

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/M/6

19 April 1983

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Committee on Customs Valuation

MINUTES OF THE MEETING HELD ON 3 MARCH 1983

Chairman: Mr. J. Goizueta

1. The Committee on Customs Valuation held its sixth meeting on 3 March 1983.

2. The Committee elected Mr. J. Goizueta (Spain) as Chairman and Mr. M. Leflon (France) as Vice-Chairman for 1983.

3. The following agenda was adopted:

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A. Accession of further countries to the Agreement

4. The representative of Australia said that the Agreement had formally taken effect for his country on 22 December 1982, following the deposition by Australia of its instrument of acceptance. His Government, which had announced in the middle of 1980 its intention to adopt the valuation system under the Agreement, had implemented the system with effect from 30 November 1981. The formal acceptance of the Code on 22 November 1982 had followed consultations with industry and monitoring by the Industries Assistance Commission to ensure that acceptance of the Agreement would have no significant effect on the level of tariff protection afforded to Australian industry. His delegation expected to be shortly in a position to submit copies of the Australian domestic legislation together with replies to the checklist of issues in VAL/2/Rev.1.

5. The observer from South Africa said that it continued to be the intention of his authorities to implement the Agreement with effect from 1 July 1983.

6. The representative of the European Economic Community welcomed Australia's accession to the Agreement. He looked forward to Australia's active and constructive participation in the work of the Committee and to the opportunity to examine the Australian legislation at a future meeting. He also welcomed the statement by the observer from South Africa. He expressed the hope that other countries which had not yet made up their minds on whether to join the Agreement would reflect on the experience of existing Parties with the Agreement, which had been very positive, and would be sufficiently satisfied with that experience to decide to apply the Agreement themselves.

7. The representative of the United States also welcomed Australia as a Party to the Agreement and looked forward to South Africa's acceptance of the Agreement.

8. The Committee took note of the statements made on this agenda item.

B. Technical Assistance

9. The representative of the European Economic Community said that, as his delegation had reported in the past, the Community was organizing seminars on customs valuation in developing countries. The Community had participated in the ASEAN seminar held in Manila in December 1982. Recalling that the question of technical assistance was being considered by the Technical Committee, he felt that it might be useful for the Committee on Customs Valuation to have a more in-depth examination of this matter in the light of the outcome of the Technical Committee's work. The Community and its member States were considering what they could further do in this area and would find it helpful if developing countries could make known their requirements in this regard. He stressed the importance that the Community attached to technical assistance, which he considered one of the most effective ways of promoting the Agreement and exploring any problems that potential signatories feared might arise from applying it.

10. The representative of the United States said that the United States had been very pleased to participate in the ASEAN seminar on customs valuation held in Manila. The United States found such seminars particularly useful and was interested in organizing other regional seminars of this kind. She added that in the United States a course on international valuation training was presently being planned and would be held in the summer of 1983. In conclusion, she urged countries interested in receiving technical assistance to indicate their needs, so that the United States could plan the most effective use of its resources available for this purpose.

11. The representative of Austria stressed the importance his authorities attached to technical assistance, and provided information on the training courses, open to officials from all developing countries, organized by the Austrian customs administration for the last sixteen years. The twentieth such course had been held in 1982.

12. The representative of Finland also stressed the importance his authorities attached to technical assistance and referred to the information

he had provided at the last meeting of the Committee on the courses organized by the Finnish customs administration since 1974 (VAL/M/5, paragraph 25). He informed the Committee that the next such course would be held in August 1983, invitations having been sent out already through the Customs Co-operation Council. The customs valuation part of the course, which also covered other matters, would continue to be based on the GATT Agreement and would include some references to and comparisons with the Brussels Definition of Value.

