

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Customs Valuation

MINUTES OF THE MEETING HELD ON 9-10 MAY 1985

Chairman: Mr. R. Hochörtler (Austria)

1. The Committee on Customs Valuation held its twelfth meeting on 9-10 May 1985.
2. The Committee was informed of the death of Mr. Herbert Rieder of the Austrian Customs Administration. It expressed its sorrow and offered its condolences to the family of Mr. Rieder.
3. The Committee elected Mr. R. Hochörtler (Austria) Chairman and Mr. P. Nicora (France) Vice-Chairman for 1985.

4. The following agenda was adopted:

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- A. Accession of further countries to the Agreement

5. The Committee noted that this matter had already been discussed at its special meeting also held on 9 May 1985 (see document VAL/M/12 for the minutes of this meeting).

- B. Technical assistance

6. The representative of Canada said that a seminar, co-sponsored by India, the Customs Cooperation Council and Canada, had been held in New Delhi, 24-30 April 1985, for the benefit of countries in the area. Among the subjects dealt with had been the provisions of the Agreement, the drafting of legislation, public review processes, administrative issues, public information programmes, the training of officials and a review of the transitional problems occurring. On these points particular attention had been paid to the experience of Canada which had recently gone through

the process of introducing the Agreement. Responding to a question, the observer from the Customs Cooperation Council said that thirty-five officials from fifteen countries had participated in the seminar.

7. The representative of the European Communities said that there was a possibility that the Community would organize a seminar for English and French speaking African countries in 1986.

8. The Committee took note of the statements made. In regard to the point raised at the Committee's last meeting about whether there was need to ensure the greater transparency of technical assistance activities so as to give interested developing countries further information and also help Parties in their planning (VAL/M/1, paragraph 18), the Committee agreed that this would be facilitated in GATT circles if the information documents prepared for the Technical Committee on such activities were also made available as a GATT document (subsequently issued as document VAL/W/29).

C. Information on implementation and administration of the Agreement

(i) Botswana

9. The representatives of the European Communities and Australia said that their authorities required further time to examine the legislation of Botswana (VAL/1/Add.16).

10. The Committee agreed to defer its examination until its next meeting and invited Parties wishing to put questions to send them in writing to the secretariat by the end of June 1985 so that they would be forwarded to Botswana in sufficient time to enable the Botswanan authorities to provide responses for the Committee's next meeting.

(ii) Canada and Czechoslovakia

11. The representative of Czechoslovakia, recalling the statement he had made at the Committee's previous meeting (VAL/M/11, paragraph 29), said that he had hoped that the modified internal regulations of the Czechoslovak Central Customs Administration necessary to ensure a more precise implementation of some Articles of the Agreement would have been ready in time to enable the Committee to have all the documents relevant to the Czechoslovak legislation in advance of the present meeting. Unfortunately, this process had not yet been fully completed and the revised regulation had not yet been published as a Decree of the Federal Ministry of Foreign Trade, which was the body responsible for implementation of the Agreement. However, the Czechoslovak authorities had given to the secretariat for circulation to Parties copies of the legislation presently in force, including the present internal regulation of the Central Customs Administration (subsequently circulated as document VAL/1/Add.18). The modified version of this regulation would be made available to Parties as soon as possible, together with Czechoslovakia's replies to the points contained in the revised checklist of issues. Czechoslovakia's action on the Committee's Decisions on interest charges and carrier media bearing software would be incorporated in this regulation.

12. The representative of Canada said that his country had been applying the Customs Valuation Code since 1 January 1985, in keeping with Canada's commitment made during the Tokyo Round of Multilateral Trade

Negotiations. The legislation to implement the Code had been originally introduced in the Canadian Parliament with the Budget of February 1984. A change in the Government of Canada prior to its passage through Parliament had necessitated its re-introduction in November 1984. The Bill, including the tariff rate adjustments negotiated in accordance with Article XXVIII procedures under the GATT that had been necessary to offset changes in tariff protection resulting from the adoption of the Code, had become law in late December 1984. Now that Canada had implemented the Code, his delegation looked forward to enhancing its participation in the work of the Committee. While Canada had participated to date on the basis of what it understood to be the intent of the Code, it would be able to offer its views from a more practical point of view as its experience in administering the Code increased. Although the legislation and the responses to the checklist of issues had been circulated (documents VAL/1/Add.17 and VAL/2/Rev.1/Add.14 respectively), he understood that there had not been sufficient time to allow other Parties to study it and that therefore the Committee might wish to examine it in detail at its next meeting. His delegation would be prepared to answer any questions at that time. He added that Canada's customs administrators had advised him that they had not encountered any problems or received any complaints to date in the application of the new legislation.

