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Committee on Customs Valuation

MINUTES OF THE MEETING OF 18 OCTOBER 2007

Chairman: Joe McClintock (United Kingdom)

The agenda proposed for the meeting, circulated in WTO/AIR/3084 was adopted as follows:

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I. REPORT OF THE WORK OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1.1 The observer of the World Customs Organization reported on the activities of the Technical Committee during the interim between the 24th and 25th Sessions. This report is contained in Annex I.

1.2 The Committee took note of the report.

II. INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

A. NOTIFICATION OF NATIONAL LEGISLATION

2.1 The Chairman recalled that Article 22 of the Agreement on Customs Valuation (hereafter, the 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.

- *Egypt*

2.2 The Chairman drew Members' attention to the Egyptian notification of its legislation relevant to customs valuation in WTO document G/VAL/N/1/EGY/1. This contained the relevant customs valuation text of Articles 22 and 23 of Egypt's law no. 95 of 2005, amending Articles 22 and 23 of the Customs Law no. 66 of 1963, and Articles 14-35 of the Ministerial Decree no. 10 of 2006. He noted that Egypt had also notified the responses to the Checklist of Issues in document G/VAL/N/2/EGY/1. It had been agreed to revert to this matter at this meeting.

2.3 The representative of the European Communities said that his delegation did not have any problems with the Egyptian legislation. He, nevertheless, wished to point out to the Egyptian delegation that Article 15 of the Egyptian legislation appeared to be more restrictive than necessary. The text of the legislation actually built in extra conditions which were not actually required by the WTO Agreement. He suggested that the Egyptian delegation might wish to reflect on this point.

2.4 The representative of the United States posed some questions and comments to which she hoped the Egyptian delegation could respond at the next meeting. The first concerned the definitions of identical and similar goods. She asked if the definitions contained in Article 15 of the Agreement were to be found in the Egyptian legislation. Although Article 14 of the Ministerial Decree provided for the adjustments of Article 8 of the Agreement, there was no reference to apportioning the value of these adjustments. Were these provisions provided elsewhere? Concerning the right of appeal without penalty, her delegation asked if an importer or other person liable for the payment of the duty could appeal under a judicial authority and, if so, where was this provided in the Egyptian laws? Her delegation had a few additional questions concerning publication and transparency, the release of goods upon sufficient guarantee and questions, as well as some concerning the interpretative notes and used cars. Her delegation would provide these questions in writing to the Egyptian delegation.

She hoped that these questions would be reflected on the record and there could be further interaction at the next mtg.

2.5 The representative of Canada also asked if, under Article 11.2 of the Egyptian legislation, importers had the right to appeal to the judiciary. The Agreement stated that each Member shall provide for the right of appeal without penalty to the judicial authority. Article 32 of the Egyptian legislation made reference to an internal administrative appeal before restoring to arbitration. Her delegation sought clarification from Egypt on what was understood by arbitration.

2.6 The representative of Egypt said that her delegation looked forward to receiving the written questions in order to be able to answer them correctly and appropriately. Her delegation would discuss these matters on a bilateral basis and revert to the at the next meeting.

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

2.8 It was so agreed.

- *Saudi Arabia*

2.9 The Chairman drew Members' attention to the notification from Saudi Arabia consisting of the Common Customs Law of the Gulf Cooperation Council (GCC), its Rules of Implementation and Explanatory Notes, as well as the Ministerial Decision No. 1207 dated 24 June 2004 by the Ministry of Finance of the Kingdom of Saudi Arabia, on Value Determination of Customs Purposes. These were contained in document G/VAL/N/1/SAU/1. Saudi Arabia had also notified its responses to the Checklist of Issues in document G/VAL/N/2/SAU/1. It had been agreed to revert to this matter at this meeting.

2.10 The representative of the European Communities noted a trend among Members in providing not just the valuation portion of the customs legislation but the supporting legislation as well. This was useful but the Committee was not meant to comment on the supporting legislation. In the Saudi case, there was the Common Customs Law presented with a Ministerial Decision on Valuation Determination. However, the latter appeared more to be rules of implementation. The last such rule of implementation stated that an "importer may clear his goods after payment of the customs taxes "duties" under cash deposit, if the final determination of the value is prolonged". However, page 65 of the Law, stated that "The importer has the right to withdraw his goods upon submitting sufficient guarantee in the form of a bank or cash deposit, bank guarantee..." In other words, the guarantee did not have to be cash which was what the Agreement specified. The problem was that there were actually two different provisions for the release of goods in case of difficulty in determining the customs value. The Common Customs Law was also very brief when it spoke of the transaction value. However, in the latter part of the text, the full definition of the transaction value was provided. This showed that it was important to read the entire instrument. In its totality, as presented, his delegation concluded that all of the important provisions were indeed properly reflected in the text.

