

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

VAL/Spec/27

10 June 1988

Special Distribution

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 3 MAY 1988

Chairman: Mr. A. Rodin (Sweden)

1. The Committee elected Mr. A. Rodin (Sweden) Chairman, and Mr. D. Shark (United States) Vice-Chairman for 1988.

2. The following agenda was adopted:

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A. Accession of further countries to the Agreement

(i) Mexico

3. The representative of Mexico referred to the ratification of the Agreement by the Government of Mexico on 9 February 1988 (VAL/31/Add.1). He said that the text of the Agreement was published under a Presidential Decree in the Official Journal of 21 December 1987. In a further Decree issued in the Official Journal of 25 April 1988, Mexico's acceptance of the Agreement and the relevant reservations and declarations had been enacted as part of the national legislation. As all Parliamentary procedures were now completed, the provisions of the Agreement fully applied within the Mexican territory.

(ii) Turkey

4. The representative of Turkey said that the draft bill on the ratification of the Agreement had been adopted on 23 March 1988 by the Commission on Foreign Affairs of the Great National Assembly. It was currently being examined by the Commission on Budget and Planning.

(iii) Spain

5. The Chairman informed the Committee that Spain had withdrawn as a Party to the Agreement in an individual capacity with effect from 25 January 1988 (VAL/34).

6. The Committee took note of the statements made under this agenda item.

B. Report on the work of the Technical Committee

7. The Chairwoman of the Technical Committee on Customs Valuation (Dr. A. Gancz, Austria) gave an oral report on the fifteenth session of the Technical Committee, held in Brussels from 14 to 17 March 1988, the full report of which is contained in CCC Document 34.628.

8. In connection with the intersessional developments, the Chairwoman said that at its fourteenth session, the Technical Committee had been informed of a communication from a developing country, signatory to the Agreement stating its intention to propose an amendment to the Agreement. It had been stated that this and other matters relating thereto would be discussed at the CCC Policy Commission (see VAL/M/21, paragraph 11). At the fifteenth session, the Technical Committee had been informed that the Policy Commission's eighteenth session held in December 1987, in considering the difficulties said to have been encountered by the developing countries, had pointed out that non-signatories could not propose changes to the Agreement. The CCC had observer status at the Uruguay Round of Multilateral Trade Negotiations, but this did not entitle it to put forward suggestions for amendments. While this legal situation

had been recognized by the Policy Commission, it had been stressed that the CCC could identify the problems and that, in practice, it could supply expertise to the GATT review group, provide technical assistance to the developing countries, and help them to present their case. The Policy Commission had finally concluded that: (a) if accepted by the Council, any proposal received from a CCC member could be offered for consideration by the CCC Secretariat in the GATT negotiations; (b) where desired, the Secretariat should give its technical support to proposals tabled at the multilateral negotiations by members and keep closely abreast of all ensuing developments; (c) the Secretariat should commence a survey of member administrations who had not yet acceded to the Agreement on Customs Valuation, in order to identify specific needs for technical assistance. The Technical Committee had been informed that as far as conclusions (a) and (b) were concerned, the Secretariat had not received any proposals from a developing country since December 1987; as for conclusion (c), the Secretariat had recently sent a questionnaire to developing countries so as to identify the areas where technical assistance could be directed.

9. The Technical Committee had also been informed that the Second Session of the Joint Expert Group on Customs Valuation Fraud had been held on 12-14 October 1987. This Group had been constituted as a result of a proposal made by the Policy Commission in 1986 to determine the best approach to be taken to assist Customs administrations in controlling fraudulent valuation practices. The meetings of the Group had been able to define four areas and to come up with results that could be of immediate benefit. It had been emphasized that the work accomplished had not been related specifically to any valuation system but was meant to be applicable to all countries, whatever system of valuation they employed.

10. On the subject of technical assistance, the Technical Committee had taken note of document 34.540 containing updated information on the technical assistance programme on customs valuation. In collaboration with the Senegalese Administration, the Council had organized a seminar on customs valuation from 25-29 January 1988. Held at Dakar, this seminar had been attended by thirty officials from eight French-speaking African countries and by three representatives from the West African Economic Community (CEAO). Two officials from the CCC had given presentations on the various technical aspects of the GATT Customs Valuation Agreement and on other general areas associated with it. A representative of the GATT secretariat had described accession procedures and the general structure of the Agreement. The Technical Committee had been informed that the Secretariat of the Council had received a request from the General Secretariat of the CEAO (Communauté Economique de l'Afrique de l'Ouest) to organize a valuation training course on the Agreement for Customs officers of CEAO countries.