13. The Committee took note of the statements made, agreed to examine in detail the Canadian and Czechoslovak legislation at its next meeting and invited delegations to give, to the extent possible, the Canadian and Czechoslovak delegations advance notice of questions by communicating them before October.

(iii) Information from Parties expected to apply the Agreement in 1986

14. The representative of the Republic of Korea said that in July 1984 his country had partially revised its customs law, enforcement decree and rules and regulations in order to implement the Agreement from 1986. Related parts of the implementation rules of the Customs Administration had been revised and were presently partially in force. It was scheduled to complete during 1985 all domestic measures necessary for full implementation of the Code. The Ministry of Finance was implementing training programmes for traders as well as customs officers. Recent reorganizations had included the establishment of an international customs division in the Ministry of Finance and a customs valuation section in the Customs Administration.

15. The representative of Brazil said that a recent decree approving the national customs regulation stated that customs value as of 23 July 1986 would be established according to the Agreement on Implementation of Article VII of the GATT. This date of application was consistent with the terms on which Brazil had accepted the Agreement. The Federal Income Department of the Ministry of Finance had approved several administrative measures for the implementation of the Code. A comprehensive training programme for officials that would implement the Agreement had been instituted. The structure of the Federal Income Department had been altered to include a new body called the Coordination of the Customs Control System, with regional and local ramifications throughout Brazil. This body would be jointly responsible with the Coordination of the Fiscal System for the operation of the valuation Code. Referring to paragraph 3 of the Protocol, he said that it was Brazil's intention to continue to apply for a period of three years the minimum values presently applied to

certain goods. These values would be inflation adjusted as necessary. Further details would be supplied shortly in writing for circulation to Parties, including the list of products subject to minimum values and the text of Brazil's customs valuation legislation.

16. The representative of the European Communities noted that, under paragraph 3 of the Protocol, the terms and conditions for the retention of officially established minimum values on a limited and transitional basis would have to be discussed and agreed by the Parties in advance.

17. The representatives of the European Communities and the United States expressed an interest in the plans of India, in particular whether it remained India's intention to invoke paragraph 3 of the Protocol.

18. The Chairman thanked the representatives of Brazil and the Republic of Korea for their helpful statements. He suggested that the Committee take note of the statements, agree to come back to this sub-item at its next meeting, and also take up at that meeting the proposals from Brazil containing the terms and conditions under which it wished to retain minimum customs values on a limited and transitional basis, in accordance with the procedures adopted by the Committee at its first meeting (VAL/M/1, Annex 2, paragraph 3). If it remained the intention of India to invoke the provisions of paragraph 3 of the Protocol, the Committee would also have to consider a proposal from India. The secretariat should communicate to India the interest of the Committee in receiving information on its intentions so that this could be made available to Parties at an early date.

19. The Committee so agreed.

(iv) Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods (VAL/6/Rev.1); Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment (VAL/8 and Add.1)

20. The Chairman suggested that the Committee take stock of the situation concerning the application of these Decisions. Documents VAL/9 and Addenda and VAL/11 and Addenda respectively contained information received from Parties on the application of the Decisions on interest charges and carrier media bearing software. In addition, VAL/1/Add.11/Suppl.2 and VAL/1/Add.2/Suppl.7 contained information on these matters from Norway and the European Communities respectively.

21. The representative of Canada said that, as of the date of implementation of the provisions of the Agreement by Canada (1 January 1985), Canada had followed the practice set out in the Decision on interest charges. As regards computer software, Canada had effectively applied duty only on the value of the carrier medium since that same date. A formal notification would be sent shortly.

22. The representative of Yugoslavia said that the practice in the Decision on interest charges had been in force in her country since 1 April 1982 (VAL/9 and Corr.1). A notification concerning the Decision on software would be sent shortly.

23. The representative of the United States said that on 28 February 1985 field instructions had been issued to customs officers to confirm the long-standing practice in the United States of treating the information

component of computer software as non-dutiable. As regards the Decision on interest charges, instructions to customs officers had been issued on 26 April 1985. Both measures would be notified to the Committee shortly. She urged signatories to notify the practice they had decided on for the valuation of computer software, including if they were excluding software from duty by tariff treatment. In response to an observation by the representative of Brazil that the Decision on the valuation of carrier media bearing software only put an obligation on those countries adopting the practice referred to in paragraph 2 of the Decision to notify and put no such obligation on other Parties, the representative of the United States said that her proposal was that countries that intended to treat computer software in accordance with paragraph 2 of the Decision, whether by valuation or tariff methods, should notify the Committee of the action taken, so that the relevant information could be issued in one document.

