

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/162
21 June 1978

Special Distribution

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

CUSTOMS VALUATION

The following text (paragraphs 1-6) of the revised draft valuation code representing the results of consultations between delegations is circulated for consideration by the Sub-Group at its meeting of 22 June 1978. (Following paragraphs to be added.)

Article 1

The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods in a sale for export to the country of importation adjusted in accordance with Article 7 (and other Articles to be later specified) of this code provided -

- (a) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of Article 6;
- (b) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
 - (i) may be imposed or required by law or by the public authorities in the country of importation;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods.
- (1)(c) that the sale or price does not include or is not conditioned on some factor or consideration not subject to valuation;
- (d) that part of the proceeds of any subsequent resale or other disposal of the goods by the buyer will not accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 7.

(1) See I.N. 1.

Article 2

(1)(a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods for export to the same country of importation sold at or about the same time as the sale of, or other transaction concerning, the imported goods, subject otherwise to the provisions of Article 1.

(2)(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantities as the goods being valued shall be used to establish the customs value. If no such sale is found and sales of identical goods are found at the same commercial level but in substantially different quantities, the transaction values of those sales shall be used, adjusted to take account of differences in unit prices attributable to quantity, provided that such adjustments can be made on the basis of evidence which clearly establishes reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or decrease in the value.

(2) For the purposes of this Article "identical goods" means goods which are the same in physical characteristics with and were produced in the same country by the same or a different person as the imported goods. For the purposes of this Article, goods produced by the same person shall take precedence over goods produced by a different person.

(3) Where the costs referred to in Article 7(2) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs between the imported goods and the identical goods in question arising from differences in distances and modes of transport. Pro Memoriam: A note will be needed.

(4) If, in applying this article, more than one transaction of identical goods is found, the lowest value shall be used to establish the customs value of the imported goods.

(2) See 1.N.2.

Article 3

(1)(a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods for export to the same country of importation sold at or about the same time as the sale of, or other transaction concerning, the imported goods, subject otherwise to the provisions of Article 1.

(3)(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantities as the goods being valued shall be used to establish the customs value. If no such sale is found and sales of similar goods are found at the same commercial level but in substantially different quantities, the transaction values of those sales shall be used, adjusted to take account of differences in unit prices attributable to quantity, provided that such adjustments can be made on the basis of evidence which clearly establishes reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(2) For purposes of this Article, "similar goods" mean goods which have like characteristics and component materials as, which are commercially interchangeable with, which are used for the same purpose as, and which are produced in the same country by the same or a different person as the imported goods. For purposes of this Article, goods produced by the same person shall take precedence over goods produced by a different person.

(3) Where the costs referred to in Article 7(2) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs between the imported goods and the similar goods in question arising from differences in distances and modes of transport. Pro Memoriam: A note will be needed.

(4) If, in applying this Article, more than one transaction of similar goods is found, the lowest value shall be used to establish the customs value of the imported goods.

(3) See 1.N.3.

Article 3 bis

(1) If the customs value of the imported goods cannot be established under the provisions of Articles 1, 2 and 3, the importer shall have the option of having the goods valued under the provisions of either Article 4 or Article 5.

(2) Where the importer exercises his option under the provisions of this Article, he shall provide the information necessary to establish the value under the option chosen and, in the case of completed value, shall have the agreement of the producer to allow any subsequent verification which may be required.

(3) If the importer does not select an option or, if having selected an option, fails to provide the data required to apply the option selected, or if the customs value cannot be established under the chosen option, the customs value shall be determined under the first of Articles 4, 5 and 5 bis in that order, for which a value can be established.

Article 4

- (1) If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3 and the goods have not been substantially altered in form or character by any process applied after importation but before resale, the goods shall then be valued on the basis of the price at which they are sold or offered for sale by the buyer to a person or persons in the country of importation who is or are, as the case may be, not related to the buyer, due allowance being made for -
- (a) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of goods of the same class or kind;
 - (b) the usual costs of transport and insurance and other usual costs incurred within the country of importation;
 - (c) where appropriate, the costs, charges and expenses referred to in Article 7 (2);
 - (d) customs duty and any other taxes chargeable at importation or by reason of the sale of the goods within the country of importation; and
 - (e) differences in prices resulting from differences between the individual quantities so sold or offered for sale and the quantity being imported.
- (2) For the purposes of this Article, a sale shall take precedence over an offer for sale.
- (3) This Article shall not apply unless the goods in question are sold or offered for sale within six months of the material time for customs valuation.

Article 5

(1) If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2, 3 and 4 the customs value shall be based upon a computed value. Computed value shall consist of the sum of:-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) the general expenses actually incurred in the production and sale of the imported goods, or where not available, an amount for the usual general expenses incurred in the production and sale of identical or similar goods;
- (c) the profit actually added by the production and sale of the imported goods, or where this profit is found to be deficient or is not available, an amount for the usual profit added in connection with the production and sale of identical or similar goods; and
- (d) the cost or value of all other expenses necessary to reflect the valuation option chosen by the signatory under Article 7(2).

(2) For purposes of this Article, no signatory may require or compel any person established or resident in another country to produce for examination, or to allow access to, any account or other record for the purpose of determining the customs value.

