

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATIONS FROM THE CUSTOMS CO-OPERATION COUNCIL

The communication below, dated 23 June 1988, has been received from the Secretariat of the Customs Co-operation Council following the statement made by the observer from the Customs Co-operation Council at the Group's meeting on 6-7 June 1988:

"During the last meeting of Negotiating Group on MTN Agreements and Arrangements (6-7 June 1988), our representative pointed out that the Technical Committee on Customs Valuation, at its 15th Session had adopted an Advisory Opinion relating to Article 17 and paragraph 7 of the Protocol. The Advisory Opinion provides that the Agreement does not restrict nor call into question the rights of Customs Administrations in the determination of Customs value and that on the subject of burden of proof, the rights of Customs and importers are governed by national laws and regulations.

Another instrument reviewed by the Technical Committee was a draft recommendation adopted by the CCC Joint Expert Group on Valuation Fraud. The recommendation provides for the possibility for Council Members to exchange information on matters concerning value-related fraud.

Our representative had also pointed out that the above-mentioned instruments would be subject to the approval of the Council at its next session.

At the proposal of the delegate of India, it was requested that information concerning the approval of these instruments by the Council be sent to the GATT secretariat for inclusion in an information document before the next meeting of the Group.

Therefore I should like to inform you that the Council adopted the aforementioned instruments at its 71st/72nd Sessions, copies of which are appended."

In a subsequent communication, dated 13 July 1988, submitting the text of the recommendation concerning action against customs valuation fraud, as adopted, the Secretary-General of the Customs Co-operation Council stated that:

"The Recommendation requests Council Members and non-Members to foster the best possible co-operation with a view to putting a stop to this type of fraud which is a matter of serious concern to all countries.

You will appreciate that the Council sets great store by this Recommendation, particularly since the problem concerned causes serious harm to the economies of a large number of countries. It is therefore highly desirable that the Recommendation be accepted by as many countries as possible.

Consequently, I should be grateful if you would encourage the competent authorities within your Organization to take appropriate steps to ensure the acceptance of this Recommendation."

ADVISORY OPINION
APPLICATION OF ARTICLE 17 OF THE AGREEMENT
AND PARAGRAPH 7 OF THE PROTOCOL

1. The question has been asked whether Article 17 read with paragraph 7 of the Protocol gives sufficient powers to the Customs administration to detect and establish valuation offences including fraud, and whether the burden of proof in the course of determination of the Customs value is on the importer?

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2. The Technical Committee on Customs Valuation concluded that in examining this matter, it has to be noted that Article 17 states that the Agreement does not restrict nor call into question the rights of the Customs administration. Paragraph 7 of the Protocol elaborates on those rights, referring specifically to the right of national administrations to expect the full co-operation of importers in enquiries concerning the truth or accuracy of any statement, document or declaration. This position is reiterated in Advisory Opinion 10.1.

3. It would be incorrect to suggest that any other rights of the Customs administrations which are not mentioned in Article 17 or paragraph 7 of the Protocol are, by implication, excluded.

4. Other than those which are specifically mentioned in the Agreement, the rights and obligations of importers and Customs in the determination of the Customs value would depend on national laws and regulations.

RECOMMENDATION OF THE
CUSTOMS CO-OPERATION COUNCIL
CONCERNING ACTION AGAINST CUSTOMS VALUATION FRAUD

THE CUSTOMS CO-OPERATION COUNCIL,

RECOGNIZING that fraud relating to the value declared to Customs for imported and exported goods is prejudicial to the economic and fiscal interest of States and autonomous Customs territories, whether or not Members of the Council, and Customs and Economic Unions,

CONSIDERING that as, in most cases, import or export duties and taxes are collected on an ad valorem basis, a false declaration of value for Customs purposes could deprive States and autonomous Customs territories, whether or not Members of the Council, and Customs or Economic Unions of a significant part of their revenue,

NOTING that Customs valuation fraud is a matter of serious concern,

NOTING that false declarations of value for Customs purposes provide a means of circumventing fiscal, financial and trade control measures, regulated in any manner by value,

HAVING REGARD to the international Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (Nairobi, 9 June 1977),

HAVING REGARD to the Customs Co-operation Council Convention on the Valuation of Goods for Customs Purposes (Brussels, 15 December 1950),

HAVING REGARD to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and the Protocol thereto (Geneva, 12 April 1979),

HAVING REGARD to the Recommendation of the Customs Co-operation Council on mutual administrative assistance (5 December 1953),

HAVING REGARD to the Recommendation of the Customs Co-operation Council on the pooling of information concerning Customs fraud (8 June 1967 and 22 May 1975),

RECOMMENDS that States and autonomous Customs territories, whether or not Members of the Council, and Customs or Economic Unions should:

1. establish that dealing with fraud relative to value be one of the priorities of Customs administrations with particular reference to the prevention, detection and repression of such fraud,
2. incorporate specialized training methods for combating valuation fraud into the training provided to staff assigned to Customs valuation control duties and, as far as possible, maintain a degree of continuity with the staff employed in this area,
3. afford the necessary attention to formulation of appropriate legislation, regulations and administrative guidelines to deal with all aspects of the valuation of goods, including post facto controls and rules requiring firms to keep records of accounts,
4. provide, within the context of the Nairobi Convention and/or if necessary, through specific bilateral or multilateral agreements, for possible exchange of information between the Customs administrations of countries or territories involved in the process of importation and exportation, with a view to the prevention, investigation and repression of Customs valuation fraud,
5. examine the possibility of concluding new bilateral or multilateral agreements for the communication of information relevant to valuation fraud,
6. contribute to the Central Information System by informing the Secretariat of any insignificant case of valuation fraud detected, this information to be disseminated via the Enforcement Bulletin,
7. seek, to the extent possible and by whatever means appear most appropriate, to secure the fullest co-operation of commercial, fiscal or banking authorities and others involved in international commerce and trade to assist the international Customs community in combating Customs valuation fraud.

REQUESTS States and autonomous Customs territories, whether or not Members of the Council, and Customs or Economic Unions which accept this Recommendation to notify the Secretary General of their acceptance, and of the date from which they will apply the Recommendation and the conditions of its application. The Secretary General will transmit this information to the Customs administrations of all Members. He will also transmit it to any Customs administrations of non-Members and any Customs and Economic Unions which have accepted this Recommendation.