2.11 As the delegation of Saudi Arabia was not present at the meeting, and in light of the statement made, the Chairman proposed that the Committee take note of the statement and revert to this matter at its next meeting.

2.12 It was so agreed.

- *Tanzania*

2.13 The Chairman drew Members' attention to Tanzania's notification of its legislation implementing the Agreement which had been circulated in G/VAL/N/1/TZA/1. This document contained the Fourth Schedule of the East African Customs and Transfer Tax Management Act of 2001. Tanzania had also notified its responses to the Checklist of Issues in document G/VAL/N/2/TZA/1. It had been agreed to revert to this matter at this meeting.

2.14 The representative of the United States noted that her delegation had received many complaints about the Tanzanian customs valuation methodology for used clothing. Her delegation had been in contact with the Tanzanian delegation and understood that it was going to provide some reactions to these concerns. Her delegation had asked Tanzania to clarify how it determined the value of used clothing and how such valuation conformed with the Agreement. Her delegation continued to be willing to work informally with Tanzania on this matter especially given their LDC's status.

2.15 As the delegation of Tanzania was not present at the meeting, and in light of the statement made, the Chairman proposed that the Committee take note of the statement and revert to this matter at its next meeting.

2.16 It was so agreed.

- *Thailand*

2.17 The Chairman recalled that, at the last meeting, it had been agreed to revert to Thailand's notification in G/VAL/N/1/THA/1 and to the responses to the Checklist of Issues in G/VAL/N/2/THA/1. The United States had 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 of November 2004 and Thailand's responses were circulated in document G/VAL/W/158. Following the last meeting, the European Communities and the United States had circulated additional questions regarding Thailand's valuation of alcoholic beverages imports. These were contained in document G/VAL/W/160.

2.18 The representative of the United States had several issues to raise. She had some detailed follow-up questions regarding Thailand's responses in G/VAL/W/158. She would provide these to Thailand and hoped to receive responses by the next meeting. Despite Thailand's explanation and confirmation that it applied Article 13 of the Agreement related to the release of goods with sufficient guarantee, her delegation continued to have questions with Thailand's application of this provision. Furthermore, although Thailand stated that its regulations were fully committed to implementing the interpretative notes to Article 14, the fact remained that many provisions of the interpretative notes were not included in the regulations such as the definition of price actually paid or payable. Her delegation wished to recall that the interpretative notes were integral to the proper implementation of the Agreement and, her delegation believed that a statement in the regulations that the interpretative notes shall be read and applied in conjunction with the determination of customs values would help transparency. It would be preferable for Thailand to more formally incorporate or adopt the interpretative notes of the Agreement into its customs laws and regulations.

2.19 Her delegation also believed that it was important that Section 11-*bis* of the Thai Customs Act No. 2469 be repealed. It understood that the Royal Thai Customs had introduced such legislation and that these changes had been approved by the Cabinet and Council of State. Her delegation encouraged the Thai Parliament to pass legislation that would repeal reference pricing from the Thai Customs Laws and Regulations. Regarding the Committee Decision on the Treatment of Interest Charges Under Financing Arrangements, her delegation would be grateful if Thailand could provide a copy of customs regulation No. 48, BE2547. With respect to the responses provided by Thailand in document G/VAL/W/158, her delegation asked whether Thailand could provide an explanation of its approach

to customs valuation with respect to carrier media bearing software for data processing equipment. Her delegation hoped to have some reactions from Thailand by the next meeting. She would provide these questions in writing to the Committee as well as to Thailand.

2.20 She added that her delegation had additional concerns related to alcoholic beverages or distilled spirits. However, first she wished to hear from Thailand whether it intended to respond to the questions that her delegation and the EC had circulated in document G/VAL/W/160. She would then wished to take the floor again.

2.21 The representative of the European Communities also asked Thailand if it was prepared to respond to the questions circulated in G/VAL/W/160. These responses would help understanding of the actual application of the Thai legislation. These were not academic concerns but were important to importers and exporters. The questions were aimed at understanding how exactly the Thai customs was applying its legislation and whether this application was in line with the WTO rules. There seemed to be trade between related parties which appeared to cause application of secondary valuation methods. Without going into a detailed explanation of the deductive method, his delegation had a keen interest in making sure that it was applied the way it was meant. His delegation would appreciate receiving the additional information it had requested in order to be confident that the rules were being applied in a way that they were meant to work. When importers and exporters had difficulties and the customs value could not be immediately determined, an administrative process would be initiated and the Agreement was very clear that trade must not be disrupted and that goods be cleared, subject to the necessary guarantee being provided. The Agreement was also clear that the guarantee did not have to be in cash. His delegation did not add questions at present, but urged Thailand to respond to the questions previously posed.

