

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

CUSTOMS VALUATION

Addendum

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, paragraph 6 and GATT/AIR/1189).
2. This agreement was confirmed at the October 1975 meeting of the Sub-Group. The Sub-Group also agreed that the written submissions contained in MTN/NTM/W/20 and addenda would, inter alia, constitute the basis for the discussion at its next meeting.
3. A communication from the European Communities has been received which reproduces the principles and rules which had already been presented (MTN/NTM/W/20/Add.1 and Corr.1), together with added comments, explanations and indications of sources. The communication is reproduced hereunder.
4. Delegations who have not yet submitted their comments are invited to do so without delay.

CUSTOMS VALUATION PRINCIPLES

1. Dutiable value should be based on simple and equitable criteria which do not cut across commercial practices and reflect a price obtainable on a sale to the market in the country of importation.

It is established practice in regard to all taxation to adapt - as far as possible - the taxation system to the existing business procedures and not to impose on traders the necessity of setting up an additional procedure merely for

the implementation of the taxation law. Customs procedures should follow commercial practice as closely as possible. Also the valuation system should be simple and equitable and should take account of the commercial realities in any given situation.

The principle given above recognizes the validity of all these views. It is taken in the main from the GATT Committee on Trade in Industrial Products, Group 2 on Valuation ad referendum report 1971 ("GATT ad referendum solution") and the first principle established by the European Customs Study Group which formulated the Brussels Definition of Value ("Brussels Principles") with the addition of material which would ensure that the commercial realities are given their due value by taking the prices obtainable on a sale to the market in the country of importation as a proper yardstick by which to determine the value for customs purposes, whether the goods are sold or not.

Moreover this concept would exclude not only reference to domestic prices in the exporting country and export prices of the exporting country to a country other than the importing country but also to the price of goods of national origin in the importing country.

2. Valuation procedures should be of general application without distinction between sources of supply.
3. The determination of customs value should be neutral in its effect and should not be used as a means of providing additional protection by artificially increasing the value of the imported goods.

These principles (2 and 3) are copied almost directly from the "GATT ad referendum solution". They set out the idea that customs valuation procedures should not constitute a protection mechanism in themselves. They are in accord with the views put forward by the United States Tariff Commission in its 1973 Report on customs valuation to the Committee on Finance and the Subcommittee on International Trade, United States Senate ("green book"); this Report stated that the customs valuation system should be so designed that "customs valuations made in accordance therewith are in effect and to the greatest practicable degree a neutral constant in the duty formula".

The concept of neutrality implies that there should not be discrimination between importers, without nevertheless suggesting that the customs valuation system be used as a means of equalizing conditions of competition between one importer and another.

4. The determination of customs value should protect trade against unfair competition arising from undervaluation.

This principle is based on the "GATT ad referendum solution" and comparable to No. V of the "Brussels Principles". It is another way of expressing the idea that all citizens should be treated equally by the customs.

5. The determination of customs value should be based to the greatest possible degree on commercial documents which are available in the country of importation and relate to the imported goods.

The requirement to base valuation on commercial documents repeats what is already in the "Brussels Principles" and in the "GATT ad referendum solution". It runs parallel to Principle No. 1 above and implies that there should be no obligation to produce parallel documents for purely customs purposes.

The second requirement, i.e., that the documents used should be those which are available in the country of importation and which relate to the imported goods, springs from the practical need to be able to check statements in the country in which the duty is paid. Checks which can only be made outside the country of importation can be inconclusive and vexatious.

6. The procedure of the determination of customs value should keep formalities to a minimum and should not prevent quick clearance of goods. When the customs consider that the declared value may be incorrect, the verification of essential facts for the determination of dutiable value should be speedy and accurate.

This principle is based on the "GATT ad referendum solution" and the "Brussels Principles" Nos. III, VI and VIII and the concept applies in all cases including those where the value is assessed by the customs authorities. Quick clearance is an absolute necessity in order to meet the needs of modern commerce, and the administrative machinery for both clearing the goods and for checking on facts and figures should never result in the clearance of a trader's goods being delayed beyond such a period as is strictly necessary.

7. The legal and administrative provisions concerning customs valuation should be accessible to the general public and should be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.

This principle is based on the "GATT ad referendum solution" and Nos. II and IV of the "Brussels Principles". It amplifies the rule that the law of the land should be made known to the people affected by it by requiring that the administrative provisions should also be published.

