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VALUATION FOR CUSTOMS PURPOSES

Questionnaire for the Ninth Session

Addendum

In the following the statements originally made to the Technical Group on Customs Administration are reproduced as revised by the delegations concerned.

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A U S T R A L I A

(Original Statement L/228/Add.1, page 2)

Question 1.

The Technical Group came to the conclusion that the system applied by the Australian Government permits the reply that no arbitrary or fictitious values are used.

This decision was taken after a careful study of the regulation providing the power for the Minister to determine the value, if this value cannot be ascertained in the normal way, and the explanation given regarding that regulation by the delegate of Australia. The Australian delegate explained that this power to fix the value is not transferred to any administrative body, but is exercised exclusively by the Minister, and that this possibility is used only in exceptional cases when the importer himself is not able to furnish the necessary data. The delegate also assured the Technical Group that the decisions are taken as speedily as possible, and that - though legally the Minister is free to ascertain the value on any basis he likes - in practice, the value ascertained is the value which would also have to be used in normal cases.

Question 3.

The following additional statements were made by the Australian delegate. Valuation is based on the information given by the exporter on the prescribed form, which has to contain the current domestic value as well as the price paid. The current domestic value is based on the actual class of trade in which the importation took place, which means that the wholesale price is used as a basis if the goods are imported by a wholesaler.

Question 4.

The reply given to this question was altered to read as follows:

"The time which is accepted for valuation purposes is, in the case of the acceptance of the actual money price, the time of sale, and in the case of the use of domestic value, the moment of exportation."

Question 6.

(a) or (b), whichever is higher, due to the definition given under 3.

Question 8.

In the case of basing the value on the actual money price paid, the invoice, and in the case of current domestic value, the declaration is used as a basis for assessing the value.

Question 9.

The regulations provide for the use of an alternative method of valuation; but the customs officer has no free choice, as he is obliged to apply one of the two systems, whichever leads to the higher value.

Question 10.

Yes. The explanation given in the statement is not based on the legal situation, but on the practical application.

Question 11.

International Monetary Fund rates are applied in so far as such rates exist in relation to the country concerned. No regulations exist to deal with foreign countries applying multiple currency rates.

Question 12.

No additional import tax is levied. The internal tax levied at import (sales tax) is based on the value fixed for duty purposes, and is calculated on a duty-paid value.

BELGIAN CONGO AND RUANDA URUNDI

(Original Statement L/228/Add.4, page 7)

Question 3.

The value is in practice based on the c.i.f. price of the product imported. The price of similar imported products is used only in very exceptional cases, as fraud etc.

Question 6.

The reply to (c) has to be "yes" instead of "no".

Question 12.

The reply under (b) should be omitted as not relevant.

The statistical tax is paid at the rate of $\frac{1}{2}$ pro mille on the customs value, duty not included.

B R A Z I L

(Original Statement L/228/Add.4, page 10)

The system described refers only to sixteen ad valorem items under 3,800 specific items.

Attention was drawn to the fact that the Brazilian Government decided to adopt the Brussels nomenclature as well as the Brussels valuation system.

B U R M A

(Original Statement L/228/Add.1, page 6)

Question 1.

The delegate of Burma explained that the appraised value in the case of absence of satisfactory information is not an arbitrary value, but is based on the value of similar imported goods. The value of orlon hosiery, a new product imported for the first time, for example, and not accompanied by related documentation, would be fixed on the basis of information available for nylon products.

Question 2.

Practically, no. Although the laws provide the possibility of basing the valuation under certain circumstances on the value of comparable domestic products (this provision is contained in the Sea Customs Act, but not in the part reproduced in the Annex to this statement, as erroneously referred to on page 6 of L/228/Add.1), in practice this regulation is not applied.

Question 3.

Yes. The regulation mentioned under (a) (fixing the value on the basis of the wholesale price) is only used in a very few cases, when no satisfactory documentation is available. In all other cases, which may cover 99 per cent of the imports, valuation is based on the price actually paid for the imported goods. This possibility is provided by a legal interpretation of (b) of Section 30 of the Sea Customs Act.

Question 3(a).

Yes. As already stated, the value is based on like merchandise only in exceptional cases. In this case, the actual class of trade is taken into account.

Question 4.

