

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

**RESTRICTED**  
**VAL/Spec/44**  
**14 July 1995**

(95-2009)

**Tokyo Round Committee on Customs Valuation**

**DRAFT MINUTES OF THE MEETING OF 12 MAY 1995**

**Chairman: Mr. P. Palečka (Czech Republic)**

1. The Committee on Customs Valuation met on 12 May 1995.

2. The following agenda was adopted:

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**A. Election of Officers**

3. The Committee elected Mr. P. Palečka (Czech Republic) Chairman.

4. The Chairman noted that the Agreement did not specifically provide for a Vice-Chairperson although in the past the practice had been to elect one. Considering the fact that the Tokyo Round

Agreement might be terminated at the end of this year, he suggested that the Committee need not elect a Vice-Chairperson for the remaining meeting in the autumn.

5. The Committee so agreed.

**B. Withdrawal from the Agreement by the United States**

6. The Chairman stated that in document VAL/55, Parties were informed that in a communication received by the Director General on 30 December 1994, the United States had notified its decision to withdraw from the Agreement. Pursuant to Article 28 of the Agreement, the withdrawal took effect upon the expiration of sixty days from that date. He also informed the Committee that, as indicated in a communication addressed to the Chairman of this Committee dated 16 March 1995, the United States would be following the meetings of this Committee in an observer capacity.

7. The Committee took note of the information provided.

**C. Report of the work of the Technical Committee on Customs Valuation**

8. The Chairman noted that the report on the work done by the Technical Committee at its Twenty-Ninth Session held from 13 to 17 March 1995 had already been presented by the observer from the Secretariat of the WCO to the meeting of the WTO Committee on Customs Valuation which had immediately preceded this meeting. A presentation of the report to this Committee appeared unnecessary as the signatories and observers in this Committee had been present at the meeting of the WTO Committee on Customs Valuation. He added that copies of the statement made by the observer from the WCO could be obtained from the WTO Secretariat. He proposed that the Committee take note of the report.

9. The Committee so agreed.

**D. Decision on "Transitional Arrangements - Avoidance of Procedural and Institutional Duplication"**

10. The Chairman recalled that, in accordance with the recommendation of the Preparatory Committee, the General Council had, at its meeting on 31 January 1995, adopted a Decision on the "Avoidance of Procedural and Institutional Duplication" (WT/L/29). The Decision provided for

cooperation between the WTO Committee on Customs Valuation and this Committee with respect to notifications and the holding of joint or consecutive meetings in the period between the date of entry into force of the WTO Agreement and the date of termination of the Tokyo Round Agreement. The decision of the Preparatory Committee and the CONTRACTING PARTIES to GATT 1947 contained in documents PC/11 and L/7582 had been proposed for adoption by this Committee. He proposed that the Committee adopt this Decision.

11. The Committee so agreed.

**E. Draft Decision on the Termination of the Agreement**

12. The Chairman recalled that a decision (PC/12, L/7583) had been taken to terminate the GATT 1947. The Tokyo Round Customs Valuation Agreement interpreted and supplemented Article VII of the GATT 1947 and there did not appear to be much use in keeping this Agreement in existence beyond the date on which the GATT 1947 terminated. He proposed, therefore, that the Committee consider terminating this Agreement one year after the entry into force of the WTO Agreement. The draft decision had been circulated in document VAL/W/65.

13. The representative of Japan stated that his delegation had no problems about terminating the Agreement. However, Japan proposed having consultations concerning the reasons given in the draft Decision for the termination of the Agreement.

14. The Chairman noted that since this issue had also come out in other subsidiary bodies of the Council for Trade in Goods, a horizontal solution would need to be found. He proposed that the Secretariat hold informal consultations with interested delegations to find a solution that would apply horizontally also to the other Agreements concerned, and that the Committee revert to this matter at its next meeting.

15. The Committee so agreed.

**F. Information on Implementation and Administration of the Agreement**

**(i) Argentina**

16. The Chairman recalled that, at its last meeting, the Committee had agreed to examine Argentina's legislation contained in document VAL/1/Add.22/Suppl.4.

17. The Committee agreed to conclude its examination of the recent amendments to the legislation of Argentina contained in document VAL/1/Add.22/Suppl.4.

**(ii) Mexico**

18. The Chairman recalled that at its last meeting, some discussion had taken place on the modifications that had been introduced to Mexico's customs legislation which essentially transformed the Mexican customs valuation system from a free-on-board (f.o.b.) to a cost-insurance-freight (c.i.f.) basis of valuation. These amendments were subsequently notified and circulated in document VAL/1/Add.25/Suppl.3. It had been agreed to revert this agenda item at the Committee's next meeting. He also added that Mexico had responded to the checklist of issues which had been circulated in document VAL/2/Rev.2/Add.8.

19. The representative of the European Communities stated that she was concerned and had difficulty in understanding why Mexico applied an f.o.b. system of valuation to goods originating from the NAFTA region and a c.i.f. system of valuation to goods coming from other countries; this treatment appeared discriminatory. To date Mexico had not yet demonstrated convincingly that its regime was compatible with Article 8 of the Agreement and moreover no distinction based on origin was justified. For this reason her delegation asked Mexico to either remove the measures introduced or to modify the relevant NAFTA clauses so as to make them compatible with the provisions of the Agreement. She added that the Community intended to raise this matter in the Working Party of NAFTA which was scheduled to meet in July, and at the next meeting of this Committee.

