
Committee on Customs Valuation

MINUTES OF THE MEETING OF 18 OCTOBER 2005

Chairmen: Jooha Woo (Korea)

The agenda proposed for the meeting, circulated in WTO/AIR/2687 was adopted as follows:

| | | |
|--------------|---|-----------|
| I. | INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT | 1 |
| (i) | <i>Notification of national legislation</i> | <i>1</i> |
| (ii) | <i>Notifications made by Developing Country Members</i> | <i>4</i> |
| II. | INFORMATION ON THE APPLICATION OF DECISIONS OF THE COMMITTEE ON CUSTOMS VALUATION..... | 5 |
| III. | TECHNICAL ASSISTANCE | 5 |
| IV. | TRANSITIONAL REVIEW IN ACCORDANCE WITH PARAGRAPH 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA | 6 |
| V. | REPORT OF THE COMMITTEE TO THE COUNCIL FOR TRADE IN GOODS | 8 |
| VI. | INDIA - INFORMATION ON CERTAIN ASPECTS OF THE EUROPEAN COMMUNITIES VALUATION POLICY | 8 |
| VII. | FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH AND ELEVENTH ANNUAL REVIEWS OF THE IMPLEMENTATION AND OPERATION OF THE CUSTOMS VALUATION AGREEMENT | 8 |
| VIII. | PRESHIPMENT INSPECTION | 8 |
| IX. | PARAGRAPH 12 OF THE DOHA MINISTERIAL DECLARATION (WT/MIN(01)/DEC/1): IMPLEMENTATION-RELATED ISSUES | 9 |
| X. | OTHER BUSINESS..... | 10 |

I. INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

(i) *Notification of national legislation*

1.1 The Chairman recalled that Article 22 of the Agreement on Customs Valuation (Agreement) required each Member to inform the Committee of any changes in its laws and regulations relevant to the Agreement, and of any changes in the administration of such laws and regulations. In addition, the Decision on Notification and Circulation of National Legislation, adopted by the Tokyo Round

Committee, required each Member to notify its legislation to the Committee. He suggested that, under this sub-item, the Committee take up the legislations in sequence as listed in the agenda. He further recalled that the notification of legislation by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had been presented to the Committee. However, the examination of this notification remained suspended since the Committee's meeting on 4-5 November 2002 pending resolution of the difference in views between the parties involved on notifications across the WTO. He noted his appreciation for the flexibility of the parties involved in allowing the Committee to proceed with the examination of other notifications.

- *Armenia*

1.2 The Chairman recalled that at the last meeting, it was agreed to revert to Armenia's notification in documents G/VAL/N/1/ARM/1 and G/VAL/N/2/ARM/1 at this meeting. The United States had circulated questions to Armenia in document G/VAL/W/128, to which replies were circulated in document G/VAL/W/146.

1.3 The Committee agreed to conclude the examination of the legislation of Armenia.

- *China*

1.4 The Chairman recalled that the Committee agreed to revert at this meeting to China's notifications of its national legislation pending any follow-up questions at this meeting. Questions were circulated in documents G/VAL/W/137 and G/VAL/W/145, to which China provided responses in documents G/VAL/W/141 and G/VAL/W/147.

1.5 The representative of the United States stated that her delegation would agree to conclude the examination of this legislation but it would make a statement under the Transitional Review Mechanism agenda item which would apply as well to this item. Her delegation underscored the importance it attached to rigorous review of all notifications. In accordance with how her delegation has been conducting the practice, her delegation considered that under the TRM, it could pose questions on the national legislation.

1.6 The representative of China expressed some confusion with the US statement. Her delegation understood that questions related to notification of national legislation would be raised under this agenda item. Of course, any Member could raise questions under the TRM but that did not mean that they would also apply to the notification agenda item. This was her delegation's understanding in order to avoid repetition.

