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# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

## CUSTOMS VALUATION

The following text of the revised draft valuation code is circulated at the request of a number of delegations for further consideration by the Sub-Group at its meeting on 19 July 1978.

Articles 1-7 represent the outcome of detailed negotiations between certain delegations but the Preamble and Articles 8-26 have not yet been the subject of such detailed negotiations.

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VALUE OF GOODS FOR THE PURPOSES OF LEVYING AD VALOREM  
DUTIES OF CUSTOMS

GATT - Multilateral Trade Negotiations - Draft Valuation Code

Agreement on the implementation of Article VII of the General Agreement on  
Tariffs and Trade

PREAMBLE

The parties to this Agreement:

Considering that Ministers on 14 September 1973 agreed to enter into comprehensive multilateral trade negotiations within the framework of the GATT aimed at expanding and liberalizing world trade through a reduction in tariffs and a dismantling of obstacles to trade;

Considering that Ministers decided that the negotiations should aim, inter alia, to reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

Recognizing that the majority of customs tariffs are 'ad valorem' and that customs valuation procedures are important non-tariff measures which can have a restricting effect on world trade;

Recognizing that there are significant divergencies in international practices relating to the valuation of goods for customs purposes and that such divergencies can affect the value of any tariff cuts which may be agreed in the negotiations;

Considering that, as a consequence, it is necessary to reduce these divergencies to the greatest possible extent;

Recognizing the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules in order to provide greater uniformity and certainty in their implementation;

Recognizing that dutiable value should be based on simple and equitable criteria which do not cut across commercial practices;

Recognizing that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that the determination of customs value should be neutral in its effect and should not be used as a means of providing additional protection by artificially increasing the customs value of the imported goods;

Recognizing that valuation procedures should protect traders against unfair competition arising from the under-declaration of the value of imported goods without, however, affecting normal conditions of competition between one importer and another;

Recognizing that anti-dumping measures are the subject of specific rules under the GATT and that valuation procedures should not, therefore, be used to combat dumping;

Recognizing that the determination of customs value should be based to the greatest possible degree on commercial documents which relate to the imported goods and are available in the country of importation;

Recognizing that valuation procedures should keep formalities to a minimum and should not prevent the quick clearance of goods;

Recognizing that valuation procedures should take into account the need to safeguard business secrets;

Recognizing that 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;

Recognizing that importers should be able to appeal to an independent and impartial body against the valuation decisions;

Recognizing that the establishment of uniform, simple and precise rules on customs valuation will benefit the developing countries and will facilitate the granting to them of differential treatment by way of technical assistance;

Considering, in the light of the above principles, that the customs value of imported goods should to the greatest extent possible be based upon the price paid or payable for them;

Hereby agree to base their legislation on the valuation of imported goods upon the following rules.

#### PART I - RULES ON CUSTOMS VALUATION

##### A. METHODS OF CUSTOMS VALUATION

###### Article 1

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 9 (and other Articles of this code to be later specified) 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 paragraph (2) of this Article;

- (b) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
    - (i) are 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;
  - (c) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and
  - (d) that part of the proceeds of any subsequent resale or 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 9.
2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph (1), the fact that the buyer and the seller are related within the meaning of Article 19 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 whenever it is demonstrated that the relationship did not influence the price.

(b) The transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph (1) whenever the importer demonstrates that such value closely approximates to one of the following:

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
- (ii) 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;
- (iii) the value of identical or similar goods as determined under the provisions of Article 4 or Article 5;
- (iv) 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 provided that the sellers in the two transactions are not related.

In applying the foregoing tests due account shall be taken of demonstrated differences in commercial and quantity levels, the elements enumerated in Article 9, and demonstrated differences attributable to costs incurred by the seller in sales to unrelated buyers.

- (c) The tests set forth in paragraph (2)(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established by the provisions of paragraph (2)(b).

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.
  - (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and/or in substantially the same quantities as the goods being valued shall be used to establish the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities shall be used, provided that it can be adjusted on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in 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. Goods produced by the same person shall take precedence over goods produced by a different person.

3. Where the costs referred to in Article 9(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.

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.

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.
- (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and/or in substantially the same quantities as the goods being valued shall be used to establish the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities shall be used, provided that it can be adjusted on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.



