

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/20

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Special Distribution

Multilateral Trade Negotiations

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Group "Non Tariff Measures"

Sub-Group "Customs Matters"

## CUSTOMS VALUATION

1. At its meeting in May 1975, the Sub-Group "Customs Matters" agreed "that participants should transmit to the GATT secretariat in writing by 15 September 1975 specific suggestions, accompanied by notes explaining the objectives of these suggestions, for the elements that they wished to have included in any new set of international rules on customs valuation to be adopted in the context of the Multilateral Trade Negotiations." (MTN/NTM/4 para.6 and GATT/AIR/1189).
2. Communications from the following countries have been received and are reproduced hereunder:

Czechoslovakia

Hong Kong

New Zealand

Finland on behalf of the  
Nordic Countries

Japan

United States

3. Delegations who have not yet submitted their comments are invited to do so without delay.

## CZECHOSLOVAKIA

According to the Czechoslovak view the new rules on custom valuation should in every case embody the principle mentioned in the second sentence of the paragraph 7 of the draft interpretative notes contained in the Annex 1 of document MTN/NTM/W/7 dated 29 April 1975, which reads as follows:

"The value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin, nor on the price of goods in the domestic market of the exporting country, nor, in accordance with Article VII, paragraph 2(a) on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value."

The use of custom valuation of imported merchandise based on the price of goods of national origin is not feasible and possible in the case of Czechoslovak exports since in view of the principles governing the price formation and price functioning in Czechoslovakia (which cannot be compared with the price mechanism of western countries) comparable domestic values do not exist in Czechoslovakia.

FINLAND ON BEHALF OF THE NORDIC COUNTRIES

The Nordic countries have stated on earlier occasions that an overall solution through the elaboration of general rules would be the most appropriate way to deal with problems in the field of customs valuation. Full harmonization of valuation systems would be desirable and feasible by adopting one single concept for the basis of customs valuation.

Differences in national legislations with regard to valuation are causing considerable difficulties for international trade. The Nordic countries therefore invite those countries, which have not yet done so, to adhere to the Brussels Convention on the valuation of goods for customs purposes. This should be facilitated by the recent decision of the Customs Co-operation Council on the application of the convention on an f.o.b. basis. Reference is also made to the ad referendum texts containing draft principles and draft interpretative notes for the uniform application and interpretation of the provisions of Article VII of the GATT (MTN/NTM/W/7, Appendix 1, Annex 1) as well as to the Nordic statement (MTN/NTM/W/7, Appendix 1, Annex 2) regarding the texts.

The Nordic countries would not be opposed to participating in discussions related to possible amendments to the Brussels Convention or to the ad referendum texts referred to above.

HONG KONG

In the view of the Hong Kong authorities, adoption of rules based on the draft interpretative notes which were elaborated by Group 2 of the Committee on Trade in Industrial Products would afford a solution to the problems which have been notified in the Inventory of Non-Tariff Measures as existing in the area of customs valuation. With the qualifications set out below, they would therefore wish that the substance of all the draft interpretative notes should be included in any new set of international rules.

In particular they attach importance to retention in new international rules of the following provisions of the draft interpretative notes (D.I.N.):

D.I.N. 2 -- the qualification that to be defined as "like merchandise" a product must be of the same origin as the product imported;

D.I.N. 7 -- the provisions that value for Customs purposes should in no case be based on (a) the price of goods in the domestic market of the exporting country, nor (b) on any arbitrary or fictitious values, with an explicit understanding that any valuation system based on the concept of minimum value is to be regarded as "arbitrary or fictitious";

D.I.N. 10, 11 and 12 - the substance of these provisions in regard to the supply of information and the establishment of appeal procedures (the substance of D.I.N. 11 to be retained, not of D.I.N. 11 bis);

D.I.N. 10 and 11 - recognition that an exporter, as well as an importer, has the right to explanation on request from the Customs administration of an importing country, a priori of the general principles and practices used in calculation of value and a posteriori of how value in regard to a particular consignment was calculated.