1.7 The Committee took note of the statements made and agreed to conclude the examination of the legislation of China.

- *Guatemala*

1.8 The Chairman drew Members' attention to Guatemala's notification of legislation circulated in G/VAL/N/1/GTM/1. This notification contained the Central American Regulations on Customs Valuation of Goods, established by the COMIECO Resolution No. 115-2004 of 28 June 2004, which put the Agreement into effect in Guatemala.

1.9 The Committee agreed to conclude the examination of the legislation of Guatemala.

- *India*

1.10 The Chairman recalled that it had been agreed to revert to India's notification in G/VAL/N/1/IND/3 which contained certain amendments to the Customs Valuation (Determination of Price of Imported Goods) Rules 1988. In addition, India's responses to the Checklist of Issues were contained in document G/VAL/N/2/IND/1 and Corr.1. Oral questions from the European Communities and written questions from the United States in document G/VAL/W/128 were submitted. India responses were circulated in document G/VAL/W/133. The United States had raised further questions in document G/VAL/W/139 to which India responded in document G/VAL/W/148.

1.11 The representative of the European Communities indicated that her delegation was still studying the responses submitted and wished to come back to the matter at the next meeting.

1.12 The representative of India considered that the responses had been circulated some time ago and therefore did not see the need to retain the item on the agenda. However, his delegation was in the hands of the Chair.

1.13 The Chairman proposed that the Committee take note of the statements made and revert to this agenda item at the next meeting. Any follow-up questions should be submitted to the Secretariat ten days before the next meeting.

1.14 It was so agreed.

- *Mexico*

1.15 The Chairman recalled that Mexico had notified its customs legislation which was circulated in document G/VAL/N/1/MEX/1. The English translation was in document G/VAL/N/1/MEX/1/REV/1. These documents contained the customs laws of 15 December 1995 and 31 December 1996 and the regulations of 6 July 1996. Mexico had also submitted its Check List of Issues circulated in document G/VAL/N/2/MEX/1 and G/VAL/N/2/MEX/1/Corr.1. The questions which the United States had posed about estimated prices and preshipment inspection, and Mexico's replies, were circulated in documents G/VAL/W/129 and G/VAL/W/132 respectively. The United States' subsequent questions were contained in document G/VAL/W/138.

1.16 The representative of Mexico informed the Committee that he had recently submitted responses to the United States and that he would give a copy to the Secretariat for circulation.

1.17 The representative of the United States confirmed that her delegation had received these responses. It would study them and wished to revert to this item at the next meeting.

1.18 The Chairman proposed that the Committee take note of the statement made and revert to this item at the next meeting. Any follow-up questions should be submitted to the Secretariat ten days before the next meeting.

1.19 It was so agreed.

- *Mozambique*

1.20 The Chairman drew Members' attention to Mozambique's recent notification of national legislation circulated in G/VAL/N/1/MOZ/1. It contained the Mozambique legislation relevant to customs valuation.

1.21 The Committee agreed to conclude the examination of the Mozambique legislation.

- *Peru*

1.22 The Chairman drew Members' attention to the recent amendment of Peru's customs valuation legislation, circulated in document G/VAL/N/1/PER/3. This document contained Supreme Decrees Nos. 098-2002-EF, No. 009-2004-EF, published in the Official Journal "El Peruano" on 11 June 2002 and 20 January 2004 which amend Supreme Decree No. 186-99 of 29 December 1999 (G/VAL/N/1/PER/2).

1.23 The Committee agreed to conclude the examination of the Peruvian legislation.

- *Qatar*

1.24 The Chairman drew Members' attention to Qatar's notification of legislation circulated in G/VAL/N/1/QAT/1. This contained the Common Customs Law of the CGG States Rules of Implementation and Explanatory Notes Thereof (2003). In addition, Qatar had circulated its responses to the Checklist of Issues in document G/VAL/N/2/QAT/1.

