

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Customs Valuation

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LEGISLATION OF ARGENTINA¹

**Argentinean Responses to Questions and Comments from the United States
submitted at the Committee meeting of 17 May 1994**

The following communications dated 17 May 1994 and 26 October 1994 have been received from the Permanent Mission of the United States and Argentina, respectively.

Communication from the United States

- **Questions and comments on Argentina's legislation contained in document VAL/1/Add.22/Suppl.2/Rev.1**

The USG is concerned that many of the revisions to the Legislation of Argentina are contrary to the GATT Valuation Agreement and introduce notional concepts that were specifically eliminated by negotiation and adoption of the GATT Valuation Agreement.

Examples of the notional concepts include the following provisions in the "Amendments to Resolutions Nos. 2778/87 (B.A.N.S. No 207/87) and 3121/87 (B.A.N.A. No. 235/87) beginning on page 23 of the above-referenced GATT document:

1. It has been noted that, in implementing the aforementioned regulations, customs offices have been obliged to release goods whose declared value manifestly differs from the actual economic value and hence is presumably worthless as an expression of the transaction value that could reasonably be determined for such goods in the light of their characteristics, type, quality, quantity, origin, etc.
2. **Article 1, Part I** - "Where there are appreciable differences between a particular importation and documents relating to other imports under similar circumstances (origin, quantity, commercial level, quality, etc.)"
3. **Article 1, Part II** - "Where the price cannot, in principle, be compared by the customs service because there have been no previous comparable cases or because the previous cases are not suitable, and the price declared is manifestly low or does not correspond to economic reality and is therefore practically unacceptable as an expression of the transaction value in view of the commercial value which could reasonably be assigned to such goods in the light of their characteristics, type, quality, quantity, origin, etc."

¹VAL/1/Add.22/Suppl.2/Rev.1 and Suppl.3

These provisions are troublesome due to the fact that the GATT Valuation Agreement does not contain any reference to determining what the "economic reality" is for the pricing of particular commodities. It appears that the Argentineans are attempting to implicitly set up a system of minimum values, a practice that is specifically prohibited under the GATT Valuation Agreement.

Further, in Article 2 of Resolution No. 2779/90 several documents that may be requested, such as authenticated copies of the commercial invoices submitted by the exporter to the foreign customs service, may not be available. In many situations, the foreign customs services may be unable to provide the information. In addition, the information that is to be provided includes export prices prevailing in the foreign market concerned for the goods that are the subject of the enquiry. Once again, requiring this information and using it as the basis of determining the price actually paid or payable for the merchandise is completely contrary to the GATT Valuation Agreement and violates that general principle that the Agreement is to provide a fair, uniform and neutral system for the customs valuation that precludes the use of arbitrary and fictitious customs values.

Finally, it appears that the Argentine legislation no longer contains the circumstances of the sale test that allows related parties to establish the validity of their prices for purposes of transaction value. Please confirm whether this is correct.

- **Questions and comments on Argentina's legislation contained in document VAL/1/Add.22/Suppl.3**

Page 16. Resolution No. 1649/92, Annex VII, Article 1.3.3 states that the Analysis and Information Division of the Technical Valuation Department shall "(a) adjust the value as appropriate, establishing the relevant charges in such cases, based on the provisions of Article 6, sub-paragraph 3 of Resolution No. 1166/92." The reference language of Article 6, sub-paragraph 3 of Resolution No. 1166/92 appears to be on Page 7 of GATT document VAL/1/Add.22/Suppl.3. However, Article 6 does not appear to contain any standards to be used in making any adjustments. Therefore, we would appreciate clarification concerning where we can locate the standards that will be used in making adjustments to the declared value.

Article 1.3.4 - The USG remains extremely concerned about the Argentinean references to declared values that are "manifestly at variance with economic reality and...(are) unacceptable as a reflection of the real transaction value, in the light of the nature, kind, quality, quantity, origin, etc. of the goods." This language introduces notional concepts that were specifically eliminated by negotiation and adoption of the GATT Valuation Code.

Article 1.3.5, second paragraph - The USG would like clarification and/or examples of situations when the imported goods would not be released even if the importer provides security.

Article 2 (page 18), Annex XIII(c) - The USG requests clarification that the valuation of particular merchandise will not be adversely affected if the importer does not possess all of the listed items e.g. catalogues, brochures and cannot reasonably procure the items.

Article 2 (page 18), Annex XIII (d) (1) and (2) - The USG requests additional information on how the export prices prevailing in the foreign market concerned for the goods will be used in the appraisement of imported merchandise by Argentine Customs Officials.

Communication from Argentina**- Reply by Argentina to the concerns raised by the United States**

At the latest meeting of the Committee on Customs Valuation, held on 17 May 1994, the United States submitted in writing some concerns relating to Resolutions Nos. 2779/90 (VAL/1/Add.22/Suppl.2/Rev.1) and 1649/92 (VAL/1/Add.22/Suppl.3) of the National Customs Administration. The following remarks address those concerns.

At present, Resolutions Nos. 2779/90 and 1649/92 have been replaced by Resolution No. 3079/93, the provisions of which do not clearly succeed in dispelling all the concerns raised.

Nevertheless, it should be borne in mind that these rules are subordinate to those of Decree Number 1026/87, establishing implementing regulations for the Agreement on Implementation of Article VII of the GATT, which was communicated to the Committee some years ago without eliciting any comment whatsoever. As that decree takes legal precedence over customs resolutions, it could be invoked, where appropriate, by those concerned if they consider that the international instrument is being applied in a manner inconsistent with its provisions. It should be added that the Department of Public Revenue of the Ministry of the Economy and Public Works and Services of the nation is the body responsible for supervising compliance with the law in the event of complaint from the public, and no appeal has been received to date concerning the aspects raised in the Committee.

It should also be stressed that the National Customs Administration, with the support of UNDP (United Nations Development Programme) is currently carrying out a comprehensive revision of its regulations. The relevant drafts are being prepared by a private-sector expert group which is to transmit its technical proposals entirely in conformity with the rules of the Agreement.

Lastly, since the concerns of the United States deserve the fullest attention from the customs authorities, the National Directorate of Taxes of the Department of Public Revenue has instructed the National Customs Administration to afford careful treatment to the issues raised until the new regulations are enacted.