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REPORT BY THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION
CONCERNING THE EFFECTS OF FALSE INVOICING
ON CUSTOMS VALUATION

At its special meeting of 9 May 1985, the Committee on Customs Valuation decided to request the Technical Committee on Customs Valuation to examine a submission received from the Customs Administration of Belize which raised concerns about the effects of false invoicing.

At its meeting of 30 September-4 October 1985, the Technical Committee examined this issue. The report of the Technical Committee, which was received through the secretariat of the Customs Co-operation Council, is attached.

REPORT BY THE TECHNICAL COMMITTEE
ON CUSTOMS VALUATION
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Introduction

1. On 9 May 1985 the Committee on Customs Valuation held a special meeting in Geneva on the adequacy and effectiveness of the Agreement and obstacles to acceptance which Contracting Parties may have faced. One of the aims was to provide GATT Contracting Parties which are not Signatories to the Valuation Code with an opportunity to express their views on the obstacles preventing their acceptance of that instrument.
2. At that meeting, the GATT Committee considered a letter from the Customs Administration of Belize wherein it was stated that the Belizean Administration was keenly interested in acceding to and applying the GATT Valuation Agreement. However, a decision on the matter could be taken without hesitation only if developing countries can be accommodated, by means of an amendment or at least an interpretation of Article 1, which would enable them to reject the purported transaction value and to value goods by the subsequent methods of the Agreement whenever Customs administrations have bona fide reasons to believe that the invoice value does not represent the total price actually paid or payable for the goods being valued.
3. In view of the number of technical issues raised, the Committee on Customs Valuation invited the Technical Committee on Customs Valuation to examine Belize's Note and to furnish a Report on its findings.
4. In response to this request, the Customs Co-operation Council Secretariat circulated Docs. 32.581 and 32.668 asking administrations for their comments.
5. At its Tenth Session, held in Brussels from 30 September to 4 October 1985, the Technical Committee on Customs Valuation examined and approved the following Report analyzing the replies received from seven administrations (Argentina, Barbados, Canada, European Economic Community, New Zealand, Sweden, United States). The Report also contains the statements made by the Delegate of Finland and the Observer of Senegal during the session.

Summary of administrations' comments

6. All the administrations which replied recognize implicitly that false invoicing is a problem. The European Economic Community stated, however, that the incidence of false invoicing was not greater under the Agreement than under other valuation systems. In addition, New Zealand and the United States noted that the problems caused by false invoicing are not unique to developing countries although it was recognized that this fraud may be of greater concern to developing countries.
7. No administration favoured an amendment or interpretation of the Agreement along the lines proposed by Belize. In general, they felt that the provisions in Article 17 of the Agreement and in the Protocol (Argentina mentions paragraph 3, while Barbados, the EEC and the United States cite paragraph 7) contain the necessary powers to meet the concern expressed by Belize. Barbados points out that nothing in those provisions appears to prevent a country exercising any of its rights, and there is no reason why a value appearing on a invoice must automatically be accepted as the transaction value. Reference may be made to Advisory Opinions 2.1 to 10.1 for clarification on this point. In particular, Advisory Opinion 10.1 suggests that invalidation of values may be necessary. The Barbadian Administration adds that paragraph 8 of the Protocol defines the term "price paid or payable".
8. The Delegate of Finland supported the statements made in paragraph 6 above and was also of the opinion that Article 17 of the Agreement and paragraph 7 of the Protocol confer the necessary rights to deal with the concerns expressed by Belize.
9. The Argentine Administration also suggested the use of specific duties in order to secure the revenue required by each country.
10. Barbados also pointed out that the GATT Code seems to suggest the use of national legislation as a complement to it. The structure of national legislation must play an important part in the determination of values and ought to be so structured as to be a deterrent to persons who seek to use, for purposes of greed and fraud, the spirit of trust intended by the Code. There is also a need for closer co-operation between Customs administrations in exporting countries and developing countries in supplying copies of correct documents when such information is requested to help detect incorrect valuations. In many cases, developing countries do not have either the financial or manpower resources to send officers to the exporting country to investigate cases of falsified documents.

