

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/167

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CUSTOMS VALUATION

Brazil

The following communication dated 5 July 1978 has been received from Brazil.

Proposals Concerning Documents MTN/NTM/W/122 and
MTN/NTM/W/162 - "CUSTOMS VALUATION"

A - Document MTN/NTM/W/122

PREAMBLE

- I - Add the following new considerandum after considerandum n° 10: "Recognizing that valuation procedures should protect parties to this Code against illicit transfer of currency arising from the over-declaration of the value of imported goods";
- II - Considerandum n° 11: Insert the following language after "combat dumping": "The Parties to this Code recognize the right of parties to this Code who have not adhered to the Anti-Dumping Code to utilize their pertinent internal legislation to combat dumping, provided that such legislation is compatible with the General Agreement";
- III - Considerandum n° 14 should read: "Recognizing that valuation procedures should take into account the provisions of Article X:1 of the GATT, relating to the safeguard of trade secrets";
- IV - Considerandum n° 17 should read: "Recognizing that developing countries should be granted special and differential treatment in the field of customs

valuation, and that, to this end, technical assistance on mutually agreed terms is one of the means to provide special and differential treatment to developing countries";

B - Document MTN/NTM/W/162

I - Article 1

- An Explanatory Note should be provided to clarify the reach of sub-paragraph (b)(iii).

II - Article 2

- Sub-paragraph (1)(a) should read:

"(1)(a) If the customs value of the imported goods cannot be determined under 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 the imported goods, subject otherwise to the provisions of Article 1".

- Sub-paragraph (1)(b) should read:

"(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 a different commercial level and/or in substantially different quantities, the transaction values of those sales shall be used, adjusted to take account of differences in unit price attributable to

commercial level and/or 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".

- Paragraph (2) should read:

"(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".

- An Interpretative Note should be provided to clarify that, in this paragraph, the word "produced" means "grown, extracted, produced or manufactured".

III - Article 3

- Sub-paragraph (1)(a) should read:

"(1)(a) If the customs value of the imported goods cannot be determined under the provisions of Article 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 the imported goods, subject otherwise to the provisions of Article 1".

- Sub-paragraph (1)(b) should read:

"(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 a different commercial level and/or in substantially different quantities, the transaction values of those sales shall be used, adjusted to take account of differences in unit prices attributable to commercial level and/or 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".

- Paragraph (2) should read:

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

- An Interpretative Note should be provided to clarify that, in this paragraph, the word "produced" means "grown, extracted, produced or manufactured".

IV - Article 3-bis

- Should be deleted.

V - Article 4

- The expression in paragraph 1 "in form or character" should be deleted.
- An Explanatory Note should be provided to clarify,

to the extent possible, the reach of the expression:
"substantially altered".

VI- Article 5

- Should be deleted.
- Alternatively, the following new sub-paragraph could be added:
"(3) The provisions of this Article shall only be applied by and among those Parties to this Code which have, by means of a Protocol to be annexed to this Code, formally accepted to mutually apply the computed value as a valuation standard as provided for in this Article".
- An Interpretative Note should be provided to clarify that the computed value shall not apply in the relations between Parties to this Code when one of such parties has not accepted the computed value by means of a Protocol to be annexed to this Code.

VII - Article 5-bis

New formulation as follows:

"Article 5-bis ~~for~~ Article 5

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2, 3 and 4 ~~and 5⁽¹⁾~~, the goods shall then be valued on the basis of whichever of the following values, provided that such values relate to sales at or about the same time as the sale of the imported goods:

⁽¹⁾ The provisions of Article 5(3) proposed above as an alternative to Article 5 shall apply

- (a) the transaction value, subject otherwise to the provisions of Article 1, 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;
- (b) the transaction value, subject otherwise to the provisions of Article 1, at which goods are sold in countries other than the country of exportation to buyers in the country of importation 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;
- (c) the price at which the imported goods, if substantially altered (*) by any process applied after importation, are sold by the importer to other persons in the country of importation, who are not related to the importer, due allowance being made for the cost or value of such processing (in addition to the allowances provided for in Article 4)".

VIII - Article 5-ter [or Article 5-bis]

- Sub-paragraph (c) should be deleted.
- The final part of this Article should read:
"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".

IX- Article 6

- Sub-paragraph (2)(b) should be deleted.
- Sub-paragraph (2)(c) should read:
"(c) the value of identical or similar goods as

(*) An Explanatory Note should be provided to clarify the reach of the expression "substantially altered".

determined under the provisions of Article 4"

for Article 5⁽²⁾.

- Insert a new paragraph to read as follows:

"(5) The provisions of this Article apply also in cases where the buyer is either an exclusive agent or an exclusive representative of the seller".

X - Insert a new Article 7, to read as follows:

"Article 7

- (1) In determining customs value under Articles 1, 2 3, 4 and 5⁽³⁾ the following shall be added to the price paid or payable to the extent that they have not been included in such price:
- a) selling commissions;
 - b) brokerage;
 - c) duties and taxes applicable outside the country of importation when directly or indirectly discharged by the buyer because of importation;
 - d) the cost of packing which is treated as being one for customs purposes with the goods in question;
 - e) the cost of packing whether for labour or materials;
 - f) the cost of materials, components, parts, etc., incorporated in the imported goods;
 - g) the cost of materials consumed in the productions of the imported goods;
 - h) the value of the right to use patent, trade mark, design and copyright;
 - i) the cost of advertising within the country of importation, of the goods being imported, discharged directly or indirectly by the importer, as a condition of the sale;

(2) foot-note n° 1 above shall apply

(3) foot-note n° 1 above shall apply

- j) the value of any price reduction not freely available to any other buyer for export to the country of importation at the same commercial level or buying in the same quantity as the buyer in question;
- (*) k) the value of any additional consideration which the buyer is directly or indirectly required to discharge as a condition of the sale, except:
- tools, dies, molds, etc., and similar items used in the production of the imported article;
 - engineering, development, artwork, design work, plans and sketches relating to the imported article;
 - royalties or licence fees paid by the importer to a third party which the manufacturer would otherwise have to pay in order to produce or sell the imported merchandise;
 - services furnished by the importer from its home office to the manufacturer where the manufacturer would otherwise have to pay for the services, such as ADP services or accounting services;
 - technical assistance furnished to the manufacturer by the importer such as furnishing of manager, attorney, cost accountant, etc.
- (2) In framing its national legislation each signatory shall provide for the inclusion in or exclusion from the customs value in whole or in part of the following:
- a) loading and unloading charges;
 - b) the cost of transport to the port or place of importation; and
 - c) the cost of insurance to the port or place of importation".

(*) Alternatively, provision could be made allowing those

XI - Insert a new Article 8 to read as follows:

"Article 8

The provisions of the preceding Articles shall also apply to goods imported through operation other than a contract of sale".

C - DOCUMENT MTN/NTM/W/122

Article 8

- Should be deleted.

Article 16

- The mention to percentual participation (between brackets) should be deleted.

Article 18

- Insert a new paragraph to read as follows:

"(2) Developing countries adhering to this Code shall be granted a delay of five years after the date of ratification to implement the provisions of the Code. During such a period, a programme of technical assistance on mutually agreed terms shall be made available to enable developing countries, wherever they deem necessary, to apply the provisions of this Code".

Parties which, by means of a Protocol to be annexed to this Code, accepted to apply the computed value as provided for in Article 5 to add, exclusively in their mutual trade relations, to the price paid or payable the considerations which otherwise are not to be added according to paragraph 1(k) of this Article.