1.25 The Committee agreed to conclude the examination of Qatar's legislation.

- *Thailand*

1.26 The Chairman recalled that at the last meeting, Members agreed to revert to Thailand's notification in G/VAL/N/1/THA/1 and the responses to the Checklist of Issues in G/VAL/N/2/THA/1. The United States circulated questions to Thailand in G/VAL/W/128, and Thailand's replies were circulated in G/VAL/W/130. Follow-up questions from the United States were circulated in document G/VAL/W/143.

1.27 The representative of Thailand said that she would contact her capital so as to have replies for the next meeting.

1.28 The Chairman proposed that the Committee take note of the statement and revert to the examination of this legislation at the next meeting. Any follow-up questions should be submitted to the Secretariat ten days before the next meeting.

1.29 It was so agreed.

- *Uganda*

1.30 The Chairman drew Members' attention to Uganda's recent notification of its legislation circulated in G/VAL/N/1/UGA/1. This notification contained the Finance Act of 2001 which was the law introducing the WTO Customs Valuation Agreement in Uganda.

1.31 The Committee agreed to conclude the examination of Uganda's legislation.

1.32 In concluding this agenda item, the Chairman urged those Members which had not yet notified their implementing legislation to do so as soon as possible.

(ii) *Notifications made by Developing Country Members*

1.33 The Chairman drew Member's attention to document G/VAL/2/Rev.21 which contained the updated lists of all Members who had invoked special and differential treatment provisions under the Agreement. In addition, he drew their attention to document G/VAL/W/76/Add.10 which contained an

updated list of the active agreed extensions for the delay of the application of the Agreement or reservations to maintain a system of minimum values.

1.34 The representative of Canada noted that Sri Lanka had an outstanding reporting requirement that was listed in document G/VAL/W/76/Add.10. His delegation looked forward to seeing this report as soon as possible.

1.35 The representatives of the United States, the European Communities, and Switzerland supported Canada's statement.

1.36 The Chairman proposed that the Committee take note of the statements made and of the information contained in these two documents.

1.37 It was so agreed.

- *Notifications made under Committee Decisions on extensions or minimum values*

1.38 The Chairman noted that under this sub-item, the Committee was to consider the notifications made under the Decisions concerning delay extensions and minimum value reservations. Senegal had circulated a progress report on its Article IX waiver for the use of minimum values. This report was also considered by the Council for Trade in Goods where, he noted, that Senegal had requested an extension of this Article IX waiver for minimum values. He proposed that the Committee take note of this information.

1.39 It was so agreed.

II. INFORMATION ON THE APPLICATION OF DECISIONS OF THE COMMITTEE ON CUSTOMS VALUATION

2.1 The Chairman informed the Committee that under this agenda item, the Committee noted any new notifications of application of the Decisions of the Committee on Customs Valuation on the 'Treatment of Interest Charges in the Customs Value of Imported Goods' and on the 'Valuation of Carrier Media Bearing Software for Data Processing Equipment', both adopted by the Committee and contained in document G/VAL/5. Israel notified its application of these two Decisions in document G/VAL/N/3/ISR/1. Document G/VAL/W/5/Rev.17 had been updated to include this notification. He suggested that the Committee take note of this information.

2.2 The Committee took note of this information.

III. TECHNICAL ASSISTANCE

- *Information on Technical Assistance*

3.1 The Chairman explained that under this item the Secretariat usually informed Members of the technical assistance activities carried out under the auspices of the WCO. Document G/VAL/8/Add.15 contained the most recent information, reported at the 19th Session of the Technical Committee, on technical assistance activities carried out by the WCO Secretariat or WCO Members.

3.2 The Committee took note of the information.

- *Article 20.3 Technical Assistance and Trade-Related Technical Assistance*

3.3. The Chairman informed Members that the Committee's Work Programme on Technical Assistance for Capacity Building as Regards the Implementation and Administration of the WTO Agreement on Customs Valuation was contained in document G/VAL/W/82/Rev.1. The Committee noted previously that customs valuation technical assistance was now incorporated in the WTO-wide technical assistance program which had been designed to streamline technical assistance requests into one annual plan. It was noted that basing the Committee's TA work on the WTO-wide plan avoided having two parallel and repetitive exercises.

