

GENERAL AGREEMENT ON
TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

CHECKLIST OF ISSUES RAISED AND OF POSSIBLE ELEMENTS THAT MAY
BE INCLUDED IN ANY NEW SET OF INTERNATIONAL
PRINCIPLES ON CUSTOMS VALUATION

Note by the Secretariat

1. At its October 1976 meeting the Sub-Group "Customs Matters" agreed that the secretariat prepare, in consultation with interested delegations and as a basis for discussion at an appropriate time a revised version of the first part of MTN/NTM/W/51/Rev.1 indicating areas of broad consensus and areas where divergencies exist (MTN/NTM/23 paragraph 4). It is understood that this note is not binding on any delegation and that participants made their comments on the understanding that these comments reflected only preliminary views on possible elements that may be included in any new set of international principles on customs valuation to be adopted in the context of multilateral trade negotiations and were not meant to reflect their views on current valuation principles or on the desirability of creating a new valuation system.
2. According to the Sub-Group's instructions the present note has been prepared by the secretariat in consultations with delegations and it is based on sections 1-12(a) of document MTN/NTM/W/51/Rev.1 including additional comments made orally at the October 1976 meeting as well as the relevant GATT provisions, the draft principles and draft interpretative notes worked out by Working Group 2 of the Committee on Trade in Industrial Products.

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1. NEUTRALITY

CTIP* Draft Principle No. 1

Valuation systems should be neutral in their effect and in no case be used as a disguised means of providing additional protection by artificially increasing the value to which the rate of duty is to be applied.

The valuation system(s) should be neutral in its (their) effect and in no case should be used as a means of providing additional protection ...

Austria (MTN/NTM/W/33/Add.4, para. (d))
 Canada (MTN/NTM/W/20/Add.2, para.23)
 EEC (MTN/NTM/W/20/Add.9, para 3)
 Japan (MTN/NTM/W/20/Add.10)
 Korea (MTN/NTM/W/20/Add.7)
 Nordic countries (MTN/NTM/W/20/Add.12)
 Turkey (MTN/NTM/W/33/Add.7)

... by artificially increasing the value to which the rate of duty is to be applied

Austria (as above)
 EEC (as above)
 Japan (as above)
 Korea (as above)
 Nordic countries (as above)

The valuation system(s) should be neutral in its (their) effect and in no case be used as a disguised means of providing additional protection by artificially increasing the value to which the rate of duty is to be applied or as a means of permitting unfair competition through undervaluation /underpricing/.

Argentina (oral statement)

*CTIP = Committee on Trade in Industrial Products of GATT.

Valuation systems in determining duties or other charges should be neutral in their effect and in no case be used as a disguised means of providing additional protection. Variable levy systems would appear particularly liable to infringe this principle where they are based on the "most favourable purchasing possibilities on the world market" rather than, e.g. on "representative" import prices.

Australia (written notification)

The main objective of the rules of a customs valuation system should be to ensure that ad valorem rates of duty are levied on actual values. A valuation system should neither add to the protection of domestic producers nor, of equal importance, permit the payment of duties on less than the actual value. This is of particular importance in dealing with trade between affiliated companies.

Canada (MTN/NTM/W/20/Add.11)

Customs valuation procedures should not constitute a protection mechanism in themselves. This is 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 Sub-Committee 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.

EEC (MTN/NTM/W/20/Add.9, para. 3)

Mexico could concur with this principle provided the need is specified for genuine non-discrimination in valuation systems and provided the principle does not prevent those systems from allowing the establishment of equality as between importers where any of these have impaired it for their own benefit or to the advantage of a third party, or from refusing prices declared to the customs authorities that would have the effect of raising domestic production costs, of evading income tax and of obtaining foreign exchange and/or profits through prices that basically affect the developing countries.

Mexico (written notification)

The current domestic value system compares favourably with the Brussels valuation system in being neutral in its effect and meets the GATT requirement that duty not be assessed on arbitrary or fictitious values. The current domestic value in the exporting country is transparent and not subject to influences within the importing country.

New Zealand (MTN/NTM/W/33/Add.2, para. (d))

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.

United States (MTN/NTM/W/20, page 6)

2. NON-DISCRIMINATORY APPLICATION

CTIP Draft Principle No. 4

Valuation systems should be of general application without distinction as between sources of supply.

The valuation system(s) should be applied on a general basis and should not allow any sort of discriminatory treatment.

Argentina (oral statement)

A major problem with which any valuation system must deal in some precise detail is how to value goods imported in arm's-length transactions and in non-arm's length transactions on an equitable basis so as not to give an advantage to one or other category of importer: this should be reflected in any interpretative note to Article VII. (For detailed explanation see MTN/NTM/W/20/Add.2, para. 2(c)). In this connexion it might be appropriate if the Sub-Group addressed itself to the elaboration of or addition to or interpretation of the provisions of sub-paragraph (c) of paragraph 2 of Article VII.

