

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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PROPOSAL SUBMITTED BY KENYA ON BEHALF OF THE
MEMBER STATES OF THE PREFERENTIAL TRADE AREA
FOR EASTERN AND SOUTHERN AFRICAN STATES (PTA)

The following proposal for modification in the Agreement on Implementation of Article VII (the Customs Valuation Code) is circulated at the request of the delegation of Kenya and the delegations of the Member States of the Preferential Trade Area for Eastern and Southern States (PTA)¹ to the Negotiating Group on MTN Agreements and Arrangements.

The note is divided into two parts. Part I contains proposals for improvements in the Agreement. Part II gives background and reasons for the suggested improvements.

PART I

Proposal to amend/modify the Agreement on Implementation of
Article VII of GATT

The following proposals are submitted to amend/modify the Agreement in order to take into account some of the serious difficulties and concerns of the PTA Member States in acceding to and in applying the Agreement.

- (a) In accordance with the requirement in Article VII of GATT which states that the customs value should be the price at which the merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions, the customs value should, in the case of developing countries, normally include discounts allowed to sole agents, distributors and concessionaires and to other parties which have entered into special trading agreements.

¹At present the Member States of the PTA participants in the Uruguay Round are Burundi, Kenya, Malawi, Mauritius, Lesotho, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe. The other members of PTA are Comoros, Djibouti, Ethiopia, Mozambique, Somalia and Swaziland.

- (b) Article I of the Agreement should be amended to place on the importer the burden of proving that the declared value is the full amount paid or payable for the goods when it is, in the opinion of the Customs Administration, lower than the price at which such or like merchandise is offered for sale in the ordinary course of trade under fully competitive conditions.
- (c) The derogation in paragraph 3 of the Protocol to the Agreement which allows developing countries to retain officially established minimum values on a transitional basis should not be limited in scope nor subject to the imposition of restrictive terms and conditions by the Parties to the Agreement.
- (d) Developing countries which currently use uplifting value can make a reservation to enable them to retain the system.
- (e) Developing countries should be given assistance by the CCC and developed countries to strengthen their customs administrations in order to handle the complexities of the Agreement.

PART II

Background and justifications

1. The PTA Member States have established that there is a need to harmonize their valuation systems in order to facilitate intra-PTA as well as international trade. In this connection, with regard to adopting the Agreement on Implementation of Article VII of GATT as a valuation system for the sub-region, Member States expressed the following concerns:

- (a) that under the GATT valuation system the burden of proof is on the customs administrations and that is a very difficult task;
- (b) that under this system uplifting of the customs value is not allowed unless price influence can be proven;
- (c) that lack of information on identical and similar goods will mostly force customs administrations to use the declared or invoice price which may not be the correct price;
- (d) that under this system of valuation various commissions are subject to deduction;
- (e) that accepting transaction value and following other valuation methods in sequence will increasingly encourage imports to understate the price paid for imported goods because of the difficulty customs administrations face in proving that the declared prices are under-invoiced;

- (f) that in general adopting the GATT valuation system may result in reducing the revenue collected from customs duties which in all the Member States constitute a large share of government revenue;
- (g) that some of the methods of the GATT valuation system are complex and difficult to administer given the existing manpower and infrastructure of the customs administrations.

2. The concerns of the Member States listed in paragraph 1 above arise from:

- (a) an expected loss of revenue as a result of differences in the legal definition of value for customs purposes in the GATT Agreement compared with the BDV (b, d, f in paragraph 1 above);
- (b) a reduction of customs powers in valuation questions under the Agreement, resulting in difficulties in administering it effectively, and a resultant further loss of revenue (a and e in paragraph 1 above);
- (c) a clear need for technical assistance in implementing and administering the GATT system (g).

3. At present, most Member States use the BDV or systems which contain elements of both the BDV and the Agreement. The BDV is based on the normal open market price at which goods would be sold to an independent buyer, the price not being influenced by any commercial, financial or other relationship between the buyer and seller. Under the GATT valuation system, the value for customs purposes is based as far as possible on the transaction value, the price actually paid or payable for the goods. This is usually the invoice price. When there is no transaction value, or when, in specified circumstances, it cannot be accepted by the customs, further methods of valuation are prescribed, the first usable one in the sequence being applied to determine the value.

4. Member States are concerned that adoption of the GATT valuation system will result in a loss of customs revenue. This concern is serious because Member States typically raise more than 50 per cent of their total government revenue from customs duties. The expected loss would arise partly from a difference in the formal definition of value between BDV and the Agreement, and partly because of what appears under the Agreement to be a restriction on the power of customs to act in suspect cases.

