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1 ARTICLE 20 AND ANNEX III

1.1 Text of Article 20

Article 20

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.

2. In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

1.2 General

1. At its meeting of 31 January 1995, the General Council took a decision on the Continued Application under the WTO Customs Valuation Agreement of Invocations of Provisions for Developing Countries for Delayed Application and Reservations under the Customs Valuation Agreement 1979.¹

¹ WT/GC/M/1, section 11. The text of the adopted decision can be found in WT/L/38.

2. At its meeting of 12 May 1995, the Committee on Customs Valuation agreed to continue the practice established by the Tokyo Round Committee on Information on Technical Assistance, in order to ensure transparency on technical assistance activities.²

1.3 Article 20.1: Delayed application of the provisions of the Agreement

3. Pursuant to paragraph 1 of Article 20, 58 developing country Members, which were not party to the 1979 Agreement on Implementation of Article VII of the GATT, requested a five-year delay of the application of the WTO Customs Valuation Agreement. This five-year delay was computed from the date of entry into force of the WTO Agreement for each of the Members concerned.³ However, 22 Members requested a further extension of this five-year period pursuant to paragraph 1 of Annex III. The length of this additional extension varied by Member.⁴

4. At its meeting of 15 December 2000, the General Council adopted a decision concerning implementation-related issues and concerns in respect of several WTO Agreements.⁵ With respect to the Customs Valuation Agreement, the General Council decided:

"Noting that the process of examination and approval, in the Customs Valuation Committee, of individual requests from Members for extension of the five-year delay period in Article 20.1 is proceeding well, the General Council encourages the Committee to continue this work."⁶

² G/VAL/M/1, para. 80-81; see also G/VAL/W/1, Section B.7. The text of the agreement can be found in G/VAL/5, Section B.4. Its revisions can be found in G/VAL/8/Add.35 and G/VAL/(Add.35/Corr.1.

³ These 58 developing Members which requested a five-year extension were: Bahrain, Bangladesh, Benin, Bolivia, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Central Africa Republic, Chad, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Gabon, Ghana, Guatemala, Guyana, Haiti, Honduras, Indonesia, Israel, Jamaica, Kenya, Kuwait, Madagascar, Malaysia, Mali, Maldives, Malta, Mauritania, Mauritius, Morocco, Myanmar, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, Philippines, Senegal, Singapore, Sri Lanka, Thailand, Togo, Tunisia, Uganda, United Arab Emirates, Uruguay, Venezuela, Zambia. On 25 April 2002 none of them maintained this special and differential treatment provision, G/L/590 p. 5. See G/VAL/W/3, 13, 22, 29, 43, 77, 89, 108, 124, 136 and G/VAL/2/Rev.19.

⁴ The following eight Members, for which the five-year delay period expired before or on 1 January 2000, requested an additional extension pursuant to paragraph 1 of Annex III: (i) Bahrain (requested three years (consultation pending) – G/VAL/W/57 and Add.1-4); (ii) Côte d'Ivoire (requested five years, extension granted for 18 months (expired 01.07.01) – G/VAL/32); (iii) Kuwait (requested two years, extension granted for one year (expired 01.01.01) – G/VAL/18); (iv) Myanmar (requested five years, extension granted for two years (expired on 01.01.02) – G/VAL/28); (v) Paraguay (requested two years, extension granted for one year (expired 01.01.01) – G/VAL/17/Rev.1); (vi) Senegal (requested five years, extension granted for six months (expired 30.06.01) – G/VAL/39); (vii) Sri Lanka (requested one year, extension granted for one year – G/VAL/23, requested second year extension, granted for 10 months – G/VAL/41, requested third extension, granted for 6 months to 30.04.02 – G/VAL/42, requested fourth extension, granted for six months to 31.10.02 – G/L/46, requested fifth extension, four months expired 28.02.03); and (viii) Tanzania (extension granted for one year (expired 01.01.01) – G/VAL/19). Also, the following 14 Members, for which this delay period expired during 2000 and 2001, requested extension: (i) Bolivia (requested two years, extension granted for 15 months (expired 31.12.01) – G/VAL/37); (ii) Burundi (requested two years, extension granted for two years to 01.08.02 – G/VAL/38); (iii) Cameroon (requested six months – G/VAL/W/80, G/C/W/245 and Add.1 – granted for six months (expired 01.07.01) – WT/L/396); (iv) Dominican Republic (requested two years, extension granted for 16 months (expired 01.07.01) – G/VAL/22); (v) El Salvador (requested two years, extension granted for 16 months (expired 07.09.01) – G/VAL/30); (vi) Egypt (requested three years, extension granted for one year (expired 30.06.01) – G/VAL/31); (vii) Guatemala (requested two years, extension granted for 16 months (expired 21.11.01) – G/VAL/33); (viii) Haiti (requested three years, extension granted for two years to 30.01.03 – G/C/W/256 and Rev.1, was granted by the General Council as Article IX waiver – WT/L/439); (ix) Jamaica (requested one year extension, extension granted for one year (expired 09.03.01) – G/VAL/24); (x) Mauritania (requested three years, extension granted for two years to 31.05.02 – G/VAL/29); (xi) Maldives (requested two years, extension granted for two years to 31.05.02 – G/VAL/35); (xii) Rwanda (requested three years – G/VAL/W/84); (xiii) Tunisia (requested three years, extension granted for 18 months (expired 28.09.01) – G/VAL/27); and (xiv) United Arab Emirates (expired 01.01.04, G/VAL/55). As a result of its Accession to the WTO on 26 June 2014, Yemen started to fully implement the Agreement by 31 December 2016 (G/VAL/75, Section I; see also WT/ACC/YEM/42, paras. 108-115). Currently no Members maintain an extension under Annex III, paragraph 1.