2.22 The representative of Thailand confirmed that her delegation had not received detailed responses from the authorities concerned in Bangkok. She hoped that the responses would come and that her delegation could circulate them before the next meeting. She also hoped that the US would provide its follow-up questions in writing so that she could pass these on to her capital for responses for the next meeting.

2.23 The representative of the United States explained that her delegation, with the EC, had submitted the questions in document G/VAL/W/160 so that Members could better understand Thailand's customs approach which, to her delegation, appeared to be an aggressive use of the deductive value methodology. Her delegation had expected responses at this meeting especially since it would be meeting to bilaterally try to resolve the disagreement. She emphasized the seriousness of her delegation's concerns and its disappointment that responses had not been forthcoming. Such responses could have provided helpful information on the valuation of imported spirits; it was unfortunate that the US and other Members had been unable to obtain this information. This delay reflects a troubling trend. She recalled that it had previously taken Thailand nearly 2 years to respond to the last series of questions from the US. This undermined the work of the Committee and the US and other interested Members rightly expected more timely responses to Members' questions. The United States Trade Representative, Ambassador Schwab, was concerned about the consistency of Thailand's customs valuation of spirits, and perhaps other products, with its WTO obligations. In connection with these concerns, and in an effort to fully understand Thailand's customs valuation practices, the US urged Thailand to respond without further delay to the questions in G/VAL/W/160. Her delegation was also seeking responses to additional questions it had provided to Thailand.

2.24 The representative of the Philippines shared the concerns faced by exporters of alcoholic beverages into Thailand. Philippine exporters had also raised the same serious problems with Thai customs concerning the use of the deductive value methodology. They considered this method in breach of Thailand's obligations under the Agreement. The questions would bring to light important systemic issues related to the deductive value method that applied, not only to alcoholic beverages,

but also to potentially all imports into Thailand including cigarettes. The absence of a response by Thailand to the written questions circulated by the US and the EC was indeed troubling. Document G/VAL/W/160 was circulated on 11 June 2007. His delegation believed that Thailand had had adequate time to respond to the 21 written questions. These responses could have provided helpful information towards resolving the issues, and his delegation urged Thailand to reply to the questions in G/VAL/W/160 without further delay and preferably in writing.

2.25 With respect to cigarettes, he informed the Committee that his delegation had submitted four written questions to Thailand on the valuation of cigarettes. These questions essentially codified the points his delegation had made at the Committee's meeting in May 2007 which were reflected in the minutes of that meeting (G/VAL/M/43). A copy of these questions were also provided to the EC, US, Japan and Switzerland for information. The Philippines did not at that time request the circulation of the questions as a WTO document. He asked, through the Chairman, whether Thailand had replies to these questions at this meeting.

2.26 The representative of Switzerland supported the concern raised by the Philippines. The issue of the valuation of cigarettes by Thailand was not new as it dated to 2006 according to the minutes of this meeting. At the May meeting, Switzerland expressed its systemic concerns regarding Thailand's valuation practices on cigarettes which it considered not to be in line with the provisions of the Agreement. It was unfortunate that Thailand did not respond to the questions from the delegation of the Philippines. The use of the transaction value to determine the customs value was the primary method to be used according to the Agreement. It was difficult to understand why Thailand suddenly ceased to accept the transaction value as the basis for determining the customs value of imported cigarettes. In particular, her delegation was interested to hear why Thailand still did not accept the transaction value, even though the values had been tested by the importer. In addition, it seemed that a new law would affect the retail price of cigarettes and that the new regulation could affect foreign brands differently from domestic ones. This would, in her delegation's view, be problematic as it would infringe GATT Article III by discriminating against imported products. In summary, her delegation considered the matter unresolved, reiterated its systemic concerns, and would welcome early responses from the Thai delegation.

2.27 The representative of the United States shared the concerns mentioned by the Philippines and supported by Switzerland. The problems mentioned by the Philippines, combined with her delegation's concerns on the valuation of spirits, pointed to the possibility of systemic problems with Thailand's customs valuation practices even going beyond these specific products. The United States urged the Thai Government to promptly respond to the questions from the Philippines and the US and the EC and requested that this matter be on the agenda for the next meeting of the Committee. She also requested that and response from Thailand to the Philippines be made available to the Committee as well.

