

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Customs Valuation

DRAFT REPORT (1983) OF THE COMMITTEE ON CUSTOMS VALUATION

1. This report outlines developments in the work of the Committee and the operation of the Agreement since the Committee's last report (L/5412 of 15 November 1982), and responds to the request addressed to the Committee by the Council at its meeting of 20 April 1983 in taking action on the decision on MTN Agreements and Arrangements contained in the Ministerial Declaration of 29 November 1982 (L/5424, page 11). This report, therefore, includes sections addressing the questions of the adequacy and effectiveness of the Agreement and obstacles to the acceptance of the Agreement by interested parties.

2. The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade entered into force on 1 January 1981. The following are Parties to the Agreement and members of the Committee established under it: Argentina¹, Australia, Austria, Brazil, Canada, European Economic Community, Finland, Hungary, India, Japan, Republic of Korea, New Zealand, Norway, Romania, Spain, Sweden, Switzerland, United Kingdom for Hong Kong, the United States and Yugoslavia. Of these, Australia, Austria, the European Economic Community, Finland, Hungary, Japan, New Zealand, Norway, Romania, Sweden, Switzerland, the United Kingdom for Hong Kong, the United States and Yugoslavia are applying the Agreement, while the other countries have delayed the application of the Agreement under the provision of Article 21:1 or under a reservation.

3. The following twenty-four contracting parties have observer status: Bangladesh, Chile, Colombia, Cuba, Czechoslovakia, Egypt, Indonesia, Israel, Ivory Coast, Malaysia, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Poland, Portugal, Singapore, South Africa, Sri Lanka, Thailand, Trinidad and Tobago, Turkey and Zaire. Two non-contracting parties, Bulgaria and Ecuador, are also observers. In view of the special responsibilities and functions assigned to it under the Agreement, the Customs Co-operation Council has been accorded permanent observer status. Two other international organizations (IMF and UNCTAD) have attended the meetings of the Committee in an observer capacity.

Developments since the Committee's last report

4. During the reporting period the Committee has held two meetings:

3 March 1983 - (VAL/M/6 and L/5468)
10-11 May 1983 - (VAL/M/7 and L/)

¹ Subject to ratification

5. At its meeting in May 1983, the Committee continued the detailed examination of national legislation submitted by the Parties. As of 11 May 1983, all Parties applying the Agreement had submitted their legislation to the Committee (documents VAL/1 and Addenda (1-14) and Supplements). As of the same date, replies to the revised checklist of issues regarding implementation and administration of the Agreement had been submitted by all such Parties levying ad valorem customs duties (VAL/2/Rev.1 and Addenda (1-12) and Supplements).

6. The Committee has continued to have detailed discussions on the proposals submitted to it concerning decisions aimed at clarifying the treatment of interest charges for deferred payment in the customs value of imported goods (VAL/W/13/Rev.1) on the one hand and the valuation of computer software (VAL/W/14/Rev.1) on the other. The Committee has also had before it a secretariat note (VAL/W/16) dealing with some legal aspects in connection with these proposals. [To be completed.]

7. The Committee adopted at its meeting in March 1983 an agreed interpretation of Article 8.1(b)(iv) of the Agreement according to which the English word "undertaken" is to be understood as meaning "carried out"; no changes in the French or Spanish texts of the Agreement are necessary.

8. Technical assistance continued to remain on the agenda of both meetings as an important item of the Committee's work. Activities in this connection are summarized in paragraph 19 below.

9. The Committee considered at its May 1983 meeting a report (VAL/W/17) from the Technical Committee on the methodology for the collection of additional and more detailed information on the use of the various valuation methods provided for under the Agreement. [To be completed.]

10. A detailed oral report on the work undertaken and the progress made at the fifth session of the Technical Committee on Customs Valuation, operating under the auspices of the Customs Co-operation Council, was also presented to the May 1983 meeting of the Committee.

11. At its March 1983 meeting, the Committee heard statements concerning the status of the Canadian reservation.

Adequacy and effectiveness of the Agreement

12. The experience of Parties applying the Agreement with its implementation has been very positive. All Parties recognize that the new valuation system has resulted in a uniform, fair, and greatly simplified system for the valuation of imported products. A significant benefit of the new valuation system, to both customs authorities and to traders, has been greater certainty in determining the customs value of imported products and thus the amount of duties payable. Moreover, experience indicates that the new valuation system has saved time and money, and improved the efficiency of the preparation and processing of customs entries.

- recognition of the concerns expressed by certain developing countries regarding importations by sole agents, sole distributors and sole concessionaires and a provision for study of this question, if problems arise in practice, with a view to finding appropriate solutions (Protocol, paragraph 6);
- interpretation of Article 17 regarding the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration (Protocol, paragraph 7);
- recognition that the price actually paid or payable includes all payments actually made or to be made as a condition of sale (Protocol, paragraph 8).

17. Delayed application; reservations. One developed country has made a reservation. Of the eight developing countries presently Parties to the Agreement, five such countries have delayed application of the Agreement pursuant to one or more of the above provisions on special and differential treatment. All these five countries have invoked Article 21.1, and four of them Article 21.2. In addition, two of them maintain reservations under paragraph 3 of the Protocol, and three of them under paragraphs 4 and 5 of the Protocol. A further developing country, which had invoked Article 21.1, applied the Agreement with effect from 1 April 1982. Countries delaying application of the Agreement under the provisions on special and differential treatment thus have the opportunity to discuss in the Committee any problems they feel might arise out of such application.

