

出國報告（出國類別：出席國際會議）

出席世界關務組織（WCO）  
第 45 屆關稅估價技術委員會  
會議報告

服務機關：財政部關務署

姓名職稱：溫武彥稽核

派赴地區：比利時布魯塞爾

出國期間：106 年 10 月 21 日至 29 日

報告日期：107 年 1 月

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## 壹、 會議概況

一、 會議時間：106 年 10 月 23 日至 25 日

二、 會議地點：比利時布魯塞爾世界關務組織（WCO）總部

三、 主席：Mr. J. BIRKHOFF（荷蘭籍）

四、 出席人員：

計有 64 個世界貿易組織（WTO）/世界關務組織會員國派代表出席；以觀察員身份與會者包括：伊朗伊斯蘭共和國（Islamic Republic of Iran）、巴勒斯坦（Palestine）與塞爾維亞（Serbi）海關、世界貿易組織、經濟合作暨發展組織（Organization for Economic Cooperation and Development, OECD）、國際商會（International Chamber of Commerce, ICC），出席人員名單詳文件 VT1117E1b 附錄 B。

五、 我國與會代表：

財政部關務署稽核溫武彥

## 貳、 會議議程

一、 確認議程（Adoption of Agenda）

（一） 議程草案（Provisional Agenda）

（二） 議程安排（Suggested Programme）

二、 確認第 44 屆技術委員會報告（Adoption of the Technical Committee's 44<sup>th</sup> Session Report）

三、 報告休會期間進展（Reports on intersessional developments）

（一） 世界關務組織稅則暨貿易事務處處長報告（Director's report）

（二） 世界貿易組織關稅估價委員會報告（WTO Committee on Customs

Valuation report)

四、 技術協助、能力建構及當前議題 (Technical assistance, capacity building and current issues)

- (一) 秘書處及會員國辦理技術協助/能力建構報告 (Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members)
- (二) 會員國採行世界貿易組織估價協定之進展報告 (Progress report on Members' application of the WTO Valuation Agreement)
- (三) 第3階段稅收課徵套案 (Revenue Package Phase III)

五、 特殊技術性問題 (Specific technical questions)

- (一) 在關稅估價協定與移轉訂價下之關係人交易 - 基於再售價格法之案例研究草案 (Related party transactions under the Agreement and Transfer Pricing - draft case study based on resale price method): 由中國大陸提交
- (二) 基於關稅估價協定第1條2(a)調查當時交易情況 - 在不同國家生產的產品 - 之研究案例草案 (Examining the circumstances surrounding the sale under the provisions of Article 1.2 (a) - goods produced in different countries): 由厄瓜多 (Ecuador) 提交
- (三) 在「快閃銷售」購買之進口貨物估價方式 (Valuation of imported goods purchased in “Flash sales”): 由模里西斯 (Mauritius) 提交
- (四) 基於關稅估價協定第1條2(a), 使用移轉訂價文件檢視關係人交易 (Use of Transfer Pricing documentation to examine related party transactions according to Article 1.2 (a) of the

Agreement)：由烏拉圭 (Uruguay) 提交

六、 休會期間所提問題 (Questions raised during the intersession)

(一) 基於關稅估價協定第 8 條 1(c)之專利權與權利金(Royalties and licence fees under Article 8.1 (c) of the Agreement)：由烏拉圭要求

(二) 基於關稅估價協定第 8 條 1(b)解析價格調整(Interpretation of the value of adjustments under Article 8.1 (b) of the Agreement)：由烏拉圭要求

(三) 基於關稅估價協定第 1 條之銷售出口到進口國 (Sale for Export to the Country of Importation under Article 1)：由加拿大 (Canada) 要求

七、 其他事項 (Other business)

八、 未來工作計畫 (Programme of future work)

九、 選舉 (Elections)

十、 下屆會期 (Dates of next meeting)

## 參、 議程摘要及討論

### 序言：

關稅估價技術委員會第 45 屆會議在布魯塞爾世界關務組織總部舉行，主席 Mr. J. BIRKHOFF 首先表示議程內容安排，本次會議將於 2017 年 10 月 23 日至 26 日間舉行，並歡迎所有的與會者，尤其是第一次參與本會的代表，冀為大會提供更多的想法與建議。

