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ON TARIFFS AND TRADE**

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Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 9 NOVEMBER 1994

Chairman: Mr. A. Constantinescu (Romania)

1. The Committee on Customs Valuation met on 9 November 1994.
2. The following agenda was adopted: Page
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A. Report of the work of the Technical Committee

1. The observer from the World Customs Organization (WCO) presented, on behalf of the Chairman, Mr. Hadjiyiannis, a report on the Twenty-Eighth Session of the Technical Committee on Customs Valuation held from 3 to 7 October 1994. The report of the session had been circulated in WCO document 39.000.
2. Under intersessional developments, the Technical Committee had been informed that at its Eighty-Third/Eighty-Fourth Sessions, the Council of the Customs Co-operation Council (CCC) had decided to adopt a new informal name for the organization. The Council had selected the name "World Customs Organization" to reflect the position of the organization as the single international intergovernmental organization dealing with customs issues.
3. The Technical Committee had also been informed that the Council had approved the reports of the Technical Committee and the seven advisory opinions on the Application of Article 8.1(c) and a case study on the application of the "price actually paid or payable". The commentary on the meaning of the expression "right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1(c), which the Technical Committee had adopted at its Twenty-Seventh Session in March 1994, had not been submitted for approval to the Council because the GATT Committee on Customs Valuation had requested the Technical Committee to re-examine the document at the Twenty-Eighth Session.
4. Taking account of the completion of the Uruguay Round, the Council had agreed that its valuation policy, laid down in the Seoul Declaration of 1984 which was to promote the GATT Valuation Agreement, would have to be redefined to take account of the consequences of the creation of the World Trade Organization (WTO). Fifty or so developing country Members of the WCO were expected to accept the agreement in the course of the next year and these countries would have considerable training needs. A priority objective would be to ensure that these WCO Members were on a sound footing to apply the GATT Valuation Agreement effectively. The assistance of existing parties to the agreement would be necessary to meet the training and other needs of the new parties.
5. The WCO Secretariat had written to all WCO Members who had signed the WTO Agreement and who were not presently parties to the GATT Valuation Agreement. In an initial letter, these Members had been informed about recent developments regarding valuation, about the formalities to be completed regarding the GATT and about their rights and obligations under the agreement. In a

second letter, they had been informed of the main issues to be considered in the preparation for the implementation of the agreement.

6. The Secretary-General of the WCO had met with officials of the International Monetary Fund (IMF) and the World Bank in Washington to explore areas of co-operation. One of the developments arising from the meeting had been a proposal to initiate a programme targeted at valuation, given that it was one of the most difficult customs administration issues, especially for developing countries about to apply the GATT Agreement. Under the proposal, the IMF, the World Bank and WCO would co-operate to develop an implementation package, using the resources and expertise of each organization. This would involve commitment on both sides: from those preparing the package and also from the beneficiaries to effect the changes required. Discussions among the three organizations were being pursued in order to realize this project.

7. With respect to administrative measures for the introduction and application of the Valuation Agreement, the delegate of New Zealand had informed the Technical Committee that New Zealand had ceased the use of its declaration form on 1 January 1993. The decision had been due principally to the introduction of a paperless customs entry environment.

8. The Technical Committee had also reviewed its Conspectus of Technical Valuation Questions and decided to delete several items from Part III of the Conspectus. Each of the items deleted had remained in Part III (i.e. questions raised, but not presently being considered by the Technical Committee) for almost ten years.

9. With regard to technical assistance, the Technical Committee had taken note of document 38.991 which updated the information on seminars and training courses organized on the GATT Agreement and the activities of the WCO in this area. In April 1994, two members of the Valuation Directorate had participated in a seminar on customs valuation held in New Delhi (India) and organised by the Indian Administration. The seminar had focused on the principal provisions of the GATT Agreement, more specifically on those areas which could give rise to difficulties in its administration. In April 1994, a seminar on customs valuation had been held in Karachi (Pakistan). The seminar had focused on the Uruguay Round developments as they impacted customs valuation. Officers from the Secretariat had also conducted expert missions in Nepal and Thailand during April 1994. In October 1994, a member of the Secretariat had visited the Preferential Trade Area of Eastern and Southern African States (PTA) Secretariat to review with that organization technical assistance needs for the future. It was agreed that a seminar concerning implementation requirements would be useful. Also in

October 1994, a seminar was held in Libreville, Gabon, for forty participants from eight countries of Central and West Africa. Participants were informed of the dispositions that would need to be taken to implement the agreement, given that six of the countries had signed the WTO Agreement.