2. For the 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 purpose as, and which are produced in the same country by the same or a different person as the imported goods. Goods produced by the same person shall take precedence over goods produced by a different person.

3. Where the costs referred to in Article 9(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.

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.

#### Article 4

1. If the customs value of the imported goods cannot be determined under the provisions of Article 1, 2 and 3, the customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, in the country of importation and in the same condition as imported to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

- (a) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connexion with sales in such country of goods of the same class or kind;

- (b) the usual costs of transport and insurance and associated costs incurred within the country of importation;
- (c) where appropriate, the costs, charges and expenses referred to in Article 9(2);
- (d) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(P.M. - Interpretative note to explain that deductions for local taxes will be made under the heading of general expenses.)

2. If the imported goods, or identical or similar imported goods were not sold on or about the time of importation of the goods being valued, the value shall be determined, subject to the provisions of paragraph 1 of this Article, on the basis of the price at which the imported or identical or similar imported goods are sold at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

#### 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 on 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) an amount for the profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation in sales for export to the country of importation;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the signatory under Article 9(2).

2. No signatory may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of establishing the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they notify the representative of the government of the country in question and the latter does not object to the investigation,

#### Article 6

At the request of the importer:

- (a) the order of application of Articles 4 and 5 shall be reversed;  
or
- (b) if the imported goods are not resold in the country of importation in the condition as imported, the customs value shall be based on the unit price in the greatest aggregate quantity at which the imported goods are sold after further processing to unrelated buyers in the country of importation, due allowance being made for the value added by such processing and the deductions provided for in paragraph (1) of Article 4.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the value shall be determined using reasonable means consistent with the principles and general provisions of this code and Article VII of the General Agreement.

2. Where he so requests, the importer shall be informed in writing of the value determined under the provisions of this Article and the method used to determine such value.

Interpretative Note for Article 7

1. In applying Article 7 goods shall be valued on the basis of whichever of the following prices is most appropriate:

- (a) 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;
- (b) the price at which goods are sold in countries other than the country of exportation for export to 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 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;

- (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.

2. In applying Article 7 only sales between parties who are not related shall be used. A valuation method set forth above shall not be used if it will result in a customs value which is unreasonable in the commercial circumstances surrounding the transaction covering the goods being valued.

Note: It is intended that this Interpretative Note should provide a definitive list of acceptable valuation methods to be used in those exceptional cases where a value cannot be determined under the provisions of Articles 1 to 6. The methods above as well as other possibilities will be the subject of further negotiations.

#### B. GENERAL PROVISIONS

##### Article 8

In determining the customs value of imported goods, due allowance shall be made for any reduction in price granted by the seller to the buyer to the extent that it has not been allowed for in the price paid or payable provided:

- (a) that the reduction was granted at the date of the contract of sale;
- (b) that the reduction related to the goods being imported; and
- (c) that such a reduction was freely available at the date of the contract of sale to any other buyer operating at the same commercial level or purchasing such goods in the same quantity as the buyer in question.

Article 9

1. In determining customs value, the following shall be added to the price paid or payable to the extent that they have not been included in such price:

- (a) the value of any additional consideration which the buyer is obliged to discharge himself or to require others to discharge as a condition of the sale;
- (b) selling commissions;
- (c) brokerage borne by the seller;
- (d) duties and taxes applicable outside the country of importation from which the goods are not relieved because of exportation;
- (e) the cost of containers which are treated as being one for customs purposes with the goods in question; and
- (f) the cost of packing whether for labour or materials.

2. In framing its national legislation each country of importation may opt for the addition, whether in whole or in part, to the price paid or payable to the extent that they have not been included in such price, 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 if such is not required to be taken out in the country of importation.

Article 10

The following shall not be included in the customs value of goods:

- (a) duties and taxes applicable outside the country of importation from which the goods are relieved because of exportation;
- (b) duties and taxes applicable in the country of importation;
- (c) costs, charges and expenses undertaken by the buyer which he is not obliged to discharge himself or require others to discharge as a condition of the sale;
- (d) fees for the drawing up outside the country of importation of documents incidental to the introduction of the goods into that country;
- (e) by way of derogation from paragraph 1(a) of Article 9, the cost of advertising within the country of importation of the goods being imported, which the buyer is obliged to discharge or to require others to discharge as a condition of sale; and
- (f) the cost of insurance if such is required to be taken out in the country of importation.