稅則暨貿易事務處處長劉平（Mr. Ping LIU）代表秘書處歡迎所有的與會者，特別是第一次參與本會的代表與首次擔任主席的 Mr. J. BIRKHOFF。

## 議程一：確認議程

### (A) 暫定議程 (Provisional Agenda, 文件 VT1099E1c)

議程	內容
I	<p>確認議程</p> <p>(a) 暫定議程</p> <p>(b) 建議日程</p>
II	第 44 屆技術委員會會議報告確認
III	<p>休會期間進展報告</p> <p>(a) 處長報告</p> <p>(b) 世界貿易組織關稅估價委員會報告</p>
IV	<p>技術協助/能力建構及當前議題</p> <p>(a) 秘書處及會員國報告辦理技術協助/能力建構活動</p> <p>(b) 開發中國家採行世界貿易組織估價協定之進展報告</p> <p>(c) 第三階段稅收課徵套案</p>
V	<p>特殊技術性問題</p> <p>(a) 在關稅估價協定與移轉訂價下之關係人交易 - 基於再售價格法之案例研究草案：由中國大陸提交</p> <p>(b) 基於關稅估價協定第 1 條 2(a) 調查當時交易情況 - 在不同國家生產的產品 - 之研究案例草案：由厄瓜多提交</p> <p>(c) 在「快閃銷售」購買之進口貨物估價方式：由模里西斯提交</p> <p>(d) 基於關稅估價協定第 1 條 2(a)，使用移轉訂價文件檢視關係人交易：由烏拉圭提交</p>
VI	<p>休會期間所提出問題</p> <p>(a) 基於關稅估價協定第 8 條 1(c) 之專利權與權利金：由烏拉圭要求</p> <p>(b) 基於關稅估價協定第 8 條 1(b) 解析價格調整：由烏拉圭要求</p>

議程	內容
	(c) 基於關稅估價協定第 1 條之銷售出口到進口國：由加拿大要求
VII	其他事項
VIII	未來工作計畫
IX	下次會議日期

### **討論摘要：**

主席總結議程草案（文件 VT1099E1c），並詢問與會者是否希望增加其他議題或事項。

歐盟代表表示鑒於移轉訂價等議題之討論，建議技術委員會於VII.其他事項對於特殊技術性問題之優先順序進行意見交換。主席請歐盟代表提出更具體之討論議題，俾便於VII.其他事項討論。

烏拉圭代表表示各國代表不遠千里而來，希望能夠與各國專家代表在關稅估價領域交換意見，原本各國代表預留了 5 天的時間進行討論，但如今根據建議日程，整個會議極有可能在週四上午即結束，建議大會利用週四剩餘的時間討論VI.休會期間所提出問題，包括了由烏拉圭與加拿大所提出的 3 項議題。主席表示由於所以日程均已於事前討論並排定，建議仍按原建議日程進行。

### **結論：**

議程草案及歐盟代表提出之「VII.其他事項：意見交換」，均獲與會代表同意。

(B) 建議日程（Suggested Programme，文件 VT1100E1a）

日期	議程
2017/10/23 星期一	I . 確認議程 (a) 暫定議程 (b) 建議日程 II . 確認第 44 屆技術委員會會議報告 III . 休會期間進展報告



日期	議程
	<p>(a) 處長報告</p> <p>IV. 技術協助/能力建構及當前議題</p> <p>(a) 秘書處及會員國報告辦理技術協助/能力建構活動</p> <p>(b) 開發中國家採行世界貿易組織估價協定之進展報告</p> <p>(c) 第三階段稅收課徵套案</p> <p>V. 特殊技術性問題</p> <p>(a) 在關稅估價協定與移轉訂價下之關係人交易 - 基於再售價格法之案例研究草案：由中國大陸提交</p>
<p>2017/10/24 星期二</p>	<p>III. 休會期間進展報告</p> <p>(b) 世界貿易組織關稅估價委員會報告</p> <p>VII. 其他事項</p> <ul style="list-style-type: none"> <li>● 經濟合作暨發展組織觀察員報告移轉訂價最新進展 (Transfer pricing updates by the representative of OECD)</li> <li>● 韓國簡報 - 關稅與內地稅於移轉訂價下之調和 (Presentation by Korea - Harmonization between Customs Duties and Internal Taxes in Transfer Pricing)</li> </ul> <p>V. 特殊技術性問題</p> <p>(b) 基於關稅估價協定第 1 條 2(a)調查當時交易情況 - 在不同國家生產的產品 - 之研究案例草案：由厄瓜多提交</p> <p>(d) 基於關稅估價協定第 1 條 2(a)，使用移轉訂價文件檢視關係人交易：由烏拉圭提交</p>
<p>2017/10/25 星期三</p>	<p>V. 特殊技術性問題</p> <p>(c) 在「快閃銷售」購買之進口貨物估價方式：由模里西斯提交</p>