⁵ WT/GC/M/62, para. 17. The text of the decision can be found in WT/L/384. See also Chapter on WTO Agreement, refer to the text on Articles IV:1, IV:2 and IX:1 of the WTO on the powers of the General Council more generally.

⁶ WT/L/384, para. 4.

1.4 Article 20.2: Delayed application of the computed value method

5. Pursuant to paragraph 2 of Article 20, 51 developing country Members delayed application of paragraph 2(b)(ii) of Article 1 and of Article 6 for three years from the date of entry into force of the WTO Agreement for each of them.⁷

1.5 Article 20.3: Technical assistance

6. At its meeting of 24 July 2001 the Committee agreed on resuming its work on technical assistance in response to a proposal from the European Communities and adopted its work programme on technical assistance.⁸ On 26 February 2002, the Committee decided to start its work programme with a seminar on technical assistance.⁹ Currently, technical assistance in the area of customs valuation is incorporated into the WTO-wide technical assistance programme.¹⁰

7. The WTO Secretariat has been providing technical assistance based on biennial plans. Individual Members may submit a request for technical assistance at any time and it will be met by a national activity designed according to the needs of the recipient.¹¹

1.6 Annex III

1.6.1 Text of Annex III

ANNEX III

1. The five-year delay in the application of the provisions of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.
2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.
3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

⁷ Members requesting an extension were: Bahrain, Bangladesh, Bolivia, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Chile, Colombia, Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Egypt, Ecuador, El Salvador, Gabon, Guatemala, Guyana, Haiti, Honduras, Indonesia, Israel, Jamaica, Kenya, Kuwait, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Morocco, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Senegal, Singapore, Sri Lanka, Tanzania, Thailand, Togo, Tunisia, Turkey, United Arab Emirates, Uruguay, Venezuela, Zambia. See G/VAL/W/3, 13, 22, 29, 43, 77, 89, 108, 124, and 136.

⁸ G/VAL/M/21. The technical assistance programme, which started in May 1997, was created with a view to enhancing the capacity of developing countries to implement and to administer the Agreement on Customs Valuation. It was a demand-driven programme. The activities in the early years "focused on improving awareness and understanding of the activities already carried out or being carried out by international organizations and Members either bilaterally or regionally"; G/VAL/W/70. The new phase of the programme is oriented on promoting the coordination and cooperation between providers and donors; G/VAL/W/82/Rev.1.

⁹ The seminar was held in Geneva on 6 –7 November 2002; G/VAL/47/Rev.2.

¹⁰ G/VAL/75, Section VI.

