

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/W/16

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Special Distribution

Committee on Customs Valuation

TREATMENT OF INTEREST FOR DEFERRED PAYMENT:
VALUATION OF COMPUTER SOFTWARE

Note by the Secretariat

1. The Committee has before it two proposals concerning (a) the treatment of interest charges for deferred payment in the customs value of imported goods and (b) the valuation of computer software. The latest versions of these proposals are contained in VAL/W/13/Rev.1 and VAL/W/14/Rev.1. In connection with these proposals, the secretariat was requested by the Committee to circulate before the next meeting a paper setting out "the legal aspects of Committee decisions as opposed to the amendment procedure, and the relevant experience in other NTM Committees" (VAL/M/5, paragraph 34).
2. When these proposals were first brought before the Committee, it was suggested that they both be implemented by amending the Agreement. Subsequent discussions have persuaded the proponents of the proposals that it would be more appropriate to deal with these matters by way of agreed Committee decisions interpreting the Agreement. This note has been requested because delegations have questioned whether it is proper to use a Committee decision in these cases. The question has also been raised as to whether present and future Parties would be bound by a decision on the one hand and an amendment on the other.
3. This paper deals first with interpretations. It seems clear that the Committee on Customs Valuation is competent to interpret the Agreement and that it can do so by decisions taken under Article 18, which gives the Committee wide ranging powers. Other MTN Code Committees, such as the Committee on Anti-Dumping Practices, the Committee on Subsidies and Countervailing Measures and the Committee on Trade in Civil Aircraft, have decided on interpretations to their respective Codes.¹ As far as the GATT is concerned, the CONTRACTING PARTIES have adopted many decisions on the interpretation of the General Agreement on the basis of Article XXV:1 and of Article XXIII which are similar to the comparable Code provisions.
4. As regards amendments, Article 27 of the Customs Valuation Code entitled "Amendments" reads: "The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an

¹ eg. Anti-Dumping, BISD 27S, p.18; Subsidies, SCM/M/9, p.8; Aircraft, AIR/M/2, p.11.

amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party". These provisions have not been used, nor have similar provisions in other MTN Codes in the relatively short time that they have been in operation. The Committees have not yet established the procedures mentioned in the Article.

5. It would seem reasonable to assume that when adopting such procedures, Code Committees would take into account the experience gained in the GATT and in particular with Article XXX. The practice is for the text of the amendment to be adopted by consensus before being submitted for acceptance by individual contracting parties. In accordance with the Article, amendments to Part I and Article XXIX of the Agreement require unanimity among contracting parties, other amendments requiring a two-thirds majority. Amendments only come into force for those contracting parties which have accepted them.

6. The use of the amendment mechanism of Article XXX of the General Agreement has decreased in recent years and the CONTRACTING PARTIES have instead increasingly relied on decisions which have similar practical effects, e.g. the decisions taken at the end of the Multilateral Trade Negotiations (BISD, 26S).

7. There is some evidence that Code Committees may also adopt decisions of this type. Examples of this are the adoption by the Committee on Anti-Dumping Practices of a Decision on the interpretation and application of the Agreement¹ in relation to developing countries (BISD, 27S, p.16) and of an Understanding¹ in which the Committee "concluded that Article 8:4 is not essential to the effective operation of the Agreement and shall not provide the basis for any anti-dumping investigation or for imposition and collection of anti-dumping duties" (BISD, 28S, p.52).

8. Decisions in the GATT are normally taken by consensus and usually enter into force immediately for all Parties unless otherwise set out in the decision.

9. Governments interested in joining the Valuation Code in future would have to accept the Agreement as amended at the time of their acceptance, except to the extent that reservations are accepted in accordance with established procedures (see Article 23 of the Customs Valuation Code, the Protocol to the Code and Annex 2 of VAL/M/1). These governments would also be expected to abide by decisions previously taken by the Committee, although experience has demonstrated that Committees are willing to consider any particular problems that governments interested in joining the Codes may have, with a view to finding acceptable solutions.

¹The fact that this action is described as an "Understanding" does not make it materially different from a "Decision".