

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CUSTOMS VALUATION

Spain

The following comments on paragraphs of the draft valuation code as reproduced in MTN/NTM/W/162 have been received from the delegation of Spain.

Article 2

(1) (b).

The wording of the document on which we are commenting reduces the field of application of this Article as compared with the draft in UD/547/78, by requiring a sale of identical goods at the same commercial level.

The objective should be to broaden the application by enabling the price to be adjusted in case the quantity and/or the commercial level is different.

- 1 - Same level - same quantity
- 2 - Same level - different quantity
- 3 - Different level - same quantity
- 4 - Different level - different quantity.

(The earlier draft covered all four assumptions whereas the present one covers only the first two.)

This broadened application, which we feel should be kept, would mean making consequential changes in Interpretative Note 2.

(4)

Instead of choosing the lowest value, use the weighted average (total imports divided by total units). Choosing the lowest value might result in the introduction of an exceptional value.

Article 3

(4)

See comment above.

Article 3 bis

The option given the importer in this Article 3 bis - for the case where the customs value cannot be established under the provisions of Articles 1, 2 and 3 - actually means that he can exercise it only by the method described in Article 5 (cost of production), since otherwise the provisions of Article 4 (deductive method) would operate and those provisions would be applied directly by the administration.

This delegation believes that a direct election of Article 5, with possible disregard for Article 4, might provide an opportunity for avoiding determination of customs value in some cases in which the application of the deductive method provided for in Article 4 would acquire special relevance, particularly where:

- (a) there has been a false declaration of the price
- (b) it is sought to conceal a transfer of profits from the country of export to the country of import, with the double tax fraud which that would imply:
 - (1) as regards the customs value in the country of import, and
 - (2) as regards the taxing of profits in the country of export.

Such cases have acquired considerable importance and are the object of special studies, for example by OECD (transfer prices).

Article 5

We shall begin with some comments on the contents of the latest draft (MTN/NTM/W/162) and on those of the draft of the 7 June meeting (UD.547/78).

Paragraph 1(a) of document 162 omits the reference in 547/78 to the cost or value of materials and fabrication of identical or similar goods, with the result that although the value would be reconstructed with greater precision and factuality, it is no less certain that the task itself of determining the reconstructed value would be made more difficult.

In the succeeding sub-paragraphs, 1(b) and (c), however, where mention is made of general expenses and profit, the reference to the usual general expenses and to the usual profit connected with the production and sale of identical or similar goods is kept.

However, we do not agree to keeping the cost-of-production method provided for through this Article. It met with diverse comments to the same effect on the part of delegations here at the last meeting of the Sub-Group,

so that it became clear how far we were from attainment of the objective of universality of the code to be adopted, in view of the disparity of judgements it was provoking.

We stress what was said on that occasion and are of the opinion that the possible application of this method in practice would be very difficult to achieve (we are not forgetting the collaboration of those concerned in the particular case), considering the delay it would imply and, after all, the problem of how the most elementary verification of the data furnished could be obtained.

Article 5 bis

In analysing the content of this Article, we ask ourselves how the choice of any of the prices enumerated in paragraph (1) can be squared with the postulated principles of balance, uniformity and universality.

We shall summarize below why we think this Article should be deleted.

As regards sub-paragraph (a) of paragraph (1):

- the determination of price described in this sub-paragraph would entail the same difficulties as those mentioned in our analysis of Article 5;
- previous Articles always referred to the price at which goods are sold for export to the country of import, whereas this sub-paragraph deals with the price at which identical or similar goods are sold in the domestic market of the country of export, which implies difficulties additional to those which we have just pointed out, in introducing the envisaged differences between costs for sales in the domestic market and those for sales for export.

Sub-paragraph (b) of paragraph (1) speaks of prices at which goods "of the same general class or kind" are sold for export, which would imply that we will henceforth accept the ambiguities resulting from its practical application.

Sub-paragraph (d) would amount to disregarding the fact that competition in the country to which the goods are exported constitutes an additional element affecting the determination of the price at which the goods are sold; in addition to the foregoing comments, we would find ourselves in possible situations involving verification far from the country of import.

We consider the last sub-paragraph, (e), a specification of Article 4 and, as such, it should appear at the end of that Article.

In conclusion, we stress the fact that with the choices provided for in this Article, we would easily arrive at a great variety of valuation practices, and we therefore are in favour of keeping only one of the criteria, that contained in sub-paragraph (c), which we believe has the virtue of being feasible, similar in content to the methods described in Articles 2 and 3, and in line with our above comments, but which we would make more precise by saying "the price at which goods are sold in countries other than the country of exportation but in the same or in a nearby economic area".

Article 5 ter

As regards section (c), we would repeat what has been stated in our comments on Article 5.

Article 6

Paragraphs 2, 3 and 4.

In our opinion these paragraphs involve a destabilizing element; we are in favour of their deletion; that does not, in our view, involve trying to diminish the scope for argument and defence on the part of importers as regards the content of the declared value, but the reason is that the demonstration referred to in these paragraphs would leave room for very dissimilar interpretations and ultimately will make administrative verification almost impossible.