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## STATEMENT MADE BY THE COMMISSION OF THE EUROPEAN COMMUNITIES AT THE MEETING OF THE SUB-GROUP OF 15 NOVEMBER 1977

1. As the Sub-Group is aware, the European Communities attach very great importance to the question of customs valuation in the context of the Multilateral Trade Negotiations. It is no secret that for a year and more we have been exploring the possibility of agreeing some new international rules on customs valuation in the GATT. The work has been exacting and time-consuming and it was not until ten days ago that we were finally able to submit a draft text to the GATT secretariat. You will, therefore, appreciate that it gives me particular pleasure to be in a position to present the draft code to the Sub-Group today.<sup>1</sup>
2. In presenting the code, I should like to explain the background to our work, make a number of general points and to say something about the detail of the code in order to facilitate your task when you come to examine our proposals in depth. We realize that you will require more time than you have had so far to consider our proposals and to respond to them, but we felt that it would be helpful to everybody if we could present them this meeting and answer any initial questions which might arise at a first reading of the draft. I can make available a copy of my statement to those delegations which are interested to lighten their task of note taking.
3. Before going any further, it is perhaps appropriate to recall certain of the objectives of these multilateral trade negotiations. In their Tokyo Declaration in September 1973, Ministers agreed that we should all aim at expanding and liberalizing world trade through a reduction in tariffs and a dismantling of obstacles to trade and that we should all aim, inter alia, to reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective international discipline. Well, quite clearly if we are going to continue to have ad valorem tariffs, and there does not seem to be much doubt about this, we cannot eliminate rules on customs valuation. We can, however, try to bring such measures under more effective international discipline. And this was, in effect, the starting point for the work of the European Communities in this area.

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4. With this objective in mind, we started by examining in depth the valuation systems of the United States, Canada and our own system which, as you know, is based upon the Brussels definition of value. In our examination we took account of all the criticisms which had been made in this Sub-Group in the GATT, and also the views of a wide range of representatives from industry, from commerce and from government. As a result of this exercise we were, I believe, able to establish a clear picture of the good features and the bad features of all three systems. We had a clear idea of the pitfalls to be avoided and what we have tried to do in preparing our draft is to take the best features of all three systems and to combine them together into a new set of rules which are fair both to importers and exporters, which are as simple as possible, which are as clear as possible, and which are consistent with commercial realities.

5. There are a number of other general points which I feel should be made today but perhaps it would be appropriate now to turn to our draft code and to give you certain explanations and then come back to these other points.

6. As you are well aware, Article VII of the GATT lays down a number of rather general principles for customs valuation but gives very little guidance on what should happen in practice. We believe, therefore, that it is appropriate for us to agree in the Multilateral Trade Negotiations on a new code on the implementation of Article VII itself. This does not imply any amendment of Article VII - merely a code which adds flesh to the bones of Article VII but does not change its basic shape.

7. It is normal to start any code with basic principles and you will see that in this respect our draft is fairly conventional. We have set out a number of considerations which we believe are consistent with the earlier discussions in the Group where we seemed to have reached a large consensus on valuation principles.

8. These basic principles set the scene for the code and also establish the basic intentions. We then come to Part A of the code which we have entitled "Methods of Customs Valuation". We make a distinction as you will have seen between five basic methods of valuation and the general provisions which apply by and large whatever method is being used.

9. Before going into detail on the methods there are two points which should be made. Firstly, you will see that we have adopted a 'positive' rather than a 'notional' approach. I hope that we shall find that this evokes a 'positive' response from our negotiating partners. Secondly, we have established our methods of valuation in a hierarchy. Let me explain. We do not believe that it is sufficient merely to establish a set of acceptable methods of valuation and to allow customs officials to choose which one they prefer to use in each case. We believe that it is important to prescribe the methods of valuation in a defined

order so that if it is possible to value the goods in accordance with the first method then that is the method which must be used. If the first method cannot be used because the various conditions are not fulfilled then the second method has to be tried and if that cannot be used one then has to try the third method and so on. This approach will become clearer if I take you through the various methods that we have provided. I should perhaps add that in adopting a positive approach with a defined hierarchy we are basing ourselves on what we believe to be good features of the United States valuation system.

10. We start in Article 1 by stating that the price paid or payable for the imported goods shall be accepted as the basis for determining the customs value provided that the buyer and seller are not related. Here we make an assumption that if the buyer and seller are not related then the price made between them is one which is determined by the market forces and is an acceptable one for valuation purposes. We recognize, of course, that buyers and sellers may be tempted to arrange the transaction so that the price itself reflects only a small element of the value of the goods and that the remainder is transferred between them by some indirect method. We have, therefore, provided, in Article 7 of our draft, for certain additions to be made to the price paid or payable if these have not been included in the basic price. But the basic concept is that provided the price paid or payable fully reflects everything which the buyer has to pay to get the goods then that is accepted as the basis for the customs value. Now, if the buyer and seller are related, then the transaction price (the price paid or payable) is also accepted as the basis for customs value provided that there was no price reduction other than one available to any other buyer operating at the same commercial level or purchasing such goods in the same quantity, or that the price is not significantly lower than that generally available to any other buyer. So our basic concept is that if the buyer and seller are not related or the price made between the buyer and seller is one which is available to any other buyer at the same level or buying the same quantities then the transaction price is taken as the basis for customs value.