24. The representative of the European Communities, referring to paragraph 3 of VAL/1/Add.2/Suppl.7, said that the Community's decision on the valuation of carrier media bearing software was being implemented by the Community on an autonomous basis without prejudice to its right to negotiate its tariff on software in any future round of multilateral trade negotiations within the GATT or to the possibility of the adoption of an alternative autonomous tariff measure producing equivalent effects.

25. The representative of Sweden said that in his country the Board of Customs would soon implement a decision on the valuation of computer software; there was no need for action by Parliament. A notification would be submitted shortly.

26. The representative of Finland said that the application in Finland of the Decision on carrier media bearing software required changes in the national law on customs valuation and hence action by Parliament. Preparations for this action had been completed and a Cabinet proposal would be submitted to Parliament in the near future. Depending on the time taken by the proceedings in Parliament, the entry into force of this amendment could be expected in the second half of 1985.

27. The Committee took note of the statements made and, in accordance with the proposal of the United States, urged countries adopting the practice referred to in paragraph 2 of the Decision on computer software that had not already notified to do so as soon as possible.

(v) Other matters

28. The representative of Argentina, recalling that Argentina had invoked the provisions of Article 21 of the Agreement on delayed application with a view to applying the Agreement from 1 January 1986, said that, during the five-year period of delay, certain institutional changes had taken place in the Argentine Government which required that the procedure of ratification be re-examined from the beginning. Another factor had been the need for the necessary technical assistance and training material to be available in Spanish. Hence, his Government considered it essential to request a two-year extension of the period of delay until 1 January 1988, in accordance with paragraph 2 of the Protocol. The purpose of this extension was not only to enable customs officials to be trained and prepared but also to ensure that production and trade circles were fully informed of the advantages offered by the Agreement. He added that, after consultations with interested bodies, the competent authority in Argentina,

namely the Ministry of Foreign Affairs, had opened formal procedures for ratification of the Agreement for submission to Congress with a view to the necessary legislation to ratify the Agreement being enacted during the present session of Congress, which had begun on 1 May 1985 and would finish during September 1985. The terms of the legislative ratification were those that had been notified by Argentina to the Director-General in connection with Argentina's acceptance, subject to ratification, of the Agreement.

29. The representative of Australia provided responses to two questions put by the United States delegation at the Committee's previous meeting (VAL/M/11, paragraph 20). In regard to the question concerning the special treatment given to inland freight costs of goods exported from Canada, she said that the provision concerning Canadian freight in sub-section 154.(3) of the Australian Customs Act reflected Australia's obligations under Article 5 of the Canada-Australia Trade Agreement. At this stage, there were no plans to review the provisions of the trade agreement. With regard to the question concerning the basis for Australia's statement as recorded in VAL/M/8, paragraph 30, she said that the conclusion that the use of computed value might lead to a result unintended by the Agreement had been reached in relation to a hypothetical example using the computed value method of Article 6 where the producer was not the exporter. The intention of the example had been to demonstrate that the use of this method in these circumstances could result in a customs value less than the influenced price, which, it had been suggested, would be unintended by the Agreement. It had in no way been intended to imply that valuation would be used to combat dumping or that the higher of two legitimate values should be accepted.

30. The Committee took note of the statements made.

D. Report on the work of the Technical Committee

31. The observer from the Customs Cooperation Council presented a report on the ninth session of the Technical Committee on Customs Valuation, held 4-8 March 1985, on behalf of the Chairman of that body, Mr. Neville Foldi. The report of the session had been circulated in CCC document 32.350. The session had been attended by all Parties to the Agreement bar five and by observers from twenty-seven other countries. With respect to the dissemination of information, he said that the Canadian customs valuation declaration form, a policy statement on the invoice requirements of Canada Customs, and the Norwegian declaration form had been distributed. The second revision of the Index of valuation rulings and conclusions had been prepared on the basis of replies and further information received from Austria, Botswana, the EEC, Finland, Hong Kong, New Zealand, South Africa, Sweden, Switzerland and the United States. The Technical Committee had decided that the Index be incorporated in the GATT Valuation Compendium and updated once a year.