20. The representative of New Zealand recalled that he had also raised this issue at the last meeting of the Committee. He wanted to draw the Committee's attention to what his delegation felt was the lack of a substantive response from Mexico at that meeting to points raised by the representative of European Communities and his delegation. For example, Mexico, at that meeting, had stated that: "if goods originated from any contracting party .... , the c.i.f. system of valuation was applicable"

(paragraph 36, VAL/M/34). In fact, this was not entirely correct. Exports to Mexico from NAFTA trading partners faced an f.o.b. valuation system provided they met the NAFTA origin requirements, while this possibility did not seem to be available to exports from non-NAFTA trading partners. Therefore, this treatment appeared to contain an element of discrimination. Mexico had also stated at that meeting that: "the fact that Mexico used a f.o.b. or a c.i.f. basis of valuation according to the interests of the members of the Committee showed that these methods were neutral" (paragraph 38, VAL/M/34). He disagreed with this assertion that the use by Mexico of the c.i.f. and the f.o.b. systems of valuation had a neutral effect. In fact, the effect of using a c.i.f. system valuation was to increase the duty levied on products sourced outside the NAFTA region when compared to the same products sourced within the NAFTA region. Neutrality or non-discrimination between the f.o.b. and c.i.f. valuation methods would really only be ensured if the same method was applied to imports from all sources. He maintained the view that the selective application of the c.i.f. or f.o.b. methods of valuation was not intended or envisaged by the Agreement. His view would be supported by Article 8 as well as the sixth preambular paragraph of the Agreement which stated that the objective of the Agreement was to avoid differences in valuation methods "without distinction between sources of supply". He therefore enquired if Mexico had any further information regarding any consideration that it might be giving to altering its valuation methods. In particular, whether Mexico could consider applying an f.o.b. valuation system across-the-board, and if this were not possible whether reasons could be provided?

21. The representative of Switzerland agreed with the views expressed by the representatives of the European Communities and New Zealand. His delegation had difficulties in finding the Mexican arguments convincing. He also wanted to obtain further information on measures which might be taken in order to correct this situation which was not compatible with the provisions of the Agreement. His authorities would pay special attention to this question in the Working Party on NAFTA as well as at the next meeting of this Committee.

22. The representative of Mexico stated that the explanations given by Mexico at the last meeting had apparently not been sufficiently clear enough to allay the concerns of other delegations. But to claim that these measures were incompatible with Mexico's commitments under the Customs Valuation Agreement was not appropriate. There were two aspects to the concerns that had been voiced during the last meeting and the present one. The first concern was linked to the fact that Mexico was applying the c.i.f. system of valuation which in turn had given rise to requests that Mexico consider changing its system of valuation to the f.o.b. method. It was for this reason that, at the last meeting of the Committee, his delegation had stressed the point that a Member was free to use either of the

two systems, f.o.b. or c.i.f., pursuant to Article 8 of the Agreement. The Agreement did not encourage in anyway one particular system over the other, and moreover there seemed to be no legal basis under the Agreement which would force Mexico to apply one system over another. The second aspect of the concern voiced by delegations was linked to the question of discrimination which was perceived by the fact that Mexico applied an f.o.b. method of valuation to products originating from a free trade area and a c.i.f. basis of valuation to goods coming from all other contracting parties. In this connection, he wanted to point out that if goods from Canada or any other NAFTA trading partner did not meet the prerequisites to be considered as originating in the NAFTA, then they would be subject to the c.i.f. method of valuation. The f.o.b. system of valuation was applied to a type of good which met certain conditions and not to the United States and Canada, *per se*. He thus believed that this practice was in conformity with Mexico's obligations under the Agreement.

23. As concerns the point made by the representative of Switzerland that Mexico should correct the situation on the basis of the relevant articles of the Agreement, he wanted to know what articles the representative of Switzerland had been referring to. As concerns the reference to the sixth preambular paragraph of the Agreement by New Zealand, as indicated at the last meeting of the Committee, the representative of Mexico had not had a clear understanding of the interpretation given by New Zealand to this paragraph. In considering the relevant text of the sixth preambular paragraph, i.e. "...all sources of supply" as well as the legal basis on which the Preamble was based vis-à-vis the operative part of the Agreement, his delegation could not see how Mexico by applying a f.o.b. system of valuation to products considered as originating from a free trade area could be in conflict with paragraph 6 of the Preamble. He added that more information on this matter would be provided to the Working Party on NAFTA, and his delegation intended to also give further information on possible effects of such types of measures.

24. The Committee agreed to revert to this agenda item at its next meeting.

(iii) Turkey

25. The Chairman stated that at its last meeting, the Committee had been informed that in accordance with paragraph 2 of Article 25, Turkey had notified regulations concerning customs valuation, which had been circulated in document VAL/1/Add.29.

26. The Committee agreed to conclude the examination of this legislation.

**G. Other Business**

(i) Derestriction of documents

27. The Chairman stated that the documents listed in VAL/W/64 had become derestricted as of 23 March 1995.

(ii) Date and draft agenda of the next meeting

28. The Chairman stated that the date of the next meeting should be coordinated with the date of the next meeting of the WTO Committee on Customs Valuation, and suggested that he fix the date and agenda of the next meeting in consultation with interested delegations.

29. The Committee so agreed.