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MEETING JULY 1976

We believe that the discussion which we had on principles was useful in that it enabled us all to see that there were often conceptual differences which were hidden when one expressed certain principles in a particular way. It appeared that we could all agree on certain ideas, but it was clear that the concepts underlying these ideas and, as a consequence, the way these ideas would be put into effect, were very different. So we think that this discussion was helpful to this extent and we think that it is inevitable in this stage of the negotiations that we should have this sort of discussion - discussion about principles and concepts. But we believe that it is the rules which are the most important things we have to examine in this Group. It is only when we talk about rules that we get down to concrete issues and concrete problems.

I do not want to go in detail through the rules included in GATT document MTN/W/51 at this stage. They are only a starting point and we believe that they do not go far enough to give us what we are looking for in these negotiations - that is to say a comprehensive set of sound, clear rules on customs valuation. I will concede that the document submitted by the Communities does not go very far. We put in our preliminary reflections just as other delegations did but we recognized the time that the ideas that we presented would need refining, would need expanding. The document which has been produced by the GATT secretariat brings together the thoughts, the ideas of a number of delegations. It is a stimulating document and it certainly led us in the European Communities to see more clearly the way that perhaps we should be going.

Today what I would like to do is to draw attention to a number of fundamental issues which we all have to look at in considering future rules. I believe a number of delegations have been rather unhappy that we have all been rather "up in the clouds" talking about principles and that they consider that we should really be dealing with concrete issues. I must say that we certainly share this opinion and I want to raise a number of concrete issues today. The first big issue, we

believe, is the question of quantities. Under the Communities system, we take the value of the quantities actually imported, but this is not the only possibility. Under some systems the normal wholesale quantity is taken. Under some systems either the quantity imported or the normal wholesale quantity is taken whichever is the lower. The GATT Article VII refers to quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in trade between countries of exportation and importation, and it may be that there are other concepts of quantities. We believe that if we are looking at a rationalization of valuation rules, and if we are all agreed that these rules should be neutral and not designed to provide additional protection, then we should concentrate particularly on the question of practicability. We believe at the moment that it is more easy to deal with the actual quantity imported than some other notional quantity like the normal wholesale quantity or a quantity not less favourable than something else. We would like delegations to consider this question of practicability. What is in practice the best way of defining the quantity to be dealt with? Is it the actual import quantity or is it some other kind of notional quantity? We would like to hear from the experience of those countries who deal with notional quantities such as normal wholesale quantities or other types of notional quantities. We would like to hear frankly their experience, their problems, so that we can see in fact whether the reservations that we have about this approach are founded. I am not suggesting that these countries should respond today. We should of course be happy to hear if they do have any comments but we think it is important to look at this question in practical terms. Given that we are agreed, in principal, that in an ideal system the valuation rules should be neutral, the question of quantities quite clearly raises all sorts of big issues. We cannot place these problems on one side, we cannot act as though they were not there. It is no good defining common rules in such a way as to allow fundamental differences approach. So we believe that as part of a preparation for further discussions and negotiations on this issue we should all consider our approach to quantities. We should not necessarily base ourselves on what we are doing, what we should consider is how best to define the rules so that they can work satisfactorily in practice. So believe that question quantities is one big issue which has to be examined.

We believe also that the question of price - the price taken into account - is one which is important. Here there are a number of different approaches. For example, the import price; the price of comparable imported goods on the domestic market of the importing country; the export price of comparable goods; the price of comparable domestic goods in the importing country; the price of comparable goods on the domestic market of the exporting country. There are all sorts of differences of an approach but once again it seems to us relatively easy to take the price of the goods actually imported as a general rule and that difficulties are bound to arise if one is trying to take the price of comparable goods and, particularly, if one is trying to take the price of comparable goods in a country

which is many thousands of miles away and which speaks a language which may often be quite obscure to the customs staff to the importing country. But we are not at this stage saying that one approach is necessarily better than the other, we are raising this question as one of practicability. We think that it would be extremely useful if, first of all, the problem could be examined in these terms, and if we could exchange ideas, if we could exchange information based on our experience of operating these different concepts.

There is another issue which is perhaps slightly more conceptual. Are we, in valuing goods for customs purposes, looking for some kind of standard price or should we be dealing with the transaction price as it stands where there are no special circumstances. This is, we believe, another important issue because if one is looking for some concept of a standard price one has to go into comparisons, one has to try to identify like or comparable goods, and one gets all the difficulties arising from that. It may be that one has to do this in exceptional circumstances, but the question has to be raised whether the concept of like goods, and the price of like goods, is one which we should introduce into the normal type of transaction without any exceptional circumstances. So once again without wishing at this stage to press for any particular approach, we believe that we ought to ask ourselves what sort of price concept we should have. Whether it should be the concept of taking the transaction price under normal circumstances, or whether we should be trying to bring about some equalization, whether we should be trying to inject some kind of equity between importers into the situation. So that appears to us to be another important issue.