The time and place of exportation mentioned in Section 30 of the Sea Customs Act refers only to export duties.

Question 5.

The port of importation.

Question 7. Yes.

Question 8.

For 99 per cent of the imports the invoice price is accepted as the basis for valuation.

In the remaining cases duty is assessed on the basis of the current wholesale market price for like imported goods.

Question 9.

The customs regulations provide an alternative application of the two systems. The customs officer has no free choice between the systems, as he has to use the wholesale price when the product is on the list of goods for which a wholesale market exists.

Question 11.

The International Monetary Fund rate where applicable, otherwise the official rate. No regulations exist to deal with foreign countries applying multiple currency rates.

Question 12.

Only an internal tax (the sales tax) is levied at importation. This tax is assessed on the duty-paid import value.

Question 13. No

C A N A D A

(Original Statement L/228/Add.1, page 9 and L/228/Add.6)

Question 1.

No, not as regards trade with contracting parties. As regards trade with countries which are not enjoying most-favoured-nation treatment, under exceptional circumstances prices are fixed at a duty value which approximates to domestic prices; but this system is only applied in cases where such imports threaten material injury to an established industry.

Question 3.

Yes. The Technical Group thought it advisable to draw the attention of the Working Party to the special valuation system for the so-called "end of season sales". The Canadian delegate underlined especially the fact that this system can only be applied in clearly prescribed circumstances, and that the value in such cases also follows closely to the average home market value of such products in the country of export. He finally stressed the point that these decisions cannot be taken arbitrarily by a customs officer, but are reserved for the Minister.

Question 3(a).

(a) and (b) are used. If the system (b) is used, the class of trade is taken into account.

Question 4.

The time of direct shipment (if not end of season case).

Question 6.

(a) or (b) whichever is the higher.

Question 8.

The valuation is normally based on the invoice price. All charges included in the invoice relate to expenses after the those from the point of direct shipment have been deducted.

Question 9.

Alternative valuation methods are provided. The customs officer has no free choice, due to the fact that the conditions under which the systems are to be applied are provided in the law itself.

Question 11.

The exchange rates applied are based on the International Monetary Fund rates, or, if such rates are not applicable, on the commercial bank rates. Where multiple rates are used the actual rates applying to each transaction are accepted.

Question 13.

No details regarding cases in which Canada feels hurt by the valuation regulations of other countries were given.

Additional question

The United States delegate further drew attention to the application of minimum prices for cut flowers in the season time. The Canadian representative explained that this system affects all cut flowers, but that the fixed values are only an assumption of the real value. The basic law of the

application of the fair market value is not set aside by this regulation, since everybody who complains has the right to have duties based on actual values if he so wishes. Such complaints can be raised by a simple letter.¹ To further questions, the Canadian delegate explained that the time of season (Christmas and Easter) is some two months, and that the minimum prices are notified to the Customs officers.

C E Y L O N

(Original Statement L/228/Add.1, page 12)

Question 3.

In the case of Ceylon, similarly as in the case of Burma, the "true wholesale market value" is used only in limited cases. A list of these items is issued weekly. It includes besides textiles of certain varieties such goods as drugs, patent medicines, cosmetics, razor blades, tyres and tubes, photographic material (raw films, plates, paper, etc.), which are sole agency goods and as such have a wholesale cash price.

Question 3(a).

The valuation is based on the market value of goods of like kind and quality. Goods are not assessed on a hypothetical market value.

Question 4.

The time of importation.

Question 5.

For all purposes of assessment of goods imported into Ceylon, the Customs Ordinance indicates that when wholesale market value which is denied from the wholesale cash price applies, the time and place of import are the main factors. Where no wholesale cash prices exist, the place (i.e. the port of Colombo) is the factor to be taken into consideration in ascertaining the cost at which goods of a like kind and quality could be delivered.

Question 6.

Normally, the landed price in the importing country.

Question 8.

Usually the invoice price.

Question 9.

The customs officer is bound as to the method he has to apply.

¹ The only decision the Minister can make is to establish actual values. He has no other option and cannot refuse to use such actual value.

Question 10.

The invoice price is used regardless of refund of taxes. In the case of deduction of taxes, they would not be added back.

Question 11.

The International Monetary Fund par value, if applicable, otherwise the official rate. No regulations exist to deal with foreign countries applying multiple currency rates.

