

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED  
COM.IND/W/64  
5 November 1971  
Special Distribution

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## Committee on Trade in Industrial Products

### GROUP 2 ON VALUATION

#### Report by the Chairman

1. Pursuant to its mandate to elaborate, on an ad referendum basis, concrete solutions to the problems in the field of customs valuation which had been notified in the Inventory of Non-Tariff Barriers, Group 2 on Valuation has asked me to submit to the Committee two drafts, one on principles for valuation and one on understandings with respect to application of Article VII which is tentatively headed "Interpretative Notes". These texts are circulated to contracting parties with my present statement as a covering explanation (see Annex 1).
2. The Group's approach has in general been to seek to interpret the provisions of Article VII of the General Agreement and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation. This approach is recognized as being only one among several possible approaches. Work has not been directed towards adoption of one common system of valuation.
3. The Group has reached a fair measure of agreement on these two texts which, if accepted and implemented, would solve the specific problems notified in the Inventory. The Group has recognized that the time has come for reflection and decisions on whether, and under what conditions, the proposed drafts are acceptable. The Group felt that these decisions might take considerably more time for some than for others as they involved changes in legislation for some.
4. The ultimate choice of an instrument or instruments to embody the material which the Group has developed has received only preliminary attention, so that not much significance should be attached to the headings "Draft Principles" and "Draft Interpretative Notes". Likewise, the eventual status of the results from the legal point of view and the relationship to existing obligations has not been considered in depth. It appeared, however, that such questions might more usefully be considered after some general consensus has been reached to proceed to acceptance.
5. The drafts are not fully agreed within the Group, as notes to the text will show, even on the basis on which the Group has worked, that is, on the understanding that neither the Group as a whole nor any of its members necessarily accepts the text. In general the views which have earlier been expressed by members of the Group, in the report annexed to L/3496 and elsewhere, continue to be held. However, the views of some members are presented separately. (See Annex 2)
6. The Group considered that, in view of the progress made on the two texts, it would now be appropriate to refer them to their administrations for careful examination and for consideration of changes which might be implied in accepting them.

ANNEX 1

Draft Principles and Draft Interpretative Notes

I. PRINCIPLES

1. Valuation systems should be neutral in their effect and in no case be used as a disguised means of providing additional protection by artificially increasing the value to which the rate of duty is to be applied.
2. Valuation systems should not be used to combat dumping.
3. Valuation systems should protect trade against unfair competition arising from undervaluation.
4. Valuation systems should be of general application without distinction as between sources of supply.
5. Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.
6. Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.
7. Valuation systems should not prevent the quick clearance of goods.
8. The legal and administrative provisions concerning customs valuation should be accessible to the general public and be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.
9. Valuation systems and practices should take into account the need to safeguard business secrets.

II. INTERPRETATIVE NOTES

1. The value for customs purposes of imported merchandise is the "actual value", which is understood to be the price at which, at a time and place determined by the legislation of the country of importation, the merchandise imported or like merchandise is sold or is offered for sale, or would be sold to that country in the ordinary course of trade under fully competitive conditions.

For countries which base their valuation on a c.i.f. price, that price includes the costs of delivery to the place of introduction into the country of importation.

Four countries which do not base their valuation on a c.i.f. price the price to be taken into consideration includes the costs of delivery of the merchandise to the place defined in the legislation of the country of importation (e.g. ex factory, at railhead, at the dock, free on board ship or delivered to aircraft).

2. For the purpose of Article VII paragraph 2 (b), "like merchandise" is understood to mean a product of the same origin and similar in all respects to the product imported or, in the absence of such a product, another product of the same origin as the product imported, whose characteristics closely resemble those of the product imported (in particular as regards condition, type, quality, etc.).
3. The price of "like merchandise" should be used as a basis for customs valuation only in cases where the "actual value" of the merchandise cannot be determined on the basis of the price paid or payable or of the price made by the vendor to other purchasers in the importing country for identical merchandise.
4. Value should be determined in accordance with the foregoing Interpretative Notes. However, in cases where actual value cannot be ascertained in this fashion, Article VII paragraph 2 (c) is applicable. The "nearest ascertainable equivalent" within the meaning of that sub-paragraph should [normally]<sup>1</sup> be based on information available on the importing market, such as:

- the price of merchandise conforming to the definition of "like merchandise" given in Interpretative Note 2 above in all respects but which originates in a country other than the country of origin of the merchandise to be valued, provided that in that other country the conditions of production (including wage rates) are comparable to those in the country of origin of the merchandise to be valued, and prices are established in fully competitive conditions;

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<sup>1</sup> Most countries could accept this text only with the word "normally" omitted and with the bracketed addition to the third indented paragraph included. One country could only accept the text with the word "normally" included.