¹¹ G/VAL/M/65. The 2017/2018 Biennial Technical Assistance Plan is contained in document WT/COMTD/W/227. Under the previous Technical Assistance Plan, in 2016, the WTO Secretariat undertook 274 technical assistance activities training close to 18,600 officials originating from different Members or Observers. Examples of activities include courses, internships, workshops, and e-learning modules. (WT/COMTD/W/227)

"The Government of reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

4. Developing countries may wish to make a reservation with respect to paragraph 2 of Article 5 of the Agreement in the following terms:

"The Government of reserves the right to provide that paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

5. Certain developing countries may have problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries.

7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller¹².

1.6.2 Paragraph 1: Extension of the five-year delay period

8. With respect to the extension of the five-year delay in the application of the Customs Valuation Agreement under paragraph 1 of Annex III, see Section regarding Article 20.1.

1.6.3 Paragraph 2: Reservation concerning minimum values

9. Pursuant to the Ministerial Decision at Marrakesh, at its meeting of 12 May 1995, the Committee on Customs Valuation adopted the following decision:¹³

"Decision on Texts relating to Minimum Values and Imports by Sole Agents,
Sole Distributors and Sole Concessionaires

Ministers decide to refer the following texts to the Committee on Customs Valuation established under the Agreement on Implementation of Article VII of GATT 1994, for adoption.

I

Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 2 of Annex III and shows good cause, the Committee shall give the request for the reservation sympathetic consideration.

¹² G/PSI/IE/R/2.

¹³ G/VAL/M/1, Section F. The text of the decision can be found also in G/VAL/1.

Where a reservation is consented to, the terms and conditions referred to in paragraph 2 of Annex III shall take full account of the development, financial and trade needs of the developing country concerned.

II

1. A number of developing countries have a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under paragraph 1 of Article 20, developing country Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

2. In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires."

10. Pursuant to paragraph 2 of Annex III, 38 Members made reservations regarding officially established minimum values.¹⁴ The establishment of minimum values allows developing countries to apply the same minimum values to all identical products, without the need to look for the value that the products would have in the event of the application of the mandates contained in the present Agreement. No Members currently maintain this reservation.

1.6.4 Paragraph 3: Reservation concerning reversal of sequential order of Article 5 and 6

11. Pursuant to paragraph 3 of Annex III, at the time of the 2016 annual review meeting of the implementation and operation of the Agreement on Customs Valuation, 53 Members maintained reservations concerning reversal of sequential order of Articles 5 and 6.¹⁵

1.6.5 Paragraph 4: Reservation to apply Article 5.2 whether or not the importer so requests

12. Pursuant to paragraph 4 of Annex III, at the time of the 2016 annual review meeting of the implementation and operation of the Agreement on Customs Valuation, 51 Members maintained reservations concerning application of Article 5.2 whether or not the importer so requests.¹⁶

Current as of: December 2017

¹⁴ Members requesting a reservation were: Bahrain, Bangladesh, Burkina Faso, Chile, Colombia, Côte d'Ivoire, Djibouti, Dominican Republic, Gabon, Guatemala, Guyana, Haiti, Indonesia, Jamaica, Kenya, Madagascar, Maldives, Mali, Malaysia, Malta, Mauritania, Morocco, Myanmar, Niger, Pakistan, Paraguay, Peru, Philippines, Senegal, Singapore, Sri Lanka, Thailand, Togo, Tunisia, Uganda, Uruguay, Venezuela, Zambia. See G/VAL/W/3, 13, 22, 29, 43, 77, 89, 108, 124, 136, 150 and 156.

¹⁵ These Members were: Argentina, Bahrain, Bangladesh, Benin, Brazil, Brunei Darussalam, Burkina Faso, Cameroon, Chile, Colombia, Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Gabon, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Israel, Jamaica, Kenya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mexico, Morocco, Myanmar, Nicaragua, Niger, Pakistan, Panama, Peru, Philippines, Senegal, Sri Lanka, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, Uruguay, Venezuela, Zambia, Zimbabwe. See G/VAL/75.

¹⁶ These Members were: Argentina, Bahrain, Bangladesh, Benin, Brazil, Brunei Darussalam, Burkina Faso, Cameroon, Chile, Colombia, Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Gabon, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Israel, Jamaica, Kenya, Madagascar, Malaysia, Malawi, Maldives, Mali, Mexico, Morocco, Myanmar, Nicaragua, Niger, Nigeria, Pakistan, Peru, Philippines, Senegal, Sri Lanka, Thailand, Togo, Tunisia, Turkey, Uruguay, Venezuela, Zambia, Zimbabwe. See G/VAL/75.