Question 12.

No other charges are based on value.

C H I L E

(Original Statement L/228/Add.5, page 1)

Question 3.

Insert in the first line of the statement, after the word "valuation" the following phrase:

" ... in connexion with the levy of ordinary customs duty".

The words in parentheses in the last line of the first paragraph should read:

"(commercial invoice, import licence, etc.)".

C U B A

(Original Statement L/228/Add.5, page 1)

Question 2.

Cuba establishes its value for duty purposes on the export price or on the current domestic value in the country of exportation. In the absence of such information, the value may be based on the value in the Cuban market of comparable goods. There is provision in the legislation for the issue of tables of official fixed values, but in fact no such lists are in force at present.

Question 7.

As indicated in Question 3, the customs valuation is based on the "usual wholesale quantities".

Question 9.

In the application of the various alternative bases of value, no choice is left to the customs officer. The highest value is to be taken as a basis for duty purposes.

Question 12.

No further information is available at the moment as to which import taxes are based on the duty exclusive of import value and which are based on the duty paid value.

D E N M A R K

(Original Statement L/228/Add.1, page 14)

Question 3.

Yes. In the statement made in paragraph 2 of the reply to this question, it is understood that in the case of a sale to an independent wholesaler, the valuation is made on the basis of the wholesale price.

Question 3(a).

Duty is based on the value of the merchandise actually imported.

Question 6.

Export price in the exporting country. Exceptionally, domestic price in the importing country.

Question 8.

Invoice price subject to corrections.

Question 10.

Internal taxes are excluded.

Question 11.

The International Monetary Fund rates are applied in so far as such rates exist in relation to the country concerned. Otherwise the official rate of the Bank of Denmark is used. No regulations exist to deal with foreign countries applying multiple currency rates.

Question 12.

In so far as internal taxes are levied on imported goods on an ad valorem basis the duty-paid import value is used as the basis for such taxation.

FEDERAL REPUBLIC OF GERMANY

(Original Statement L/228/Add.1, page 17 and Add.4, page 13)

Question 2.

Attention is drawn to the fact that the English version of the German statement (which is a translation) contains an error, and should not read that the valuation "may", but "cannot" be based on the value of comparable domestic products.

Question 10.

The interpretation of the law tends in the direction that only the deduction of taxes on products, that is to say indirect taxes, is acknowledged as being in conformity with this regulation. In practice also the deduction of other charges (social payments, direct taxes) does not lead to a correction of the value for the time being, but these practices may soon be changed.

Question 11.

In all cases, official bank rate.

Question 12.

No import tax is levied. The only internal tax levied is the turnover equalization tax. This tax is levied on the basis of the duty-paid value of the imported merchandise.

F R A N C E

(Original Statement L/228/Add.2, page 7 and Add.5, page 4)

Question 1.

Fixed values are applied for mineral oil. These values are fixed by the Direction des Carburants du Ministère de l'Industrie on the basis of the prices for each quarter-year, for the previous period. The prices are, as far as the delegate knew, fixed on a general basis without further distinction. This system finds its reasons in the necessity to levy internal taxes at the same time as duties and thus avoid complicated calculations at the time of import of mineral oils.

Question 8.

The treatment of the valuation of pharmaceutical products which, regardless of the phase of importation, always have to be valued on the basis of the retail price.

Question 11.

Exchange rates are fixed on the latest market rates which are published in the Journal Officiel. If a publication such as the Journal Officiel is not available for the country involved, a conversion is effected on the basis of average rates notified monthly to the customs authorities. If such a valuation is not possible, the rate which can be proved to have been effectively paid, or if such a proof is not possible, the published estimated rates, are used.

Question 12.

Normally the customs value is taken as a basis for the valuation of import and internal ad valorem taxes levied at importation. With the exception of the special temporary compensation tax, to which a duty is not added, the duty-paid value is used. A number of special valuation systems are referred to in the statement made by France under this question.

I N D I A

(Original Statement L/228/Add.1, page 20)

Question 3.