13. The observer from the Customs Co-operation Council said that the CCC's project to develop an international valuation course that he had referred to at the Committee's last meeting (VAL/M/5, paragraph 23) was on track and that the CCC was looking forward to its full implementation. In regard to the activities of the Technical Committee in this area, he recalled that a questionnaire aimed at seeking information and statistics from developing countries on their needs in regard to technical assistance had been issued. Since the rate of response had only been about 25 per cent so far, he urged all interested countries to reply. Nevertheless, some valuable information and statistics had been obtained. These would be made available to the Technical Committee at its meeting of 7-11 March 1983 and in due course submitted to the Committee on Customs Valuation for its information. In conclusion, he expressed his appreciation for the opportunity given to the Customs Co-operation Council to participate in the seminar organized in Manila for and by the ASEAN countries. He considered that it had been an outstanding example of how a group of countries could take the initiative to arrange such seminars with a worldwide participation.

14. The observer from Singapore expressed the thanks of the Singapore Customs and Excise Department to the United States, the EEC, the Netherlands, the United Kingdom, the Customs Co-operation Council and the GATT secretariat for their participation in the valuation seminar held in Manila. He said that the seminar had been very useful, and hoped that more such seminars would be held in developing countries.

15. The Committee took note of the statements made on technical assistance.

C. Agreed interpretation of the work "undertaken" used in Article 8.1(b)(iv) of the Agreement

16. The Chairman recalled that at the third meeting of the Committee the European Economic Community had put forward a proposal to the effect that the word "undertaken" in Article 8.1(b)(iv) of the English text of the Agreement should be understood as meaning "carried out". He also recalled that the matter had been further discussed at the Committee's fourth and fifth meetings.

17. The representative of Japan said that his authorities had concluded that they could accept the proposal.

18. The Committee agreed that in the context of Article 8.1(b)(iv) of the Agreement the English word "undertaken" was to be understood as meaning

"carried out". It noted that the French and Spanish versions of the Agreement were not affected.

D. Treatment of interest for deferred payment; valuation of computer software

19. The Chairman, recalling that the Committee had discussed these matters at its last two meetings, said that in the light of the comments made at the last meeting, the European Economic Community and the United States had circulated revisions of their respective proposals, in documents VAL/W/13/Rev.1 and VAL/W/14/Rev.1. In addition, a secretariat note relating to some legal questions raised in this connection had been circulated in VAL/W/16. He also recalled that reports by the Technical Committee on present national practices in regard to the two questions had been circulated before the Committee's last meeting in documents VAL/W/10 and VAL/W/11. He suggested that at this meeting the Committee might focus on the substance of the two proposals, leaving discussion on the legal aspects to a future occasion.

20. The representative of the United States said that, in revising its proposal on the valuation of computer software, his delegation had attempted to deal with certain concerns expressed at the last meeting of the Committee and in subsequent discussions. His delegation was prepared to envisage another revision of the proposal, if necessary, to meet further technical drafting points. It had hoped that, following bilateral consultations, it would be possible to reach a consensus on the proposal at this meeting. Unfortunately, this had not proved possible. His delegation continued to hope that, through a continuation of the process of bilateral consultations, it would be possible to develop a draft decision that all Parties would be prepared to accept.

21. The representative of Brazil stressed the complexity of the issue regarding computer software and its growing importance in international trade. He wished to share with the Committee some of the doubts that his authorities had in relation to the proposal. The first related to the objective of the proposal itself. The aim of the proposal was to reduce the taxable basis of the goods in question to a very large extent. The proposal thus would not just entail a change in customs valuation procedures, but also a liberalization of trade in this sector. While not being against trade liberalization as such, his authorities doubted that the method in the proposal was the appropriate way to achieve this objective. It was not a method for trade liberalization contemplated in the GATT. Since the proposal was innovative in this respect, it was bound to create a precedent however much the Committee wished to deny it. His authorities were concerned about how far this method might be extended to other sectors, for example books, records and videotapes. Moreover, in the view of his authorities, the proposal would result in even more drastic commitments to free trade in "software" than those which normally resulted from GATT tariff schedules. The normal methods of withdrawing from a tariff concession - for example those under Articles XXVIII or XIX - would not apply. In addition, his authorities felt that the element of compensation due to countries that were net importers of software was not clear in the proposal. The

representative of Brazil further said that it had not yet been made clear what provisions of the Agreement the proposed decision purported to interpret. He felt that many might think that the relevant provision that was being amended or interpreted would be Article 7.2(g).