日期	議程
	VI. 休會期間所提出問題 (a) 基於關稅估價協定第 8 條 1(c)之專利權與權利金：由烏拉圭要求 (b) 基於關稅估價協定第 8 條 1(b)解析價格調整：由烏拉圭要求 (c) 基於關稅估價協定第 1 條之銷售出口到進口國：由加拿大要求
2017/10/26 星期四	VII. 其他事項 VIII. 未來工作計畫 IX. 下次會議時間

**討論：**

主席請會員就本（45）屆會議議程內容（VT1100E1a），與該議程將納入歐盟所建議項目於週四之VII.其他事項中討論，是否有修正意見。

**結論：**

技術委員會無修正意見。

## 議程二：確認第 44 屆技術委員會會議報告

(文件 VT1098E1b revised)

### **討論：**

在休會期間由阿根廷、美國與烏拉圭對於第 44 屆報告草案 (VT1098E1a) 所提書面意見以紅色字收錄在文件 VT1098E1b 作為草案，隨後針對該草案由加拿大與美國所提書面意見以紅色字收錄在文件 VT1098E1b revised。主席指出會員國書面意見之處，並請技術委員會確認最後的修正內容。

### **結論：**

技術委員會對文件 VT1098E1b revised 所提修正建議進行熱烈討論，並再作修正。技術委員會通過了第 44 屆會議的報告，並作成文件 VT1098E1c。

### 議程三：休會期間進展報告

#### 一、 處長報告（文件 VT1101E1a）

主席邀請關稅及貿易事務處處長報告休會期間的活動，處長特別強調打擊非法金融流動（Combating Illicit Financial Flows，IFF）與該議題在 G20 領袖共同聲明中受重視的程度，並摘要報告其他活動，詳細內容詳文件 VT1101E1a。

#### 討論：

歐盟對處長所作報告表達感謝，表示移轉訂價議題之蓬勃發展使得該議題正處於一個決擇關頭，另表示非法金融流動的議題在本會議中很少被提及，希望世界關務組織能對該等重要議題提供更多資料給會員國參考。

烏拉圭對處長所作報告表達感謝，但似乎最近本委員會對新技術文件公開方式有所改變，例如第 44 屆的結論諮詢意見 4.17 在世界關務組織的網站上即可找到，這是很好的作法，提升了資料的透明性，但似乎與世界關務組織的政策有所不同，請說明該政策是否有所改變。

處長感謝歐盟與烏拉圭對於世界關務組織基本政策的支持，並表示世界關務組織對於新技術文件公開方式確有政策上的改變且係基於世界關務組織透明化政策而執行，但基於先前該等技術文件均以銷售方式公開與收入上考量，該等變更僅限於新技術文件。又對非法金融流動議題，前次會議已有會員發言表示非法金融流動涉及關務詐欺（Fraud），屬查緝業務，不宜在此技術委員會討論，但相關資訊都會盡量讓會員瞭解。

主席支持處長所述，非法金融流動議題應屬關務詐欺問題，不宜在此技術委員會討論。

#### 二、 世界貿易組織關稅估價委員會報告（文件 VT1117E1b 附錄 C）

世界貿易組織關稅估價委員會在技術委員會休會期間於 2017 年 5 月 15 日召開會議，下次會議定於 2017 年 11 月 6 日舉行。

關於世界貿易組織對應用於進口貨物估價與具軟體可作資料處理媒體載體

之估價決定（決定 4.1）之第 2 段於處理利息費用所作通知（Notifications on the application of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods and of paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment）已由秘書處彙整為世界貿易組織文件 G/VAL/W/5/Rev，但由烏拉圭所提建議更新案（世界貿易組織文件 G/VAL/W/241/Rev.1）仍未有結論，將於下次會議繼續討論。

依據裝船前協定（The Preshipment Agreement）第 6 條每 3 年需檢視會員國立法、導入與操作情形之規定，世界貿易組織關稅估價委員會將於下次會議對裝船前檢查（preshipment inspection，PSI）報告（世界貿易組織文件 G/PSI/N/1/Rev.2/Add.4）進行檢視。