The system of applying fixed values based on values prevailing during the preceding twelve months has been introduced as a convenience to the trade and to the administration. It is applied to about five per cent of the tariff items. The fixed values are revised every year but in the case of bigger fluctuations in values arising suddenly during the year, changes can be and have occasionally been made during the year. The values which are chargeable under this system are fixed after prior consultation with the trade and are notified under certain legal regulations. Generally they are applicable to imports from all countries except where separate values have been fixed for different countries. The fact that sometimes the fixed values are differentiated depending on the source of the goods, finds its reason in the fact that the prices in the preceding period were different for different sources.

Questions 4 and 5.

Time and place of importation. The reference to exportation is made only for export duties. The existence of a tariff value does not liberate the importer from declaring the import value, but the duty is fixed independently from the value declared on the basis of the fixed value.

Question 9.

The law provides, depending on the goods imported, for valuation on the basis of the market value, on the invoice or on fixed value. Also, the application of the market value is not left to the discrimination of the customs officer, but is strictly circumscribed by the existing regulations. This wholesale market value is used for staple commodities with well-known world market prices.

Question 11.

In the reply to this question it has to be understood that in all cases the current bank rate is applied.

I N D O N E S I A

(Original Statement L/228/Add.1, page 24)

Question 3.

The reply to this question was affirmative. When additionally questioned, it was admitted that the value is increased by the charge to be paid in connection with the acquisition of foreign currency (nil, 33-1/3, 100 or 200 per cent, depending on which products are imported).

Although it seems that an addition is made to the real value, the Indonesian delegate pointed out, that in the opinion of his Government such is not the case, because the system applied does not affect the meaning of "value in entrepôt", of which a definition and some explanations have been given at the Eighth Session (see Questionnaire in document L/81/Add.3, page 7), which reads:

"In practice, all costs, normally made prior to importation in Indonesia, which an importer is required to pay in order to get the goods in customs bonds, are to be added to the original purchasing price."

Question 11.

The system of surcharges payable on certain imported commodities (regardless of country of origin) is well known to the International Monetary Fund (see document L/138/Add.1, 29 September 1953).

Question 12.

The statistical tax is 1 per cent, and is levied on the value, without including the duty.

Internal taxes levied at import are based on the duty-paid value.

I T A L Y

(Original Statement L/228/Add.2, page 13 and
(English only) Add.5, page 4)

Question 8.

If goods covered by the same contract are delivered in instalments within a reasonable period in accordance with normal commercial practice, the invoice price may in practice be taken as a basis for customs valuation, provided that in the meantime no considerable change in the price of the goods takes place. If delivery is delayed by duly proved unavoidable circumstances (storms, shipwreck, etc.), the customs administration may take a benevolent view of the case and accept the invoice price as a basis for customs valuation.

Question 12.

The "administrative charge" of 0.5 per cent is levied on the customs value duty not paid. The equalization tax for the original turnover tax is levied on the duty plus value.

The administrative charge of 0.5 per cent is destined for services rendered and the total revenue from this tax - which did seem high to some delegates - does not cover the full cost of the customs administration.

J A P A N

(Original Statement L/228/Add.1, page 55)

The normal basis for establishment of the value for duty purposes in Japan is the invoice price plus charges up to the c.i.f. point. Where no invoice price is available, or the invoice price is unacceptable, the value for duty purposes is established at a c.i.f. level by reference to the value of like goods recently imported, or failing such evidence, by reference to the value of like goods sold in the internal market of the exporting country. As a last resort, reference may be made to the value of comparable goods of Japanese origin, treated as being duty-paid values. Each of these methods is generally subject to the condition that the prices to be considered are not less than the prices for goods in the usual wholesale quantity in the ordinary course of trade.

NETHERLANDS - NEW GUINEA

(Original Statement L/228/Add.3, page 9)

Question 1.

The regulations provide a system of fixed values similar to those applied in India and Pakistan. This right, however, has not been used since the war.

Question 8.

The term "value in bond" means "the value at introduction in free trade".

Question 12.

The statistical tax is 1 per cent of the dutiable value, duty not included.

NETHERLANDS - SURINAM

(Original Statement L/228/Add.3, page 6)

Question 7.

The rule that the valuation has to be based on the normal quantity imported provides the right for the importer, who is importing at exceptionally low quantities and therefore at relatively higher prices, to require the valuation on the basis of the wholesale value. It has to be understood that this is a right of the importer which is granted only on his request.

Question 12.

The statistical tax is 1 per cent of the dutiable value, duty not included.

