

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## Multilateral Trade Negotiations

### Group "Non-Tariff Measures"

#### Sub-Group "Customs Matters"

## CUSTOMS VALUATION

### Revision

1. 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.
  2. The document includes an annex containing a provisional list of points where it is proposed to prepare Interpretative Notes. These will form an integral part of the code and will be circulated as soon as possible as an addendum to this document.
  3. The draft does not include the Preamble or Final Provisions. These will also be circulated later.
  4. The draft also contains new material relating to Code Administration and Dispute Settlement (Part II). This material is circulated to provide a basis for further discussions.
  5. The draft includes a number of provisions in square brackets. In some cases the brackets signify that there still exists a difference of view between the delegations involved in the drafting; in other cases the brackets signify that drafting changes which do not affect the substance are contemplated.
  6. The draft does not commit any delegation to all or any part of the text.
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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:

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Hereby agreed 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 when sold for export to the country of importation adjusted in accordance with Article 9 (P.M.: perhaps other Articles also) 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 no part of the proceeds of any subsequent resale or disposal of the goods by the buyer will 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 17 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 provided 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 (P.M.: perhaps other Articles also), and [demonstrated differences attributable to costs incurred by the seller in sales to unrelated buyers]. [A value shall not be used for test purposes unless it was established at or about the time of exportation of the goods being valued.]

- (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 sold for export to the same country of importation and exported at or about the same time as the goods being valued, 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 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, adjusted to take account of differences attributable to commercial level and/or to quantity, provided that such adjustments can be made on 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 "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 a different person shall be taken into account only where there are no identical goods produced by the same 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 sold for export to the same country of importation and exported at or about the same time as the goods being valued, 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 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, adjusted to take account of differences attributable to commercial level and/or to quantity, provided that such adjustments can be made on 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, and which are produced in the same country by the same or a different person as the imported goods. Goods produced by a different person shall be taken into account only where there are no similar goods produced by the same 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.

2. If the imported goods or identical or similar imported goods were not sold at 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

[If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, then at the request of the importer -

(a) the order of application of Articles 4 and 5 shall be reversed;  
or

(b) where 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.

Article 8

[Notwithstanding Articles 1 to 7, the value for customs purposes of imported goods that:

(a) are used goods; or

(b) being unused goods, are not prime quality goods or are known in the trade as closeouts, remnants, discontinued lines or job lots or are surplus or obsolete goods

may be based on the transaction value of corresponding unused prime quality goods sold as regular or current lines, with due allowance for depreciation, obsolescence, quality, condition or other factors as the case may be.]

Article 9

1. In determining the customs value, there ~~[shall]~~ ~~[may]~~ be added to the price actually paid or payable for the goods:-

(a) the following to the extent that they ~~[form part of the total consideration due from the buyer and]~~ have not been included in the price paid or payable for the goods;

(i) ~~[selling]~~ commissions;

(ii) brokerage;

(iii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iv) the cost of packing whether for labour or materials;

(v) ~~[the cost of storage in the country of exportation]~~;

~~[(b)]~~ the value of the following goods and services to the extent that they have been supplied directly or indirectly by the buyer ~~[importer]~~ free of charge or at reduced cost for use in connection with the production ~~[and sale for export]~~ of the imported goods and their value has not been included in the price paid or payable;

(i) materials, components, parts, and similar items incorporated in the imported goods;

(ii) tools, dies, moulds, and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, and plans and sketches relating to the imported goods;

(v) technical assistance, such as the services of a manager, attorney, or cost accountant relating to the imported goods; and

(vi) other services for which the seller would otherwise have to pay directly or indirectly, such as ADP services or accounting services relating to the imported goods.]

- (c) royalties and licence fees which the buyer is obliged to discharge himself or to require others to discharge as a condition of the sale;
  - (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
  - [ (e) the cost of advertising and warranty or guarantee services undertaken in the country of importation if the buyer is obliged to undertake such services as a condition of the sale and provided that the seller bears the cost, whether by way of discount, reimbursement or otherwise; ]
  - [ (f) the value of any price discount not freely available on a sale of such goods to any other buyer on a sale for export to the country of importation in the same quantities and at the same level; ]
  - [ (g) the value of any additional consideration not specified above which the buyer is obliged to discharge himself or require others to discharge as a condition of the sale. ]
2. In framing its national legislation, each signatory shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:-
- (a) loading, unloading and handling charges;
  - (b) the cost of transport to the port or place of importation; and
  - (c) the cost of insurance.
3. Additions to the price paid or payable shall be made in pursuance of this Article only when they can be made on the basis of objective and quantifiable data. If such data is not available such additions shall not be made. (P.M. The question of pro-rating should be dealt with separately.)
4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.
- [ 5. The provisions of this Article shall not preclude the granting of relief from duty by the signatories on goods originating in the country of importation. ]
- [ 6. Where the price paid or payable includes an element to cover costs, charges or expenses undertaken by or on behalf of the seller for work to be done to the goods in the country of importation, the price paid or payable shall, when determining customs value, be reduced by an amount equivalent to an amount covering such costs, charges and expenses. ]

#### Article 10

1. For the purposes of Article 1, the price to be used in determining the customs value of goods shall be the price finally agreed upon prior to the time of importation.
2. Where the total price paid or payable includes interest or financing charges, such charges shall not be taken into account in determining the customs value.

