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ARTICLE VII - VALUATION FOR CUSTOMS PURPOSES

The Use of the Commercial Invoice Price in Customs Valuation

Statement made by Mr. T.G. Edmond Smith to
the Technical Group on Customs Administration on 16 December 1954

Several of the delegates to **this Group** have asked me for further information about my memorandum reproduced as Document W.9/54. As I shall probably be unable to attend further meetings of the Group after Christmas, I am grateful for the opportunity of saying a few words of additional explanation.

I would like to make it clear that this document does not criticise Article VII of the Agreement. Nor does it criticise the definition in force in any country. Moreover it has no intention of trying to persuade anyone to accept any new ideas.

It draws attention only to very old ideas, ideas older than any definition of value in force in any country; its object being to reconcile techniques which have grown divergently out of these old ideas and to bring them together again by reattaching them to their common origin. I refer to the primitive concept of value, the concept which everyone has in his own mind, that of the price he would pay for an article as a buyer or the price he would sell it for as a seller.

Article VII recognises this primitive concept. It speaks of "actual" or "real" value. But this pearl of wisdom is not allowed to stand alone. It is qualified by a definition drawn in terms which, by application in national legislation, can distort or deface it.

"Actual" or "real" value, as applied to the commercial field with which Article VII is concerned, cannot I think have any other meaning than that of the freely negotiated commercial price - the "transaction value" of the United Nations Statisticians. In my memorandum I have attempted to develop this meaning and make it more explicit for use independently of any fiscal definition.

I do not suggest, however, that this elaboration of "actual" or "real" value should replace paragraph 2(b) of Article VII. A definition suitable for fiscal use, such as that contained in paragraph 2(b) is of course essential. My suggestion is for an addition to Article II, whereby the meaning of "actual" or "real" value could be made clear and retained as the mother concept to which all definitions, national or international, should conform.

This, Mr. Chairman, very briefly stated, is the gist of the proposal which I have put before you. I would like to add a few words to explain more fully why I think it is necessary.

For over a quarter of a century I have been associated with the development of valuation practice and theory, and in valuation negotiations nationally and internationally. Over and again it has been borne in on me that nearly all of the difficulties, complaints, misgivings and mistrusts which plague the valuation administrator arise from the fact that he on his side can look only to his national definition of value whereas, on the other hand, the complainant - whether he be the importer or the administrator of another country - looks only to his conception of the "actual" or "real" value, that is to say, the freely negotiated commercial invoice price.

It is of course a feature of definitions, to which definitions of value are no exception, that whilst they are always devised as a means to an end, they eventually become the end itself. I think it will be agreed that the bedrock upon which all valuation procedures, including the definitions, are built, is the commercial price, whether of the merchandise to be valued or of similar merchandise. There is, in fact, no other standard. Yet nearly every definition of value can be used to reject such a price whenever it is convenient to the administration to do so; and will in fact tend to be so used if the end which it is intended to serve is allowed to be obscured.

It is this fact, or the fear of this fact, which gives rise to complaints. They would not arise were it known that, without valid reason, the freely negotiated commercial price would not be rejected.

The remedy, therefore, in my view, and in my experience, is to acknowledge the admissibility, in valuation practice - I stress practice - of the freely negotiated commercial price and to use the definition only when that price, for good reason, is inadmissible, and in case of dispute.

My memorandum seeks to establish this proposition, and to clarify in this context the precise application of a freely negotiated commercial price. It also suggests how it could be given practical effect. It is a concrete proposal, but is put forward as a suggestion only. It is designed to avoid tying the hands of any administration except to leave it with the responsibility of explaining, where challenged under the Agreement, why the "actual" value is not being used as a basis for valuation.

I hope, Mr. Chairman, that this suggestion, which is wholly impartial and has no motive other than that of an enduring personal interest in the practice and theory of valuation, may recommend itself to the CONTRACTING PARTIES. Should it do so, I feel sure that it would have the approbation of international trade.