

GENERAL AGREEMENT ON

RESTRICTED

L/6822

1 March 1991

TARIFFS AND TRADE

Limited Distribution

COUNCIL
12 March 1991

Original: English

UNITED STATES - CUSTOMS USER FEE FOLLOW-UP ON THE PANEL REPORT

Communication from the European Communities

The following communication has been received from the Permanent Delegation of the Commission of the European Communities with the request that the matter be inscribed on the agenda of the Council meeting on 12 March 1991.

The Panel report (L/6264) adopted by the Council in February 1988 concluded that the US customs user fees for merchandise processing were not in conformity with the General Agreement. The Panel ruled that a customs user fee was not in itself illegal, but that it should be limited in amount to the approximate cost of services rendered.

The US Customs and Trade Act of August 1990, effective from 1 October 1990, which was intended to implement the Panel's findings, provided a number of modifications to the previous US customs user fees for one year. The US Omnibus Budget Reconciliation Act of October 1990 extended it for four more years, i.e. to 30 September 1995.

The new 1990 legislation provides a somewhat more equitable customs user fees structure, since the fixing of a ceiling makes the fees less onerous for high-value consignments. Furthermore, the possibility remains of an adjustment of the level of fees: this would be a step towards a system which reflects the costs of the customs services rendered. However, the fee is still likely, in many cases, to exceed the cost of the services rendered since the fee, irrespective of the level, is still based on the value of the imported goods. This is recognised in a recent study within the US Government (e.g. by the GAO), which concluded that it is unclear whether even modified ad valorem fees would approximate the cost of processing an importer's individual shipment.

In addition, US Customs are still likely to have a net surplus from the introduction of a minimum fee, as well as from the surcharge for manual entries. There is no means of verifying the fairness of the charges until more information on costs is made available.

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Finally, the possible adjustment of fees is limited to a range between 0.15 and 0.19% and there could still remain a surplus in the Customs User Fees Fund, even if the adjustment is made. Furthermore, the adjustment is discretionary and there are no guarantees that this will in practice be made. A key issue will be the extent to which overcharging in the past will be taken into account in adjusting the fees. This is because the original system was charging for services which the Panel considered should not be paid by the users.

The European Community has already expressed its concerns about this issue at the Council meeting in October 1990. The Community considers that the new legislation does not appear to be fully consistent with the Panel report because it does not lead to the imposition of fees which are commensurate to the costs of the customs services rendered for individual transactions. This can only be determined when the new scheme has been operational for some time and when the foreseen adjustments, i.e. the reduction of the level of fees, have been implemented. The Community reserves its GATT rights.