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CUSTOMS VALUATION

The following comments concerning the Code on Customs Valuation have been received from one delegation.

In the course of informal contacts in recent weeks among delegations studying a draft Code on Customs Valuation within the framework of the Multilateral Trade Negotiations, it has been found that concern is being felt in various countries as to the compatibility of the general principles established in Article VII of the General Agreement and the provisions of the above-mentioned draft.

This concern was already expressed on an earlier occasion by the Chairman of the Sub-Group "Customs Matters" who, in the same sense as the countries mentioned, underlined the need for a legal study to be carried out by the secretariat in order to clarify the viability of the aforementioned draft Code, how it could fit in with the General Agreement, and the procedures for its acceptance and entry into force. Such a study is now urgent because, in the present version of the draft Code, there are various issues that give rise to serious doubts.

The draft valuation code, whose primary objective is, as in other cases, the establishment of rules for the practical application of Article VII of the General Agreement, might in some way be in contradiction with the precepts of that Article. Indeed, Article VII states that "The contracting parties recognize, in regard to the determination of value for customs purposes, the validity of the general principles set forth in the following paragraphs of this Article, and they undertake to give effect to such principles". Let us see what those general principles are.

Under the General Agreement, the value for customs purposes must be based on the "actual value" of the imported merchandise or of like merchandise, understood as being the price at which such merchandise is sold in

the ordinary course of trade under fully competitive conditions, and at a time and place determined by the legislation of each country. As regards quantity, Article VII permits two different criteria, provided that one of them must be elected once and for all. Consequently, the component elements of the "actual value" are the following:

- selling price or offer price;
- time;
- place;
- ordinary course of trade;
- fully competitive conditions;
- quantity.

Let us examine the requirements laid down by the General Agreement for these elements, and the way in which they are covered in the draft Code.

PRICE. The Notes and supplementary provisions ad Article VII explain that "actual value" may be represented by the invoice price, plus any non-included elements of actual value and plus any abnormal discount or other reduction from the ordinary competitive price.

The draft valuation Code bases the customs value on the "transaction value", this being the price actually paid or payable for the goods, subject to the circumstances listed. Consequently, the "transaction value" is consistent in principle with the concept of "actual value"; but only in principle, because the draft fails to state that to the price actually paid or payable there must be added all elements of the "transaction value" that are not included in the price paid.

Furthermore, under Article 8, the price actually paid or payable may be adjusted only in accordance with the provisions of that Article, and since no mention is made therein of abnormal discounts or other reductions of price,

this means that such reductions must be allowed, and the letter and the spirit of Article VII of the General Agreement would thereby be infringed.

TIME. Under Article VII a moment in respect of valuation is to be determined by the legislation of each country. This moment must be unique, of course in order to avoid any discrimination, although certain tolerances can be allowed.

The draft Code does not contain any general designation of the moment to be taken into consideration for valuation nor even of the limits between which the determination must be situated.

Nevertheless, in certain specific situations, the draft Code mentions "moments" with varying criteria according to the case. Thus Article 1, paragraph 2(b), mentions values occurring at or about the same time, without specifying in relation to what.

In Articles 2 and 3 it is stated that the moment corresponds to the time of exportation of the goods to be valued.

In Article 5 - application of the deductive method - the relevant moment is the time of importation of the goods being valued. Nevertheless, a tolerance of ninety days is allowed as from the date of importation.

In Article 9, concerning exchange of currency, the moment to be taken into consideration is the time of exportation from the producing country or of importation into the receiving country. This does not seem serious, since the moment must be unique for all purposes, whether it be favourable or prejudicial to the importer or the administration.

FULLY COMPETITIVE CONDITIONS. The Notes and supplementary provisions ad Article VII state that the phrase "in the ordinary course of trade ... under fully competitive conditions" is to be construed as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

In addition, the standard of "fully competitive conditions" permits a contracting party to exclude from consideration prices involving special discounts granted only to exclusive agents.

The draft Code omits this general principle of "fully competitive conditions" and, apparently, does not fulfil the commitment entered into under Article VII:1 of the General Agreement. Furthermore, it disregards the fact that price is not the sole consideration since in the interpretative note to Article 1 of the draft Code it is stated that activities undertaken by the buyer - other than those covered by Article 8 - "are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities are not, therefore, part of the customs value".

Furthermore, by disregarding "fully competitive conditions" the draft encourages discrimination against independent importers - importers not related to their suppliers - because they would have to pay higher customs duties than related competitors, their transaction values being higher than those of related importers.

QUANTITY. As already stated, Article VII allows two criteria as to quantity: comparable quantities and standard quantities. One or other criterion can be adopted, provided it is elected once and for all.

From this aspect too, the draft Code might be inconsistent with the General Agreement because in Articles 2 and 3, paragraph 1(b) uses the criterion of "comparable quantities", while the criterion of "standard quantities" is adopted in Article 5, paragraphs 1(a) and 2.