32. In regard to technical assistance, the Technical Committee had taken note of CCC document 32.247 which supplements information document 31.808 with additional information on past activities and on the programme of future work in the field of technical assistance. The Technical Committee had invited countries offering technical assistance to submit updated statements of their activities, and invited developing countries to make known their needs. The third Council training course on customs valuation was scheduled for June 1985. It had already been over-subscribed. In

consequence, it would be held in English with a French language course to follow later in the year. Henceforth, such courses would constitute a permanent part of the Council's activities. The main aim of the valuation courses was the training of trainers; the latter would then form a nucleus in their respective administrations to train other customs officers and thus produce a multiplier effect. While such courses could be hosted at places other than Brussels, they should be organized on a regional basis, rather than for a single country. An example of this was the seminar which had since been held in India for the countries of that region (see paragraph 6 above). The CCC Secretariat had invited developing countries to indicate if they were in a position to host a regional training course or seminar on customs valuation. At its session, the Technical Committee had been informed that the training kit on customs valuation had been finalized by the Council. The kit was available in English, French and Spanish in either a two-volume or a full three-volume set. The three-volume set consisted of the complete lesson plans, including lesson objectives, instructor notes and practical cases, for thirty-six lessons on customs valuation. It also contained guidelines for organizing training courses, lessons on the training of trainers and valuation fraud, as well as model assimilation tests. It was completed by a large number of instructional aids such as slides, transparencies and a flow-chart providing an analysis of the Valuation Code. The two-volume set was the same but was without the slides and transparencies. It did, however, contain the material from which the transparencies could be made. The Technical Committee had noted that a complete training kit of this type, the first of its kind, would be of great use to administrations in the organizing of training programmes to improve the efficiency of their valuation officers. A copy of the two-volume training kit had since been sent to all Council Members. The full three-volume set and additional copies of the two-volume kit could be purchased from the Council. In regard to the question of the accession of further countries to the Agreement, customs administrations had been urged to take advantage of the informal consultations and special meeting organized by the GATT Committee, and the CCC Valuation Directorate had sent all countries concerned a letter drawing their attention to the importance of these meetings.

33. Continuing his report, the observer from the Customs Cooperation Council said that the Technical Committee had adopted four instruments (one commentary, one advisory opinion and two case studies) relating to technical questions:

- A Commentary on the Treatment of Tie-In-Sales. It described the two broad categories of tie-in sales and then listed the most important practices involved, namely "countertrade" which was essentially a mechanism of paying for goods in international trade through the exchange of products for products. The Commentary concluded that, in view of the number of different forms countertrade could take, it would be unlikely that any single conclusion in this regard could be made and it would be necessary to take a decision on the basis of the facts of each transaction, including the type of countertrade involved.
- An Advisory Opinion on the Meaning of the Expression "sold for export to the country of importation" in Article 1 of the Agreement, which, put briefly, stated that only transactions involving an actual international transfer of goods may be used in valuing merchandise under the transaction value method.

- A Case Study on Restrictions and Conditions in Article 1.
- A Case Study on the Treatment of Proceeds under Article 8.1(d).

34. The Technical Committee had considered a number of other technical questions, namely:

- Importation of antique or vintage cars. The Technical Committee had given its opinion on a practical problem encountered by a Party relating to the purchase of an antique or vintage car through a middleman.
- Practical application of Article 7. Under this Agenda item, the Technical Committee was seeking to be informed of the most interesting situations where Article 7 was applied. Several cases had already been communicated and useful information derived therefrom. It had been decided to keep this item on the programme of future work and to continue to circulate details of any relevant cases submitted.
- Meaning of the term "restrictions" in Article 1.1(a)(iii). After examining a draft commentary on this question, it had been decided that the commentary should be expanded to cover restrictions in Article 1.1(a).
- Treatment of quota charges. The Technical Committee had decided that before beginning a study on this question, it would await details of the problem encountered by a Party which had asked for this item to be placed on the agenda.
- Interpretation of the term "development" in Article 8.1(b)(iv). The Technical Committee had decided to return to this question when the Committee on Customs Valuation had reached a conclusion.