#### 議程四：技術協助/能力建構及當前議題

##### 一、 秘書處及會員國從事技術協助/能力建構之報告（文件 VT1102E1a 及 VT1112E1a）

###### 秘書處報告：

上次會議後，美國及日本海關提供其舉辦技術協助的活動資訊，該等資訊以及秘書處安排之活動資料詳如文件 VT1112E1a 附件 I 及 II。

###### 結論：

主席感謝提供技術協助的國家，並歡迎各會員國提供相關技術協助/能力建構資料。

##### 二、 會員國應用世界貿易組織估價協定之進展報告（文件 VT1103E1a）

###### 背景：

根據關稅估價技術委員會的決定，秘書處一直監測各會員國在世界貿易組織估價協定應用上的進展，並發表報告。休會期間，秘書處發布文件 VT1103E1a，邀請各國針對世界貿易組織估價協定的應用提供書面報告。

###### 本次報告成員：

多明尼加與巴基斯坦。

##### 三、 第三階段稅收課徵套案( Revenue Package Phase III，文件 VT1104E1a)：

###### 背景：

第三階段稅收課徵套案是 2016 年由政策委員會(Policy Commission)認可，並由理事會(Council)通過，內容可在文件 VT1057E1a 之附錄取得，所有工作將在 2018 年 6 月完成。

###### 秘書處意見：

「完稅價格控制實務手冊」(Practical Guidelines for Valuation Control)已納入更多文件，部分國家分享其國家價格控制方案，包括使用價格資料庫作為風險評估工具。

秘書處近期赴中國大陸進行研究訪問，雙方共同進行描述其價格控制方案之

案例研究已完成，近期並將於利潤合規與詐欺工作小組（Working Group on Revenue Compliance and Fraud，WGRCF）簡報成果。

**結論：**

下次會議將持續討論追蹤稅收課徵套案進展。

## 議程五：特殊技術性問題

### 一、 在關稅估價協定與移轉訂價下之關係人交易 – 基於再售價格法之案例研究草案：由中國大陸提交

文件 VT1105E1a 與 VT1113E1a

#### **背景：**

在上屆會議中，本案例研究草案已被做出結論，於是秘書處將該草案作成 VT1105E1a, VT1105F1a and VT1105S1a 3 種語言版本，並邀請會員國提出任何文字上錯誤。加拿大與烏拉圭分別對法語與西語版本所作回應已被更新於文件 VT1113E1a 附錄。

#### **討論：**

技術委員會錄下了由加拿大與烏拉圭所作建議修正與另一位代表對西語版本修正。

#### **結論：**

技術委員會採用了案例研究 14.2 (文件 VT1117E1b 附錄 D)，並將於 2018 年 6 月提交至世界關務組織理事會採認。

### 二、 基於關稅估價協定第 1 條 2(a)調查當時交易情況 – 在不同國家生產的產品 – 之研究案例草案：由厄瓜多提交

文件 VT1106E1a 與 VT1114E1a

#### **背景：**

在第 44 屆技術委員會，基於似乎未能對此問題達到共識，有代表建議厄瓜多將此問題納入關稅估價技術問題第 3 部分 (Part III of the Conspectus of Technical Valuation Questions)。

此外，在實際狀況下，檢視此問題需要更多資訊，但此問題是基於經濟合作暨發展組織移轉訂價指引 (OECD Guidelines to Transfer Pricing) 所載理論性案例，不會有額外資訊提供。

厄瓜多未採納將此問題納入關稅估價技術問題第 3 部分之建議，並對中國大



陸所作觀察提出評論（文件 VT1093E1a 附錄）。

**討論：**

技術委員會咸認本問題應納入關稅估價技術問題第 3 部分且無法獲得共識，主席建議厄瓜多代表將此一建議帶回考量。

**結論：**

技術委員會同意暫將本問題保留在議程中，如厄瓜多代表獲得其總部同意將本問題納入關稅估價技術問題第 3 部分，下次會議則不再討論本問題。

**三、 在「快閃銷售」購買之進口貨物估價方式：由模里西斯提交**

文件 VT1107E1a 與 VT1115E1a

**背景：**

在第 44 屆技術委員會已對此問題（文件 VT1087E1a）進行討論，而會員意見與模里西斯之回應載於文件 VT1095E1a 與文件 VT1115E1a。

**討論：**

重點如下：

- （一）對於線上購買「快閃銷售」並透過 PayPal 付款進口之智慧型手機（亦即可確認交易流與金流之情形），海關是否應按關稅估價協定第 1 條規定採認其美金 11.99 元之折扣價格為完稅價格基礎，亦或應依序地應用替代估價方法決定其完稅價格；
- （二）本案如此高的折扣價格（智慧型手機的一般價格為美金 200 元），是否於其他案件（無法取得實際交易價格時）可用來作為同樣或類似貨物之交易價格。