2.28 The representative of Thailand had received information from Bangkok that Thai customs had not announced the value of imported Philippine cigarettes since March 2007. Since then, Thai customs had not exercised any currency values to the cigarettes in question. With such progress, her delegation considered that it would be difficult to answer the questions from the Philippines. The matter was now under appeal. Her delegation would, however, try to follow-up with customs to reply to the questions in due course. However, her delegation could assure the Philippines, with regard to the last question regarding the domestic taxation in Thailand, that her Government did not apply domestic taxation in a way to discriminate against either domestic or imported cigarettes. Therefore she confirmed that domestic taxation applied uniformly to cigarettes and did not discriminate against imported cigarettes.

2.29 The representative of the Philippines would reflect on Thailand's reply to its last question and reserved the right to come back to it if necessary. His delegation was, however, dismayed that

Thailand had chosen not to reply to the other three valuation-related questions, despite the fact that the questions were provided in writing to Thailand one month earlier than the US-EC questions on alcoholic beverages. His delegation was also extremely disappointed that this matter had remained on the agenda of the Committee for over a year. His delegation would now transmit to the Secretariat the questions related to cigarette valuation that had been submitted bilaterally to Thailand last May and request that they be circulated immediately as an official WTO document. His delegation expected the Thai representative to convey to the Thai Customs Authorities the significance of replying without further delay to questions raised in the Committee.

2.30 The representative of Switzerland did not consider that the Thai response to the guarantee values responded to the concerns it had raised in its earlier intervention. This was especially so since this appeal was still not settled and it seemed that there was even further delay in dealing with this appeal. Her delegation maintained its concerns.

2.31 The representative of Canada supported those delegations in the Committee which raised concerns about the lack of timely responses to questions posed. Thailand had before it now outstanding questions related to 2 areas. This was a concern and her delegation encouraged Thailand to come to the next meeting with full responses.

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

2.33 It was so agreed.

B. NOTIFICATIONS MADE BY DEVELOPING COUNTRY MEMBERS

2.34 The Chairman recalled that under this agenda item, the Committee reviewed the special and differential treatment provisions maintained by Members through the document series G/VAL/2 and Rev.1 through 24. Since the last meeting, there had been no changes to this situation and, therefore, no revision to the document series had been produced. He proposed that the Committee take note of this information and agree that the Secretariat update this document only when and if it received a new notification or the situation with respect to the invocation of the special and differential treatment provisions changed.

2.35 The Committee so agreed.

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

3.1 The Chairman recalled that under this agenda item, the Committee noted any new notifications of application of the Decisions of the Committee on Customs Valuation on, first, the "Treatment of Interest Charges in the Customs Value of Imported Goods" and, second, the "Valuation of Carrier Media Bearing Software for Data Processing Equipment", both adopted by the Committee and contained in document G/VAL/5. Since the last meeting, there had been no such notifications and, therefore, the document had not been updated. He urged Members to notify the Committee, as necessary, on their practices regarding these two Decisions. He proposed that the Committee take note of this information.

3.2 It was so agreed.

IV. TECHNICAL ASSISTANCE

A. INFORMATION ON TECHNICAL ASSISTANCE

4.1 The Chairman recalled that, under this item, the Secretariat informed Members of the technical assistance activities carried out under the auspices of the WCO. Document G/VAL/8/Add.18 contained the most recent information, which was to be reported to the 25th Session of the Technical Committee on Customs Valuation, on technical assistance activities carried out by the WCO Secretariat and WCO Members.

B. ARTICLE 20.3 TECHNICAL ASSISTANCE AND TRADE-RELATED TECHNICAL ASSISTANCE

4.2 The Chairman recalled 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.

4.3. The Committee noted previously that customs valuation technical assistance was now incorporated in the WTO-wide technical assistance program. The 2007 Plan contained one sub-regional activity on customs valuation which was held in the Maldives in September 2007. 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. This year, one such national activity was carried out in Belize. At present, work was underway on the biennial 2008-2009 Technical Assistance Plan. Members were encouraged to inform the Committee of technical assistance and capacity building activities that had provided on bilateral or other fronts.

4.4 The representative of the European Communities believed that, increasingly, technical assistance was being packaged in larger programs which rendered it difficult to separate out technical assistance on valuation, *per se*. However, technical assistance was still quite important for valuation because not insubstantial number of customs administrations had demonstrated that they had some way to go in fully applying the Agreement. While there was certainly good will and resources available for technical assistance in general, the provision of technical assistance could benefit from a more proactive approach in recipient countries formulating and requesting demands to identify their needs. Document G/VAL/W/82/Rev.1 showed that Japan had provided a number of courses on valuation and post-clearance. He thanked Japan, not only for provided technical assistance, (lots of other countries did as well) but by identifying the special skill of valuation audit. It was now accepted by the wider community of customs administrations that audits were important to fully apply the Agreement. It was the way to assure customs administrations against fraud. His delegation hoped to see more of this type of targeted technical assistance delivered in the future, which of course, should always be carried out in partnership with the recipient country.