3.4 The Committee on Trade and Development, at its meeting of 5 October 2005, adopted the TA Plan 2006 circulated in document WT/COMTD/W/142. In this Plan, there were no regional activities planned specifically for customs valuation. Requests for technical assistance on customs valuation could be made at any time by individual Members and would be met by a national activity designed to meet the needs of the recipient. He added that Members were encouraged to inform the Committee of technical assistance and capacity building activities that they were providing on bilateral or other fronts. The Committee had not received any notifications of new activities. He looked forward to receiving them, either orally or in writing under this agenda item, in due course. He proposed that the Committee take note of this information.

3.5 The Committee took note of the information.

IV. TRANSITIONAL REVIEW IN ACCORDANCE WITH PARAGRAPH 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

4.1 The Chairman recalled that in accordance with paragraph 18 of the Protocol of Accession of the People's Republic of China, the Committee was to report to the Council for Trade in Goods on the outcome of this Review, which will then report to the General Council. The Committee conducted its third Transitional Review in 2004, where China explained the implementation of its commitments with regard to the Agreement on Customs Valuation and responded to the questions raised. He reminded Members that China was content to cross-reference between Notification of National Legislation and this item (TRM) so as to avoid duplication of work and to avoid repeating earlier questions or answers. He further noted that China had recently submitted an informational document after the agenda had been circulated. This information was contained in document G/VAL/W/151.

4.2 The representative of China stated that his delegation had submitted the information in G/VAL/W/151 on valuation matters pursuant to Annex IA of China's accession protocol. It offered a comprehensive overview of China's implementation efforts. However, he reiterated that customs valuation-related legislation in China, *inter alia*, the Regulations on Import and Export Tariffs which entered into force on 1 January 2004, were in full conformity with the relevant provisions governing the procedure and methodologies of valuation set forth in the Customs Valuation Agreement of the WTO. Further information on customs valuation matters was also available through the official website of China Customs General Administration at www.customs.gov.cn. China was willing to continue the exchange with Members on issues of common interest in this Committee. He expressed his appreciation to the Chairman and the Secretariat for the efficient work in preparing this session.

4.3 The representative of the United States stated that his delegation considered that the transitional review remained an important and useful mechanism, serving both the interests of China and the interests of other WTO Members, particularly in those areas where China continued to phase in its commitments. It provided Members with the opportunity to seek clarifications regarding China's policies and practices. It also allowed Members to convey to China their expectations with regard to China's efforts to implement its commitments. For China, in turn, it provided the opportunity to clarify its policies and practices, with the potential to prevent misunderstandings that

could lead to trade frictions. In other words, the TRM promoted the fundamental principle of transparency that underlay the WTO Agreement.

4.4 He noted that the US did not submit any written questions for China as part of this year's transitional review. However, the US would like to make a statement regarding China's implementation efforts. The US had been trying to gain a better understanding of China's regulatory measures, including the *Rules Regarding Determination on Customs Valuation of Imported and Exported Goods* (G/VAL/N/1/CHN/1), issued by the General Administration of Customs in December 2001, and the *Regulations Regarding Determination on Customs Value of Royalties and License Fees Related to the Imported Goods* (G/VAL/N/1/CHN/3), issued by the General Administration of Customs in May 2003. During the past year, the US continued to seek clarifications about this legislation in meetings of the Customs Valuation Committee, and his delegation appreciated the responses that it had received from China. It also appreciated the information submitted in G/VAL/W/151 which it had not had time to review yet.