Article 11

Where a contract of sale contains a revision clause, the price for the purposes of determining the customs value of goods shall be the price finally paid or payable.

Article 12

The price to be taken into account in determining the customs value of goods shall be the cash price as at a time laid down in the relevant legislation of the country of importation concerned.

Article 13

The material time for valuation for customs purposes shall be fixed by the legislation of the country of importation concerned but in no case shall such time be fixed at a date later than the date of acceptance by the customs authorities of the declaration for home use in respect of the imported goods.

Article 14

Rates of exchange to be used when determining the customs value of goods shall be duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the real values of the currencies concerned in terms of the currency of the country of importation.

Article 15

When the quantity of goods being cleared for home use on a particular customs declaration represents a partial delivery of a larger quantity purchased by the same buyer in the one transaction, any price reduction granted by reference to such larger quantity shall be duly allowed for when determining the customs value of goods provided that such reduction would be freely available under similar conditions to any other buyer.



Article 16 (General Confidentiality Provision - new material)

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned, who, to the extent consistent with their domestic legislation, shall not reveal it without specific permission of the party submitting such information.

Article 17

Each country of importation shall provide a procedure for appeal to an independent and impartial body against valuation decisions.

Article 18

All laws and legal instruments giving effect to these rules shall be published in conformity with Article X of the GATT by the country of importation concerned.

Article 19

1. In these rules:

"customs value of goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

"country of importation" means country or customs territory of importation.

2. For the purposes of these rules persons shall be deemed to be related if:

- (a) they are officers or directors of one another's businesses;
- (b) they are partners in business;

- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls, or holds /X/ per centum or more of the issued stock or shares of both of them;  
or
- (e) they are directly or indirectly controlling, controlled by, or under common control with, any person.

## PART II - FINAL PROVISIONS

### Article 20

This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to the General Agreement and by the European Economic Community. The Agreement shall enter into force on .... for each party which has accepted it by that date.<sup>1</sup> For each party accepting the Agreement after that date, it shall enter into force upon acceptance.

### Article 21

Each party to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of the entry into force of the Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the customs valuation code.

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<sup>1</sup>The Code would come into force only when specified key countries had formally accepted it.

Article 22 (Review Clause - new material)

Not later than three years after this code comes into operation, the Committee of Signatories referred to in Article 17 shall review the application of the code. The Committee shall propose such amendments, if any, as may appear necessary in the light of experience.

Article 23

This Agreement may be amended by agreement of the signatories to it. Amendments may be proposed by any of the signatories to this Agreement; and other signatories which accept a proposed amendment shall signify their agreement in writing to the Director-General to the Contracting Parties to the General Agreement who shall notify all signatories to this Agreement accordingly. An amendment shall come into force twelve months after the Director-General has notified acceptances from at least one third of the signatories. However, any signatory may decide not to apply the provisions of an amendment whether temporarily or otherwise provided that it notifies the Director-General of its intention before the amendment comes into force. The Director-General will inform all signatories to this Agreement of such notifications.

Article 24

After the coming into effect of this Agreement any of the signatories may request the Director-General to the Contracting Parties to convene a meeting of representatives of the parties to this Agreement for the purpose of affording them the opportunity of consulting on matters relating to the

interpretation or the operation of the customs valuation code or the furtherance of its objectives. The Director-General to the Contracting Parties shall convene such meeting promptly provided that he is satisfied that at least /X/ of the parties to the Agreement consider that it is desirable so to do. Such consultations shall be without prejudice to Articles XXII and XXIII of the General Agreement.

Article 25

Each signatory shall periodically notify [an appropriate body] of the criteria by which decisions on the inapplicability of Articles 1, 2, 3 and 4 are reached and of the means by which importers are informed of those criteria. The notification should also set out the criteria under which decisions under Article 5 have been reached and the means by which importers are informed of those criteria.

Article 26

This Agreement shall be deposited with the Director-General to the Contracting Parties who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each contracting party to the General Agreement and to the European Economic Community.

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ..... in a single copy, in the English and French languages, both texts being authentic.