49.1(d) which dealt with the option provided for in Article 8.2 of the Customs Valuation Agreement. In this context, questions inevitably arose including the following: had the change already taken place or was it a future amendment? was this new amendment going to be comprehensive and apply to all contracting parties?

40. The representative of the United States thanked the representative of Mexico for the written responses and the additional information provided. She added that her delegation would like to see these amendments notified in writing. Her authorities had a number of concerns about Mexico's legislation contained in document VAL/1/Add.25/Suppl.2 including the following:

- The second criterion in the Preamble stated that " If the text of the invoice or any other commercial document does not distinguish the portion of the freight, loading, unloading and insurance costs applicable up to the point of export, the entire amount of such costs will be considered eligible to be added". Did the phrase "...entire amount of such costs..." refer to the cost of the freight, loading,

unloading and insurance costs incurred to get the goods up to the point of export, or incurred to ship the goods to Mexico?

- The third criterion of the Preamble appeared to provide for some type of addition for insurance purposes. However, Article 49. 1(d) provided that charges for insurance paid abroad to get the goods to the place of exportation were the only charges to be added to the price paid for the goods. Could the circumstances under which insurance would be added to arrive at the customs value of the goods be clarified?

- Her authorities had read with interest the explanations given by Mexico, but nevertheless continued to be concerned by the use in Article 48 of the word "importer" rather than "buyer" as required by the Agreement;

- With respect to Article 53, and notwithstanding the Mexican administration's comments concerning the amendments to this provision, her delegation would like further clarification as to whether the Ministry of Finance and Public Credit had or would be setting a maximum percentage by which the price could deviate from the test value;

- There was reference in Article 53 to "general rules", and in that connection, her authorities would like to know if these rules established by the Ministry of Finance and Public Credit had been published, and if so, could her delegation be provided with a copy?

41. The representative of Korea stated that his delegation shared the concerns expressed by Australia, Canada and United States regarding Article 48 which stated that .."The transaction value of goods to be imported shall be the price paid for the goods,..... The price paid means the total amount paid or to be paid by the importer to the seller or on his behalf for the imported goods." In the Agreement on Customs Valuation, the transaction value of the imported good was the "... price actually paid or payable for the goods when sold for export.." The fact that Argentina's legislation did not appear to contain a provision excluding freight and insurance charges meant that if the importer had to pay for freight and insurance and these charges appeared on the invoice, Mexico's customs authorities would include these charges in the customs value. However, as Mexico was now changing its valuation system to one based on the c.i.f., the problem might be resolved. He looked forward to receiving the written notification of Mexico's modified legislation.

42. The representative of Japan expressed his interest in obtaining detailed information on this amendment as soon as possible.

43. The representative of New Zealand supported the points raised by the representative of the European Communities on the recent changes to Mexico's legislation. In particular, his delegation was interested in knowing whether the new c.i.f. system of valuation would be applied without distinction between sources of supply?

44. The representative of Mexico stated that receipt of those questions in writing would permit his delegation to respond in a more detailed and precise manner. Nevertheless, he had some preliminary comments to make on the points raised. The modified legislation had been handed to the Secretariat at this meeting and would be distributed in the near future to Committee members. The changes had come into force on 1 January 1994, and applied to all countries irrespective of the source of supply including the United States and Canada. However, if a good, under Mexico's rules of origin, was determined to have originated from North America, the system of valuation on an f.o.b. basis would apply. If, however, a product could not be qualified as originating from North America, then customs valuation for duty purposes would take place on a c.i.f. basis of valuation.

45. The Chairman encouraged delegations which had questions on any of the notified legislations to submit them in writing to the delegations concerned before 15 July 1994, with copies to the Secretariat. Delegations preparing the responses were requested to submit the information in writing to the delegations concerned by 9 September 1994, with copies to the Secretariat. This would enable the Secretariat to circulate both questions and answers to other Committee members in good time before the Committee next met.

46. The Committee took note of the statements made and agreed to revert to this agenda item at the next meeting. It also looked forward to receiving the modified legislation from Mexico.

E. Other Business

(i) Derestriction of documents

47. The Chairman stated that the documents listed in VAL/W/61 had become derestricted as of 10 March 1994.

(ii) Date and agenda of the next meeting

48. The Chairman suggested that the next meeting of the GATT Committee be held the week after the Twenty-Eighth 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 would establish the agenda of the next meeting in consultation with interested delegations. It was so agreed.