4.5 The US had also been concerned about the implementation of the above measures by China's customs personnel. During meetings of the Committee over the past year, the US raised concerns about two types of practices that US exporters continued to encounter at many ports. First, even though China's regulatory measures provided that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, Chinese customs officials were reportedly in some cases still improperly using "reference pricing", usually resulting in a higher dutiable value. His delegation would review the new information in G/VAL/W/151 as it pertained to transactions pricing and valuation methods. Second, some of China's customs officials were reportedly not applying the provision in the 2002 regulations on conditions of sale as it related to software. These officials were still following China's pre-WTO accession practice of automatically adding royalty and software fees to the dutiable value, even though China's new regulations directed them to add those fees only if they were paid to the exporter as a condition of the particular sale in question.

4.6 His delegation urged China to continue to work to establish more uniformity in the administration of its customs valuation regime and in its adherence to WTO customs valuation rules. One final concern involved imports of high-value electronic media that were intended to be used after importation to produce multiple copies of products such as DVDs for wide distribution and sale. China's customs officials had been assessing duties based on the estimated value of the yet-to-be-produced copies. The US urged China to follow the same principle that applied to carrier media bearing software and instead assess duties based on the value of the underlying carrier medium.

4.7 The representative of China said that her delegation did not recall any agreements or consensus that would allow statements or written questions submitted under this agenda item to be automatically applied to the notification agenda item or vice-versa. China believed that it would not be appropriate to mix two agenda items given their different nature and practice. Furthermore China also urged Members not to repeat their questions under different agenda items for the sake of time constraint and resources. China's understanding in this Committee was that it was not necessary to repeat what had been discussed at previous meetings. One of the concerns raised by the US concerning the Chinese valuation system was already answered in the information circulated in G/VAL/W/151. The other concerns were also fully answered in document G/VAL/W/147 which were the responses from China to questions posed by the US under the notification of national legislation item. Her delegation did not wish to repeatedly discuss the same questions under different agenda items.

4.8 The Chairman proposed that the Committee take note of the statements made and that the Secretariat prepare a short factual report, under his responsibility, referring to the minutes of the meeting for further detail, to be sent to the CTG.

4.9 The Committee so agreed and the TRM was concluded.

V. REPORT OF THE COMMITTEE TO THE COUNCIL FOR TRADE IN GOODS

5.1 The Chairman drew Members' attention to document G/VAL/W/149 which contained the draft report of the Committee to the Council for Trade in Goods. He asked Members for any comments they had on the draft report.

5.2 The Chairman proposed that the Secretariat update the report to take into account this meeting and submit it to the Council for Trade in Goods.

5.3 It was so agreed.

VI. INDIA - INFORMATION ON CERTAIN ASPECTS OF THE EUROPEAN COMMUNITIES VALUATION POLICY

6.1 The Chairman recalled that at the last meeting of the Committee, it was agreed to revert to this item, pending reactions and further follow-up questions from Brazil and India, to the replies from the European Communities which were circulated in document G/VAL/W/131. These responses were to questions initially posed by Brazil in document G/VAL/W/122. At the last meeting, Brazil made an oral statement reacting to the replies from the EC. The EC, in turn, had responded to this statement. It was agreed that both parties would circulate their statements in writing, although neither had done so.

6.2 In the absence of questions or statements, the Chairman noted that this item had been on the agenda of the Committee's meetings for almost five years. There had been several exchanges of questions and answers both with the delegation of India as well as with the delegation of Brazil. At this stage, and given the lack of follow-up from the last meeting and the lack of substantive exchange of views at this meeting, he proposed that the parties consult bilaterally outside of the Committee and that the item be removed from the agenda.

6.3 It was so agreed.

VII. FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH AND ELEVENTH ANNUAL REVIEWS OF THE IMPLEMENTATION AND OPERATION OF THE CUSTOMS VALUATION AGREEMENT

7.1 The Chairman recalled that, at its last meeting, the Committee took note of the Fourth through Tenth Annual Reviews contained in documents G/VAL/W/29, G/VAL/W/43, G/VAL/W/77, G/VAL/W/89, G/VAL/W/109, G/VAL/W/124 and G/VAL/W/136. Today, the eleventh review was added to the list which had been circulated in document G/VAL/W/150. India stated that her capital was carefully reviewing this matter. It had been agreed to revert to this item at this meeting.