11. Obviously there are circumstances where that situation does not arise. There may, for example, be a special transfer price between associated companies and in such cases the transaction price is not a satisfactory measure of the value of the goods. In these circumstances, Article 2 provides that one then looks to see whether the seller is selling identical goods (in effect the same sort of goods) to another buyer who meets the conditions of Article 1 - that is to say, an independent buyer buying at a price freely available to any other buyer. If one can find a sale made under these circumstances then one bases the value of the goods which are being valued on the price of the identical goods. One small point which is perhaps worth commenting on. It may well be that the customs in looking around find a number of sales of identical goods to different buyers at slightly different prices or maybe the buyer in question can bring forward evidence to show

that the seller sells identical goods to other buyers at different prices. In those circumstances there has to be a rule about the price to be taken into consideration. Our proposed rule is that the value should be based upon the average of the prices. Also, as we have noted in our footnote, we are going to have to provide some kind of rules as to what goods can be accepted as identical. That is something we feel can be done in the course of the negotiations.

12. We now turn to the situation where we cannot accept the transaction price and we cannot find identical goods sold under conditions allowing us to base the value on the price of such identical goods. Under the provisions of Article 3, we then look around to see if there are similar goods as defined in the Article. If one can find similar goods sold under the conditions of Article 1, that is to say, to an independent buyer or at a price available to any buyer, then one takes the price of the similar goods as the basis of value. Where a range of prices are identified the averaging rule would once again apply.

13. If one cannot find similar goods and one has then exhausted the possibilities of applying Article 1, Article 2 and Article 3, then in Article 4 we have a fourth method of valuation. We take the imported goods, if they are sold to an independent buyer, and we work back from the price realized in this sale by deducting the various commissions and costs, etc., which are specified in the Article.

14. Obviously there is room for discussion about the order of the methods within the hierarchy. We have come to the conclusion that the hierarchy which we have set out is logical, is practicable and is fair. But, of course, this is just our view and we are very happy to discuss alternative approaches.

15. We expect that the majority of valuation cases will be settled by the application of Articles 1, 2, 3 and 4 but we have to recognize that there will be cases where this will not happen. We therefore have to provide what one might call a fall-back method and here we looked at a number of possible alternative approaches. Our aim was to limit so far as possible the scope for arbitrary decisions by customs officials and we came to the conclusion that the current Canadian approach of determining the value in a legal instrument (an order made by a Minister, a regulation) was the best way of limiting the scope for arbitrariness by officials. You will see also that we believe that there are certain methods of valuation which should not feature in a fair and neutral system. We have therefore specified that the value cannot be determined on the basis of:

- (1) the cost of production of the goods, or
- (2) the selling price in the country of importation, of similar or comparable goods grown, or produced or manufactured in the country of importation, or

- (3) the price of identical, similar or comparable goods on the domestic market of the country of exportation, or
- (4) the price of identical, similar or comparable goods sold to another country.

We believe that such bases of value are unsatisfactory and should, therefore, be excluded. Furthermore, we believe it important to try to prescribe certain limits so as to avoid arbitrary or fictitious values. You will see that we have proposed that the value established under the provisions of this Article should be based on objective criteria relevant to the circumstances of the particular sale or other transaction and that it should have due regard to the principles and general provisions of the code. Furthermore, we propose that the reasoning by which the value is arrived at should be set out in the legal instrument so as to give the buyer the possibility of challenging the decision in the courts.

16. Perhaps I can now deal rather quickly with Part B - "General Provisions". In Article 6 you will see that we have provided for the allowing of certain reductions in price in circumstances where they are not already taken account of in the invoice price. Obviously, in the normal case these reductions would be reflected in the actual transaction price but there may be some circumstances under which they are not taken into account.

17. In Article 7 we have laid down the various elements of cost which we would expect to see reflected in the invoice price and made a provision for their addition to the invoice price if they are not included. As I have already indicated, this provides a certain security against a situation where a buyer and seller may agree on an artificially low price for customs purposes but recover the additional amounts through some other kind of arrangement. We have also recognized that at present some systems are based on a c.i.f. concept and some on an f.o.b. basis. Whilst it would be clearly desirable to establish a single approach we have taken the view that, at least in these negotiations, it is unlikely that we shall all be in a position to agree either on f.o.b. or on c.i.f. as a unique basis. We have therefore made provision for those countries which wish to apply the rules on a c.i.f. basis, to add to the price of the goods, to the extent that it is not already included, the transport costs.

18. In Article 8, we have excluded those elements which we believe that it is inappropriate to include in the customs value. And here I should perhaps draw your attention to Article 8(e) where we have excluded the costs of advertising in the country of importation. We have done this partly because in many cases the advertising costs are borne either directly or indirectly by the seller and the transaction can reasonably be viewed as an invisible export, and partly in the interests of simplification.