11. Continuing her report, the Chairwoman of the Technical Committee said that the Technical Committee had adopted the following six advisory opinions relating to technical matters:

- Treatment of a situation where the sale or price is subject to some condition or consideration for which a value can be determined with respect to the goods being valued (Annex III to the report of the fifteenth session of the Technical Committee circulated in CCC Doc. 34.628). This advisory opinion concluded that the value of the condition or consideration, when it was known and related to the imported goods, was part of the price actually paid or payable.
- Quota charges paid by the buyer to the seller of the goods. The advisory opinion covering this case expressed the view that quota charges should be considered as a part of the price paid or payable (Annex IV to CCC Doc. 34.628).
- Quota charges paid by the buyer to a third person (e.g. a broker or an agent). In this case, the advisory opinion expressed the view that, since the payment for the quota was not a condition of the sale and not made for the benefit of the seller, it should not be considered as a part of the price actually paid or payable.
- Scope and implication of Article 11 of the Agreement which dealt with the right of appeal (Annex VI to the CCC Doc. 34.628).
- Implications of Article 13 of the Agreement which allowed release of the goods when final determination of Customs value was delayed (Annex VII to CCC Doc. 34.628).
- Application of Article 17 of the Agreement and paragraph 7 of the Protocol, which related to the rights of customs administrations (Annex VIII to CCC Doc. 34.628).

The last three advisory opinions dealt with topics of a similar nature arising from the Special Meeting which had been held to examine problems faced by non-signatories who had been considering the adoption of the Agreement. These three advisory opinions emphasized that the Agreement did not intend to cover cases which involved violations of Customs law and fraud and that such cases should be governed by national legislation.

12. In addition to the aforementioned questions for which instruments were adopted, the Technical Committee had examined a number of other technical matters:

- Meaning of the expression "the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable". The Committee had examined a draft advisory opinion on the meaning of this expression and on the determination of the rights and obligations of the customs administrations and the importers within the context of related party transactions. In addition to the written comments, a

number of amendments had been proposed during the discussion. In view of the significance of some of the proposals, it had not been possible to take a decision and the Technical Committee had decided to consider a revised draft at its next session.

- Meaning of the expression "activities undertaken by the buyer on his own account after purchase of the goods but before importation". The Technical Committee had examined a draft commentary which contained examples on the subject within the context of Article 1 and various amendments had been proposed. It had been decided to revert to this item at the next session and to include another example in the commentary.
- Conversion of currency in cases where the contract provides for a fixed rate of exchange. At its fourteenth Session, the Technical Committee had adopted an advisory opinion on conversion of currency in cases where the contract provided for a fixed rate of exchange and decided to illustrate this advisory opinion with the examples. It had also decided to examine a case submitted by Finland on the subject at its next session. Accordingly, the Secretariat had circulated a series of examples submitted by the International Chamber of Commerce and a draft case study submitted by Finland for consideration. During the fifteenth Session, the delegate of Australia had explained that his administration had concerns with previously-adopted advisory opinion and had requested that this subject be reconsidered. The Committee had decided to discuss this Administration's arguments at its next session and, therefore, the examination of the examples as well as the case study had been deferred. The submission of the advisory opinion for approval by the Council had also been postponed.
- Determination of the amount for commission or profit and general expenses for use in the deductive value method. In accordance with the instructions of the Committee, the Secretariat had prepared a revised commentary based on replies to a questionnaire. Following discussions, it had been decided to support the commentary by a case study which could provide more specific indications on the application of this provision. The draft commentary would be re-examined in conjunction with this case study during the next session.
- Determination of the amount for profit and general expenses for use in the computed value method. Considering the limited experience of administrations with the use of this valuation method, the Committee had decided to postpone discussion of this subject until such time as a document which provided specific guidance could be drafted. This topic was placed in Part III of the Conspectus of future work.
- Buying commissions. At its fourteenth Session, at the request of the International Chamber of Commerce, the Technical Committee had decided to examine the subject of buying commission on the basis of an example

submitted by the ICC. During the fifteenth Session, the ICC had provided additional information relating to the case. The Committee had discussed the form of the future document and other considerations to be taken into account and the Secretariat had been instructed to prepare a new document for the next session.