8. Valuation practices should take into account the need to safeguard business secrets.

This principle is taken from No.9 of the "GATT ad referendum solution" and requires no comment.

9. Valuation decisions of customs authorities should be open to appeal to an independent and impartial body.

This principle is based on the "GATT ad referendum solution" and "Brussels Principle" No.IX. It omits, however, the idea contained in the "Brussels Principle" in question, that the procedure should be "speedy" because there is always an element of delay in this area of appeal. It is desirable, of course, that all matters of litigation or dispute should be settled as fast as possible.

10. Valuation procedures should not be used to combat dumping.

This principle is taken from the "GATT ad referendum solution". It amplifies the principles in Nos. 2 and 3 above by making a specific reference to the dumping problem. Dumping and under-declarations are different problems, each of which should be solved by its own appropriate remedy. The situation regarding dumping is already covered by the GATT Code on Anti-Dumping.

CUSTOMS VALUATION RULES

1. A definition of customs value should describe the basic elements needed for valuation, i.e., the price, time, place, commercial level and quantity factors to be taken into consideration. It should also state clearly that the value to be determined is that of the goods actually being imported.

2. The value for customs purposes is the price at which the goods are sold or would be sold with a view to importation into the country of importation in the ordinary course of trade under fully competitive conditions between a buyer and a seller independent of each other, where that price is the sole consideration.

The theme that should run through a description of these elements is the need to respect the commercial realities at all times. If one factor more than another should predominate in a valuation system, it is this very need for respecting the commercial realities - a principle already inherent in GATT Article VII itself.

Price

The price for valuation purposes should be the competitive price however described, i.e. the price made on a sale between a buyer and a seller independent of each other, when the price is the sole consideration.

Time

In regard to the material time for valuation there is need for some measure of flexibility which would recognize the commercial reality. Ideally the best moment for the valuation of goods would be that at which they are being cleared for home use. However, this would not always be in conformity with commercial realities. Clearly, contracts will generally be made some time before that moment and one should therefore allow some degree of tolerance as between the date of making a contract and the date of clearing of the goods through customs.

Place

As regards the apportionment of delivery costs (particularly transport costs) which have an incidence on the customs value of the goods the place to be taken into consideration should be precisely indicated in order to avoid dispute. It would be desirable for international rules on valuation to prescribe a uniform criterion for this place. The place of introduction into the country of importation would seem to offer the best point for this purpose although there are others available. Once again it is a question of respecting the commercial realities.

Commercial level

The commercial level or stage at which a buyer is operating can influence the price at which a seller will sell his goods to him, and accordingly valuation procedures should respect such a commercial reality. If the commercial level or stage claimed by the buyer is confirmed by the circumstances and facts of the transaction and his activities, then that commercial level or stage, and any price variations in respect thereof, should be taken into consideration in determining the customs value.

The commercial distribution patterns may be different in the various countries and may also be different within a particular country. Once again valuation law should respect the commercial realities.

Quantity

Valuation should be related to the actual quantity of goods being imported with all due allowance being made for a certain flexibility in treatment where it is necessary to bring in a purchased quantity in split consignments. Any attempt to value goods by relation to a standard quantity bought in specified circumstances should be avoided for the reason that it does not respect commercial realities.

3. When the goods to be valued have been imported as a consequence of such a transaction¹, the price paid or payable under that contract of sale shall be the value for customs purposes subject only to adjustments as necessary in respect of costs, charges and expenses incidental to the sale and the delivery of the goods.
4. In other cases the price paid or payable should also be taken as the basis of value as far as possible.
5. When the price requires adjustment, for example, because it is not the sole consideration or because it is influenced by association between buyer and seller, such adjustment should be reasonable having regard to the circumstances of the particular importation.

Rules 3-5 aim at making it possible to clear goods to the maximum extent feasible on the basis of purchase prices. Adjustments of such prices must be allowed to meet certain contingencies, but the adjustments should never result in valuations which once again do not respect the commercial realities or to be more specific the adjustments should not lead to an assessment base which, demonstrably, would not be economically viable for imported goods in the market conditions obtaining in the country of importation. If such lack of viability exists it should not arise from the customs adjustment procedures.

¹See rule No. 2 above.