NEW ZEALAND

(Original Statement L/228/Add.1, page 26)

Question 3.

The addition of 10 per cent was originally introduced to adjust the current domestic value in the principal markets in the country of export to an approximate c.i.f. value. This system is applied regardless of whether the goods are imported by sea or air. The practice uses the current domestic value declared by the exporter as the basis of valuation. Investigation takes place only in cases of doubt. If a price to wholesalers has been established as the current domestic value in the exporting country such price would be accepted for duty purposes even for sales to retailers or consumers in New Zealand.

Question 6.

The Collector of Customs has the right to value goods at amounts either higher or lower than the declared current domestic value if he has reason to believe that such higher or lower value represents the true current domestic value but this right is subject to appeal to higher administrative authority or to the Courts of Law. The Minister's power to determine valuation is confined by law to cases where for various reasons the normal definition of current domestic value cannot be applied. Such cases are rare.

Question 12.

The sales tax is based on the duty-paid value of the imported goods plus 25 per cent to arrive at an estimated wholesale value in New Zealand. Wholesale value is the basis of sales tax on all taxable goods whether domestic or imported.

NORWAY

(Original Statement L/228/Add.1, page 31)

Question 1.

The remark made in the statement which draws attention to Item 6 has not to be understood as if Norway would apply arbitrary or fictitious values.

Question 3(a).

The valuation is based on the value of the merchandise actually imported, with the exception of the cases referred to under the replies to Question 5.

Question 12.

The import licence fee mentioned is one per mille. The expression "transportation tax" would be better replaced by "harbour fee". In fact this levy is charged for landing costs and is different depending on the harbour which is used. No such charge is levied if the goods are not imported by sea. An equivalent fee is levied for import otherwise than by sea. The levy is used for a special fund to improve harbour installations etc."

PAKISTAN

(Original Statement L/228/Add.3, page 13)

Question 1.

The fixed values are revised on 1 January each year. These values are based on the average actual value established by reference to the immediately preceding twelve months. The trade is consulted in fixing these values. In the case of a major change the value is revised during the year. The fixed values refer to about 5 per cent of the import tariff items. Duty is recovered on the basis of the fixed values and the customs have no right to ignore these fixed values in preference to actual values even where the latter would yield more duty.

RHODESIA AND NYASALAND

(Original Statement L/228/Add.1, page 35)

Question 10.

In the statement that the exclusion of taxes is limited to customs and excise duties and purchase tax it has to be understood that these are the only taxes that have become known to us but if the case arose we would deduct any other indirect governmental tax on commodities, similar to purchase tax, provided it is refunded on exportation.

S W E D E N

(Original Statement L/228/Add.3, page 15)

Attention is drawn to the fact that the Swedish Government has the intention to change over in the near future from the actual system of valuation to the Brussels system.

Question 8.

The right to evaluate goods by experts to arrive at a basis for valuation is used only in the case when the value cannot be found by any other means. As far as it is known, such estimates are not based on the domestic but on the actual value of the imported products.

Question 11.

In the case of currencies which are not officially quoted, the actual commercial bank rate is used.

T U R K E Y

(Original Statement L/228/Add.2, page 16)

Question 12.

The charge levied in connexion with the acquisition of foreign currency (concerning which a case is pending at the CONTRACTING PARTIES as to whether such a levy is to be considered an import tax in the sense of Article II) is found on the basis of the customs value without adding import duties.

U N I O N O F S O U T H A F R I C A

(Original Statement L/228/Add.1, page 39)

Question 3(a)

The statement in L/228/Add.8 in the second line of paragraph (b) add the words "actually imported" after the word "merchandise" where it appears for the first time.

Question 6.

The word "market" in the first line should read "markets".

Question 7.

The obligation to fix the value on the basis of the "usual wholesale quantity" means (i) that a trader importing a quantity appreciably in excess thereof would not obtain the benefit of the additional quantity discount, and (ii) that a trader importing appreciably less than the "usual wholesale quantity" would obtain the benefit of an additional quantity discount dependent thereon. All importers would pay the same duty on the same commodity.

UNITED KINGDOM

(Original Statement L/228/Add.1, page 42)

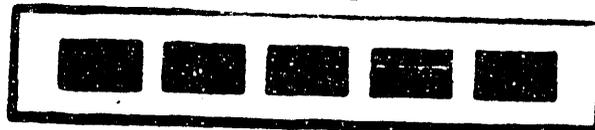
Question 3.