10. With regard to **technical instruments in respect of which an instrument was adopted**, the observer from the WCO recalled that the GATT Committee on Customs Valuation, at its last meeting, had decided to send the commentary on the scope of the expression "right to reproduce the imported good" within the meaning of Article 8.1(c) back to the Technical Committee, pending the finalization of a second document dealing with the valuation treatment of payments for the right to reproduce. At the Twenty-Eighth Session, the Technical Committee had considered a document on the valuation treatment of payments for the right to reproduce and decided that a document on this subject was not necessary. Instead, it had instructed the Secretariat to prepare a document on a related issue: "the implications of the right to distribute or resell the imported goods with reference to the Interpretative Note to Article 8.1". The Technical Committee had also agreed to amend the text of the previously adopted commentary on the meaning of the expression "right to reproduce the imported goods", by inserting an additional paragraph to conclude the commentary. With that amendment made, the Technical Committee had adopted the commentary. The commentary provided guidance on the types of activities which would be covered by the phrase "right to reproduce" and 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 had also been provided.

11. The Technical Committee had concluded its consideration of the two case studies relating to issues dealing with assists and royalties (application of Article 8.1). Both 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, free of charge, to the seller of the goods. The Technical Committee believed that in certain circumstances these types of payments might more appropriately be considered under Article 8.1(b) of the agreement rather than Article 8.1(c).

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

Importations by sole agents, sole distributors and sole concessionaires:

13. Pursuant to the decision during the Uruguay Round relating to the concerns expressed by developing countries with regard to importations by sole agents, sole distributors and sole concessionaires, the Technical Committee had sought to address these concerns on the basis of examples of problems referred to it by developing countries. In this regard, the Technical Committee had examined for the first time two draft case studies related to importations by sole agents and sole concessionaires which were generally based on cases submitted by a Member. The Technical Committee had suggested a number of amendments to both draft case studies and had agreed to re-examine both draft case studies at its Twenty-Ninth Session. The Technical Committee had also instructed the Secretariat to prepare two additional draft case studies based on two cases supplied by another Member during the meeting. The Technical Committee had taken note of a request for an opinion submitted by Colombia in relation to the interpretation of the phrase "legally recognised partners in business" in Article 15.4 of the agreement. The Technical Committee had instructed the Secretariat to obtain additional information from Colombia so that it could consider the issue at its Twenty-Ninth Session.

Transfer pricing:

14. The Technical Committee had taken note of an information document on the topic of transfer pricing which had been prepared by the Secretariat. The Technical Committee, agreeing that transfer pricing was an important topic for customs administrations, had instructed the Secretariat to write to Members seeking information on the documents, rulings and instruments that they might have issued in relation to the subject.

Questions from the Slovak Republic:

15. The Technical Committee had considered three questions referred to it during the intersession by the Slovak Republic pursuant to paragraph 2(d) of Annex II to the agreement. All three questions related to the valuation treatment of second hand motor vehicles purchased on the domestic market of the exporting country. The Technical Committee had instructed the Secretariat to prepare a draft document for consideration at the Twenty-Ninth Session.

16. With respect to its **programme of future work**, the Technical Committee had a full programme for its Twenty-Ninth Session. It would continue its examination of the questions from the Slovak Republic and case studies involving importations by sole agents, sole distributors and sole

concessionaires. A number of new issues would also be examined by the Technical Committee, including the interpretation of "partners in business" in Article 15.4, the scope of the term "maintenance" in the Interpretative Note to Article 1, the implication of the right to distribute or resell the imported goods with reference to the Interpretative Note to Article 8.1(c), and the correlation between paragraphs (c) and (d) of Article 8.1. This latter topic had been previously considered by the Technical Committee. The Technical Committee also anticipated a significant increase in workload as its membership grew as a result of the establishment of the WTO.