#### Article 11

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.

#### Article 12

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that 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 current value of such currency in commercial transactions in terms of the currency of the country of importation.
2. The effective time for the purposes of such conversion shall be the time of exportation or the time of importation.
3. Each signatory must notify in writing to the Director-General the date it will use for this purpose and must apply it in all cases.

#### Article 13

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, except to the extent that their domestic legislation or judicial proceedings otherwise require, shall not reveal it without specific permission of the party submitting such information.

Article 14

1. The national legislation of all signatory Governments shall provide for the right of appeal without penalty when ~~[the importer]~~ ~~[a person directly affected by a Customs value determination]~~ deems himself to be aggrieved thereby.
2. An initial right of appeal without penalty may be to an authority within the Customs administration, but the national legislation shall provide for the right of appeal without penalty to a judicial authority in the final instance.
3. Written notice of verdict on appeal shall be given to the appellant, and shall state the reasons for the verdict and give notice of the right to any further appeal.

### Article 15

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 16

[In order to facilitate the clearance of goods through customs, a basis of value determined under the provisions of this code in respect of one importation of goods may, by agreement between the importer and the customs, be applied to subsequent importations of identical goods sold by the same seller to the same buyer under the same conditions. The application of this provision shall not, however, prejudice the rights of the importer or the customs to have such subsequent importations valued under the provisions of Articles 1 to 9 should either of them so wish.]

### Article 17

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;

"produced" includes grown, manufactured, mined or otherwise obtained;

"identical goods" means identical goods as defined in paragraph 2 of Article 2;

"similar goods" means similar goods as defined in paragraph 2 of Article 3.

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 5 per centum or more of the outstanding voting stock or shares of both of them;]

[(e) they are directly or indirectly controlling, controlled by, or under common control with, any person;] or

(f) they are members of the same family.



Article 18

If, in the course of determining the value of goods for customs purposes it becomes necessary to delay the final determination of value, the importer shall nevertheless be able to withdraw his goods from customs provided he offers sufficient guarantee, in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The national legislation of each signatory shall make provision for such circumstances.

PART II - CODE ADMINISTRATION AND DISPUTE RESOLUTION

Institutions

Article 19

There shall be established under this Agreement:

1. A Committee of Signatories composed of representatives from each of the signatories to this Agreement. This Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording signatories to this Agreement the opportunity to consult on matters relating to the administration of customs valuation systems in any signatory country or customs territory as it might affect the operation of this Agreement or the furtherance of its objectives, and to carry out the other responsibilities assigned to it under this Agreement and by the signatories. The GATT secretariat shall act as the secretariat to the Committee of Signatories.

2. A Technical Committee on Customs Valuation under the auspices of the Customs Cooperation Council which shall carry the responsibilities assigned to it by the signatories as set forth in Annex 1 to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultations

Article 20

1. If any signatory considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded, as a result of the actions of another signatory or signatories, it may, with a view to reaching a satisfactory resolution of the matter, request consultations with the signatory or signatories in question. Each signatory shall afford sympathetic consideration to any request from another signatory for consultations.

2. The signatories concerned shall initiate requested consultations promptly.

3. Signatories engaged in consultations on a particular matter affecting the operation of the Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to signatories engaged in consultations with a view to assisting the signatories reach satisfactory solutions.

## Resolution of Disputes

### Article 21

1. If no mutually satisfactory solution has been reached between the signatories concerned, the Committee of the Signatories shall meet at the request of any signatory to the Agreement [within one month of receipt of such a request,] to consider the matter, with a view to facilitating a mutually satisfactory solution.

The Committee of Signatories shall consider the results of relevant work of the technical committee or, if the technical committee has not previously examined any technical aspects of the matter in question, [shall] [may] request the technical committee to do so and furnish the results of this work to the Committee of Signatories.

[2. If the Committee of Signatories is unable to facilitate a mutually satisfactory solution within a reasonable period of time from the time the matter was referred to it, the Committee of Signatories shall, at the request of any of the parties concerned, establish an ad hoc panel to examine the matter and to report its findings to the Committee.]