A system that provides one set of valuation rules on one group of products and a different set of rules on another group of products cannot be considered to be one which operates fairly or equitably.

Canada (MTN/NTM/W/20/Add.2, paras. 2(A),
2(C) and 2(D))

The valuation system should not discriminate between the classes of importers or exporters or between different sources of supply.

Austria (oral statement)
EEC (oral statement)
India (MTN/NTM/W/33/Add.8)
Nordic countries (oral statement)
United States (oral statement)

The valuation system should not discriminate between the classes of traders or between different sources of supply.

Israel (oral statement)

The valuation system(s) should be of general application without distinction as between sources of supply.

Japan (MTN/NTM/W/20/Add.10)

Turkey (MTN/NTM/W/33/Add.7)

It is considered necessary that any new international principle or rule established should specify the need for genuine non-discrimination in valuation systems.

Mexico (MTN/NTM/W/33/Add.5, para. (d))

3. RELATION WITH ANTI-DUMPING

CTIP Draft Principle No. 2

Valuation systems should not be used to combat dumping.

The [customs] valuation system(s) should not be used to combat dumping.

Canada (MTN/NTM/W/20/Add.11)
EEC (MTN/NTM/W/20/Add.9)
Japan (MTN/NTM/W/20/Add.10)
Korea (MTN/NTM/W/20/Add.7)
Nordic countries (MTN/NTM/W/20/Add.12)
United States (oral statement)

Valuation systems used in calculation of duties or other charges should not be used to combat dumping. Variable levy systems would appear to be particularly prone to infringe this principle because they are often based on lowest world offer prices. Such prices would no doubt sometimes be dumped prices and so the resultant levy would automatically incorporate an anti-dumping margin.

Australia (written notification)

Mexico agrees that unfair business practices should be combated through ad hoc legislation. Nevertheless, this recommendation must not be compulsive for all countries, in particular those that are in the process of development, which should be allowed to continue to apply their existing safeguard mechanism against unfair business practices. In Mexico there is no special legislation to combat dumping and the system of official prices is therefore used for this purpose.

Mexico (written notification)

4. UNDERVALUATION

CTIP Draft Principle No. 3

Valuation systems should protect trade against unfair competition arising from undervaluation.

The valuation system(s) should protect trade against unfair competition arising from undervaluation.

Austria (oral statement)
EEC (MTN/NTM/W/20/Add.9, para. 3)
Japan (MTN/NTM/W/20/Add.10)
Mexico (written notification)
Nordic countries (MTN/NTM/W/20/Add.12)
United States (oral statement)

5. CONSISTENCY WITH COMMERCIAL PRACTICES

CTIP Draft Principle No. 5

Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

As a practical matter, the value for duty should, to the extent possible, be consistent with commercial practice but not, of course, when this would permit inequities to be tolerated. This, in the Canadian view, means that valuation systems should have as their primary standard the actual monetary worth or value of a product when sold at arm's length and in the ordinary course of trade under fully competitive conditions (i.e. open market sales).

Canada (MTN/NTM/W/20/Add.11)

Dutiable value should be based on equitable criteria which do not conflict with commercial practice.

EEC (MTN/NTM/W/20/Add.9, para. 1)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)
Mexico (written notification)

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.

United States (MTN/NTM/W/20, page 6)

6. DOCUMENTS AVAILABLE IN COUNTRY OF IMPORTATION

CTIP Draft Principle No. 6

Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.

The valuation system(s) should keep formalities to a minimum and valuation 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. There should be no obligation to produce parallel documents for purely customs purposes.

EEC (MTN/NTM/W/20/Add.9, para. 5)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)

Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.

Mexico (written notification)

7. SIMPLICITY

CTIP Draft Principle No.5

Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

It is the view of the Canadian delegation that it is not realistic to attempt to devise a system which is both simple, and precise and predictable. Canadian experience has been that if a valuation system is to be precise it must be relatively complex. If it is to be simple, it will be imprecise. An imprecise system will require more discretionary action, more arbitrariness. This cannot yield any significant measure of predictability. The question therefore, is which of these objectives should take priority.

Canada (MTN/NTM/W/20/Add.11)

The customs valuation systems of various countries should be as simple and stable as possible based on the same principle and the same criteria.

Japan (MTN/NTM/W/20/Add.10)

Dutiable value should be based on simple criteria which do not cut across commercial practice.

Nordic countries (MTN/NTM/W/20/Add.12)

To facilitate understanding and administration, a valuation standard should be as simple as possible.

Mexico (written notification)
United States (MTN/NTM/W/20, page 6, para.3)
EEC (oral statement)

8. QUICK CLEARANCE OF GOODS

CTIP Draft Principle No. 7

Valuations systems should not prevent the quick clearance of goods.

The valuation system(s) should keep formalities to a minimum and should not prevent quick clearance of goods.

EEC (MTN/NTM/W/20/Add.9, para. 6)
Japan (MTN/NTM/W/20/Add.10)
Mexico (written notification)
Nordic countries (MTN/NTM/W/20/Add.12)
United States (oral statement)

9. CERTAINTY

GATT Article VII:5

The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

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 or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments thereof, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.