4.5 The Chairman proposed that the Committee take note of the statements made.

4.6 It was so agreed.

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

5.1 The Chairman informed Members 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. The CTG would then report to the General Council. The Committee conducted its fifth Transitional Review in 2006, where China explained the implementation of its commitments with regard to the Agreement on Customs Valuation and

responded to the questions raised. China had recently submitted an informational document which was circulated in document G/VAL/W/163.

5.2 The representative of China introduced his delegation's submission. It provided information that was required under Annex I.A of China's Protocol of Accession for the purpose of the sixth TRM in this Committee. It provided a comprehensive overview of China's implementation efforts. Further information on customs valuation could be obtained from the Official website of the Chinese General Custom Administration at www.customs.gov.cn. The channels for mutual information exchange with Members on issues of common interest was always open.

5.3 The representative of the United States had not yet seen the Chinese document so did not have any reactions to it. She provided her delegation's statement, rather than pose questions, under this TRM. This was the Committee's sixth annual transitional review of China's efforts to implement the commitments that it had made in its Protocol of Accession to the WTO. The US continued to believe that the transitional review remained an important and useful mechanism, serving both the interests of China and the interest of other WTO Members. It provided Members with the opportunity to seek clarifications regarding China's laws and regulations, while also allowing Members to convey their views of China's implementation of its commitments. China, in turn had the opportunity to clarify its laws and regulations, with the potential to prevent misunderstandings that could lead to trade frictions. The US did not submit any written questions for China as part of this year's transitional review. However, the US wished to make a statement regarding China's implementation of its WTO obligations.

5.4 The United States continued to be concerned about the inconsistent application of China's regulatory measures in the area of customs valuation, 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 Imported Goods* (G/VAL/N/1/CHN/3), issued by the General Administration of Customs in May 2003. China had still not uniformly implemented these measures. US and other exporters continued to report that they were encountering valuation problems at many of Chinese ports. For example, even though China's measures provided that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials were still improperly using "reference pricing", which usually resulted in a higher dutiable value. Wood products provided one example of imports that were often subjected to reference pricing. In addition, some of China's customs officials were reportedly not applying the regulatory provision on conditions of sale as it related to software. These officials were still following China's pre-WTO accession approach to 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. A separate concern for the US 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. These problems were not new. Her delegation had raised them in the past in this Committee. Her 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.

5.5 The representative of China said that his delegation had not received the statement of the United States in advance either. He understood that under the TRM, the US had no obligation to provide anything in written form in advance. His delegation appreciated the message put forward at this meeting and he would try to clarify after the meeting the nature of each and every concern noted by the United States so as to communicate them to his capital for further discussion of these issues.

5.6 The Chairman proposed that the Committee take note of the statements made and that the Secretariat prepare a short, factual report that he would submit, on behalf of the Committee, to the Council for Trade in Goods. The report would refer to the minutes from today's meeting

5.7 The Committee so agreed.

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

6.1 The Chairman drew Members' attention to document G/VAL/W/161/Rev.1 which contained the draft report of the Committee to the Council for Trade in Goods. He asked if any Members had any comments on any aspect of the draft report.

6.2 In the absence of comments, he proposed that the Secretariat update the document to include the present meeting. She would then fax the revised report to Members for any comments within five days. The final version would be submitted to the Council for Trade in Goods.

6.3 The Committee so agreed.

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

7.1 The Chairman recalled that at the last meeting, the Committee took note of the nine documents containing the Fourth through Twelfth Annual Reviews 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, G/VAL/W/136, G/VAL/W/150, G/AL/W/156 and Corr.1. Today, the thirteenth annual review, circulated in G/VAL/W/162, should be added to this list. He asked India to update the Committee on any developments to this matter.

7.2 The representative of India stated that his delegation was continuing its review of its reservation which had taken longer than expected. He hoped to revert to the Committee shortly on the matter.

7.3 The Chairman proposed that the Committee take note of the statement made and revert to this matter at the next meeting.

7.4 The Committee so agreed.

VIII. PRESHIPMENT INSPECTION

8.1 The Chairman asked if any Member wished to take the floor on this item, which was a standing item on the Committee's agenda.