22. The representative of the European Economic Community said that he did not view the proposal on software in the same light; it was not a tariff negotiation, but an attempt to deal with an unexpected result of the new Agreement and to restore the status quo ante. The aim was not to achieve a tariff reduction, but to avoid a tariff increase. The problem was not a new one; it had been addressed in the CCC in regard to the Brussels Definition of Value, recognised as a special case, and a solution had been found. He doubted that a similar situation existed anywhere else in the tariff, where the physical carrier, which was what was supposed to be dutiable under the tariff, represented only a small fraction of the value of the good. The proposal, therefore, could not be viewed as having implications for other sectors. Making the software element dutiable raised not only conceptual problems, but also considerable practical ones for customs administrations. For example, there were cases where computer tapes were supplied without charge, where tapes with faults in the data or instructions were replaced by complete new tapes, or where tapes were imported to be tested on the equipment on which they were to be run or in the environment in which they were to operate.

23. The representative of India, confirming his willingness to follow the Chairman's suggestion of focusing on the substance of the proposals at the present meeting, stressed the importance that he attached to the legal aspects and the desire of his delegation to examine them carefully at a future meeting. He added that his comments on substance would be without prejudice to the views that his delegation would have on the legal aspects. In regard to the EEC's proposal on interest charges, his delegation could go along with the substance of the proposal. As for the US proposal on software, he expressed appreciation for the efforts made by the United States delegation to revise its earlier proposal, in particular the exclusion of sound, cinematic and video recordings. His delegation had considered the US proposal very carefully but further reflection had only served to confirm the difficulties his authorities had originally perceived. Apart from the issues of precedent for other MTN codes or implications for the concept of transaction value under the Agreement, his delegation continued to have problems of a fundamental nature even on the specific issue of treatment of computer software because it was the considered view of his authorities that in the valuation of computer software, it was the information component of software, i.e. the part on which the intellectual labour had been expended, which had the predominant value with the magnetic tape or carrier media being only of relatively minor value. His delegation found itself broadly in agreement with the thrust of the comments made by the representative of Brazil on the US proposal. He did not think it necessary at this stage to respond to some of the points made by earlier speakers.

24. The representative of Australia confirmed that his delegation continued to have no difficulties with the substance of the proposal on interest

charges for deferred payment. Moreover, he thought that his delegation would be prepared to take a fairly relaxed attitude with respect to the legal method of implementing it. In regard to the proposal on computer software, he recalled that his delegation had expressed a preference for a tariff-based approach to any problems that might occur, although his delegation had also indicated that it would be willing to accept a valuation-based approach if that was the consensus that emerged among Parties. He informed the Committee that, since the time that these remarks had been made, his Government had referred the question of the computer software and computer hardware industries to the Industries Assistance Commission (IAC), which was an independent governmental advisory body; the deadline for the IAC's report on these industries was November 1983. His delegation would not be in a position to agree to a proposal that would significantly alter Australia's present customs treatment of data and/or instructions on carrier media until his Government had had an opportunity to receive and decide on the IAC's report. Nevertheless, his delegation would not wish to block any consensus that might emerge in the Committee during such time. In such an event, his delegation would, however, need to enter a reservation, so that the decision of his Government on the IAC's report would not be prejudged.

25. The representative of Sweden said that charging duty on the the software element would only discourage the import of software on tapes and encourage its transmission by electronic means. The effect would be a loss of possibilities for governments to collect customs duties and taxes and an increase in costs to companies, which would be bad for all parties concerned - companies, consumers and governments.

26. Responding to the comments of the representative of the European Economic Community, the representative of Brazil doubted that there were many cases where software was really supplied for free, without any counterpart. He also said that in Brazil there existed well-established procedures for temporary imports that could be used to deal with programmes imported for demonstration or test purposes. He could not agree that it was reasonable under the Agreement to charge duty on the carrier only; to him, such a value would be "arbitrary or fictitious". Responding to the comment of the representative of Sweden, he said that in Brazil there also existed methods to detect the import of software by means other than magnetic tapes.