35. As regards future work of the Technical Committee on Customs Valuation, he said that, in addition to the matters mentioned in the previous paragraph, the following items had been put on the agenda for the next session, which would be held from 30 September to 4 October 1985: application of test values; consideration of relations under Article 15.5 read with Article 15.4; treatment of rented or leased goods; and updating of the conspectus of technical valuation questions. In the elections for its officers, the Technical Committee had elected Mr. Haaland of Norway as Chairman, and Mr. Brimble (Canada) and Mr. Nair (India) as Vice-Chairmen.

36. The Committee took note of the report and expressed its appreciation for the continued valuable work of the Technical Committee. The Committee also expressed its appreciation for the contribution that Mr. Neville Foldi had made as Chairman of the Technical Committee over the last two years.

E. Linguistic consistency of the term "development" in Article 8.1(b)(iv)

37. The Chairman noted that only one delegation, Argentina, continued to have difficulties with the suggestion for resolving this matter contained in paragraph 6 of VAL/W/24/Rev.1.

38. The representative of Argentina said that at the ninth session of the Technical Committee on Customs Valuation, the Argentine Administration had communicated its position on the subject under consideration. This had been reported in the draft report of that Committee as follows:

"The Argentine Administration considered that, as used in Article 8.1(b), the Spanish expression 'creación y perfeccionamiento' could not be interpreted as allowing any part of the value to be excluded from the 'creación y perfeccionamiento' (the 'development' value). Defining the Spanish terms 'creación' and 'perfeccionamiento' was, of course, not the same as specifying their scope for other purposes; the aim here was to determine the coverage of these terms and not to define them as such.

"Although, conceptually, it was possible to differentiate research, studies and trials from successful results, in actual business practice the cost and expenditure history had a decisive influence on the value of the results obtained. It was the value of these results which was required for the purposes of Article 8.1(b)(iv). Initial basic research might have only a small effect on the cost in certain branches of 'creación' or 'perfeccionamiento', whilst applied research and trials (e.g. clinical and toxicological trials in the case of medicines) accounted for a substantial and increasing part of application costs and efforts. The Argentine Administration saw no reason to distinguish between the various stages and then to authorize the cost or value of one or more stages to be excluded from the value of the successful results achieved."

He added that, in order not to impede a decision on this matter on the part of the Committee, an alternative solution could be found if a reservation covering Argentina's position were permitted.

39. Discussion of this item was adjourned to allow for informal consultations.

40. On the resumption of the meeting, the Chairman made the following statement:

"Consultations have taken place and in the light of these I suggest that the matter be settled by including the following statement in the minutes of the meeting, on the understanding that this would be without prejudice to rights and obligations under the Agreement and that members of the Committee can revert to the matter should the need arise.

"The Parties to the Agreement considered that the terms 'development' in English, 'travaux d'étude' in French and 'creación y perfeccionamiento' in Spanish in Article 8.1(b) are understood to exclude 'research' in English, 'recherche' in French and 'investigación' in Spanish, as stated in paragraph 6 of VAL/W/24/Rev.1. However, one signatory, Argentina, considered that, as used in Article 8.1(b), the Spanish expression 'creación y perfeccionamiento' could not be interpreted as allowing any part of the value to be excluded from the 'creación y perfeccionamiento'."

41. It was so agreed by the Committee.

F. Preparations for annual review of the implementation and operation of the Agreement

42. The Committee agreed that the secretariat be invited to prepare a background note for the 1985 annual review along the same lines as that prepared for the 1984 annual review.

G. Other business

(i) Panelists

43. The Chairman said that, in accordance with paragraph 2 of Annex III to the Agreement, Parties were expected at the beginning of 1985 to nominate persons available for panel service in 1985 or to confirm existing nominations. To date, nominations for 1985 had been received from Japan, Norway, the United Kingdom on behalf of Hong Kong and the United States. Parties wishing to modify or confirm previous nominations and Parties not having made such nominations were invited to communicate the relevant information to the Chairman, through the secretariat, as soon as possible.

44. The representative of Romania confirmed the existing nominations of his country.

(ii) Dates of next meetings; draft agenda of next meeting

45. The Committee agreed to hold its next meeting on 12-13 November 1985 and to set aside tentatively 29-30 April 1986 for its first meeting in 1986.

46. The Committee agreed that the draft agenda for its next meeting would include the following items:

- A. Accession of further countries to the Agreement
- B. Technical assistance
- C. Report on the work of the Technical Committee
- D. Information on implementation and administration of the Agreement
- E. Reservations under paragraph 3 of the Protocol
- F. Fifth annual review of the implementation and operation of the Agreement
- G. Annual report to the CONTRACTING PARTIES.