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18. Under certain of the provisions on special and differential treatment, reservations are automatically accepted (Protocol, paragraphs 4 and 5). In other cases, including all reservations by developed countries, reservations are subject to the consent of the other Parties (Article 23). At its first meeting, in January 1981, the Committee adopted procedures for reservations (VAL/M/1, Annex 2). These procedures provide, inter alia, for cases where a minority view about the acceptability or non-acceptability of a reservation exists to be examined in the Committee, at the request of the country wishing to enter the reservation, with a view to seeking a mutually acceptable solution.

19. Technical assistance. The importance attached to technical assistance by Parties has been stressed at meetings of the Committee and of the Technical Committee. Developed country Parties have affirmed their willingness to extend technical assistance in connection with the Agreement not only to developing country Parties, as provided for under Article 21.3, but also to other developing countries. Technical assistance is considered a valuable means for exploring the problems that potential signatories feel might arise from applying the Agreement and sharing with them experience on how such difficulties might be coped with. Technical assistance has taken two main forms:

- seminars on the Agreement held in developing countries, often on a regional basis, with the participation of officials from developed country Parties (and often officials from the CCC and GATT secretariats also);

13. The information gathered by the Committee in 1981 on the use of the different valuation methods provided for under the Agreement indicated that, in line with the Agreement's objectives, the vast majority of customs entries were being valued on the basis of transaction value in the eight Parties that reported (EEC, Finland, Hungary, Japan, Norway, Romania, Sweden and United States). This result was considered to be relevant to allaying certain of the fears expressed in respect of the Agreement by some countries which have not yet adhered to it.

14. No substantial difficulties have been encountered by Parties in applying the Agreement. The examination of the national legislation of Parties that the Committee has undertaken has shown that the provisions of the Agreement have by and large been faithfully reflected. No action has been requested under the conciliation and dispute settlement procedures of the Agreement since it came into force.

Obstacles to acceptance of the Agreement

15. The Agreement contains a number of provisions, particularly those on special and differential treatment, aimed at reducing obstacles to acceptance of it. In addition, certain activities of the Committee, such as those relating to reservations, technical assistance, the participation of observers and the circulation of documents, have been carried out with a view, amongst other things, to facilitating acceptance of the Agreement. These provisions and activities are summarized below.

16. Special and differential treatment. The question of the difficulties that particular countries, especially developing countries, might have in accepting the Agreement was a major issue in its negotiation that was not resolved until November 1979, with the working out of the text of a Protocol aimed at meeting the requirements of developing countries. The provisions on special and differential treatment in the Agreement, including its Protocol, relate to the following:

- possible delay of the application of the provisions of the Agreement by developing countries from the date of its entry into force for such countries (Article 21.1 and Protocol, paragraph 2);
- possible additional delay of the application of the computed value method of valuation (Article 21.2);
- technical assistance (Article 21.3);
- deletion of Article 1.2(iv) of the Agreement (Protocol, paragraph 1);
- possible temporary retention of officially established minimum values (Protocol, paragraph 3);
- possible removal of the discretion accorded to importers regarding the order of application of the deductive and computed methods of valuation (Protocol, paragraph 4) and the application of Article 5.2 (Protocol, paragraph 5);

- training courses for officials from developing countries held by developed country Parties in their countries.

In addition, the Technical Committee, which operates under the auspices of the Customs Co-operation Council, has as one of its responsibilities "to facilitate, as requested, technical assistance to Parties with a view to furthering the international acceptance of the Agreement" (Annex II of the Agreement, paragraph 2(e)). The Customs Co-operation Council is in the process of establishing an annual training course on valuation. Also, in the course of seminars addressing GATT questions more widely that have been held by GATT secretariat technical co-operation missions in many developing countries, considerable interest has been shown in information on the provisions and operation of the Agreement.

20. The obstacles to acceptance that continue to be perceived by non-Parties are, of course, basically a matter for non-Parties to pronounce on rather than for the Committee. The information available to the Committee is, by the nature of things, limited. However, certain responses have been given to a question, in the questionnaire on technical assistance circulated to developing countries by the Technical Committee (CCC document 29.867), on their principal difficulties and concerns in regard to the implementation and application of the Agreement. The following are the principal difficulties cited by the 22 countries that had replied to the questionnaire as of the last meeting of the Technical Committee in March 1983 (four of these countries are Parties to the Agreement that do not yet apply it, the others being non-Parties): training of customs personnel (mentioned by 11 countries); determining procedures and practices for the application of the Agreement (6 countries); loss of revenue because of the provisions on commissions and advertising and related expenses (6 countries); providing guidance to importers (5 countries); preparation of laws, regulations and rulings to implement the Agreement (5 countries); greater risk of fraud (3 countries); and transactions between related parties (3 countries).

21. Participation of observers, circulation of documents. At its first meeting, the Committee adopted procedures, similar to those adopted by other Code Committees, for the participation of observers and the circulation of documents (VAL/M/1, Annex 1 and paragraph 17). The procedures for the participation of observers state that observers may participate in the discussions in the Committee but decisions shall be taken only by signatories. A list of countries having observer status in the Committee is contained in paragraph 3 above.

22. In view of the very positive experience which the Parties applying the Agreement have had with its implementation, the Committee hopes that countries which have not yet accepted the Agreement will soon adhere to it. To this end, the Committee and individual members of it remain ready to discuss further with interested parties any obstacles that they may feel exist to their acceptance of the Agreement.