They would however wish the following amendments to be made in the present provisions of D.I.N. 4:

- (a) Deletion of the words "provided that in that other country the conditions of production (including wage rates) are comparable to those in the country of origin of the merchandise to be valued" and substitution for them of "provided that that other country is at a similar stage of economic development to the country of origin of the merchandise to be valued". The present formula appears to be both too narrow in its effect and likely to be impractical in administration; comparison of conditions of production would be likely to give rise to substantial difficulties for Customs administrations and, in particular, comparisons of wage rates would involve difficult considerations of exchange rate fluctuations, variations in productivity etc.
- (b) Removal of the square brackets round the last six words of D.I.N. 4 and addition of words so that the end of the sentence reads "and information provided by the exporter, including information of the exporter's invoice price for like goods sold to other markets)." This addition would reflect the intention, with which Hong Kong is in agreement, of the second sentence of the Statement by India recorded in Annex 2 of MTN/NTM/W/7.

#### JAPAN

1. For further development of the international trade, it is desirable, in our view, that the customs valuation systems of various countries should be as simple and stable as possible based on the same principle and the same criteria. From

this viewpoint, we consider that a future multilateral solution should include at least the following elements:

- (a) Abolition of the customs valuation system of an arbitrary nature which goes counter to the words and/or spirit of Article VII of the General Agreement.
- (b) Abolition of the system which uses the higher of the two, the domestic price of exporting countries or the export price, as the basis of customs valuation.
- (c) Abolition of the system which uses as a rule domestic price of exporting countries as the basis of customs valuation.

In this connexion, it is desirable, in our view, to use the "draft Principles" and the "draft Interpretative Notes" worked out on an ad referendum basis by the Group 2 of the Committee on Trade in Industrial Products in 1971 (Appendix to MTN/NTM/W/7) as the basis of our future discussions.

2. With respect to the legal nature of the "Principles" and the "Interpretative Notes", it is appropriate, in our view, to make it as a binding code. And it would be useful to discuss introduction of additional provisions for it.

#### NEW ZEALAND

New Zealand has some reservations on whether there is very much value in seeking to expand and interpret Article VII of the General Agreement which it regards as being fairly explicit in meeting the GATT objectives that any system should be neutral in effect and non-discriminatory in application. However, if this view is not shared by the majority of participants, then the Draft Principles and Draft Interpretative Notes annex to GATT document COM.IND/W/64 of 5 November 1971 might form a basis for consideration in drafting a new set of individual rules, subject to the exclusion of any principles and interpretations which have the effect of making acceptance of the Brussels Valuation System mandatory on all contracting parties.

On this basis New Zealand has no objection to the Principles and Interpretative Notes contained in COM.IND/W/64 with the following exceptions:

- (a) Paragraph 1 of the Interpretative Notes should be suitably amended to delete reference to valuation systems which include the cost of delivery of merchandise. This is regarded as natural consequence to the adoption of f.o.b. alternative to the Brussels Valuation System. In any case it is not felt that contracting parties should be compelled to include delivery charges in their systems and thus tending to penalize distant suppliers.
- (b) Paragraph 7 of the Interpretative Notes - New Zealand disagrees with this paragraph since, in effect, it would compel a country to adopt the Brussels Valuation System.

#### UNITED STATES

The United States believes that the GATT Draft Principles and Interpretative Notes (MTN/NTM/W/7) contain many elements that should be included in any international rules on customs valuation. However, the United States also believes it useful to examine more precise definitions and better solutions for valuation purposes than have been offered by these GATT ad referendum principles.

In considering possible new rules and proposals for customs valuation, the United States suggests that the following principles offer appropriate guidelines:

1. Fairness to all classes of traders
2. Consistency with commercial practice
3. Simplicity
4. Precision
5. Predictability of results
6. Ready availability of needed information to importers and to customs officials
7. Provision for equitable administrative and judicial review procedures

These seven principles are not mutually exclusive; they are obviously interrelated in varying degrees. These principles of valuation are discussed individually below.