8.2 The representative of the United States expressed her delegation's appreciation for the report G/VAL/W/63/Rev.9. She informed Members that her delegation continued to watch the PSI situation closely and took note of the recent shift in direction terms of PSI services. Her delegation hoped that this would be the beginning of a positive trend and it would continue to monitor the situation.

8.3 The Chairman proposed that the Committee take note of the statement made.

8.4 The Committee so agreed.

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

A. PARAGRAPH 8.3 OF DOCUMENT WT/MIN/(01)/17

9.1 The Chairman recalled that the General Council, at its meeting in December 2002, authorized the Committee to continue its work under the existing mandate in paragraph 8.3 of the Decision on Implementation-Related Issues and Concerns, and to report back to the General Council once its work had been completed. It was agreed at the last meeting to revert to this matter at this meeting. It was also agreed that he would hold informal consultations on this matter in the interim, which he had done with some interested Members on 24 September 2007. At this consultation, India explained that it would be putting forward a new submission on the matter before this meeting. Other Members expressed their willingness to examine this new submission.

9.2 India's paper had been received and was circulated in Job(07)/153. He noted two small corrections which India had requested that he read out. The first was to be made in the last line of the second paragraph of the second bullet point – the words "information and" should be added before the word "documents." Also, in the third line of the third bullet point, the word "provided" should be added after the word "documents." He understood that Members would need more time to study the recently circulated Indian submission. However, Members could present initial comments or general statements if they wished.

9.3 The representative of India recalled that his delegation had made a proposal to this Committee (G/VAL/W/102) to operationalize the mandate contained in Paragraph 8.3 of the implementation issues in the Doha Ministerial Declaration. The objective was to provide for a mechanism for the exchange of information regarding customs value. As had been indicated in paragraph 8.3 itself, the intention of this paragraph was to strengthen cooperation between the Customs administrations of Members in order to prevent fraud. These concerns remained even with the unilateral reductions of applied tariffs since made by Members, particularly developing countries.

9.4 This proposal had been variously discussed in this Committee. Some of the suggestions made by Members were that the Committee could explore bilateral agreements to facilitate such exchanges or that the exchange mechanism should, at least to start with, be non-binding. It was also suggested that this should not be a substitute for Members improving their own Customs Administrations. His delegation's experience with the voluntary exchange of information or with using bilateral agreements to facilitate such exchange was not particularly encouraging. It also believed that there was nothing in Paragraph 8.3 which suggested that the mechanism should be voluntary. However, as an attempt to address the issues raised, his delegation suggested some measures which would have the effect of circumscribing any request. These were not particularly novel and some Members might have seen them elsewhere. The proposals made were intended to ensure that any such request for information should not be made in a routine manner and should follow after appropriate internal verification. Members could also be assured that they would only be expected to provide information to the extent available within the Customs Administration, and that they would not be expected to make any enquiries. Such a mechanism would also not require Members to modify their existing procedures or documentation. In addition, an upper limit to the number of requests that could be made in a calendar year was provided as was an outer time limit beyond which no requests would be made regarding any transaction. Having said that, his delegation remained open to discussion and suggestions from Members. His delegation proposed to continue such discussion in order to arrive at language that suitably addressed Members' concerns and achieved the intended objective of the mandate.

9.5 The representative of Canada said that her delegation would need to review the document further, but she would present some preliminary reactions. Canada had noted that the points raised in India's document largely mirrored the revised proposal in the trade facilitation negotiating group,

document TN/TF/W/123/Rev.1. It was slightly confusing that the matter was being addressed in two fora and there was a lot of similarity. Decision 8.3 clearly stated that where information exchange was sought, the exporting member "shall offer cooperation and assistance consistent with its domestic laws and procedures". This suggested that some Members would have difficulties in assisting other Members and suggested that paragraph 8.3 was not binding. For Canada, this aspect must be taken into account as different Members had different domestic requirements. Therefore, any solution would have to provide a mechanism for the requested Member to decline such a request, should concerns about use of information, confidentiality or consistency with their domestic laws remain. Her delegation did not consider that the proposal, as currently drafted, provided for this. Her delegation was open to discuss suggestions with India. Her delegation also pointed out on-going, related work elsewhere. At the last session of the Technical Committee on Customs Valuation in May 2007, an update to the Customs Control Handbook was completed. This provided further guidance to administrations in dealing with situations where they doubted the truth or accuracy of the values declared. Her delegation would like this information to be taken into account.

