

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

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Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

CUSTOMS VALUATION

Addendum

1. At its meeting in May 1975, the Sub-Group "Customs Matters" agreed "that participants should transmit to the GATT secretariat in writing by 15 September 1975 specific suggestions, accompanied by notes explaining the objectives of these suggestions, for the elements that they wished to have included in any new set of international rules on customs valuation to be adopted in the context of the Multilateral Trade Negotiations" (MTN/NTM/4, paragraph 6 and GATT/AIR/1189).
2. This agreement was confirmed at the October 1975 meeting of the Sub-Group. The Sub-Group also agreed that the written submissions contained in MTN/NTM/W/20 and addenda would, inter alia, constitute the basis for the discussion at its next meeting.
3. At its meeting in March 1976 the Sub-Group invited delegations to submit any additional comments they wished to have included in a working paper to be prepared by the secretariat, containing a checklist of issues raised and of possible elements that may be included in any new set of international rules or principles on customs valuation to be adopted in the context of the Multilateral Trade Negotiations (MTN/NTM/13 paragraph 8).
4. A communication from Canada has been received which supplements its previous communication reproduced in MTN/NTM/W/20/Add.2.

The problem of consistency with commercial practice

As a practical matter, the value for duty should, to the extent possible, be consistent with commercial practice but not, of course, when this would permit inequities to be tolerated. This, in the Canadian view, means that valuation

systems should have as their primary standard the actual monetary worth or value of a product when sold at arm's length and in the ordinary course of trade under fully competitive conditions (i.e. open market sales).

The real problem is what to do about the sales that are not arm's length nor in the ordinary course of trade nor under fully competitive conditions.

Consideration of simplicity, precision and predictability

It is the view of the Canadian delegation that it is not realistic to attempt to devise a system which is both simple, and precise and predictable. Canadian experience has been that if a valuation system is to be precise it must be relatively complex. If it is to be simple, it will be imprecise. An imprecise system will require more discretionary action, more arbitrariness. This cannot yield any significant measure of predictability. The question therefore, is which of these objectives should take priority?

Relationship between customs valuation systems and anti-dumping duties

The Canadian delegation recognizes that valuation systems should not be used to combat dumping; that is the function of anti-dumping systems. However, as noted in MTN/NTM/W/20/Add.2, it is the view of this delegation that a valuation system should not "convey on an importer the right to pay a duty on less than actual value of the goods and thus to reduce the level of protection provided by the schedule of rates of duty". This consideration is often, incorrectly, confused with the question of whether or not an anti-dumping duty should be levied. It is, however, a separate consideration to which the Canadian delegation attaches importance.

The problem of undervaluation of goods in international trade

The main objective of the rules of a customs valuation system should be to ensure that ad valorem rates of duty are levied on actual values. A valuation system should neither add to the protection of domestic producers nor, of equal importance, permit the payment of duties on less than the actual value. This is of particular importance in dealing with trade between affiliated companies.

The Canadian system of valuation, which bases the value for duty on the price of like goods when sold freely by the exporter in his home market, is designed to deal with these particular trading practices. The use of sales of like goods by the exporter in his home market offers an objective and easily-applied method of appraising the imported goods, whether or not these goods are sold by an exporter to an affiliated company. It is difficult to understand how a system which accepts

the actual transaction price of the imported goods as the basis for the value for duty, subject to adjustment through a series of arbitrary decisions (e.g. uplifts) can be made to work equitably and fairly in regard to the import trade of countries whose trade is largely between affiliated companies.

Considerations of fairness and equity

The Canadian delegation has previously commented on these considerations. We would now like to offer a further comment.

It is our view that a system that provides one set of valuation rules on one group of products and a different set of rules on another group of products cannot be considered to be one which operates fairly or equitably. When separate and different rules for a specified group of products are unavoidable, the country imposing them should ensure that the products involved can be easily identified.

Questions of definition of value for customs purposes

Goods

Section 2(a) of Article VII of the GATT provides that the value for duty should be based on the actual value of the imported merchandise or the actual value of like merchandise.

A system which uses the transaction price as the basis for value for duty or a system which uses sales by the exporter in his home market as the value for duty, should, as a practical matter, both result in value for duty determinations which are equal to the actual value of the imported merchandise for most transactions that take place in the open market. The former arrives at this valuation by using as a primary standard, or base to be adjusted, the stated transaction price of the imported merchandise and the latter by using the actual price of like merchandise when sold under comparable conditions by the exporter in his home market.

As regards a system which uses the transaction price, a judgment must be made by customs officers as to whether valuation can be made on the basis of the price of the imported merchandise or whether some other value should be used. Customs officers must, therefore, be provided with considerable latitude for discretionary action; this may lead to arbitrary decisions which result in uncertainty for exporters and importers alike. Even with an equitable and effective appeal procedure, it would be difficult to challenge appraisal decisions under a system which explicitly provides for numerous administrative adjustments to the transaction price to arrive at the valuation.