7.2 The representative of India informed Members that her delegation was still examining this matter and hoped to reply to the Committee by the next meeting.

7.3 The Committee took note of the statement made and agreed to revert to this matter at its next meeting.

VIII. PRESHIPMENT INSPECTION

8.1 The Chairman reminded Members that, according to Article 6 of the Agreement on PSI, the Ministerial Conference was obliged to review the provisions, implementation and operation of the Agreement "at the end of the second year from the date of entry into force of the WTO Agreement and

every three years thereafter..." The first review had been carried out from 1996 through 1999. He asked the Committee to consider, for discussion, two questions: whether it was desirable to carry out a second review of the Agreement, given the obligation under the Agreement and the fact that a second review called for every three years thereafter was overdue; and secondly if a review was desirable, in which body of the WTO should this review be conducted. He further recalled that, in reply to a question from the United States at a previous meeting about whether this Committee had a mandate to carry out this Review, it was noted that one of the recommendations of the Working Party was that "future monitoring of the Agreement [on PSI] should be undertaken initially by the Customs Valuation Committee, and that PSI should be a standing agenda item.". This recommendation was subsequently endorsed by the General Council. At its last meeting, he had encouraged delegations to read the relevant background documentation and to submit ideas to the Secretariat for circulation. None had been received. He also mentioned, for the information of the Committee, that the Independent Entity, established pursuant to Article 4 of the Agreement on Preshipment Inspection had received its first case for Review. This Review was on-going and for the first time was putting into effect the general Council Decision of 13 December 1995 establishing the Independent Entity.

8.2 The representative of the United States noted that her delegation continued to believe that the Review should be carried out in this Committee.

8.3 The Committee took note of the information and the statement and agreed to revert to this matter at its next meeting.

IX. PARAGRAPH 12 OF THE DOHA MINISTERIAL DECLARATION (WT/MIN(01)/DEC/1): IMPLEMENTATION-RELATED ISSUES

- *Paragraph 8.3 of document WT/MIN/(01)/17*

9.1 The Chairman recalled that the Committee's mandate, as set out in paragraph 8.3 of the Implementation Decision of the Doha Ministerial Declaration, was "to identify and assess practical means" to address concerns on the accuracy of declared values, including "the exchange of information on export values and to report to the General Council by the end of 2002 at the latest.". He further recalled that the General Council, at its meeting in December 2002, authorized the Committee to continue its work under the existing mandate and to report back to the General Council once its work had been completed. In the July 2004 Decision, the General Council instructed the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority. He informed the Committee that, as requested, he had undertaken informal contacts with some interested delegations. He reported that there had not been any further developments on the matter.

9.2 The representative of India thanked the Chairman for carrying out informal consultations to try to resolve or to further the progress on the implementation of paragraph 8.3. In order to try and find a way forward, he proposed to send to his capital the draft decision that had been circulated in 2003 for re-examination. He would report to the Committee at its next meeting on the outcome of this effort.

9.3 The Chairman proposed that the Committee take note of the statements made and agree to revert to this item at its next meeting.

9.4 It was so agreed.

X. OTHER BUSINESS

- *Date of the next meeting*

10.1 The Chairman informed the Committee that the date of the next meeting of the Committee could not be confirmed as yet. Members would be informed of the date in due course.

10.2 Before adjourning the meeting, the Chairman drew Members' attention to the Chairman's remarks at the meeting of the Trade Negotiations Committee last Thursday. With respect to implementation issues, he stated that he was undertaking a consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration with the assistance of a number of Chairs of the relevant WTO bodies. The five tirets related to the Agreement on Customs Valuation remained outstanding and fell into this category of issues. In his capacity of Friend of the TNC Chair, he informed Members that he did not plan to hold any new consultations on this matter. Nevertheless, he remained at the disposal of Members and if any wished to speak to him about these outstanding issues, they could contact him on an individual basis.

10.3 The meeting was adjourned.