27. The representative of Japan said that his delegation had no particular difficulties with accepting both the proposals. He regarded the proposal on interest charges for deferred payment as being no more than a reflection of the intention of the negotiators in the Tokyo Round. It had already been incorporated in Japan's customs tariff law.

28. The representative of Canada said that, in regard to the proposal on computer software, his delegation had some concerns about the precedent that might be created for other products. Commenting on the text of the United States proposal, he expressed the view that the approach whereby the proposal applied to all carrier media which contained data or instructions other than certain specified exclusions might result in ambiguity about the exact coverage of the proposal. His delegation favoured a text that would

spell out more precisely the intent of the proposal to apply to computer data and instructions contained on physical media. In regard to the proposal on interest charges for deferred payment, he recalled that his delegation had pointed to the need to avoid giving importers an opportunity to reduce value for duty by overstating interest charges. It was his delegation's understanding that interest charges would have to be consistent with commercial lending rates and identified separately.

29. The representative of the Republic of Korea said that his delegation had no difficulties with the proposal on interest charges for deferred payment, which was consistent with the present practice of the Korean customs administration. As to the proposal on computer software, he said that his delegation was not yet in a position to indicate its position as the matter was still under study by his authorities.

30. The representative of Finland, speaking on behalf of the Nordic countries, said that the proposal on deferred payment did not represent any difficulties for the Nordic countries and could be accepted. On the question of computer software, the Nordic countries saw the proposal essentially as a means of restoring the status quo that existed before the Agreement came into force. They were prepared to go along with the substance of the proposal, although there might still be certain technical questions in regard to the drafting of the proposal that needed to be settled. He suggested that the issue should be reverted to at the next meeting of the Committee after further informal consultations, with a view to reaching a consensus on the matter. The Nordic countries attached considerable importance to a consensus solution that would be implemented by all Parties; providing scope for particular countries to depart from a practice to be assumed by the majority of Parties would be a bad precedent.

31. The representative of the United States said that the intention of the proposal on computer software was not to liberalize trade but to reverse the increase in protection on this product which had resulted accidentally from the Tokyo Round negotiations. He recognized that this had not been the case for all Parties - this was one reason why the issue was so difficult. He did not share the concerns about the danger of creating a precedent; in his view, the proposed treatment on computer software could not easily be extended to other areas. He also did not share the view that the proposal would have the effect of locking countries into a certain customs treatment of computer software. While the valuation element of such treatment would be fixed and his country was seeking to have the classification element fixed in another forum, flexibility would remain in regard to the tariff to be charged on the physical carrier; when the tariff was bound in GATT, safeguard actions and Article XXVIII would remain applicable. In conclusion, he said that his delegation would welcome being informed before the next meeting of any drafting points in regard to the proposal that other delegations might have, and would wish to return to this question at the next meeting of the Committee.

32. The representative of Brazil said that, if countries were concerned to reverse an unforeseen consequence of the Agreement, they could unilaterally adopt the proposed treatment of computer software without needing the Committee's approval; it was not necessary, then, to deal with the matter

multilaterally as was being proposed. In his view, the most appropriate way for the interested parties to revert to the pre-Agreement practice would be through the elimination of their tariff, whether unilaterally or by negotiation. In the event of a negotiation, it would be normal GATT practice for those interested countries to negotiate bilaterally or plurilaterally among themselves, without involving countries that were not interested in the matter; they should of course apply the resulting tariffs on a m.f.n. basis. He therefore suggested that the delegations interested in this issue engage in such a process. In the event that this approach was not adopted, he hoped that the proponents of the proposal would be in a position to indicate at the next meeting of the Committee their difficulties in doing so, that is in following the traditional GATT procedures for trade liberalization.

33. In regard to the proposal on interest charges for deferred payment, the representative of Brazil recalled that the delegate of Brazil had informed the Technical Committee when this matter had been discussed that:

"his country had a national tax system which required that when goods were directly financed by the seller, financial charges had to be included in the tax base. This policy had been determined on the grounds of administrative convenience. Its rationale was that it was very hard in such situations to calculate accurately the actual financial charges. Allowing deductions for unknown charges would lead to distortions and abuse."