3. Where an ad hoc panel is set up it shall carry out the responsibilities set forth in Annex 2 to this Agreement and shall operate in accordance with the procedures contained therein.

4. Reports made under the provisions of paragraph 2 above shall be given prompt consideration by the Committee of Signatories. The Committee of Signatories shall take appropriate action on reports of panels within a reasonable period of time.

5. The Committee of Signatories shall keep under surveillance any matter on which it has made recommendations or given rulings.

Balance of Rights and Obligations

6. When disputes arise concerning the obligations under the Agreement, the signatories to this Agreement shall exhaust the dispute settlement provisions under the Agreement. Any subsequent action would have to be examined in the light of the precise legal relationship between the Agreement and the GATT. Provisions to maintain the balance of rights and obligations will need to be developed.]

(PART III - FINAL PROVISIONS)

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ANNEX I

Technical Committee on Customs Valuation

In accordance with Article 19 of the Agreement, a Technical Committee on Customs Valuation shall be established under the auspices of the Customs Cooperation Council with a view, at the technical level, towards uniformity in interpretation and application of the Agreement.

The Technical Committee shall have the responsibilities assigned to it by the signatories, including the following:

1. to examine specific technical problems arising in the day to day administration of the customs valuation systems of signatories and to give advisory opinions on appropriate solutions based upon the facts presented;

2. to study, as requested, valuation laws, procedures, and practices as they relate to the Agreement and to prepare reports on the results of such studies;

3. to prepare and circulate annual reports on the technical aspects of the operation and status of the Agreement;

4. to furnish such information and advice on any matters concerning the valuation of goods for customs purposes as may be requested by any signatory or the Committee of Signatories. Such information and advice may take the form of advisory opinions, commentaries, or explanatory notes;

5. to facilitate, as requested, technical assistance to signatories or prospective signatories with a view to furthering the international acceptance of this Agreement; and

6. to exercise such other responsibilities as the Committee of Signatories may assign to it.

### General

1. The Committee shall attempt to conclude its work on specific matters, especially those referred to it by signatories or the Committee of Signatories, in a reasonably short period of time.
2. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Cooperation Council.

### Representation

3. Each Signatory to the Agreement shall have the right to be represented on the Committee. Each signatory may nominate one delegate and one or more alternates to be its representatives on the Committee. Such a signatory so represented on the Committee is hereinafter referred to as a member of the Committee. Representatives of members of the Committee may be assisted by advisers. The GATT Secretariat may also attend such meetings with observer status.
4. Members of the Customs Cooperation Council who are not signatories to the Agreement may be represented at meetings of the Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Committee as observers.
5. Subject to the approval of the Chairman of the Committee, the Secretary General may invite representatives of governments which are neither signatories to the Agreement nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Committee as observers.
6. Nominations of delegates, alternates, and advisers to meetings of the Committee shall be made to the Secretary General.

### Committee Meetings

7. The Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Committee at its preceding session.

The date of the meeting may be varied either at the request of any Member of the Committee concurred in by a simple majority of the Members of the Committee or, in cases requiring urgent attention, at the request of the Chairman.

8. The meetings of the Committee shall be held at the headquarters of the Council unless otherwise decided.

9. The Secretary General shall inform all Members of the Committee and those included under Paragraphs 4 and 5 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Committee.

### Agenda

10. A provisional agenda for each session shall be drawn up by the Secretary General and circulated to the Members of the Committee and to those included under Paragraphs 4 and 5 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Committee during its preceding session, all items included by the Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary General or by any Members of the Committee.

11. The Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Committee.



Officers and Conduct of Business

12. The Committee shall elect from among the Delegates of its Members a Chairman and one or more Vice Chairmen. The Chairman and Vice Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice Chairmen are eligible for re-election. A Chairman or Vice Chairman who ceases to represent a Member of the Committee automatically loses his mandate.

13. If the Chairman is absent from any meeting or part thereof a Vice Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

14. The Chairman of the meeting shall participate in the proceedings of the Committee as such and not as the representative of a Member of the Committee.

15. In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant.

16. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state his ruling. If this ruling is challenged the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.

Quorum and Voting

[17. Representatives of a simple majority of the Members of the Committee shall constitute a quorum.]

[18. Each Member of the Committee shall have one vote. Decisions shall be taken (to be agreed). The fact that such (to be agreed) has not been obtained on a particular question shall not preclude the Committee from making a full report to the Committee of Signatories and to the Council on that matter and indicating the different views expressed in the relative discussions.]

