

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

CUSTOMS VALUATION

Austria

1. At its meeting of October 1975 the Sub-Group "Customs Matters" dealing with questions of customs valuation invited participants to transmit to the secretariat in writing by 31 January 1976 specific comments on the following points (MTN/NTM/7, paragraphs 2 and 3 and GATT/AIR/1226, paragraph 1):
 - (a) judicial and administrative review procedures;
 - (b) publication of laws, regulations and administrative decisions;
 - (c) precise and fair handling of non-arm's length transactions;
 - (d) neutrality of valuation system/systems.
2. A communication from Austria has been received and is reproduced hereunder.
3. Delegations who have not yet submitted their comments are invited to do so without delay.

(a) Judicial and administrative review procedures

In the opinion of the Austrian authorities it would be suitable to provide for a judicial as well as for an administrative procedure for reviewing administrative decisions in customs matters. The review by an independent court would better secure the impartiality just because of its independence from the administration; an administrative review procedure has however the advantage that it is at the same time simpler to handle and that it can normally be carried out within a shorter period than a judicial procedure. A combination of these two procedures would in particular

correspond to the last of the Nine Brussels Customs Valuation Principles drawn up by a study group and which determines that review procedures for the settlement of disputes between the importer and the customs administration should be simple, fast, just and impartial.

In Austria both types of review procedures exist. The party involved has first of all the possibility to lodge an appeal against a customs decision with the "Finanzlandesdirektion". After the exhaustion of the administrative review procedure the party involved has the possibility to lodge a complaint with the High Court of Administration (Verwaltungsgerichtshof).

(b) Publication of laws, regulations and administrative decisions

All laws and regulations should be duly published in order to provide the importer with the knowledge necessary to carry out the importation in accordance with these laws and regulations.

In Austria laws and decrees are in principle published in the Federal Law Gazette; regulations of the administration - as far as they concern customs matters - are published in the official gazette of the Austrian Finance Administration.

(c) Precise and fair handling of non-arm's length transactions

When an imported merchandise is not sold under full competitive conditions, the fact itself should not entitle to an automatic increase of the invoice price for the purpose of customs valuation. In the first instance, the customs administration should examine if and to what extent the invoice price is influenced by the existence of a non-arm's length transaction; only in cases where such an influence is determined, the invoice price should be adjusted as necessary in order to correspond to the normal price.

The principles referred to above are fully reflected in the procedures adopted in Austria.

(d) Neutrality of valuation system/systems

A valuation system for the purpose of customs valuation should be strictly neutral. Therefore, the determination of value should not be affected by protective mechanisms which increase artificially the customs value.

The Brussels definition adopted as valuation unit the "normal price" which can also apply to cases where a merchandise is not imported under fully competitive conditions. This system ascertains a uniform neutral valuation.

Furthermore, with respect to the elaboration of rules or principles concerning customs valuation may I reiterate the Austrian view that the further work of this sub-group should be based in principle on the work done by Working Group 2 of the Committee on Trade in Industrial Products, the "Draft Principles and Draft Interpretative Notes" as contained in Annex 1 to document MTN/NTM/W/7.