13. In addition to these technical questions, the Technical Committee had held a preliminary discussion on the use of various valuation methods by Parties. The Secretariat had been instructed to prepare a document for consideration at the next session.

14. Concluding her report, the Chairwoman of the Technical Committee said that the next Session of the Technical Committee would be held from 3-6 October 1988. She added that the present Chairwoman had been re-elected and, Dr. D.E. Zolezzi (Argentina) was First Vice-Chairman, and Mr. R. Karpoja (Finland) Second Vice-Chairman.

15. The representative of the European Economic Community said that while the report on the fifteenth session of the Technical Committee stated that the two advisory opinions on the treatment of quota charges had been adopted by majority, his delegation had noted that the Technical Committee had not been able to reach a consensus on the adoption of the first advisory opinion. The comments of his delegation opposing the solution in this advisory opinion were recorded in the same report (CCC Doc. 34.628, paragraphs 158-174). He noted that his matter evoked wide interest and that the practice regarding quota charges varied from country to country. He suggested that the Committee should refer this matter to the Technical Committee for its reconsideration.

16. The representative of the United States, joined by the representative of New Zealand, said that the Committee should not take any action which would indicate its dissatisfaction with the advisory opinion adopted by the Technical Committee. However, the Committee might take up the subject of treatment of quota charges, at the request of a Party, once the delegations had had the opportunity of considering the substance of the matter. The representatives of Canada and the Republic of Korea said that their respective authorities had not yet studied the implications of the two advisory opinions at the legislative level. They were not in a position, at this stage, to support the suggestion by the delegation of the European Economic Community.

17. Commenting on the section of the report by the Chairwoman of the Technical Committee concerning the decisions taken by the CCC Policy Commission at its eighteenth session, the representative of the United States expressed the concerns of his delegation regarding the rôle that the CCC had given itself in the Uruguay Round of Negotiations. The mandate of the Technical Committee set out in Annex II of the Agreement did not include the preparation of proposals for amendments to the Agreement. It was up to the Committee itself to seek information and advice from the Technical Committee in its consideration of any possible amendments to the

Agreement. The representative of the European Economic Community supported this statement.

18. The Committee took note of the report of the Chairwoman of the Technical Committee and the statements made in this connection. It agreed to revert to the matter of treatment of quota charges at its next meeting.

C. Information on Implementation and Administration of the Agreement

(i) Argentina

19. The representative of the European Economic Community said that Decree No. 1.026 on implementing regulations, circulated in document VAL/1/Add.22, did not provide an adequate basis for the examination of the national legislation of Argentina. The Committee would need further documentation for this purpose.

20. The representative of Argentina said the Agreement had been introduced in the national legislation by Law No. 23.311. This law incorporated the full text of the Agreement and was published in the Official Bulletin. All aspects of customs legislation were addressed in the Customs Code approved by Law No. 22.415. The sections of this Code relating to valuation matters would be submitted to the Committee.

21. The Committee took note of the statements made. It agreed to revert to the legislation of Argentina at its next meeting on the basis of questions and answers to be exchanged between Argentina and other Parties, through the secretariat.

(ii) Brazil

22. The Committee agreed that it had completed its examination of the legislation of Brazil, with the understanding that it could revert to any questions in this respect at future meetings.

23. With regard to the Brazilian reservation under paragraph I:3 of the Protocol, the Committee took note that, on 13 November 1987, the Brazilian authorities had withdrawn a number of items from the list of products subject to minimum values and reference prices (VAL/W/36/Add.2).

(iii) India

24. The representative of India said that the legislative bill for the amendment of the Customs Act of 1962 had been introduced in the current session of the Parliament which dealt with the budget. This bill would be adopted once the consideration of the budget was completed. His authorities would submit the relevant information on the implementing regulations to the Committee as soon as the bill was enacted.

25. The Committee took note of this statement.

(iv) Zimbabwe

26. The Chairman drew attention to information on Zimbabwe's implementing legislation (VAL/1/Add.23) and its replies to the checklist of issues (VAL/2/Rev.2/Add.5) and invited the Committee to discuss the legislation of Zimbabwe at its next meeting on the basis of written questions and replies to be exchanged between interested delegations and the delegation of Zimbabwe through the secretariat before that meeting. The Committee so agreed.

