

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CUSTOMS VALUATION

The following proposal for amendment of the draft valuation code, reproduced in document MTN/NTM/W/175/Rev.1, is circulated at the request of a number of delegations.

This proposal is designed to facilitate a consensus in the Sub-Group and to ensure equilibrium in the practical application of the rules on valuation.

PART I - RULES ON CUSTOMS VALUATION

A. METHODS OF CUSTOMS VALUATION

Article 1

Paragraph 2, delete sub-paragraphs (b) and (c).

Article 2

Paragraph 1(a), retain the wording in document MTN/NTM/W/175. ("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.")

Article 3

Amendment in the same sense as proposed for Article 2. ("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.")

Article 4

Replace the existing text by the following:

1. If the customs value of the imported goods cannot be determined by applying the provisions of Articles 1, 2 and 3, it shall be based on the unit price at which such imported goods - or identical or similar imported goods - are sold or offered for sale in the greatest aggregate quantity and in the same condition as imported to persons who are not related to the sellers, at the time of importation of the goods to be valued into the country of importation, or ninety days before or after that time, subject to the following deductions:

(a) any commission usually paid or agreed to be paid or the additions usually made for profit and general expenses in sales in the country of importation of goods of the same class or type;

(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.

(e) differences in unit selling prices resulting from differences in the total quantities imported.

2. If the imported goods are not sold or offered for sale in the country of importation in the same condition as imported, the customs value shall be determined on the basis of the unit price in the greatest aggregate quantity at which the goods are sold or offered for sale in the country of importation after further processing to unrelated buyers, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 of this Article, at the time of importation of the goods to be valued into the country of importation, or ninety days before or after that time.

3. For the purposes of application of this Article, the unit price of goods sold shall have priority over the unit price of goods offered for sale; the unit selling price of goods valued shall have priority over the

unit selling price of identical or similar imported goods; and the unit price of goods sold or offered for sale by the same importer shall have priority over the unit selling price of goods sold or offered for sale by other importers.

Article 5

Delete.

Article 6

Delete paragraph (a).

Paragraph (b) has been incorporated in the text proposed for Article 4.

Article 7

Replace the existing text by the following:

1. If the customs value of the imported goods cannot be determined under the provisions of the preceding articles, the value shall be determined using reasonable means consistent with the principles and general provisions of this code and of Article VII of the General Agreement, and on the basis of data originating in the country of importation.
2. In the application of this article, account shall be taken only of sales between unrelated parties. No valuation method based on this article shall be used if there results a customs value that is unreasonable in the specific trade circumstances of the transaction in the goods to be valued.
3. 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.
4. Each signatory shall notify periodically (to the appropriate organ) the customs valuation methods it is applying under this article.

Article 9

Paragraph 1: delete "may" and remove the square brackets around "shall".

Sub-paragraph (a): delete square brackets.

Point (i): delete "selling".

Point (v): delete.

Sub-paragraph (b): delete square brackets; in the second line add "or" after "buyer". Delete the square brackets and words ["and sale for export"].

Delete (ii), (v) and (vi) and place (iv) between square brackets.

Sub-paragraph (c): replace the existing text by the following:

(c) royalties and licence fees which the buyer discharges or which others discharge on his behalf. (P.M.: A note should be added to take account of the case of fees in respect of patents, trade marks or manufacturers' marks, designs and copyright.)

Sub-paragraph (e): delete square brackets; clarify what is meant by "warranty"; replace "condition" by "consequence".

Sub-paragraph (f): delete square brackets.

Paragraph 2:

Sub-paragraph (c): add "at the port or place of importation".

Paragraphs 5 and 6: delete.

Insert an interpretative note to Article 9:1(b) in the following form:

"The purpose of this provision is to allow adjustment of the price paid or payable, in cases where the transaction implies, in addition to payment of an amount of money for the goods by the buyer to the seller - directly or indirectly - the furnishing of services. Where the value of non-monetary goods or services can be quantified and added to the amount of money paid, it will be possible to use the transaction price, leaving aside other valuation methods."

Article 10

Replace the text of paragraph 1 by the following:

"Where a sale contract contains a review clause, the price to be considered to determine the customs value of goods shall be the total and definitive price payable."

Article 11

Replace the text by the following:

When the quantity of goods being cleared for home use in a particular customs declaration represents only a part of a larger quantity purchased by the same buyer in one transaction, any price reduction granted by

reference to such larger quantity shall be duly allowed for when determining the customs value, provided that such reduction is granted freely to any buyer in similar conditions, and that the total quantity of goods purchased enters the country of importation within a period consistent with usual practices in the trade sector concerned.

Furthermore, to be accepted any reduction by reference to quantity must not be retroactive and the total quantity to which the reduction relates must be effectively intended for the country of importation.

Article 11 bis

Insert the following text:

The price to be taken into consideration for determining the customs value of goods shall be the cash price at the time stipulated by the legislation of the country of importation.

Article 11 ter

Insert the following text:

The time to be taken into account for customs valuation shall be established by the legislation of the country of importation concerned; in no case, however, shall that time be later than the date of acceptance by the customs authorities of the import declaration for home use of the goods.

Article 12

Replace the text by the following:

The rates of exchange to be considered in the determination of the customs value of goods shall be those corresponding to the time of valuation in terms of Article 11 ter, and shall be published by the competent authorities of the country of importation concerned, reflecting as effectively as possible, in each period covered by such publication, the real values of the currencies concerned in terms of the currency of the country of importation.

Article 17

Insert a new sub-paragraph (g) with the following text:

(g) If, in general, either of them has any interest in the business of the other or both have common interests in any business or if some third person has an interest in the business of both of them, whether such interests be direct or indirect.

Annex I

Point 20, delete the square brackets around "and Spanish".

PART III - SPECIAL AND DIFFERENTIAL TREATMENT

(To be supplemented later)

"ART:_____ Developing countries that sign this Code may postpone compliance with the rules thereof for a period of ten years, which they shall notify to the GATT secretariat at the time of acceptance."

(P.M. Other derogations and/or reservations in respect of this code will be formulated by the developing countries as the negotiations on the code proceed.)

"ART:_____ Notwithstanding the provisions of other parts of this code concerning multilateral administration of technical assistance, signatory developed countries shall furnish technical assistance to signatory, or potential signatory, developing countries that so request on mutually agreed terms; the developed countries shall draw up, on the basis of the objectives of the requesting developing country, the relevant programme which may include, inter alia, elements concerning training of personnel, establishment of control measures, access to sources of information and counselling to solve specific cases of valuation."