- if the imported merchandise is sold or resold, the price made on the first sale or resale in fully competitive conditions, such price being adjusted to take account of the various elements that should not be included in the customs value as defined in Interpretative Note 1; or
- any other element that can constitute a valid basis for determining the value for customs purposes (for example, rental during the normal lifetime of the merchandise, value shown in the balance sheet as an asset and information provided by the exporter<sup>1</sup>).

5. If there is a difference between the price paid or payable for the imported merchandise and a value obtained by other methods, that should not in itself constitute a reason for rejecting the price paid or payable. There may be acceptable reasons for the difference; e.g. technical developments in the exporting country, different distribution methods, etc.

6. With regard to the elements of level, quantity and time, contracting parties should respect economic reality and commercial practice and, inter alia

- accept the usual quantity rebates even in the case of fulfilment of a contract in successive consignments;
- take into account the time required for executing the contract in the branch of trade in question.

7. Notes 1-6 above, together with Article VII and its existing Interpretative Notes, describe the calculation of actual value and indicate other acceptable methods of valuation to calculate the nearest ascertainable equivalent to actual value. The value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin, nor on the price of goods in the domestic market of the exporting country, nor, in accordance with Article VII, paragraph 2(a) on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value.<sup>1</sup>

8. The value for customs purposes of any imported product should not include the amount of any customs duty applicable within the country of origin or export from which the imported product has been exempted or has been or will be relieved by means of refund.

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<sup>1</sup>The representative of Argentina could not accept this formulation which appeared to classify a system based on minimum values, alone among all named systems, as using "arbitrary or fictitious values".

9. The importer should be made responsible for the accuracy of his customs valuation declaration.
10. On the request of an importer or an exporter the customs administration shall explain in advance the general principles and practices for the calculation of value for customs purposes [so that traders can estimate with a reasonable degree of certainty the value of their goods for customs purposes].
11. The customs administration shall explain to the importer or exporter, on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded.
- 11 bis. On the request of the person declaring the goods the customs administration shall explain how the value for customs purposes has been calculated for his goods.
12. Consistent with Article X :3(b) , each contracting party shall provide a procedure for appeal to an independent and impartial administrative and/or judicial body against valuation decisions of its customs authorities.

ANNEX 2

Statements of Certain Delegations

The European Communities, Japan, the Nordic countries, and the United Kingdom

The great majority of countries are of the opinion that the adoption by all contracting parties of the principles and Interpretative Notes which are the subject of this document would be a major advance towards the elimination of obstacles arising out of customs valuation. They are nevertheless, convinced that only a full harmonization of valuation systems on the basis of one single concept can make a substantial contribution to the expansion of international trade in a climate of stability and certainty. Taking into account the fact that an increasing number of countries have already taken this path by acceding to the Convention on the Valuation of Goods for Customs Purposes (Brussels, 15 December 1950); or at least by acting consistently with the concepts of the Convention, the best way of achieving such harmonization would seem to be for all contracting parties to accede to one single convention, thereby applying one single customs valuation concept.

Sweden

The Swedish delegation had raised certain problems as regards the use of uplifts but the intention now was to pursue this matter further in the CCC.

Canada

The Canadian delegation does not consider the draft interpretative notes which have been discussed in the Group to be either the simplest or the most effective solution to customs valuation problems. The Canadian delegation therefore emphasizes the Group's understanding that the work of the Group does not involve any commitment on the part of any country to accept or implement the solutions elaborated in the Group, that the results of the Group's work do not preclude the possibility for other solutions and that no delegation is bound to accept any particular solution. It is also the Canadian view that the report should state that some countries do not consider harmonization of valuation systems to be either necessary or desirable and that these countries therefore feel that interpretative notes of the nature proposed are both inappropriate and unnecessary.

United States

Whether and under what conditions the texts elaborated by the Group are acceptable would depend, for some countries, on the prospects for obtaining some balance of advantage from the results of work of the other Groups now preparing concrete solutions on non-tariff barriers, or possibly from work yet to be undertaken on additional non-tariff barriers or on other aspects of the GATT work programme.

India

It should be understood that contracting parties having valuation systems requiring them to take into account prices of the same or like product in the markets of exporting countries would be obliged to modify them to bring them into conformity with paragraph 7 of the Interpretative Notes. It was suggested that pending modification of their valuation systems they should instead of current domestic value take into account (a) invoice prices of the exporting country of like merchandise to its major exporting country; or (b) invoice prices generally obtained by the exporting country for like merchandise for exports to other third country markets.

Pakistan

The representative of Pakistan drew attention to the fact that views along the lines of the above statement had been expressed by Pakistan at various times during the consideration of valuation by Group 2.