1. Fairness to all classes of traders in international trade. The United States favours a customs valuation system that does not discriminate between classes of traders. Customs valuation should, to the greatest practicable degree, be a "neutral constant" in the duty formula, as applied to all classes of traders, thereby permitting the rate of duty to be the sole expression of the protection intended.
2. Consistency with commercial practice. A valuation standard should be consistent with commercial practice and should not be arbitrary or artificial and, therefore, should be based upon the transaction price under fully competitive conditions.
3. Simplicity. To facilitate understanding and administration, a valuation standard should be as simple as possible.
4. Precision. To minimize differences in interpretation and resulting delays in making final determinations, the elements of a valuation standard should be precise. A precise standard would lessen the need for administrative and judicial review.
5. Predictability of results. Valuation standards should allow exporters and importers alike to reasonably predict dutiable values, in order to avoid unnecessary disagreement and delay in the assessment of duties.
6. Ready availability of needed information. The information required to administer a customs valuation standard should be readily available to traders and customs officers. Many customs valuation standards in current use involve requirements for which the needed information is difficult to obtain within a reasonable time. If at all, a full administration of such requirements inevitably leads to delays in the final determination of dutiable value.
7. Review and appeal procedures. The system should provide a procedure for the review of valuation decisions that will be readily available to all parties and will afford impartial, equitable, and rapid decisions on appeals. Regardless of how clearly and explicitly the value standard is defined, importers and customs officials will sometimes differ as to the correct dutiable value. Valuation systems should, therefore, provide for review of valuation decision within the customs service and for appeal of contested valuations to the courts. When interpretations of valuation standards are made by customs authorities or the courts, the interpretations should be publicized to avoid repetitious litigation and should be followed uniformly.

These principles are not exclusive of other elements that the United States believes should be required in international rules on customs valuation. However, in considering these various principles, attention is directed at the following elements of customs valuation that have not received sufficient attention in international fora:

1. Judicial and administrative review procedures
2. Publication of laws, regulations, and administrative decisions
3. Precise and fair handling of non-arm's-length transactions (i.e., provisions for officials to explain, upon request, how they arrived at their determination of uplift).

1. Judicial and administrative review procedures. One element that should be included in any valuation system is the principle expressed in CTIP Interpretative Note, No. 12:

"Consistent with Article X:3(b), each Contracting Party shall provide a procedure for appeal to an independent and impartial administrative and/or judicial body against valuation decisions of its customs authorities."

United States judicial and administrative procedures for valuation purposes were cited by other delegations at the last Sub-Group meeting as exemplary provisions for protests of valuation, for redress by an importer, and for appellate procedures. A brief description of these procedures is offered as an example of the type of judicial and administrative procedures necessary to carry out this type of appeal, which should be included in any internationally standardized valuation system.

The Customs Courts Act of 1970 and the Customs Administrative Act of 1970 (Public Law 91-271, effective 1 October 1970) provide for voluntary reliquidation within ninety days from the date of notice of the original liquidation.<sup>1</sup> The customs official will reliquidate in order to correct errors found in appraisal, classification, or any other element that is adverse to the Government or to the importer. In other words, an importer may protest an appraisement by petitioning at the port level for administrative review within ninety days after the date of liquidation or other decision. Notice of the denial of a protest, in whole or in part, is mailed to the importer. The option of judicial review is available to the importer by filing a protest with the Customs Court. The court will hear the case and render a decision based on facts presented. However, if

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<sup>1</sup>Liquidation is the final ascertainment of the amount of duty due. The notice of reliquidation informs the importer of any reassessment of duty amount that is higher or lower than the entry's initial determination.

the decision of the Customs Court is unfavourable to the importer, he may appeal to the United States Court of Customs and Patent Appeals (CCPA). If the CCPA rules against the importer, he may then petition the Supreme Court of the United States to review the decision of the CCPA. (When it is established in a liquidation of an entry that a lesser amount of duty is due on the goods than was deposited at the time of entry, the excess is refunded without any claim for refund or other action upon the part of the importer.)

Unfortunately, not all countries guarantee appeal procedures to an impartial body through legislative mandate or administrative ruling. For example, the Brussels Definition of Value recommends but does not require that each member country grant the right of appeal. The right to appeal procedures should not be left to the discretion of countries. Thus, the United States believes the right of appeal should be included in any international rules on customs valuation.