技術委員會未能就討論重點達成共識，秘書處將就討論內容彙整成文件供各會員國檢視，並請提供意見。

**結論：**

技術委員會同意下次會議再基於秘書處所彙整文件討論本問題。

#### 四、 基於關稅估價協定第 1 條 2(a)，使用移轉訂價文件檢視關係人交易：由烏拉圭提交

文件 VT1108E1a 與 VT1116E1a

##### **背景：**

在第 44 屆技術委員會已對此問題（文件 VT1108E1a 附錄 II）進行討論，海關基於關稅估價協定第 1 條 2(a)，使用移轉訂價文件檢視關係人交易，該移轉訂價文件係以「交易邊際淨值法」（TNMM）進行，使用可比較公司與無關係夥伴交易（亦即，可比較未受控交易）以獲得進口價格。同時，該等移轉訂價結論已由稅務機關檢視，且透過進出口國雙邊預先訂價協議（APA）由進出口公司與雙方稅務機關同意，進口人未能以關稅估價協定第 1 條 2(b)與(c)提出測試價格。

##### **討論：**

烏拉圭代表表示同意秘書處對該案例研究草案所作建議修正，並表示希望能透過本案將使用「交易邊際淨值法」所製作移轉訂價文件無法適用關稅估價協定規定之相關樣態均包含在內。

技術委員會認為該案例研究草案仍有不夠嚴謹之處，且似乎不應有雷同於評論 23.1 結論之另一份技術文件。

##### **結論：**

技術委員會決議將本問題納入關稅估價技術問題第 3 部分。

## 議程六：休會期間所提問題

### 一、 基於關稅估價協定第 8 條 1(c)之專利權與權利金：由烏拉圭要求

文件 VT1109E1a

#### **簡介：**

休會期間，烏拉圭提交一個問題與技術委員會為可能性考量，該問題（VT1109E1a 附錄）係關於關稅估價協定第 8 條 1(c)之專利權與權利金。

#### **討論：**

烏拉圭代表表示，提交此一案例，係因無技術文件可作為處理按比例收取專利權之指引。

有代表認為此問題使對現有關稅估價協定第 8 條 1(c)技術文件產生懷疑，亦有代表認為其海關當局亦面對此一問題，如能有一致的看法將會有所幫助。

有代表建議將此問題重新整理，聚焦重點以便討論，並將其保留在下次會期之「休會期間所提問題」。如此讓會員國在休會期間得以反應是否要將此問題列入特殊技術性問題，以進行討論。

#### **結論：**

技術委員會同意將此問題保留在下次會期之「休會期間所提問題」。烏拉圭將與秘書處合作，把會員的意見納入文件當中。

### 二、 基於關稅估價協定第 8 條 1(b)解析價格調整：由烏拉圭要求

文件 VT1110E1a

#### **簡介：**

本問題係基於關稅估價協定第 8 條 1(b)，以解析實付應付價格之調整，烏拉圭代表已提交一個評論草案（VT1110E1a 附錄），技術委員會將討論是否將其列入下次會議之特殊技術性問題中。

烏拉圭代表認為，一份提供應用關稅估價協定第 8 條 1(b)時額外資訊之技術文件對海關當局將有助益，特別是討論到在運送時，對進口貨物生產者之「協助」所產生費用。

**討論：**

秘書處指出，技術委員會知悉，在關稅估價協定與現有技術文件均未包含此一由烏拉圭所提問題，所以應作為特殊技術性問題進行討論。

**結論：**

技術委員會同意將此問題納入在下次會期之特殊技術性問題。

**三、 基於關稅估價協定第 1 條之銷售出口到進口國：由加拿大要求**

文件 VT1111E1a

**簡介：**

由加拿大所提之新技術問題，係關於一特定交易中所確認之出口銷售。

**討論：**

加拿大代表解釋，此一問題並非實際案例，惟係已遭遇過之一般性情境。該問題係關於出口銷售、實際買家與是否實際上發生出口銷售之確認。

有代表引述評論 22.1 係關於後續銷售，但與本問題不同。銷售商向出口商（XCO）直接下單，進口商（ICO）雖然被申報為進口人，但在購買過程中並無角色。事實上，進口商扮演進口貨物之配銷者與行銷者之角色。

**結論：**

技術委員會同意將此由加拿大所提案例納入下次會期之特殊技術性問題中討論。加拿大將與秘書處合作製作新文件，包括圖解之釐清與分析，以描述此一交易。國際商會被邀請對此案例進行商業實務簡報。