In looking at the problem of customs value in practical terms, it seems a good idea to try to define the normal circumstances first, the normal sort of transaction and then to deal with exceptions. One approach to the normal transaction is a price made between parties independent of one another, where the price is the sole consideration for the goods. But there may be other ways of defining normal types of transaction and we have to be very careful how we define normal transactions. Once again, one sees from the jurisprudence of certain countries which have a different approach that where one tries to bring in an element of comparison one gets into difficulties of definition. So I think we should perhaps ask ourselves, is there some kind of normal transaction which we can define and which could be the subject of some basic rules, and should we dispose of that particular issue and then try to write some rules to deal with exceptions.

Here, when one comes to exceptions, one gets into difficult areas. We have mentioned the question of non-arms' length transactions, I think, at all of our previous meetings and we are all agreed that this is a very important area and a very difficult area. The majority of you will be aware that in the OECD a code has recently been agreed at Ministerial level which tries to set out the responsibilities of multinational companies. Transfer pricing is an element included in this particular code, but the dispositions or rules do not go into

any detail and it is clear that the OECD document does not give us much guidance on this particular issue. Transfer pricing is not only a customs problem; it is a problem, we know, for fiscal authorities; it is a problem for exchange control authorities because transfer prices are manipulated to transfer capital, to transfer profits. So we have to see whether we can make a contribution to the solution of this particular problem by trying to define as precisely as possible the standards to be applied between associated companies or between branches of the same companies. It is clear that it is a very difficult problem and we have to see whether, in our collective wisdom, we can produce some solutions. And therefore, we believe, it is important for all delegations to examine this question in depth and to come forward with their proposals.

But the area of non-arms' length transactions is not the only exceptional problem that we have to deal with in customs valuation, and although I may appear to have been rather critical of the Canadian valuation system in our earlier discussions, I would like to praise the Canadian delegation for its contribution in document MTN/NTM/W/20/Add.11 in which they have said to us all that these are a number of special circumstances which we ought perhaps to consider as candidates for inclusion in the rules. They have mentioned "time" and "place" which have also been mentioned in previous documents by other delegations, including the Communities. But they also refer to items such as goods on consignment, discounts and deferred discounts, royalty payments, commissions, sales at a loss, "assists". They are not suggesting any particular solutions at the moment but they are raising these as issues which need to be examined.

We think that we should all consider in time for the next meeting, what elements should be included in the rules. This does not mean to say that by the time we meet again we should all be in a position to define very precisely how these problems should be tackled. But it will be an extremely useful contribution if we all sat down and said there are a number of problems, a number of special circumstances, which affect the customs value and which are potential candidates for inclusion in the rules. If one looks at the Explanatory Notes to the Brussels Definition, for example, one can find 40-50 special circumstances which are covered. If one looks at commentaries on other valuation legislation, if one looks at the jurisprudence on certain valuation systems, one finds a whole range of problems which are dealt with and where precision and definition are required.

At this stage I am not in a position to suggest exactly that what should be included. I believe that we will find that certain possible special circumstances are relatively minor and are inappropriate for inclusion in a set of rules which might be developed in the MTN. But there are, we believe, a large number of issues which are sufficiently important, and which give rise to a sufficient number of difficult problems, for us to include them and to define how they should be dealt with in our new set of valuation rules. So, once again, I believe that

all delegations should consider this issue and be ready to follow the Canadian initiative and suggest what elements they would like to see, what special circumstances they would like to see covered in the rules that we are elaborating.

I think that it is appropriate to recall at this moment in time that we are looking at the possibility of developing an ideal and practicable set of valuation rules. We must all try to base ourselves not on what we are doing at the moment but on what is best. We must try to avoid insisting that our approach is the only or the most effective one. We must be open-minded and we must try to share and exchange experiences so that we can all contribute to a solution of the very real problems which do arise in the international trade from difficulties in the valuation of goods.

I believe that we should set ourselves an objective, an overall objective, for the next meeting. We have agreed or we shall agree, I think, that the document MTN/W/51 should be revised by the secretariat. But we should all try to give very considerable thought to the issues which I have previously mentioned such as quantities, price, the concept of a standard price or not, the concept of a normal transaction, and a definition of the exceptional circumstances or the listing of the exceptional circumstances which are important enough to be dealt with in our work.

I believe that if we all go away from here with that intention and we all try to make progress in that direction, then we shall be making a significant step forward in this area which, as you know and I think all delegations know, the European Communities regard as a very important one in the NTB context.

That is all I have to say on this particular issue. As I have already mentioned, we should very much welcome the reactions, the observations, of other delegations but we appreciate that it may be premature to expect them to say anything specific. I would, however, like the sub-group to regard what I have just said as a proposal if not for a formal work programme, then at least a work target. So I would like us to have an understanding that other delegations agree that this is appropriate and that they agree that this is something which should be an objective for the next meeting.