18. The Technical Committee had also been requested to consider holding a symposium in connection with its autumn meeting in 1995. The purpose of the symposium would be to address difficult administrative questions associated with implementation of the Valuation Agreement and would provide a forum for new Members to obtain information or to clarify points associated with its administration. The Technical Committee had also discussed whether it should include issues related to the administration of valuation in its agenda and concluded that this could prove to be very useful for new Members.

19. The Technical Committee's Twenty-Ninth Session would take place from 13 to 17 March 1995.

20. The representative of Korea stated that it appeared that the Technical Committee had already started work regarding the implementation of the Uruguay Round results, for example with respect to the question of importations by sole agents, sole distributors or sole concessionnaires. Following the entry into force of the WTO Agreement, the Ministerial Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value would have to be implemented. This Decision had been elaborated so as to allay the concerns of developing countries. However, the danger existed for customs administrations to overuse this decision, as it enabled them to not apply the primary method of valuation "the transaction value of imported goods" for reasons that were not provided for in Article 1.

21. The representative of New Zealand suggested that the text of the report made by the WCO observer be made available, and the letter referred to in the statement be circulated to the Members of this Committee.

22. The observer from the WCO informed the Committee that a copy of the statement had already been provided to the GATT Secretariat, and that the letter could be made available. He added that the Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value was an interpretation that had been made by a number of authorities

with respect to the problems of administering the GATT Agreement. The concern voiced was appreciated since the formalization of this particular interpretation could lead some parties to overuse this provision. No particular program had been devised to monitor the implementation of this decision, but it was his belief that traders would notify their administrations in case difficulties were encountered in this area. Moreover, the WCO Secretariat had informed and instructed administrations on the proper use of these types of provisions in the context of its technical assistance programmes.

23. The **Chairman** informed the Committee that copies of the statement made by the Observer from the WCO were available in the Secretariat.

24. The Committee **took note** of the report on the work of the Technical Committee, and **expressed** appreciation for its continued valuable work.

B. Information on Implementation and Administration of the Agreement

25. The **Chairman** informed the Committee that as indicated at the last meeting of the Committee and in accordance with paragraph 2 of Article 25, Turkey had notified regulations concerning customs valuation. These texts had been circulated in document VAL/1/Add.29.

26. The **Chairman** recalled that at the last Committee meeting, parties had been invited to provide by 15 July 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. Delegations preparing the responses had been requested to submit the information in writing to the delegations concerned by 9 September 1994, with copies to the Secretariat. Questions submitted by the United States on the Mexican legislation together with the responses had been circulated by the Secretariat in document VAL/W/60/Add.2. The Secretariat had also received questions from the United States on Argentina's legislation. These questions, together with the responses were circulated in document VAL/W/63.

(i) **Argentina**

27. The **Chairman** recalled that at the last meeting of the Committee, a first discussion had taken place on Argentina's legislation circulated in documents VAL/1/Add.22/Suppl.2/Rev.1 and Suppl.3. Argentina had notified additional legislative texts which would be circulated shortly in document VAL/1/Add.22/Suppl.4.

28. The Committee **agreed** to examine Argentina's legislation contained in document VAL/1/Add.22/Suppl.4 at the next Committee meeting.

(ii) Mexico

29. The **Chairman** recalled that at its last meeting, the Committee had been informed that further modifications had been introduced to Mexico's customs legislation which 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. These amendments were subsequently notified and circulated in document VAL/1/Add.25/Suppl.3. A preliminary discussion on this issue had taken place at the last Committee meeting.

30. The representative of **Korea** stated that Mexico's response to one of the questions put forward by the United States had prompted his delegation to seek the following clarification. In its response to question number three in document VAL/W/60/Add.2, Mexico had stated that it preferred to use the word "importer" rather than "buyer", and that "although the Customs Law does not define the word importer, the importer is generally considered to be the consignee of the imported goods thus eliminating the customs agent, transporter or any other agent not concerned by the operation." However, paragraph IV of Article 51 of the Mexican legislation contained in document VAL/1/Add.25/Suppl.2 dealt with the relationship between buyer and seller. In this document it was stated that "...the customs value shall be the transaction value, provided: ...that the buyer and seller are not related, or where the buyer and seller are related, this has not affected the transaction value". So the term "buyer" had been used in the Mexican legislation. However, no definition had been provided for either "buyer" or "importer", which led to some confusion.