11. The Observer for Senegal expressed the opinion that the solution to the problem posed by false invoicing might be found in the greater use of the legal means at the disposal of administrations within the context of mutual administrative assistance.
12. Canada noted that neither Article 17 nor the Protocol provided the basis for a decision to reject the transaction value method per se and to proceed to apply one of the alternative methods of valuation in cases involving false or fraudulent invoicing. In situations where it is proved that fraud of this kind is involved, it is more appropriate to treat the matter as a serious Customs offence warranting the application of serious penalties which would have a deterrent effect in respect of such practices.
13. Canada also pointed out that acceptance of Belize's proposal would be tantamount to extending tacit approval to the practice of false invoicing, since the only sanction contemplated in such cases is to "uplift" values using a secondary method of valuation.
14. The European Economic Community noted that the powers contained in the Agreement are reinforced by the possibility for Parties to have recourse to the CCC's Enforcement Committee and to the CCC instruments concerning mutual administrative assistance or to other international instruments providing for such assistance.
15. The New Zealand Administration considered that mere suspicion was not necessarily an acceptable reason for rejecting transaction value. The Valuation Code states that Customs valuation should, to the greatest possible, be effected under the transaction value method, and if necessary in consultation with the importer. New Zealand was of the opinion that the amendment proposed by Belize may breach some of the principles of the Code and possibly negate appeal provisions. In addition, the question also arises as to whether it would be reasonable to reject the invoiced price on the grounds that it does not closely resemble the price of identical or similar goods. Furthermore, there is the possibility that the importer was able to negotiate favourable prices and therefore should not be penalized for obtaining such contracts.
16. Sweden noted that valuation under the Agreement must be based on facts. If the Customs authorities suspect that the price charged by a foreign seller to an unrelated buyer is not the total price actually paid or payable, that price must not be rejected under Article 1 unless it is proved that the goods have been underinvoiced. Where the Customs authorities are unable to prove that the goods have been underinvoiced,

they must co-operate with the income tax authorities in order to ensure that a different value has not been used to calculate the company's taxable profit.

17. The United States Administration noted that a Customs administration which has a reasonable basis for suspecting that an importation may be undervalued should take investigatory action in an attempt to verify its initial suspicion. If the truth or accuracy of any statement, document or declaration is disproven through investigatory efforts, the use of transaction value as the basis of valuation would be precluded. The Customs administration involved could then base the valuation of the merchandise on the next appropriate method set forth in the Code. However, in view of the purposes stated in the preamble to the Code (i.e. the need for a fair, uniform and neutral system for the valuation of goods; to use transaction value to the greatest extent possible as the basis for valuing goods and to base Customs values on simple and equitable criteria consistent with commercial practices) the United States believe that the rights conferred under Article 17 and the Protocol are not unlimited. Customs administrations may not use these rights in an arbitrary or capricious manner, or in a wholesale effort to avoid valuation under Article 1. Rather, it must be recognized that commercial reality dictates that some individuals will be able to purchase goods at prices lower than others (e.g., due to volume of purchase, seasonal discounts, purchases of discontinued or "grey-market" goods, to satisfy a seller's desire to penetrate a market, etc.) and that the primary method of valuation under the Code was specifically designed to recognize the use of the free-market trading system.

Conclusions

18. On the basis of the replies summarized above and the discussions during the Tenth Session, the Technical Committee concluded that it was clear that support is lacking for the proposal by Belize to amend or interpret the Agreement to deal with the problems raised by suspected false invoicing.
19. The general view was that the provisions of the Agreement and its Protocol are sufficient to satisfactorily resolve the questions raised by Belize. Particular note should be taken of the reply received from Barbados which would be expected to face the same problems as Belize.

20. It was also agreed that the relevant provisions in the Agreement should be supplemented by national measures designed specifically to eliminate fraudulent practices and to combat fraud in a broader sense. In this respect, attention should be drawn to the resources and instruments for mutual administrative assistance which exists at international level.
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