

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Special Distribution

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## Committee on Customs Valuation

### ADEQUACY AND EFFECTIVENESS OF THE AGREEMENT AND OBSTACLES TO ACCEPTANCE WHICH CONTRACTING PARTIES MAY HAVE FACED

#### Note by the Secretariat

#### Introduction

1. The present note has been drawn up by the secretariat on its own responsibility in preparation for the special meeting on 9 May 1985 called in response to the action taken by the CONTRACTING PARTIES at its Fortieth Session (L/5756). This note reproduces the relevant parts of the Committee's 1983 Report to the CONTRACTING PARTIES (L/5491) which, in accordance with an invitation contained in the Ministerial Declaration of 29 November 1982 (L/5424), included sections on the adequacy and effectiveness of the Agreement and on questions relating to obstacles to acceptance of it. This note also provides information on subsequent developments of possible relevance.

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 have signed the Agreement: Argentina (subject to ratification), Australia, Austria, Botswana, Brazil, Canada, Czechoslovakia, European Economic Community, Finland, Hungary, India, Japan, Republic of Korea, Malawi, New Zealand, Norway, Romania, South Africa, Spain, Sweden, Switzerland, United Kingdom for Hong Kong, the United States and Yugoslavia. The following twenty-two contracting parties have observer status on the Committee on Customs Valuation: Bangladesh, Chile, Colombia, Cuba, Egypt, Indonesia, Israel, Ivory Coast, Malaysia, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Poland, Portugal, Singapore, Sri Lanka, Thailand, Trinidad and Tobago, Turkey and Zaïre. Two non-contracting parties, Bulgaria and Ecuador, are also observers.

#### A. Adequacy and Effectiveness of the Agreement

3. The 1983 Report of the Committee to the CONTRACTING PARTIES contains the following on this matter (L/5491, paragraphs 12-14):

"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.

"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.

"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."

4. Information on the use of the different valuation methods provided for in the Agreement subsequently given by Australia and Austria indicated that the experiences of these countries had been similar to that of the countries referred to above (VAL/M/8, paragraphs 20 and 49).

5. In its 1984 report to the CONTRACTING PARTIES, the Committee included the following (L/5729, paragraph 13):

"The Committee conducted its fourth annual review of the implementation and operation of the Agreement at its November 1984 meeting, on the basis of a background note prepared by the secretariat (VAL/W/25). It concluded that the experience of Parties applying the Agreement had led to general satisfaction on their part with its implementation and operation so far. One indication of this was that no substantial difficulties had been encountered so far by Parties in applying the Agreement and that no use had yet been made of the consultation and dispute settlement provisions of the Agreement. More positively, the Parties held the view that, in general, the Agreement had facilitated international trade and had proved, from the administrative point of view, to be practicable and reasonably uncomplicated. The Agreement had in general been welcomed by both customs authorities and traders, as increasing the predictability of valuation determinations (and thus of duty payable) and, for the most part, the speed and efficiency of the processing of customs entries. With some two-thirds of world imports already subject to the Agreement, it had contributed towards greater uniformity in valuation practices between, as well as within, countries. It remained, however, a major objective of Parties to encourage more countries to accept the Agreement."

B. Obstacles to Acceptance of the Agreement which Contracting Parties May Have Faced

6. In its 1983 Report to the CONTRACTING PARTIES, the Committee included the following regarding obstacles to acceptance of the Agreement (L/5491, paragraphs 15-22):

"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.

"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);
- 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).

"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. 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.

"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.

"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);
- 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.

"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 twenty-two 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 eleven countries); determining procedures and practices for the application of the Agreement (six countries); loss of revenue because of the provisions on commissions and advertizing and related expenses (six countries); providing guidance to importers (five countries); preparation of laws, regulations and rulings to implement the Agreement (five countries); greater risk of fraud (three countries); and transactions between related parties (three countries).

"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.

"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."

7. Since the Committee submitted this Report to the CONTRACTING PARTIES in May 1983, the following developments regarding the information contained in that Report should be noted:

- (i) Delayed application; reservations. The reservation of the developed country ceased to be in force as of 1 January 1985. Two additional developing countries have acceded to the Agreement, one without invoking any of the provisions on special and differential treatment, the other invoking Article 21.1 and paragraph 4 of the Protocol.
- (ii) Technical assistance. The Customs Co-operation Council (CCC) has held two two-week training courses on the Agreement so far. Each participant is given a training kit to help him, in turn, train customs officers in his home country. The text of the course together with supporting material have been published by the CCC. Other technical assistance activities additional to those

mentioned in paragraph 6 above have included the temporary direct attachment of customs officials from non-Parties to the customs services of certain Parties to obtain experience of how the Agreement works in practice. With regard to the question in the Technical Committee's questionnaire on technical assistance seeking information on the principle difficulties and concerns seen in regard to the implementation and application of the Agreement, responses were finally received from thirty-one customs administrations. These responses indicate essentially the same situation as that summarized above; the number of customs administrations citing the various difficulties and concerns listed above remained unchanged, except for increases to thirteen in the number referring to training of customs personnel, eight in the number referring to loss of revenue because of the provisions on commissions and advertizing and related expenses and seven in the number referring to greater risk of fraud.

8. Other recent developments that may be of relevance to consideration of factors affecting accession to the Agreement include:

- (i) Seoul Declaration of the CCC. The Seoul Declaration (see VAL/12), adopted unanimously by the ninety-five member countries of the Customs Co-operation Council at its annual plenary session in May 1984, urges, inter alia, all those countries not yet Parties to the GATT Valuation Code to intensify their efforts to accede and implement it as soon as possible. In informing the Committee about this at the Committee's November 1984 meeting, the observer from the CCC said that the Seoul Declaration was highly significant in indicating the belief of the members of the CCC that the future of the CCC in the field of valuation lay with the GATT Valuation Code (VAL/M/11, paragraph 7). In addition to its responsibilities under the GATT Valuation Code, the CCC administers the Brussels Definition of Value.
- (ii) Comparative study. The Customs Co-operation Council has completed and published a comparative study of the Brussels Definition of Value and the GATT Valuation Agreement, undertaken at the request of countries wishing to consider the implications of acceding to the GATT Agreement.
- (iii) Economic considerations. The Secretariat of the Customs Co-operation Council has also prepared a draft study (CCC document 31.906) on economic considerations relating to valuation systems. Consideration is now being given to the revision of the draft and the GATT secretariat has been asked to make comments in this regard.
- (iv) Fraud. In response to an issue raised during a technical assistance seminar, the Technical Committee has adopted an Advisory Opinion (number 10.1) on the treatment of fraudulent documents, which confirms that a customs administration cannot be required to rely on fraudulent documentation. The Technical Committee has also been informed of the CCC's work on national

and international action to combat false invoicing and forwarded the issues raised to the CCC's Enforcement Committee for consideration. The Enforcement Committee is presently pursuing its work on this matter by examining a list of case studies and a study on auditing as a means of enforcement.

- (v) Informal consultations. The Committee on Customs Valuation, at its November 1984 meeting, decided to invite countries having observer status in the Committee to participate in informal consultations on questions relating to accession, including any difficulties in this connection. A report on these informal consultations, which were held on 16 April 1985, will be made to the special meeting.