19. Articles 9-13 are self-explanatory and do not call for comment.

20. Article 14 at the moment contains only two lines. We are aware of the importance which certain delegations attach to this question and we, ourselves, share the preoccupations of these delegations. We have not dealt with the question of appeals in any detail in our draft because we believe that it is appropriate to examine closely the work which is going on in the Customs Co-operation Council on this matter. A new Annex (Annex H1) is being developed under the Kyoto Convention which will provide some specific rules for dealing with appeals against customs decisions in general. We think, therefore, that since this work is going on in parallel with our own it may well be appropriate later on in the negotiations to incorporate, or refer to, the results in our code. If for any reason it does not prove practicable to do this, we should be very happy to examine the possibility of including more detailed provisions on this matter in the valuation code itself.

21. Article 16 contains a number of definitions and in particular a definition of persons who are deemed to be related. This is a matter which, I am sure, will be the subject of much discussion in these negotiations. Whilst we have suggested a definition, we recognize that there are other possibilities and we are very ready to examine alternative proposals.

22. I now turn to the final provisions. These are ones which we believe one would expect to find in a code of this nature. I should merely like to draw your attention to Article 19 under which we have provided for amendments to the code. We think that it is essential to have a flexible instrument which can be amended if necessary. Article 20 provides the possibility of meetings in the GATT to consult on matters relating to the interpretation or operation of the code. In Article 21 we provide for a notification on the operation of the code and in particular on the operation of Article 5 to an appropriate body. It is important for all of us to ensure that the code is reasonably and fairly applied and if the idea of regular reviews is accepted we should consider whether this is an activity which would be appropriate to the GATT or to some other body.

23. I have now dealt in some length with the details of the code and perhaps, Mr. Chairman, you will allow me to come back to a number of general issues.

24. We believe that this code is important not only in itself in the context of reducing non-tariff barriers but also in the context of any tariff reduction formula which may be agreed, since quite clearly customs value is an element in any calculation of duty payable and if the systems of customs valuation around the world are widely divergent then this obviously has implications for the validity of any tariff reduction formula which may be agreed.

25. As I said at the beginning of my statement we have opted for a positive approach. Those of you who know our valuation system and who know the Brussels definition will recognize that the adoption of a positive system would represent a fundamental change for the European Community. This would be a very big concession on the part of the Community made in the interest of the success of these negotiations.

26. I cannot conclude my remarks without saying something about the position of the developing countries. We do not believe that it would make any sense to have different valuation rules for imports from developing countries. Such an approach would add to the complexities of international trade and would be counterproductive. We consider, however, that a set of rules along the lines of our draft code would be of great assistance and great importance to the developing countries. Firstly, they would be much simpler and clearer than the rules of the valuation systems in operation today. The task of exporters in the developing countries would as a consequence be facilitated. Furthermore, although valuation rules are necessarily somewhat complicated we believe that our draft establishes rules which can reasonably be operated by the developing countries. And here, Mr. Chairman, as you are aware the European Communities attach great importance to the concept of providing technical assistance to the developing countries in many areas and in particular in the area of customs valuation. We would hope that, if the code were adopted, not only the Community but other countries as well would provide technical assistance to help the developing countries to set up new valuation systems based on the code. Furthermore, it will not have escaped the notice of the developing countries that we make no reference to the price of goods on the domestic market of the exporting country amongst our basic methods of valuation and that we have excluded it as a fall-back method. We have done this as we accept the validity of the arguments of developing countries at earlier meetings of the Sub-Group that often the prices on their domestic markets are artificial ones and that the price charged in those markets is no fair measure of the value of their goods at export.

27. In conclusion I must stress that we present our draft code with a great deal of humility. We recognize that the valuation of imported goods poses difficult and complex problems and we do not claim that we have reached perfect solutions. What we have tried to do is to prepare a draft which could provide the starting point for these negotiations. We have made an honest and sincere attempt to draft a text which is neutral, which is fair, which is simple and as clear as possible. We believe that through the process of discussion and negotiation in this Sub-Group it should be possible to improve still further the text that we have presented. I, therefore, stress that so far as the European Communities are concerned the text is merely the beginning and not the end and we, ourselves, reserve the right to propose changes to the text not only in the light of the negotiations here, but also in the light of the evolution of our own thinking as we continue to study and to ponder over this complex problem.

28. I should add that we do not envisage that the code would stand on its own as the sole international text on this matter. We have attempted to include all important elements in our draft code but we envisage that it would be accompanied by substantial commentary which would fill in the detail and facilitate its implementation.

29. I thank you, Mr. Chairman, and the Sub-Group, for listening so patiently and attentively to this rather lengthy and detailed statement. We felt, however, that it was necessary to provide the background and to explain something of our objectives and something of the details of the code to facilitate the task of other delegations in examining it in depth. I recognize that today we cannot have a lengthy debate on our proposals but I should be happy to try to answer any questions which may immediately arise.