He said that Brazil continued to be unable to be a party to the proposal on interest charges. However, his delegation would be willing to discuss with interested delegations how the problem could be tackled in the Committee. The basic problem for Brazil was that the proposal could create grounds for undue and excessive deductions from value for duty. He noted in this context the Canadian concern that interest charges should reflect market interest rates. If suitable language to safeguard against the practices that were of concern to his authorities could be inserted in the proposal, he felt that Brazil would be in a better situation to re-examine the matter.

34. The Chairman said that it appeared that further time was required for reflection on the two proposals, including the points that had been made during the meeting. He therefore suggested that the Committee take note of the statements made; that these statements should be reflected in the Committee's minutes; and that the Committee would return to these matters at its next meeting.

35. It was so agreed.

E. Other business

(i) Panelists

36. The Chairman said that nominations of persons available for panel service in 1983 had been received from Denmark, Finland, Norway and the

United Kingdom on behalf of Hong Kong. He urged other Parties to confirm existing nominations or present new ones in line with the provisions of paragraph 2 of Annex III to the Agreement.

(ii) Canadian reservation on acceptance of the Agreement

37. The representative of the United Kingdom speaking on behalf of Hong Kong, referring to the reservation made by Canada on its acceptance of the Agreement, said that acceptance of that reservation by Parties to the Agreement did not exempt Canada from honouring its obligations as a GATT contracting party. As Canada's reservation under the Agreement had no status under the GATT, it could not and did not have the effect of amending or modifying the provisions of the GATT in any way whatsoever. In this respect, the relevant GATT provisions were Articles I and XXVIII. Article I required that customs duties be applied on an MFN basis. Article XXVIII set out certain specific procedures for the modification of tariff schedules, but such procedures could not and did not have the effect of overriding the MFN requirement in Article I. He said that a recent report of the Canadian Tariff Board (reference No. 159) proposed, among other things, country-specific tariffs on garments and certain footwear products as part of tariff adjustments to compensate for loss of protection following Canada's implementation of the Agreement. He said that such country-specific tariffs were, of course, completely contrary to the MFN provisions of Article I. In addition, he wished to make it clear that Hong Kong had never accepted the present practice of ministerial prescriptions which had resulted in an arbitrary mark-up for customs valuation purposes of the value for duty on garments imported from Hong Kong. On several occasions the Hong Kong Government had conveyed to the Canadian Government its view that such ministerial prescriptions were inconsistent with the GATT.

38. The representative of Canada said that the document to which the representative of the United Kingdom speaking on behalf of Hong Kong had referred was a working document prepared by the staff of the Tariff Board; it had not been approved by the Tariff Board itself. The document had been issued for public discussion purposes only. He added that Canada did not agree with the statement that its system of ministerial prescriptions was inconsistent with the GATT. It was Canada's view that the use of such prescriptions was fully consistent with Canada's present rights and obligations relating to the determination of value for duty as contained in Article VII of the GATT and other relevant GATT provisions. In regard to the status under the GATT of the Canadian reservation to the Agreement, he noted that it had been accepted by the Committee.

(iii) Dates and draft agendas of the next meetings

39. The Committee noted that its next meeting would be held on 10-11 May 1983, as agreed at its November 1982 meeting. The Committee agreed to hold its autumn 1983 meeting on 9-11 November 1983.

40. The Committee agreed that the draft agenda for its next meeting would contain the following items.

- A. Accession of further countries to the Agreement
- B. Technical assistance
- C. Information on implementation and administration of the Agreement
- D. Report by the Chairman of the Technical Committee
- E. Use of various valuation methods by Parties
- F. Treatment of interest for deferred payment; valuation of computer software
- G. Other business:
 - (i) Panelists
 - (ii) Other items raised
 - (iii) Dates and draft agendas of next meetings.

41. The Committee agreed that its examination of the Australian legislation and replies to the checklist of issues would be undertaken at its November 1983 meeting. It also agreed to take up at that meeting the question of the time standard for test values under Article 1.2(b) of the Agreement (VAL/M/4, paragraph 29).