The problem referred to by the United States under their Question 13 (L/288/Add.1, page 51), was replied to as follows by the United Kingdom delegate:

"In assessing the extent to which importations into the United Kingdom liable to ad valorem duty are subject to special enquiries regarding the basis on which the value should be determined, it is important to bear in mind, firstly, that the tariff provides for unconditional exemption from duty of a large proportion of the import trade; secondly, that of the remaining items the great majority are not charged with duty if they originate in the preferential area; and thirdly that there are numerous specific duties in the tariff. The problem raised by the United States delegate, therefore, has practical significance only in a field which is small in comparison with the total imports of the United Kingdom.

Within this field, it would probably be reasonable to assume that 90 per cent of the importations relate to goods which have been sold and bought by vendor and purchaser completely independent of each other and in respect of which the purchase price, as evidenced by the commercial invoice, is accepted as the basis of value without adjustment or enquiry. In such cases duty is taken outright and, provided that he has not subscribed to a false or incorrect declaration of his relations with his supplier, the importer can be confident that the question of the customs valuation of the goods will not subsequently be re-opened. Of the remaining 10 per cent of cases, where the importer and supplier are not independent of each other, probably two-thirds consist of instances in which the importer is little more than the selling agent of the supplier. For such importations the basis of value usually adopted is the price (less adjustment for the included duty and post-importation expenses) at which the agent sells the goods to independent purchasers in the United Kingdom. This basis, of course, yields the same value for duty for importations by the agent as would obtain in the case of goods imported directly by the supplier's customers in the United Kingdom.

There remains a residuum of imports, probably amounting to 2 per cent or 3 per cent of all imports chargeable with ad valorem duties, which are the subject of case by case determination of the basis of value for duty purposes. Enquiries are made into the precise relationship existing between the importer and his supplier with the object of determining whether the invoice price is a privileged one not available to an importer independent of the supplier and, if this proves to be the case, the extent by which it falls short of an open market price. Once this has been assessed directions are given to the ports regarding the basis on which imports by the particular importer concerned from the supplier in question are to be valued. This basis may, when the invoice price provides a reliable starting point, be expressed in the form of invoice prices plus so much per cent. In other cases it may take the form of the importer's re-sale price to independent



customers in the United Kingdom less the included duty and less an allowance in respect of post-importation expenses and normal profit. The basis of value, once determined, is applied to all trade between the named importer and supplier until such time as a review of this trading relation indicates that it is appropriate to modify the basis."

UNITED STATES

(Original Statement L/228/Add.1, page 47)

Questions 1 and 2.

The United States delegate stated that it is true that his country has a provision for determining value on the basis of comparable domestic prices, and that there are some arbitrary elements in connection with determining "United States value" and "cost of production". In regard to the first, it is pointed out that "American selling price" is not a provision applying generally to merchandise imported into the United States, and in any event only six classes of goods are affected. Also, the application of "United States value" and "cost of production" is probably not unprecedented in the practice of other countries which inevitably have to use similar criteria if the value cannot be determined in a normal way. The difference as compared with other countries seems to lie in the fact that other countries can use administrative measures more flexibly, whereas under the American system the administration must be guided by precise legal provisions. However, the possible removal of the arbitrary elements in these provisions of law has been under study.

Questions 3 and 3(a).

The Canadian delegate stated that there are important instances when the United States does not levy duties on actual values. For example, wholesale prices at which sales are made to United States wholesalers are often not accepted as the values on which duties are applied. Although similar sales are normally made at the same wholesale prices to domestic wholesalers, such prices are not accepted unless they are offered to any buyer, including retailers. As a result duties are often levied on the higher price to retailers, although the actual price at which the goods were imported was at the wholesale level.

The United States delegate stated that under Section 402 of the Tariff Act, determination of value is based on merchandise "freely offered for sale". Under judicial determinations, if the goods are freely offered to all purchasers, but at different prices depending on the class of purchaser, then the highest price would have to be taken since that would be the only price at which anyone can buy. This phase of the valuation law, along with others, has been the subject of study in the United States. However, in the opinion of the United States delegate the foregoing interpretation can be considered "actual value".