The United States is also concerned about the varying degrees of jeopardy to the importer in going to court. Some countries which subscribe to the BDV may require the loser to pay court costs and attorney fees for the opposing side. In some countries (e.g., Brazil and France), the valuation case goes to a criminal court, where the importer is subject to a fine if he loses. These financial risks discourage importers from making valuation appeals to the courts in many countries. On the other hand, there is little financial risk in carrying a valuation case to court in the United States. Indeed, Section 113(b) of Public Law 91-271 (Customs Courts Act of 1970) assesses the protesting importers only a small fee, which is explicitly fixed by the Customs Courts to be "not less than \$5 nor more than the filing fee for commencing a civil action in a United States district court". Thus, the United States believes that the appeal procedures for protesting an appraisement should be guaranteed and made financially accessible to the importer.

2. Publication of laws and regulations. The United States strongly believes that the legal and regulatory provisions and administrative decisions concerning valuation should be readily accessible to the general public. Not all countries publish their laws, regulations, and administrative decisions for easy use by traders. This should be corrected by enforcing publication requirements in any international rules on customs valuation that would support GATT Article X:1 ...

"Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, ... shall be published promptly in such a manner as to enable governments and traders to become acquainted with them ... The provisions of this paragraph shall not require any contracting party to disclose confidential information



which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

In keeping with the provisions of GATT Article X, United States valuation laws, regulations, and administrative rulings are published and are easily accessible to both United States importers and foreign exporters to the United States. For example, the statutory provisions for protest of an appraisement are published in the Tariff Act of 1930, as amended, under Sections 514, 515, and 516; Title 19, United States Code, Sections 1514 and 1515; as well as Title 19 of the Code of Federal Regulations, Part 173, Part 174, and Part 175. The judicial and administrative procedures for appeals from Customs Court decisions are promulgated in the Customs Court Act of 1970, Public Law 91-271. In fact, under the 1970 Customs Courts Act, the publication of court decisions is mandated by this United States law:

"All decisions of the Customs Court shall be preserved and open to inspection. The court shall forward copies of each decision to the Secretary of the Treasury or his designee and to the appropriate customs officer for the district in which the case arose. The Secretary shall publish weekly such decisions as he or the court may designate and abstract of all other decisions."

Changes in regulations are published in the Federal Register and the weekly "Customs Bulletin".

These United States practices in publishing legal and administrative provisions concerning customs valuation are cited as a specific example of the type of procedures that should be required in any valuation rules so that importers and exporters will know in advance the legal and administrative provisions governing the calculation of value for customs purposes. Indeed, the publication of laws and regulations would help traders to estimate with a reasonable degree of certainty the value of their goods for customs purposes.

3. Precise and fair handling of non-arm's-length transactions. The United States also seeks to have included in any valuation system the implementation of the principles expressed by CTIP Interpretative Note, No. 11:

"The customs administration shall explain to the importer or exporter, on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded."

In order to determine the value of goods in "non-arm's-length" transactions, the United States first attempts to base value on the prices at which such or similar goods from the same country are freely sold to the United States. If this value cannot be determined, ordinarily a value is found by using the constructed value basis of appraisement. Generally, this is based on the costs to the producer of materials and fabrication, less certain taxes and includes an amount for general expenses and profit as that usually reflected in sales to the United States of goods of the same general class or kind in the country of exportation. United States customs explains the basis for its action and its computation to the importer. If agreement cannot be reached, the importer has the right to petition judicial and administrative appeals procedures - an appeal not generally available elsewhere.

United States exporters have experienced problems with countries that use the Brussels Definition of Value in applying "uplifts" whenever the importer and exporter are "associated in business". The customs official operating under the BDV fixes a percentage increase on merchandise between related parties or on entries by a buyer having exclusive purchasing rights. This may not always reflect the real costs involved in the transaction. The problem appears primarily related to the failure of customs officials to employ real costs in calculating uplifts and to explain how they arrived at the percentage of uplift. Thus, international rules on customs valuation should reflect CTIP Interpretative Note, No. 11. In other words, customs officials should be required to explain on request to importers or exporters how the customs value has been calculated for their goods. In addition, the United States may wish to suggest more specific proposals to ensure the precise and fair handling of non-arm's-length transactions at some future point in the multilateral trade negotiations.