19. The Secretary General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Committee.

Languages and Records

20. The official languages of the Committee shall be English, French, [and Spanish.] Speeches or statements made in any of these [three] languages shall be immediately translated into the official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French, [and Spanish,] subject to the same conditions, but in the event the delegation concerned shall provide the translation into English, French, [and Spanish.] Only English, French, [and Spanish] shall be used for the official documents of the Committee. Memoranda and correspondence for the consideration of the Committee must be presented in one of the official languages.

21. The Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Committee at each meeting of the Committee of Signatories and at each meeting of the Council.

ANNEX II

AD HOC PANELS

1. Ad hoc panels established by the Committee of Signatories under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee of Signatories;
- (b) to consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and
- (c) to make an objective assessment of the facts of the matter as they relate to the application of the Agreement and, if instructed, to prepare such draft recommendations for the Committee of Signatories as the facts warrant.

2. In order to facilitate the constitution of panels, the Chairman of the Committee of Signatories shall maintain an informal list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations. This list may also include persons other than government officials. If a panel is requested, the Chairman, after securing the agreement of the signatories to this Agreement directly concerned, shall propose the composition of the panel, consisting of three or five members and preferably government officials.

Except by agreement of the parties concerned citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

3. Each panel shall develop its own working procedures. All parties, having a substantial interest in the matter, shall have an opportunity to be heard. Each panel may consult and seek information from any source it deems appropriate and shall give careful consideration to any previous work done by the Technical Committee on the matter. Any signatory to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without

formal authorization from the government [or person] providing the information. Where such information is requested but release of such information is not authorized, a non-confidential summary of the information authorized by the government [or person] providing the information will be provided.

[4. (alternative 1). Where the parties have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should [normally] set out the rationale behind any findings and recommendations that it makes.]

[4. (alternative 2). The Panel shall make full written statements of their findings, including the reasons for those findings.]

5. Panels should aim to deliver their findings, and where appropriate, recommendations to the Committee of Signatories without delay, taking into account the obligation of the Committee of Signatories to ensure prompt settlement in cases of urgency, [normally within a period of four months.]

ANNEX III

Provisional List of Interpretative Notes  
Required for Customs Valuation Code

Article 1

1. Note concerning customs powers of verification.
2. 1 (b)(iii) - concerning restrictions which do not substantially affect the value of the goods.
3. 1 (c) - concerning conditions for which transaction value will be rejected and those for which transaction value will not be rejected. Depends on outcome of Article 9.
4. Note on operation of 2 .
5. 2 - concerning the phrase "demonstrated differences attributable to costs incurred by the seller in sales to unrelated buyers".
6. Note to explain the term "closely approximates".

Article 2

1. 1 (b) - to define the term "and/or".
2. 1 (b) - note on adjusting only on basis of reliable information.
3. 2 - to clarify the term "identical goods".
4. Note to ensure 2 does not impact on application of tests to Article 1.

Article 3

1. 1 (b) - to define the term "and/or".
2. 1 (b) - note on adjusting only on basis of reliable information.
3. 2 - to clarify the term "similar goods", particularly the phrase "commercially interchangeable".
4. Note to ensure 2 does not impact on application of tests in Article 1.

Article 4

1. 1 - to define the term "in the same condition as imported".
2. 1 (a) - to explain that deductions for local taxes will be made under general expenses.
3. Note needed to define "commissions"
4. 1 (a) - to define the term "of the same class or kind".
5. 2 - note on practical application of concept of "greatest aggregate quantity".

Article 5

1. 1 - to explain that generally accepted accounting principles must be used and to define this concept.
2. 1 (b) - to define the term "of the same class or kind".
3. Note on usual profits and general expenses.
4. To explain scope of application of Article 5.

Article 6

1. Note on time for importer to exercise option.
2. (b) - to explain the expression "due allowance being made for the value added by such processing".

Article 7

1. Note outlining acceptable fallback standards.
2. Note on valuation of imports from non-market economy countries.

Article 8

1. To say that the allowances shall be reasoned and based upon objective criteria.

Article 9

1. 1 (a)(ii) - to clarify the terms "brokerage" and "commissions".
2. 1 (b) - to clarify the term "value" as including the notion that value includes cost.
3. 1 (b) - note to explain notion of "assists".
4. 1 (c) - to clarify the position of patents, trade marks, design, copyright fees.
5. 3 - to explain how proration is to be done.

Article 12

1. To explain that currency conversion rates can be published to apply during a specified period.

Article 13

1. To explain that confidential information can be used in litigation.

Article 14

1. 1 - to explain "national legislation."
2. 1 - to define term "without penalty".
3. To further explain who should have right of appeal.

Article 15

1. To clarify that legal instruments include binding judicial and administrative decisions which have a general bearing on interpretation of laws and regulations regarding customs valuation.

Article 17

1. 2 - to explain concepts of "partners in business" and "members of the same family" and that "persons" includes "legal persons".