31. The representative of the **European Communities** stated that Mexico had indicated that as from 1 January 1995, it would change its practice regarding the treatment of costs linked to transport and insurance, i.e. it would include as of that date in the customs value an amount paid for transport and insurance to the point of importation. Such a system was provided for in Article 8.2 of the agreement. However, it had come to the attention of his authorities that in separate texts and agreements, Mexico had provided for a variation of that treatment. For certain of its trading partners, it would continue to apply the previous f.o.b. basis of valuation which meant including in the customs value costs up to only the point of exportation, while for other trading partners, it would apply the new c.i.f. basis of valuation, which meant including in the customs value all costs linked to transport and insurance up to the point of importation. So, in fact, no one rule would be applied to all imports. It was a question

that needed to be looked at in more detail as it was not a practice which had been used before by a party to the agreement, and neither was it provided for in Article 8 of the agreement. This difference in the treatment of transport and insurance costs depending on the trading partner, would not appear to be entirely in accordance with the provisions of the agreement. In this regard, it would be useful to know what had been the actual approach of Mexico regarding this matter, and whether additional legislation providing for the f.o.b. system of valuation actually existed. The legislative texts currently available only covered customs valuation per se, but if additional texts had been presented in another field of activity, they would also need to be examined before a final view on the treatment of transport costs could be taken.

32. The representative of **New Zealand** supported the observations made by the representative of the European Communities. It was also a subject that his delegation had referred to very briefly at the last Committee meeting. In this context, he drew attention to the preambular provisions in the agreement which stated that "...valuation procedures should be of general application without distinction between sources of supply;". For this reason and the other specific reasons suggested by the representative of the European Communities, his delegation would find it useful to look further into this aspect of Mexico's régime.

33. The representative of **Mexico** stated that it was regrettable that the representative of Korea had not forwarded the question in advance of the meeting so as to have enabled his authorities to prepare a more detailed response. He recalled that Mexico had provided responses to a number of questions already on 5 July 1994 and there had been ample time to request further clarifications in writing. However, as a preliminary response he stated that Mexico had decided to use "importer" in order to make it clear that these transactions concerned sales for export to the Mexican territory. Following the amendments of the Customs Law in 1993, the original text was replaced by the text of the Customs Valuation Agreement which explained the use of the term "buyer" in the paragraph pointed out by the Korean representative. However, this was just a preliminary response and it would be useful to obtain the question in writing in order to give a more detailed answer.

34. With respect to the comments made by the representatives of the European Communities and New Zealand, he pointed out that at the previous meeting his delegation had referred to the main elements of this new c.i.f. valuation system which was applied in Mexico as of 1 January 1995. Attention had been drawn to the fact that this system applied to all contracting parties, but that in the case of goods considered as originating from North America, a f.o.b. system of valuation was applied. The two systems were consistent with the provisions of Article 8 of the agreement. The preambular paragraph

of the agreement, to which reference had been made, was familiar as his country had been subscribing to this agreement for a number of years. The fact that the treatment extended to goods from North America may be different from the treatment accorded to goods coming from other regions was not incompatible with the provisions of the agreement. In the case of goods coming from the United States or Canada, the c.i.f. system of valuation was applicable as in the case of goods coming from any other contracting party. The f.o.b. system of valuation was applied only to goods originating in NAFTA members if they conformed to the origin provisions in the NAFTA agreement, which Mexico had signed. This agreement did not contain provisions referring to "contracting parties" as such but rather to "goods coming from a given source". Therefore, this system did not discriminate against any contracting party.

35. The representative of the European Communities thanked the representative of Mexico for the response provided although he could not agree with everything that was said. Indeed, if he had understood the explanation correctly, what this meant was that for Mexico's North American trading partners, the f.o.b. basis of valuation would be used, but, for other trading partners it would be the c.i.f. basis of valuation. This situation would seem to be one which was not actually intended by the agreement. Some harmonization needed to take place as one system had to apply to all parties. It did not appear to be envisaged by the agreement that a party could adopt a selective approach, applying the f.o.b. system of valuation or the c.i.f. depending on the source of the imports; a party could use one or the other, but not both. This split-approach was one that needed to be looked at further because it was a fairly basic point as regarded the application of Article 8 of the agreement. The legislation currently under examination did not give a full picture because it only indicated the fact that Mexico was applying the c.i.f. system of valuation. Indeed if other texts or implementing provisions to other agreements indicated a different situation, or a partially different situation, it would be useful to look at those texts.

