

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES

Ninth Session

Review Working Party II on Tariffs,  
Schedules and Customs Administration

## ARTICLES VII, VIII AND IX

Recommendations by Working Party II to the CONTRACTING PARTIES

(Draft)

Review Working Party II has examined the proposals relating to Articles V, VII, VIII and IX as well as a proposal for a new article. This report contains recommended amendments to the text of the Agreement and to the Interpretative Note. It also contains notes on the reasons for rejecting certain proposed amendments. The following recommendations on Articles VII, VIII and IX are based principally on the report of the Technical Group on Customs Administration (W.9/155).

### Article VII

#### Valuation for Customs Purposes

##### Paragraph 1

1. Delete the words "at the earliest practicable date".
2. Delete the Interpretative Note.

Note: relating to 1 and 2.

These amendments are recommended on the assumption that the Agreement will contain a general provision allowing time for governments to bring their legislation into conformity with the new rules. In connection with this recommendation the representative of Brazil reserved his position on the whole of Article VII.

3. Insert the following Interpretative Note:

"The expression 'or other charges' is not to be regarded as including internal taxes or equivalent charges imposed on or in connection with imported products."

Note: The intention of this proposal was to make it clearly understood that the wording of paragraph 1 of Article VII does not require internal taxes (or their equivalents) which are charged on imported goods to be assessed on the same basis as that established for the purpose of charging customs duties. While some countries assess internal taxes on imported goods on the customs value or the customs value inclusive of duty, certain countries establish the value on which such internal taxes are charged on a different basis, being the same basis as is adopted for the charge of such internal taxes on domestically produced goods. Moreover, Article VII cannot be held to impose any commitment in relation to internal taxes, over and above those contained in Articles I and III.

4. Amend the first sentence of paragraph 2(b) as follows:

"'Actual value' should be the price at which, at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions."

Note: This change is proposed merely as an improvement of drafting.

5. As a consequence, amend the second paragraph of the Interpretative Note by deleting "read in conjunction with".

6. Amend the third paragraph of the Interpretative Note as follows:

"The prescribed standard of 'fully competitive conditions' permits contracting parties to exclude from consideration distributors' prices which involve involving special discounts limited to exclusive agents."

Note: No change of substance is intended. The recommended text corresponds, in its French version, with the wording used in the Havana Charter Interpretative Note, and in its English version is a better translation of that text.

7. Amend the fourth paragraph of the Interpretative Note as follows:

"The wording of sub-paragraphs (a) and (b) permits a contracting party to assess duty contracting parties to determine the value for customs purposes uniformly ...".

Note: This proposal seeks merely to improve the drafting.

Paragraph 3

8. The Working Party has considered a proposal to insert "customs duties" as follows:

"The value for customs purposes of any imported product should not include the amount of customs duties or any internal tax, 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."

A majority of the members of the Working Party were in favour of the proposal but, in view of the difficulties it would involve for several countries, did not press the matter at the present time. In the circumstances, the adoption of this amendment is not recommended. The Working Party believes, however, that it touches upon an important question which it might be desirable to bring under review again at a later date.

9. The Working Party considered a further proposal that the words "any internal tax" in the same paragraph be replaced by the following phrase:

"... any indirect tax actually borne by the finished product or actually borne by the material going into the manufacturing of such product ...".

The Working Party wishes to record the statement submitted by the Technical Group on Customs Administration explaining its reasons for not recommending the adoption of this proposal:

"The intention behind this proposal is to exclude from the provisions of this Article those taxes of a kind which are considered by some countries to constitute unfair subventions to exports, and a number of members of the Technical Group supported the proposal for this reason. It was, however, generally agreed that the words "internal tax" read in conjunction with the words "from which the imported product has been exempted or has been or will be relieved by means of refund" appearing in paragraph 3 of Article VII mean only (i) internal taxes of the kind which are levied directly on the goods exported (or directly on the materials going into the manufacture of such goods), as distinct from (ii) other taxes (income tax, etc.). It follows that the obligation contained in Article VII, paragraph 3, is limited to internal taxes of the kind mentioned in (i) above; so far as concerns taxes of the kind falling within (ii) above, there is no obligation upon contracting parties and, equally, there is nothing to prevent them from giving imported goods the benefit of more liberal provisions. However, the Technical Group considered it was not prudent to modify the text of the Article itself, particularly in view of the opinion of several members that it was inappropriate to seek to deal with the problems of subsidization in Article VII."

The Working Party therefore considered it best to report the matter to the CONTRACTING PARTIES for consideration.

Paragraphs 4(a) and (b)<sup>1</sup>

10. Amend these paragraphs as follows:

"4(a) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based on the par values of the currencies involved, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a by special exchange agreement entered into pursuant to Article XV of this Agreement.

"(b) Where no such established par value has been established and no such recognized rate of exchange exists, the conversion rate shall reflect effectively the current value of such currency in commercial transactions."

Note: This amendment covers certain exchange situations which are likely to arise in practice and which are not provided for in the present text. For example, in the case of Canada there is an established par value accepted by the Fund, but which is no longer the effective rate, and where the Fund recognizes the fluctuating rate for its own accounting purposes. This type of exchange situation will be covered by the amended text.

Paragraph 5

11. The proposal to replace the words "the bases ..... should be stable" by the words "the system ..... should not constitute an obstacle to the rapid clearance of imported merchandise, should protect honest importers from unfair competition in the field concerned, should as far as possible be based on trade documents ....." is not recommended. Members of the Working Party expressed sympathy with the ideas underlying this proposal, but did not find it practicable to recommend the amendment. It was desired particularly to retain the requirement that valuation systems shall be stable.

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<sup>1</sup> Proposals by the delegation of Italy (W.9/61) and by the Scandinavian delegations (L/273, 275 and 276) were withdrawn.

Article VIII

Formalities connected with Importation and Exportation

Paragraphs 1 and 2

12. Amend these paragraphs to read as follows:

"1(a) The contracting parties recognize that All fees and charges Other than duties (of whatever character other than import and export duties and other than taxes within the purview of Article III) imposed by governmental authorities contracting parties on or in connection with importation or exportation should shall be limited in amount to the approximate cost of services rendered and should shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. The contracting parties also recognize the need for reducing the number and diversity of such services and charges.

"(b) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

"2. Any contracting party shall, upon request by the CONTRACTING PARTIES or by another contracting party, review the operation of any of their/ its laws and regulations in the light of these principles the provisions of this Article."

Note: This amendment is recommended on the assumption that the Agreement will contain a general provision allowing time for governments to bring their legislation into conformity with the new rules and on condition that the amendment to the Interpretative Note recommended in paragraph 13 is adopted. However, if Article XV:9(a), as it emerges from the Review, does not allow a contracting party to maintain multiple currency exchange fees for balance-of-payments reasons with the approval of the International Monetary Fund, it will be necessary to consider a specific proviso covering this point in the Article.

Three delegations (Brazil, Chile and Cuba), however, reserved their position as regards the omission of the provision that the obligation of paragraph 1(a) should come into force only at the earliest practicable date.

13. If the amendment of paragraph 1, proposed above, is adopted, amend the Interpretative Note as follows:

"... with the approval of the International Monetary Fund, the provisions of paragraph 2 Article XV:9(a) fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date."

14. Insert the following new Interpretative Note:

"It would be consistent with paragraph 1 of Article VIII that on the importation of products from the territory of any contracting party into the territory of any other contracting party the production of certificates of origin should only be required to the extent that is strictly indispensable."

#### Article IX

#### Marks of Origin

15. Insert the following new paragraph between paragraphs 1 and 2:

"The contracting parties recognize that, in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications."