

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/W/31

17 October 1985

Special Distribution

Committee on Customs Valuation

FIFTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT

Background Document by the Secretariat

Article 26 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade provides that "the Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof".

The main objectives of the Agreement are those listed in the Preamble. The annual review of the Committee should cover the operation of the Agreement as a whole, as well as action by Parties to ensure proper implementation and operation of the Agreement in the light of its objectives and specific obligations.

This background document is circulated by the secretariat on its own responsibility with the aim of facilitating the preparations by governments for, and the conduct of, the fifth annual review to be held at the November meeting of the Committee.

The information contained in this document has been made available in the normal course of the work of the Committee and of the Technical Committee and gives the situation as per the date of this document. The document may need to be revised after the review session, to take into account the work of the Committee at that meeting and any other additional points. It is recalled that the fourth annual review document, covering the activities of the Committee in 1984, is VAL/13.

The contents of this document are as follows:

	<u>Page</u>
1. Accessions, acceptances and reservations	2
2. Composition of the Committee on Customs Valuation	4
3. Meetings of the Committee	5
4. National legislation presented	5
5. Amendments, interpretations and rectifications of the text of the Agreement	6
6. Other decisions taken by the Committee	6
7. Possible requirements for amendment, interpretation or rectification of the Agreement	6

	<u>Page</u>
8. Litigation in national or supranational courts on the text of the Agreement	7
9. Technical assistance	7
10. Information and advice from the Technical Committee, and general report on the Technical Committee	7
11. Substantial difficulties encountered by Parties in applying the Agreement	8
12. Consultation and dispute settlement	8
13. Panelists	8
14. Other matters relating to implementation	8
15. Annual report to the CONTRACTING PARTIES	8
16. General appreciation of experience with implementation and operation of the Agreement	8

1. ACCESSIONS, ACCEPTANCES AND RESERVATIONS

(a) Status of accessions and acceptances

Since the Committee's last annual review, there have been no new accessions to or acceptances of the Agreement. Pursuant to its reservation on accession, Canada implemented the Agreement with effect from 1 January 1985. Otherwise the full information on the status of acceptances and accessions at Annex I of the background document for the Committee's last annual review (VAL/13) remains unchanged.

The number of signatories remains thirty-three (EEC(10) plus twenty-two other countries plus Hong Kong). The acceptance of the Agreement by one country remains subject to ratification.

(b) Terms of acceptance

In regard to terms of acceptance, the special provisions available for developing countries have been invoked as follows:

(i) Article 21.1 (delayed application of the provisions of the Agreement)

Argentina	(1 January 1986)
Brazil	(23 July 1986)
India	(1 January 1986)
Korea, Rep. of	(5 February 1986)
Malawi	(22 December 1988)
Spain	(not later than 19 July 1986)

At the Committee's May 1985 meeting, Argentina requested a two-year extension of its period of delay in accordance with paragraph 2 of the Protocol (VAL/M/13, paragraph 28). The Republic of Korea and Brazil said that they intended to apply the provisions of the Agreement from 1986 and 23 July 1986 respectively (VAL/M/13, paragraphs 14-15).

(ii) Article 21.2 (delayed application of the computed value method)

Argentina
India
Korea, Rep. of
Spain

(iii) Protocol, paragraph 3 (reservation concerning minimum values)

Brazil
India

At the Committee's meeting of May 1985, Brazil outlined its proposals regarding its maintenance of minimum customs values on a transitional basis (VAL/M/13, paragraph 15). The Committee is expected to discuss this at its November meeting with the aim of reaching an agreement on the terms and conditions of such reservation.

(iv) Protocol, paragraph 4 (reservation concerning reversal of sequential order of Articles 5 and 6)

Argentina
Brazil
India
Malawi

(v) Protocol, paragraph 5 (reservation concerning application of Article 5.2 whether or not importer so requests)

Argentina
Brazil
India

(c) Accession of further countries

At its meeting of 9 November 1984, the Committee agreed that countries having observer status in the Committee would be invited to participate in informal consultations on the question of possible accession, including any difficulties or problems in this connection, to be organized by the secretariat, on the basis of a number of questions suggested by certain delegations. These consultations were held on 16 April 1985. A report on them was presented to the Committee's special meeting held on 9 May 1985 (VAL/M/12, paragraphs 2-4). In addition to the information from observers summarized there, document VAL/W/30 contains the views subsequently presented by the observer from Ecuador. A communication was also received from Belize. The Committee invited the Technical Committee to examine it. A report from the Technical Committee will be available at the Committee's November meeting.

The special meeting of the Committee on 9 May 1985 was held in pursuance of the CONTRACTING PARTIES' decision of 30 November 1984 on the MTN Agreements and Arrangements (reproduced in document VAL/W/27), which invited each Committee or Council of an MTN agreement or arrangement to examine in a special meeting the adequacy and effectiveness of the Agreement or Arrangement in question and the obstacles to acceptance which contracting parties may have faced, providing an opportunity to non-signatory contracting parties to express their views in the discussion. For this meeting, the Committee had before it a secretariat note, document VAL/W/28, reproducing what the Committee had previously said on these matters and providing information on subsequent relevant developments. The results of the meeting (VAL/M/12) were summarized in a report prepared by the secretariat consolidating the observations made and conclusions reached in the special meetings of the Committees and Councils of the MTN Agreements and Arrangements (MDF/12). This report was examined by a Working Group whose report (L/5832/Rev.1) was adopted by the Council at its meeting of 17-19 July 1985. In regard to the Valuation Agreement, this report states that "the members of the Group shared the favourable evaluation of this Agreement by the Committee on Customs Valuation" (L/5832/Rev.1, paragraph 26).

2. COMPOSITION OF THE COMMITTEE ON CUSTOMS VALUATION

Chairman: Mr. R. Hochörtler (Austria)

Vice-Chairman: Mr. P. Nicora (France)

Signatories

Argentina ¹	Korea, Republic of
Australia	Malawi
Austria	New Zealand
Botswana	Norway
Brazil	Romania
Canada	South Africa
Czechoslovakia	Spain
European Economic Community and its member States	Sweden
Finland	Switzerland
Hungary	United Kingdom for Hong Kong
India	United States
Japan	Yugoslavia

Observers

(i) Governments:

Bangladesh	Nigeria
Bulgaria	Pakistan
Chile	Peru
Colombia	Philippines
Cuba	Poland
Ecuador	Portugal
Egypt	Singapore

¹ Subject to ratification

Indonesia
Israel
Ivory Coast
Malaysia
Nicaragua

Sri Lanka
Thailand
Trinidad and Tobago
Turkey
Zaire

(ii) International Organizations:

Customs Co-operation Council (permanent observer)
IMF
UNCTAD

3. MEETINGS OF THE COMMITTEE

Since the fourth annual review, the Committee has held two meetings, a special meeting (see section 1 above) on 9 May (minutes: VAL/M/12) and a regular meeting on 9-10 May (minutes: VAL/M/13). The Chairman's note on the latter meeting is document L/5805.

4. NATIONAL LEGISLATION PRESENTED

Article 25 of the Agreement requires each Party to inform the Committee of any changes in its laws and regulations relevant to the Agreement and in the administration of such laws and regulations. At its first meeting the Committee agreed on procedures for the submission of the complete texts of national legislation (VAL/M/1, paragraph 37).

Since the fourth annual review, the following additional texts of national legislation, regulations and administrative procedures have been submitted:

Botswana	VAL/1/Add.16
Canada	VAL/1/Add.17 and Suppl.1-2
Czechoslovakia	VAL/1/Add.18
European Economic Community	VAL/1/Add.2/Suppl.6-8
Norway	VAL/1/Add.11/Suppl.2
United States	VAL/1/Add.1/Suppl.4-5

At its second meeting, the Committee decided that Parties should provide written responses to a checklist of issues (VAL/2/Rev.1) concerning their national laws, regulations etc. (VAL/M/2, paragraph 52). Since the last annual review, a reply to the revised checklist of issues has been submitted by the delegation of Canada (document VAL/2/Rev.1/Add.14).

A complete listing of national legislation and replies to the checklist of issues communicated to the Committee is at Annex I of this note.

At the Committee's meeting of 9-10 May 1985, Australia replied to two questions posed earlier on its legislation (VAL/M/13, paragraph 29). The Committee also made arrangements for the examination of the Botswanan, Canadian and Czechoslovak legislation at its November 1985 meeting.

At its meeting of 9-10 May 1985, the Committee also reviewed the status of the application of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods (VAL/6/Rev.1) and of

paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment (VAL/8 and Add.1), on the basis of information made available by Parties in documents VAL/9 and Addenda (Decision on interest charges) and VAL/11 and Addenda (Decision on software) (VAL/M/13, paragraphs 20-27).

It might also be noted that the Technical Committee has established procedures for the dissemination of information on publications relating to national legislation where the texts in question are not covered by the procedures of the Committee on Customs Valuation, and for the circulation of declaration forms for customs value. The Technical Committee also publishes an Index of rulings and conclusions on valuation questions issued by Parties. Details of information available through the Technical Committee are at Annex II of this note.

5. AMENDMENTS, INTERPRETATIONS, RECTIFICATIONS, ETC. OF THE TEXT OF THE AGREEMENT

During the year under review, the Committee settled a question relating to the linguistic consistency between the English, French and Spanish texts of the Agreement by inserting the following statement in the minutes, on the understanding that this would be without prejudice to rights and obligations under the Agreement and that members of the Committee could revert to the matter should the need arise. The Parties to the Agreement considered that the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b) are understood to exclude "research" in English, "recherche" in French and "investigación" in Spanish, as stated in paragraph 6 of VAL/W/24/Rev.1. However, one signatory, Argentina, considered that, as used in Article 8.1(b), the Spanish expression "creación y perfeccionamiento" could not be interpreted as allowing any part of the value to be excluded from the "creación y perfeccionamiento" (VAL/M/13, paragraph 40).

Texts adopted by the Technical Committee in 1985 are listed in section 10.

A compendium of substantive and procedural decisions taken by the Committee on Customs Valuation, together with a listing of the texts issued by the Technical Committee as of 30 September 1984, is contained in document VAL/10.

6. OTHER DECISIONS TAKEN BY THE COMMITTEE

The Committee has taken no other decisions during the course of 1985.

7. POSSIBLE REQUIREMENTS FOR AMENDMENT, INTERPRETATION OR RECTIFICATION OF THE AGREEMENT

As mentioned in section 5 above, the Committee, at its meeting of 9-10 May settled the question relating to the linguistic consistency of the term "development" in Article 8.1(b)(iv) of the Agreement. No new proposal to amend, interpret or rectify the Agreement was made by a Party in the Committee in 1985.

8. LITIGATION IN NATIONAL OR SUPRANATIONAL COURTS ON THE TEXT OF THE AGREEMENT

No reports have been received in this respect since the Committee's last annual review.

9. TECHNICAL ASSISTANCE

Technical assistance aimed at providing information to assist countries in their consideration of joining the Agreement and at helping countries in their preparations for the application of the Agreement has continued to be a matter of high priority to Parties, the Committee on Customs Valuation and the Technical Committee. Technical assistance is being made available to both developing country Parties and other developing countries interested in the Agreement.

The information documents, prepared by the CCC Secretariat for the Technical Committee, describing technical assistance activities relating to the Agreement have also been circulated as Committee documents (VAL/W/29 and Rev.1) to facilitate the greater transparency of technical assistance activities in GATT circles.

A communication from Bangladesh drawing attention to its technical assistance requirements in connection with the Agreement is contained in document (VAL/15).

10. INFORMATION AND ADVICE FROM THE TECHNICAL COMMITTEE, AND GENERAL REPORT ON THE TECHNICAL COMMITTEE

A detailed oral report on the work of the ninth session of the Technical Committee, held 4-8 March 1985, was presented by the observer from the Customs Cooperation Council to the 9-10 May meeting of the Committee on Customs Valuation (VAL/M/13, paragraphs 31-35). At its meeting, the Technical Committee had adopted the following texts:

- Commentary on the treatment of tie-in sales;
- Advisory opinion on the meaning of the expression "sold for export" to the country of importation;
- Case study on restrictions and conditions in Article 1;
- Case study on the treatment of proceeds under Article 8.1(d).

The Committee on Customs Valuation took note of this report and expressed its appreciation for the continued valuable work of the Technical Committee. These texts were approved at the June 1985 session of the Customs Cooperation Council.

At its meeting of 30 September-4 October 1985, the Technical Committee adopted the following texts:

- Commentary on the meaning of the term "restrictions" in Article 1.1(a)(iii);

- Explanatory note on consideration of relationship under Article 15.5 read in conjunction with Article 15.4.

A report on matters raised by a communication from Belize was also adopted for presentation to the Committee on Valuation (see section 1(c) above).

11. SUBSTANTIAL DIFFICULTIES ENCOUNTERED BY PARTIES IN APPLYING THE AGREEMENT

As in previous years of operation of the Agreement, no Party has reported any substantial difficulty with applying the Agreement.

12. CONSULTATION AND DISPUTE SETTLEMENT

The secretariat is not aware of any Party that has requested consultations under Article 19 of the Agreement. The provisions of Article 20 have not been resorted to.

13. PANELISTS

In accordance with paragraph 2 of Annex III of the Agreement which states that each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of one or two governmental experts whom the Parties would be willing to make available for panel work, the following Parties have nominated persons who would be available to serve on panels in 1985: Finland, Japan, Norway, Romania, Sweden, United Kingdom for Hong Kong, and United States.

14. OTHER MATTERS RELATING TO IMPLEMENTATION

Use of various valuation methods by Parties

It will be recalled that, at its meeting of 10-11 November 1983, the Committee agreed that a new data collection exercise should be postponed until additional countries were applying the Agreement, and decided to revert to this question at an appropriate future meeting.

15. ANNUAL REPORT TO THE CONTRACTING PARTIES

The Committee will adopt its annual report to the CONTRACTING PARTIES at its meeting of November 1985 in accordance with the requirements of Article 26 of the Agreement.

16. GENERAL APPRECIATION OF EXPERIENCE WITH THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT

The Committee's examination of the adequacy and effectiveness of the Agreement at its special meeting of 9 May 1985 confirmed its previous conclusions that, taken as a whole, experience with the implementation and operation of the Agreement so far has been highly positive (VAL/M/12 and VAL/W/28).

ANNEX I

Information on National Legislation

Below are listed the references to the documents containing national laws, regulations etc. and replies to the Checklist of Issues (VAL/2/Rev.1) received from Parties.

<u>Signatory</u>	<u>National legislation</u>	<u>Replies to the Checklist of Issues</u>
Argentina	Not yet applying the Agreement	
Australia	VAL/1/Add.14 + Suppl.1	VAL/2/Rev.1/Add.12
Austria	VAL/1/Add.10	VAL/2/Rev.1/Add.3 + Suppl.1
Botswana	VAL/1/Add.16	Not received
Brazil	Not yet applying the Agreement	
Canada	VAL/1/Add.17 + Suppl.1-2	VAL/2/Rev.1/Add.14
Czechoslovakia	VAL/1/Add.18	Not yet received
European Economic Community	VAL/1/Add.2 + Suppl.1-8	VAL/2/Rev.1/Add.6
Finland	VAL/1/Add.4 + Suppl.1	VAL/2/Rev.1/Add.5
Hungary	VAL/1/Add.6	VAL/2/Rev.1/Add.4
India	Not yet applying the Agreement	
Japan	VAL/1/Add.7	VAL/2/Rev.1/Add.8
Korea, Rep. of	Not yet applying the Agreement	
Malawi	Not yet applying the Agreement	
New Zealand	VAL/1/Add.12	VAL/2/Rev.1/Add.10
Norway	VAL/1/Add.11 + Corr.1 + Suppl.1-2	VAL/2/Rev.1/Add.7
Romania	VAL/1/Add.8 + Suppl.1	VAL/2/Rev.1/Add.9
South Africa	VAL/1/Add.15 + Corr.1 + Suppl.1	VAL/2/Rev.1/Add.13
Spain	Not yet applying the Agreement	
Sweden	VAL/1/Add.3	VAL/2/Rev.1/Add.2 + Suppl.1
Switzerland	VAL/1/Add.5	Not applicable
United Kingdom on behalf of Hong Kong	VAL/1/Add.9	Not applicable
United States	VAL/1/Add.1 + Suppl.1-5	VAL/2/Rev.1/Add.1
Yugoslavia	VAL/1/Add.13	VAL/2/Rev.1/Add.11

ANNEX II

Information relevant to the implementation and administration of the Agreement disseminated through the Technical Committee

A. Dissemination of information on national legislation, etc.

The Technical Committee has established procedures for the dissemination of information on national publications relating to the adoption and implementation of the Agreement other than those texts circulated to the Committee on Customs Valuation under the procedures relating to the notification of national legislation. The following Parties have informed the Technical Committee, in the CCC documents specified, of publications that they would make available on request:

<u>Party</u>	<u>CCC document number</u>
Australia	28.311
Canada	28.619 and 29.275
European Economic Community	27.182
Japan	27.182
New Zealand	29.939
Sweden	27.703
United States	27.292 and 28.109

B. Declaration forms

Declaration forms for valuation purposes of the following Parties have been circulated in the CCC documents indicated:

<u>Party</u>	<u>CCC document number</u>
Austria (provisional translation)	29.276
Canada	32.005, 32.459
European Economic Community	26.916
Finland	27.484
Japan	27.473
New Zealand	29.938
Norway	32.211
Sweden	28.225

C. Index of rulings

The Technical Committee has included in its compendium on the Agreement an index listing rulings and conclusions on valuation questions issued by countries applying the Agreement. Parties interested in a particular ruling can request the full text from the issuing administration.