CTIP Draft Principle No. 8

The legal and administrative provisions concerning customs valuation should be accessible to the general public and 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.

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

Argentina (oral statement)

Bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be given sufficient publicity to enable traders to estimate with a reasonable degree of certainty, value for customs purposes.

This objective would appear to present particular difficulties for variable levy systems. Because of their tendency to vary from day to day, traders are unable to determine what levy their landed goods will attract.

Australia (written notification)

The elements of administrative discretion and arbitrariness can and should be minimized by enacting as law all the general rules. This would permit importers and exporters to predict dutiable value.

When separate and different rules for specified group of products are unavoidable, the country imposing them should ensure that the products involved can be easily identified.

Canada (MTN/NTM/W/20/Add.2 and Add.11)

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.

EEC (MTN/NTM/W/20/Add.9, para.7)
Japan (MTN/NTM/W/20/Add.10)
Mexico (written notification)
Nordic countries (MTN/NTM/W/20/Add.1)
United States (MTN/NTM/W/20, page 6)

The valuation system should avoid uncertainties and should be fair and equitable.

India (MTN/NTM/W/20/Add.13)

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.

United States (MTN/NTM/W/20, page 6)

10. BUSINESS SECRETS

GATT Article X:1

... "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."

CTIP Draft Principle No. 9

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

The valuation system(s) and practices should take into account the need to safeguard business secrets.

EEC (MTN/NTM/W/20/Add.9, para. 8)
Japan (MTN/NTM/W/20/Add.10)
Mexico (written notification)
Nordic countries (MTN/NTM/W/20/Add.12)

11. PUBLICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE DECISIONS - READY
AVAILABILITY OF NEEDED INFORMATION TO TRADERS AND CUSTOMS OFFICIALS

GATT Article VII:5

The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty the value of customs purposes.

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 or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments thereof, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them ...

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments thereof, shall be enforced before such measure has been officially published.

CTIP Draft Principle No. 8

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

The legal and administrative provisions and decisions of general application concerning customs valuation should be published and should be readily accessible to the general public.

Argentina [add "promptly" after "published"]
Austria (MTN/NTM/W/33/Add.4 para. (b))
Canada (written notification)
EEC (MTN/NTM/W/33/Add.1, para. (b))
Iran (MTN/NTM/W/33, para. B)
Japan (MTN/NTM/W/33/Add.3, para. 2(2)(b))
Mexico (MTN/NTM/W/33/Add.5, para. (b))
New Zealand (MTN/NTM/W/33/Add.2 and Corr.1)
Spain (MTN/NTM/W/33/Add.6, para. (b))
United States (MTN/NTM/W/20, page 8)
Turkey (MTN/NTM/W/33/Add.7)
India (MTN/NTM/W/33/Add.8)

The following opinions have been expressed on the question whether administrative decisions related to specific cases should be also published:

- EEC: only to those affected by them (MTN/NTM/W/33/Add.1 para. (b))
- New Zealand: only to the parties directly involved
(MTN/NTM/W/33/Add.2 and Corr.1)
- United States: the legal and regulatory provisions and all administrative decisions (MTN/NTM/W/20 page 8)
- India: important administrative decisions having general and direct interest to the trade (MTN/NTM/W/33/Add.8 page 2)
- Japan: only decisions of general application (MTN/NTM/W/33/Add.3)

The legal and administrative provisions concerning customs valuation as well as principles emerging from appeal cases shall be published.

Nordic countries (MTN/NTM/W/20/Add.12)

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.

United States (MTN/NTM/W/20, page 6)

12. INCORPORATION OF VALUATION PROVISIONS IN A PUBLIC LAW

Customs valuation provisions should be set out in public law. Given the wide range of commercial practices and the related difficulty of stating precisely in legal terminology the legal rules to be followed in relation to every class of transaction, there is bound to be need for the exercise of administrative discretion in the application of valuation provisions. This is provided for in Article VII, specifically in sub-paragraph 2(c). However, to the extent practicable, a customs valuation system, like other instruments of commercial policy, should avoid undue administrative discretion and arbitrariness. To that end, the measurement of each element or allowance necessary to calculate an "actual value" should be by reference to an actual element of price in an actual transaction, or transactions. This consideration makes a valuation system relatively complex, because the system of law has to reflect the wide variety of commercial practices. The elements of administrative discretion and arbitrariness can and should nevertheless be minimized by enacting as law all the general rules. This would permit importers and exporters to predict dutiable value.

The Canadian delegation considers, however, that paragraph 5 of Article VII does not go far enough in requiring contracting parties to narrow the scope of administrative discretion and arbitrariness and to incorporate their valuation systems in the structure of public law. It would appear that Article X of the General Agreement imposes obligations that go a good deal beyond the provisions of paragraph 5 of Article VII.

Canada (MTN/NTM/W/20/Add.2, para. 2(D))