9.6 The representative of the European Communities also noted the similarity between the new Indian submission and the one presented in the trade facilitation negotiations. His delegation did not see how parallel discussions could be carried out in the two bodies. He noted that a lot of good work had been carried out in the past leading to various proposals by Members in the Committee. It was still the case that no single proposal found full agreement. His delegation would read the paper, but bearing in mind that there was an active dialogue on the matter going on elsewhere.

9.7 The representative of Japan would study the proposal and come back to it with comments. Noting the similarity with work going on elsewhere, he asked India to clarify the relationship between this latest submission and the proposal submitted in the other body.

9.8 The representative of Brazil said that his delegation considered that the new version presented by India included elements to solve the concerns raised by Members on the previous version. Brazil could support the new proposal. She added that it didn't matter where the issue was being discussed. The important idea was that this issue must be discussed and solved.

9.9 The representative of Hong Kong, China also noted the similarity between this submission and the work in the negotiating group on trade facilitation. His delegation would continue to engage with India and other interested Members on this issue.

9.10 The representative of the United States said that her delegation only just received the paper and needed more time to study it as well as the question of whether this Committee was the best venue to discuss this proposal. She noted that the paper was similar to one presented in another WTO body. Her delegation's position had not changed on the interpretation of the mandate in paragraph 8.3, and it did not share India's views on what the Committee was to do pursuant to the mandate in paragraph 8.3. Her delegation understood that India had an interest in pursuing a binding set of disciplines on this subject. However, her delegation did not believe that the mandate required the Committee to pursue something binding on the matter.

9.11 The representative of Singapore also would need time to study the paper. As a preliminary statement, her delegation did not see the current mandate as providing for any binding mechanism. Her delegation was prepared to discuss the matter further and would be willing to engage in further consultations if necessary.

9.12 The representative of Switzerland noted the similar discussions going on in other fora and asked India how they intended to proceed with this matter in different committees.

9.13 The representative of Thailand said that his delegation would study the paper in its capital and would be ready to engage in any discussions with India and others interested and concerned Members on this issue.

9.14 The representative of Chinese Taipei agreed that the exchange of information on customs valuation could be useful in certain cases. However, the value declared on the export declarations may not be reliable because there could many motivations for the exporter to manipulate the value. His delegation believed that careful study was necessary and would come back to this question later.

9.15 The representative of Australia said that her delegation also needed more time to study the proposal. She recalled that the matters under discussion had an extensive background which should be noted. Her delegation was willing to engage in any further discussions on this matter.

9.16 The representative of India said that his delegation considered that what happened in other bodies of the WTO should not be of concern to this Committee which was charged with the mandate of Paragraph 8.3. It would have to find a way to operationalize that mandate. While there could be different interpretations to this mandate, and his delegation was willing to discuss this with other Members, this Committee should not be distracted by the work of other WTO bodies. Secondly, his delegation believed that the point raised by Chinese Taipei about the reliability of the value in export declarations needed to be addressed in some way. His delegation would discuss this with Chinese Taipei and other delegations interested in building in language that addressed this concern. His delegation hoped to continue this discussion with other interested Members and looked forward to receiving more detailed responses so that it could further develop the language which would address Members' concerns and be consistent with the mandate.

9.17 The Chairman proposed that the Committee take note of the statements made and revert to this matter at its next meeting. In the meantime, he would be available for informal consultations, if necessary.

9.18 The Committee so agreed.

X. OTHER BUSINESS

(i) Indonesia

10.1 The Chairman invited the United States to make its statement under the first item it requested, namely, Indonesia.

10.2 The representative of the United States understood that Indonesia was currently determining the duties on imported goods on the basis of a price database that incorporated, among other things, an established risk criterion for importers. She asked if Indonesia could provide further clarification on its current valuation methods. Specifically, i) how was the risk level of an importer determined; ii) Were importers considered "high risk" alerted of their status; iii) once an importer had been labeled with a particular risk level, how were the corresponding prices assessed; and iv) was the check-price database publicly available? She also asked Indonesia to clarify how the use of importer risk levels and reference pricing in determining the customs value of imported goods was consistent with Article 7.2 of the GATT and Article 1.1 of the Customs Valuation Agreement?

10.2 Her delegation had learned that Indonesia may be revising its customs valuation laws and regulations to more closely follow the hierarchy of valuation methodologies set forth in the Customs Valuation Agreement. This would be a welcome development. In this regard, her delegation hoped that any revisions to Indonesia's customs laws and regulations would include the elimination of any type of reference pricing or pricing based on risk. While Indonesia was concerned with under-

invoicing practices, her delegation urged Indonesia to adopt a valuation system that was consistent with the Customs Valuation Agreement, which would lead to more transparent and less trade-distorting methods of valuation.