(v) Australia

27. In response to a request for information by the representatives of the United States and the European Economic Community, the representative of Australia said that his authorities envisaged the introduction of certain amendments to the section of the Customs Act of 1901 concerning valuation. These amendments were designed to eliminate the problem of avoidance of payment of customs duties and were consistent with his country's obligations under the Agreement. The first part of the package of amendments had been made effective as from 1 July 1987 under the provisions of the Customs Valuation Amendment Act 1987. The second half, entitled the Customs and Excise Legislation Amendment Bill No.2, 1987, had not been approved by the Senate. A new version of this bill was presently being considered by the Parliament. Australia would notify the amendments to the Customs Act in their entirety, after the enactment of the second bill, in accordance with the terms of Article 25.2 of the Agreement.

28. The Committee took note of this statement and agreed to revert to this matter after the notification of the relevant amendments by Australia.

(vi) Status of application of the Committee decisions on interest charges (VAL/6/Rev.1) and computer software (VAL/8)

29. The Chairman drew attention to the status of information on the date of application of these two decisions contained in document VAL/W/34/Rev.4. This document would be updated by the secretariat as necessary. He also said that the Committee should revert to this matter at future meetings if so requested by a Party. It was so agreed.

D. Private companies engaged in customs valuation

30. The representative of the United States, joined by the representative of Sweden, welcomed the initiative of the Negotiating Group on Non-Tariff Measures for reviewing the problems associated with the activities of pre-shipment inspection companies. However, their delegations continued to believe in the importance of this issue for customs valuation. Therefore, the Committee should have the possibility of reverting to this subject at any time in the future. The representative of Mexico said that there had

been no definite decision on the appropriate forum for discussing this issue in the future. The representative of the European Economic Community said that the subject should be maintained on the agenda of the meetings of the Committee. The representative of Switzerland said that the Committee could revert to this issue if so requested by a Party.

31. The Chairman suggested that this item of the agenda be suspended for the time being, on the understanding that the Committee could revert to it at any time at the request of a Party. It was so agreed.

E. Technical Assistance

32. The representative of New Zealand said that New Zealand had already provided technical assistance for the adoption of the new valuation legislation in Papua New Guinea, and was continuing to assist the customs administration of this country to implement its new valuation system.

33. The Committee took note of this statement.

F. Other Business

(i) Proposal by India to the Negotiating Group on MTN Agreements and Arrangements

34. The representative of India referred to the proposal submitted to the Negotiating Group on MTN Agreements and Arrangements (NG8) on the "burden of proof regarding transaction value" (MTN.GNG/NG8/W/9, Section (ii)). He said that his delegation had considered it opportune to raise this matter for multilateral consideration both in the NG8 and in the Customs Co-operation Council because the customs administration in his country had experienced some problems when applying the Agreement on a de facto basis. Customs fraud occurred more frequently in countries that had high customs duties because of the high premium on the avoidance of the payment of such customs duties. Furthermore, under-invoicing represented a significant problem in countries where customs duties constituted a large share of the customs revenue. In his delegation's view, customs authorities might have valid reasons for questioning the truth or accuracy of the price paid or payable for customs valuation purposes. On a number of occasions, customs authorities in his country had noticed that the value of a product imported through a third country had been less than the value of an identical product imported directly from the country of origin. The invoices used in the two transactions were bona fide because of collusion between the importer and the exporter. In a particular instance of customs fraud, the Indian customs administration had carried out a full enquiry with the support of the authorities of the country of export. Following this enquiry, they had been able to establish that the value of the transaction declared in the copy of the invoice which had been presented by the manufacturer to the tax authorities in his country was different from the

value which had been declared for customs valuation purposes. While the invoice presented at the time of importation was bona fide, the declared value was not. His delegation believed that in the kind of cases mentioned in the proposal submitted to the NG8, this kind of enquiry would be called for on a prima facie basis. The proposal sought departures from the provisions relating to the acceptance of the transaction value only in specific instances. His delegation considered that Article 17 and paragraph 7 of the Protocol did not provide an adequate basis for customs authorities to satisfy themselves as to the truth or accuracy of any statement, document or declaration in the specific circumstances cited in the proposal. If the burden of proof were shifted from customs administrations to importers, under specific circumstances, the importer would be responsible for establishing that the declared value represented bona fide transactions. Customs authorities would have the right not to accept the declared value which appeared to reflect inaccurately the value of commercial transactions. The customs authorities might have to give advance notice or explain the reasons for contesting the declared value on the documents for a particular transaction. The importer or exporter would be expected to produce, within a specific period, additional documentation proving that the declared values were based on legitimate commercial transactions.