5. Under the GATT system, discounts allowed to sole agents, distributors and concessionaires which are included in the value under the BDV, are specifically excluded from the value. The national value to be established under the BDV can be determined by customs, when necessary, regardless of the value stated on commercial documents whereas the same does not apply under the Agreement. When the importer and the exporter are associated in

business, the invoice price has frequently to be uplifted to arrive at the open market price and the BDV gives a broad definition of persons associated in business. Under the Agreement, however, if the price has been influenced by a trading relationship, the invoice price may not be acceptable, but the definition of related persons is much more restricted under the Agreement than under the BDV.

6. In some countries, international trade has been facilitated under the BDV by the establishment of open market values for many frequently imported commodities. Use of these standard values, which were in practice minimum values, speeded up the clearance of imports, but their use is prohibited by the Agreement. These values may also be described as fictitious although their use under a system which establishes a national value may be defended. These values could be used as a point of reference in the valuation of goods when there was a trading agreement between the importer and exporter but under the Agreement even if a trading agreement exists between an importer and an exporter the use of such values is not allowed.

7. Studies undertaken in developing countries of the effects of the above have produced estimates of revenue loss ranging from 4 to 10 per cent. The expected loss of revenue depends on the volume of imports by sole agents, distributors and concessionaires, and the extent to which uplifted and standard values are used in the country concerned. The estimates represent a substantial loss of Government revenue which would need to be raised in alternative ways. This need will produce difficulties in Member States.

8. It has been the experience of customs administrations in many Member States that importers sometimes submit invoices which do not show the full price paid or payable for the goods. An importer may, for example, pay part of the cost of goods in cash in advance and subsequently receive an invoice which shows only the outstanding balance to be paid for the goods. Such an invoice may purport to show the full price paid or payable for the goods. In some areas of the world, South East Asia and Africa being examples, the close trading relationships and ethnic bonds of a large number of traders operating in different countries give rise to circumstances in which the invoice price may reflect the transaction value in far less than the 95 per cent acceptance rate reported in Europe and North America. In many cases, there may be off-setting transactions with only the balance between the consignee and the consignor in order to reduce the duty payable. For example, in one reported case, an importer was found to be typing invoices for submission to customs using blank invoices obtained from his supplier overseas.

9. Much of the foreign trade in some developing countries is controlled by parties which may be regarded as having a divided loyalty between their country of residence and their kinsfolk in other countries. The Agreement is, in the circumstances, seen as moving the balance of power away from customs in favour of traders. Because of the limitation of customs powers in these matters, intentional under-valuation and in some cases

over-valuation of goods, considered by some customs administrations to be serious threats to customs revenue and foreign exchange repatriation, respectively, would be even more difficult to control under the Agreement.

10. The Agreement allows customs to refuse to accept the transaction value stated in an invoice in limited circumstances only. For example, the price will not be acceptable if the sale of price is subject of some condition or consideration for which a value cannot be determined. However, customs could not refuse to accept an invoice price without good reason, merely on the grounds of suspicion arising from the low price. Article 17 of the GATT Agreement affirms the unrestricted rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration, but under Article I of the Agreement the burden of proof is placed on customs. The experience of customs administrations suggests that the detection and investigation of invoices purporting to show the full amount paid or payable for the goods is likely to be difficult. In particular, for instance, it may be impossible to obtain evidence concerning cash transactions.

11. Compared with the BDV, in suspect cases the onus of proof has been moved from the importer to the customs. This is a cause of great concern. Customs might have to accept many invoice prices which do not reflect the actual transaction value because they are unable to obtain all the facts and, therefore, do not have grounds to reflect them.

12. It is not possible to make any estimate of the amount of revenue which might be lost pertaining to under-invoicing. A cumulative effect is also feared. As importers found that customs had to accept invoice prices which did not show the transaction value they would be further encouraged to submit such invoices. Member States are, therefore, most reluctant to accept any reduction under the GATT Valuation Agreement system of customs powers to deal with suspect invoices.

13. The concerns of the Member States may be summarized as follows:

- (a) a loss of customs revenue from implementation of the GATT system resulting from:
 - (i) exclusion from the value for customs purposes of discounts allowed to sole agents, distributors and concessionaires, which are included in the value under the BDV;
 - (ii) prohibition of the application of uplifted, standard and minimum commodity values which are used under the BDV;
 - (iii) since the burden of proof lies on customs, an obligation to accept invoice prices which do not show the actual transaction value in cases where customs have suspicion but not sufficient grounds for refusing to accept them under Article I of the GATT Agreement;

- (b) due to the complexities of the Agreement, a need for technical assistance and training in order to introduce and administer the complexities of the Agreement.

14. The proposals contained in Part I of the document are, therefore, submitted in order to modify the Agreement accordingly. It is hoped that serious consideration will be given to the proposals since they reflect serious and genuine concerns and difficulties of the countries with regard to the Agreement.