(ii) Nigeria Reference Price Regimes

10.3 The Chairman requested the United States to make its statement under the second item it had requested under Other Business, namely Nigeria Reference Price Regimes.

10.4 The representative of the United States said that her delegation remained concerned over Nigeria's use of reference prices to assess duties on imports of rice instead of using the actual import value. This practice, on its face, raised serious doubts as to its consistency with Nigeria's WTO commitments under GATT Article 7.2 and Article 1.1 of the Customs Valuation Agreement. She asked Nigeria to explain its reference price regime. Specifically, i) how were import tariffs on rice currently determined; ii) how were reference prices calculated; What triggered revisions and how often did these take place; iii) once determined or revised, were reference prices published and made available to the public; if so, how; if not, what was the justification for not making the prices available to the public? She added that under the WTO Customs Valuation Agreement, import values shall be based on the actual "transaction value" of the good. Nigeria was obligated to comply with the Agreement. Could Nigeria explain how its use of reference pricing was compatible with the Agreement? Finally, her delegation had learned that Nigeria had agreed to discuss the issue bilaterally and it looked forward to working with constructively with Nigeria in addressing this issue.

10.5 The Chairman proposed that the Committee take note of the statements made.

10.6 The Committee so agreed.

(iii) Date of the next meeting

10.7 The Chairman informed Members that the next meeting of the Committee was scheduled for 6 May 2008.

10.8 The meeting was adjourned.

Annex I

**Report to the Committee on Customs Valuation on the work of the Technical Committee on
Customs Valuation and on technical assistance.**

(October, 2007)

Since the last meeting of the Committee on Customs Valuation, the Technical Committee on Customs Valuation (Technical Committee) did not hold any meeting. It will hold its 25th Session from 22 to 25th October at the WCO Headquarters in Brussels.

The report of its 24th Session and WCO Secretariat's programme of technical assistance in the field of Customs valuation has already been presented to the Committee in May 2007.

Administrative Matters Related to the Application of the Agreement

The Council at its 109/110th Sessions in June 2007 adopted the revised Valuation Control Handbook which had been approved by the Technical Committee at its 24th Session and the same is under publication. The Council also adopted the Commentary 22.1 on "Sold for export" which had been approved by the Technical Committee at its 24th Session.

Second Joint WCO-OECD Conference on Transfer Pricing

The Second Joint WCO-OECD Conference on Transfer Pricing was held at the WCO on the 22nd and 23rd May 2007. It was attended by over 270 delegates from the WTO, WCO, OECD, Customs and Tax Administrations and the Private Sector. The said Conference dealt with issues relating to differences and similarities of Valuation rules of Transfer Pricing, Customs and VAT and the desirability and feasibility of convergence. It also discussed specific issues of valuing intangibles and exchange of information. The Conference recommended encouraging dialogue and cooperation between the Customs administrations, Tax authorities and the business community and suggested setting up of a Focus Group as a way forward.

Technical Assistance and Capacity Building.

Since our last report to the Committee on Customs Valuation, the WCO Secretariat conducted one regional seminar on implementation of the WTO Agreement for the countries of the Asia/Pacific region in Shanghai from 4th to 8th June 2007.

The WCO is organizing the 46th Fellowship Programme for English-speaking officers of Customs from 13 countries from the 1st to 26th October at the WCO Headquarters.

25th Session of the Technical Committee

At its 25th Session, the Technical Committee will continue to consider the technical questions of Royalties and License Fees submitted by Brazil, Canada, Colombia and Japan.

The Technical Committee will also discuss the following technical issues:

- Customs Valuation of imported electricity (Brazil)

- Customs Valuation treatment of business design documentation (Kazakhstan)
- The issue of “Group under invoicing” (Pakistan)
- Valuation of perfume testers (Mauritius)
- Valuation of cinematographic films (Mauritius)

Besides the technical issues, it will also deliberate upon the preparations for the Theme Meeting in spring 2008 and the Focus Group on Transfer Pricing meeting scheduled for 26th October.

Focus Group on Transfer Pricing

As a sequel to the recommendation of the Second Joint WCO-OECD Conference on Transfer Pricing in May 2007, a Focus Group on Transfer Pricing has been set up with representatives of the WTO, WCO, OECD, Customs, Tax Administrations and the Private Sector. It is scheduled to have its first meeting on 26th October 2007 in Brussels. It will deliberate on issues of convergence between Transfer Pricing and Customs valuation, Intangibles and greater certainty for business.

Private Sector Seminar on Transfer Pricing

The WCO will hold a Seminar for the private sector on 13th-14th November 2007 on Customs Valuation and Transfer Pricing at the WCO Headquarters.