The Canadian valuation system refers to like goods in determining value for duty regardless of whether or not the sale between exporter and importer is a non-arm's length sale or is made in the normal course of trade under fully competitive conditions. Under this system relatively little administrative discretion is required. Exporters and importers can predict the value for duty with reasonable accuracy; the exporter can usually estimate the valuation by reference to his own records.

Goods exported on consignment

Goods are sometimes shipped by an exporter without a sale taking place prior to importation and clearance through customs. In most of such situations, the goods are cleared through customs in the country of importation by a party acting on behalf of the exporter for future sale.

Any international rules or principles on valuation should deal adequately with the issues raised by consignment shipments, so as to ensure that they are valued in a manner consistent with the way in which other goods are valued.

Time and place

Paragraph 2(b) of Article VII provides that the actual value of an importation should be the price at which the imported merchandise or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions, at a time and place determined by the legislation of the country of importation.

Time:

Since the actual value of imported goods may change between the time a contract or purchase order is signed and the time of direct shipment, it is for consideration how legislation in countries of importation should be drafted so as to respect, to the extent possible, commercial realities.

Place:

Generally, the Canadian valuation system bases the value for duty on prices in effect at, or near, the place of direct shipment in the country of export. Most systems based on the transaction price, however, currently include in the value for duty all charges incurred on the sale of the goods up to the place of importation (i.e. inland freight from factory to port, insurance, ocean freight, etc.)

If there is any merit in the argument that valuation systems should be subject to some measure of harmonization, there would appear to be a case for the use of an internationally agreed rule which would specify only one concept for the place element in determining value for duty.

The concept of "nearest ascertainable equivalent"

Whether a valuation system is based on actual transaction prices or prices in the exporter's home market, situations will always arise where values for duty will have to be adjusted as a result of unusual conditions affecting the transaction. In the view of the Canadian delegation, it is important, however, that valuation systems keep to a minimum the necessity for these adjustments and that rules applied in these cases be precise so as to avoid arbitrariness and undue discretion. This should apply to any type of system.

The following are examples of the sorts of elements or factors where common rules or principles would be useful in dealing with possible adjustments in value:

Discounts based on terms of payment and deferred discounts

Some exporters grant discounts on condition that payment will be made by the purchaser (importer) within a specified period of time following the date of purchase or of shipment. Other discounts may be granted if an importer's total purchases over a given period of time meet a minimum specified quantity or value. In either situation it is not usually possible for customs officers to determine at the time a particular importation is being cleared through customs whether the importer will in fact comply with the terms and conditions laid down by the exporter or whether the discount will indeed be granted. Thus, a case could be made that such discounts should not be allowed in valuation determinations.

Royalty payments and other compensation arrangements

Royalty payments may be remitted by the importer to the exporter as a flat fee, as an amount per unit imported or as an amount per unit sold in the country of importation. This consideration may be included in the selling price to the importer, or may be paid separately to the exporter or to a third party. In many cases, the royalty fee is charged for the use of the imported goods, and would therefore appear to be an amount which should be included in the value for duty. In other cases, the payment may be applied to an imported article merely as a means of controlling or collecting the royalty payment on other, usually related, goods that are fabricated or assembled in the country of importation. It might be useful to consider rules which would spell out the conditions under which these and other compensation arrangements could be taken into account in the value for duty of the imported goods.

Commissions

Commissions may be paid by an importer to an agent to facilitate the purchase and importation of goods or they may be paid by an exporter to his agent for performing various selling services. These commissions may be included in the exporter's price to the importer, or charged separately by the exporter or the agent. The agent may or may not be related to the exporter and may or may not take title of the goods before they are exported. In many transactions, commissions represent an integral part of the selling price for the goods and would be dutiable factors; in other situations the payments may represent charges for services incurred subsequent to exportation and may be additional to those normally included in the price of a product. It may be useful to consider rules which take into account these payments when calculating value for duty.

Sales at a loss

Sales are sometimes made at a loss for a number of reasons (e.g. to dispose of obsolete goods, discontinued lines or close-outs). The exporter may make these sales in his home market as well as for export. Should these sales be deemed to reflect actual values? If it is considered that sales at a loss are acceptable for customs valuation purposes, what implications would this have for sales at a loss, or indeed at prices below actual value, between affiliated companies? It appears desirable to consider special valuation rules to deal with these situations.

"Assists"

An important area of international trade consists of the production and export of custom-made goods that are fabricated with the use of imported "assists" (e.g. tooling, dies, etc.). There should be internationally agreed procedures to ensure that that portion of the value of the exported goods which is attributable to the imported assist is calculated in an equitable and fair manner. One way that this could be done would be to consider appropriate adjustments in the value of the assist to account for the extent, if any, to which the assist was used prior to importation and the extent to which it can or will be used for subsequent orders. There should be agreement on methods of arriving at a pro-rated value of the assist to reflect the total quantity of goods normally produced with the assist; i.e. the value for duty of individual export shipments should include only a portion of the value of any assist that has not been fully consumed or depreciated in the production of the exported goods.