Article 5 bis

(1) If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2, 3, 4 and 5, the goods shall then be valued on the basis of whichever of the following prices is or are acceptable for such purpose to the Contracting Party concerned -

- (a) the price at which identical or similar goods are sold in the domestic market of the country of exportation, with due allowance for differences in quantities and trade levels, transport costs, and other costs not incurred in sales for export;
- (b) the price at which goods, although not identical or similar, being nevertheless of the same general class or kind, are sold for export to the country of importation from the same country of exportation as the goods being valued;
- (c) the price at which goods are sold in countries other than the country of exportation and which would otherwise be considered as being identical or similar goods but for the fact that they were produced in a country other than the country in which the goods being valued were produced;
- (d) the price at which identical or similar goods are sold in the country of exportation to buyers in countries other than the country of importation of the goods being valued;
- (e) the price at which the imported goods, if substantially altered in form or character by any process applied after importation, are sold by the importer to other persons in the country of importation, due allowance being made for the cost or value of such processing (in addition to the allowances provided for in Article 4).

(2) A sale shall not be regarded as valid for the purposes of paragraph (1) of this Article unless it is between parties who are not related.

(3) In applying paragraphs (1) and (2) regard shall be had to the principles and general provisions of this code.

(4) Each Contracting Party shall notify the Director General to the Contracting Parties as to which of the prices mentioned in paragraph (1) is acceptable to his government for the purposes of this Article.

Article 6

(1) In determining whether the transaction value is acceptable for the purposes of Article 1, the fact that the buyer and the seller are related within the meaning of Article 16 shall not in itself be grounds for regarding the transaction value as unacceptable. In such cases the circumstances surrounding the sale shall be examined and the transaction value shall be accepted unless the relationship influenced the price.

(2) The transaction value shall be accepted and the goods valued in accordance with the provisions of Article 1 whenever the importer, or other person responsible for declaring the goods, can demonstrate that such value closely approximates to one of the following:-

- (a) the transaction value in sales to unrelated buyers of identical or similar goods (as defined in Articles 2 and 3) for export to the same country of importation;
- (b) the price paid or payable in sales to unrelated buyers of identical or similar goods in the exporting country with adjustments for costs not incurred in export sales;
- (c) the value of identical or similar goods as determined under the provisions of Article 4 or Article 5;
- (d) the transaction value in sales to unrelated buyers for export to the same country of importation of goods from other countries which would be identical or similar to the imported goods except for having a different country of origin.

(3) In applying the tests set forth in paragraph (2) above, due account shall be taken of differences in commercial and quantity levels, the elements enumerated in Article 7, and differences attributable to costs incurred by the seller in sales to unrelated buyers which are not incurred by the seller in sales to related buyers.

(4) The tests set forth in paragraph (2) above are to be used for comparison purposes only, and substitute values may not be established by the provisions of this Article.

Article 5 Ter. (Canadian proposal)

Notwithstanding Articles 1 to 5,

- (a) where the goods imported are used or obsolete, the value for customs purposes may be determined on the basis of the current replacement value new, or its equivalent, with adjustments for obsolescence, depreciation and condition as warranted;
- (b) where the goods imported are not prime quality goods as known in the trade, or are known in the trade as closeouts, remnants or discontinued lines, or are surplus goods, or constitute a job lot, the value for customs purposes may be determined on the basis of the value for corresponding prime quality goods sold as regular or current lines, however, subject to a deduction not to exceed 20 percent;
- (c) where the goods imported are intended to be assembled, packaged or further manufactured in the country of importation or are intended to enter into the course of manufacture in the country of importation, the value for customs purposes may be determined in the manner set forth in Article 5, except that the amount to be added for usual general expenses and profit may be determined in such manner as may be specified by legal instrument.

Prescriptions made by legal instrument under the provisions of this Article shall be reasoned and based upon objective criteria relevant to the circumstances of the particular sale or other transaction in question.⁷

Interpretative Notes

I.N.1

Article 1, subparagraph (c). NOTE: Among other conditions, Article 1 provides that a transaction value can be established as long as the sale or price does not include or is not conditioned on some factor or consideration not subject to valuation. Some examples of the types of factors or considerations which would preclude valuation under Article 1 would be:

- (a) the seller fixes the price of the imported goods solely on the basis of an agreement that the buyer will also purchase a stated quantity of another product;
- (b) the price of the imported goods is related to a price of another product sold by the importer to the exporter;
- (c) the price is fixed on the basis of a form of remuneration having no relationship to the value of the imported goods, such as when a seller provides a semifinished product at a price based on the condition that he will receive a number of finished products free of charge.

I.N.2

Article 2(1)(b). NOTE: Quantity adjustments shall not be arbitrary but shall be made only on the basis of demonstrable and objective criteria that clearly establish the reasonableness and accuracy of the adjustments whether they increase or decrease the value. For example, if the imported goods being valued consist of a shipment of 10 units and the only identical goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of value under Article 2 is not appropriate and an attempt should then be made under Article 3.

I.N.3

Article 3(1)(b). NOTE: Quantity adjustments shall not be arbitrary but shall be made only on the basis of demonstrable and objective criteria that clearly establish the reasonableness and accuracy of the adjustments, whether they increase or decrease the value. For example, if the imported goods being valued consist of a shipment of 10 units and the only similar goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of value under Article 3 is not appropriate.