36. The representative of New Zealand wondered whether the following reflected accurately the thrust of Mexico's statement. Essentially that there was no discrimination against any contracting party because the different systems used were distinguished according to whether the product was of North American origin or not. In the case of the former the f.o.b. system of valuation was applicable and in the case of the latter it was the c.i.f. system of valuation which was applicable.

37. The representative of Mexico stated that if goods originated from any contracting party including the United States or Canada, the c.i.f. system of valuation was applicable. If the goods, conformed to the rules of origin provisions contained in NAFTA, then these goods were considered to come not

from the United States or Canada but from North America. In this case the f.o.b. system of valuation was applied.

38. The representative of New Zealand stated that it was because of this distinction that his delegation had felt it useful to inject into the debate the language contained in the preamble of the agreement. It was the sixth preambular paragraph which did not mention "contracting parties" or "parties to the Agreement", but instead mentioned "sources of supply". With this in mind, his delegation had some difficulty at this stage in seeing how imports from one source of supply, in this case North America could be treated differently from imports coming from another source, for example New Zealand or any other country.

39. The representative of Mexico stated that it was possible that there was a difference in the actual appreciation of the value and the legal impact which his authorities attached to Article 8. The fact that Mexico used a f.o.b. or a c.i.f. basis of valuation according to the interests of the members of the Committee showed that these methods were neutral. If one method prejudiced a party over another, then it would have been stated in Article 8. Since parties were free to use one system or the other, then in principle the consequences on valuation of using one system or the other would be absolutely neutral. Furthermore, Mexico attached greater legal value to an article in the operative part of the agreement than to one of the preambular paragraphs. But, turning to that preambular paragraph he pointed out that the interpretations given to the term "source" could differ. He had also taken note of the request made by the representative of the European Communities concerning the notification of the document in which a reference was made to the use of the f.o.b. system of valuation. However, his delegation reserved the right to see whether this really corresponded to what was covered by the Customs Valuation Agreement and then act accordingly. His authorities would submit before the next meeting of this Committee the document in question or a response as to why Mexico believed that this item did not come within the purview of this Committee, should that be the case.

40. The representative from the European Communities indicated his appreciation that Mexico would consider providing the texts in question. If it was decided not to provide these texts, then his authorities reserved their position and would need to consider how they might look further at the question.

41. The Committee agreed to revert to this agenda item at its next meeting.

(iii) European Communities

42. The Chairman stated that at its last meeting, the Committee had been informed 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. It had been agreed at that meeting to consider this legislation, which was circulated in document VAL/1/Add.2/Suppl.13, at the present meeting.

43. The representative of the United States stated that her authorities had reviewed the texts under consideration. One question that had been raised was whether the European Community had promulgated any new customs valuation regulation since this submission, and if so when they would be made available to this Committee.

44. The representative of the European Communities stated that there had been no change introduced to the customs valuation provisions since their publication as contained in document VAL/1/Add.2/Suppl.13. The Customs Code itself had not been changed either. However, there were draft provisions presently under consideration but which would not affect the customs valuation section of the Code. The European Community had a Code of implementing provisions as well which had been amended twice, but these amendments had not affected the customs valuation section of the Code.

45. The Committee agreed to conclude the examination of this legislation.

C. Technical Assistance

46. The Committee took note of the most recent information concerning technical assistance which was contained in document VAL/W/29/Rev.9.

D. Fourteenth annual review of the implementation and operation of the Agreement; Annual Report (1994) to the CONTRACTING PARTIES

47. The Committee conducted its annual review of the implementation and operation of the Agreement on the basis of a Secretariat background note (VAL/W/62). 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.

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

E. Other business

(i) Panel candidates

49. 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 1995 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

50. The **Chairman** suggested that he fix the date and agenda of the next meeting in consultation with interested delegations. It was so **agreed**.