35. The representative of the European Economic Community drew attention to the Advisory Opinion on the application of Article 17 and paragraph 7 of the Protocol adopted by the Technical Committee at its fifteenth session (see paragraph 11 above). This advisory opinion had reinforced the view that had been expressed by a number of Parties that the issue raised by the delegation of India in NG8 should not be a problem for countries applying the Agreement and that there were no grounds that would warrant the amendment of the relevant provisions of the Agreement.

36. The representative of the United States, supported by the representative of New Zealand, said that problems of fraud could exist in any field of taxation. The application of the Agreement to customs administrations and to importers was neutral. Its provisions could not be the cause of customs fraud. He also stated that Article 17 had been included in the Agreement to respond to a request by the delegation of India. Joined by the representative of Japan, he wondered how the Agreement could prevent governments from taking measures for handling valuation fraud, and asked the delegation of India to give details on the particular problems that had been faced by Indian customs administrations in this respect.

37. The representative of Japan said that Article 17 and paragraph 7 of the Protocol provided an adequate legal basis for customs authorities to question the accuracy of the declared value. If the provisions were amended in order to allow non-acceptance of transaction value and to shift the burden of proof to importers, arbitrary valuation might result in certain cases.

38. The representative of India said that the proposal by his delegation was aimed at finding remedies to problems that customs administrations had encountered in dealing with day-to-day transactions. He asked whether delegations who spoke on the matter denied the existence of the kind of problems to which he had referred, whether they objected to the idea of dealing with these problems or asserted that the provisions of Article 17 and paragraph 7 of the Protocol were adequate for dealing with these problems. He also said that the proposals submitted for consideration in NG8 should not be a part of the agenda of the on-going work of the Committee. The information in this proposal had been shared with the Committee for the purposes of transparency, but the Committee was not the appropriate forum for dealing with this proposal.

39. The representative of the United States said that without prejudice to the prerogatives of any Group in the negotiations, the Committee had the capacity to address any issue that had a bearing on the implementation of the Agreement.

40. In concluding the discussion of this item, the Chairman said that NG8 would address the issues relating to the Agreement on Customs Valuation at its meeting to be held on 6-9 June 1988. The Committee would revert to the issue raised by the delegation of India, as necessary, in the light of discussions that would take place in that Group. It was so agreed.

(ii) Linguistic consistency

41. The Chairman recalled that, at its last meeting, the attention of the Committee had been drawn to the question of linguistic consistency in the English, French and Spanish versions of the text of paragraph 1 of the Notes to Articles 2 and 3 (TBT/M/21, paragraph 68).

42. The representative of the European Economic Community said that there appeared to be two linguistic issues in the paragraph in question. He suggested that the Spanish text of the first part of the sentence should be aligned with the English and French texts. He also noted that, in the second half of the first sentence, the term "sale" had been omitted in the English and Spanish texts.

43. In connection with the second point, the representative of Argentina said that the reference to the "same quantity as the sale of goods being valued" in the French text constituted a misconception. The notion of quantities being valued related to the "quantities of goods" and not to the "quantities of the sale of goods".

44. The representative of Canada said that the Committee should study the meaning of the texts in the three languages and the implications of any possible differences in the meanings of these texts on the practical application of the Agreement.

45. The representative of Mexico said that, as the text of the Agreement had been incorporated in the national legislations, Parties might need to undertake complicated domestic procedures to take into account any alignments between the text of the Agreement in different languages. The Committee might resolve any possible problem by reaching an understanding concerning the meaning of the texts in question in different languages.

46. In concluding the discussion on this point, the Chairman suggested that the Committee revert to this matter at its next meeting on the basis of a note explaining the nature of the problem, to be prepared by the secretariat, in consultation with interested delegations. It was so agreed.

G. Date and draft agenda of the next meeting

47. The Committee agreed to hold its next meeting on 11 October 1988. The following draft agenda was agreed for this meeting:

- (i) Accession of further countries to the Agreement;
- (ii) Report on the work of the Technical Committee;
- (iii) Information on implementation and administration of the Agreement;
- (iv) Technical assistance;
- (v) Eighth annual review of the implementation and operation of the Agreement; 1988 report to the CONTRACTING PARTIES;
- (vi) Other business.