## 議程七：其他事項

### 一、 經濟合作暨發展組織觀察員報告移轉訂價最新進展

經濟合作暨發展組織觀察員向技術委員會提供稅基侵蝕與利潤移轉專案 (Base Erosion and Profit Shifting programme, BEPS) 之最新進展。

經濟合作暨發展組織觀察員說明稅基侵蝕與利潤移轉專案係由 G20 提出，而依據 2015 年稅基侵蝕與利潤移轉專案之最終報告，移轉訂價指引亦作修正。

更新版本之經濟合作暨發展組織跨國企業與稅務機關移轉訂價指引 (OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations) 已於 2017 年 7 月公布。

### 二、 韓國簡報 - 關稅與內地稅於移轉訂價下之調和

韓國報告：關稅估價與移轉訂價間調和之成就

#### ● 主題

##### (一) 調和之歷史成就

	預先審核		改正	預先調整	預先審核之申報
關稅估價 (韓國關稅法, Korea Customs Act, KCA)		第 37 條 (Advance Customs Valuation Arrangement, ACVA)	第 38 條之 4	第 37 條之 2	第 28 條
移轉訂價 (國際租稅調整法, Adjustment of International Taxes Act)	第 6 條 (Advance Pricing Agreement, APA)		第 10 條之 2	第 6 條之 3	
年度	1997	2008	2012	2015	2017

(二) 關稅估價預先審核協議與預先訂價協議間比較

標題	關稅估價預先審核協議	預先訂價協議
法律基礎	<ul style="list-style-type: none"><li>● 世界貿易組織關稅估價協定</li><li>● 韓國關稅法第 37 條</li></ul>	<ul style="list-style-type: none"><li>● 經濟合作暨發展組織移轉訂價指引</li><li>● 國際租稅調整法第 6 條</li></ul>
程序	<ul style="list-style-type: none"><li>● 大致相似（預先諮詢、申請、文件檢查、結果通知年度報告義務、保密義務等）</li></ul>	
確認之標的	<ul style="list-style-type: none"><li>● 關係人間交易中貨物</li></ul>	<ul style="list-style-type: none"><li>● 應稅期間交易（年度）</li></ul>
確認期間	<ul style="list-style-type: none"><li>● 貨物進口前</li></ul>	<ul style="list-style-type: none"><li>● 最長 5 年追溯期</li></ul>
申請期間	<ul style="list-style-type: none"><li>● 申報完稅價格前</li></ul>	<ul style="list-style-type: none"><li>● 不得遲於第 1 應稅年度結束前</li></ul>

● 關稅估價預先審核協議

(一) 定義

- 由納稅義務人提出申請，透過納稅義務人與海關等相關單位間協商，以事先決定進口交易貨物完稅價格之方法
- 對跨國企業確保商業穩定性，避免事後稽核致使不在預期中之關稅罰款

(二) 法律基礎

- 韓國關稅法第 37 條第 1 項第 3 款
- 韓國關稅法強制執行命令第 31 條第 1 項至第 4 項
- 關稅估價決定之通知第 61 條至第 67 條
- 關係人預先價格審核指令

(三) 重點

- 申請人：向關係人進口貨物之納稅義務人
- 貨物：將採行新移轉訂價政策之貨物
- 申請時間：貨物進口之前
- 處理期限：1 年
- 有效條款：發給證明後 3 年內

(四) 實務運作結果

截至目前，65 個申請案，已完成 44 個

	'07	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	總計
申請	3	1	0	5	5	3	4	8	15	9	12	65
同意			2	3		4	3	5	4	6	4	31
放棄 / 拒絕				1	1		1		3	7		13

(五) 關稅估價預先審核協議優惠措施

- 暫停事後稽核
  - ✓ 在申請企業之要求下，關稅估價預先審核協議調查期間，海關將暫停事後稽核
- 免除額外之關稅罰鍰
  - ✓ 在關稅估價預先審核協議申請時申報了暫定的完稅價格，在申報最終的完稅價格時，可免除了因有瑕疵關稅款項所產生的額外租稅
  - ✓ 在關稅估價預先審核協議申請前所完成之進口申報，當貨物完稅價格被更正後，因疏忽的申報（等同於十分之一的完稅價格）所產生的額外租稅可予免除
- 發出更正之增值營業稅發票
  - ✓ 在發出了關稅估價預先審核協議結論後，申請人按關稅估價預先審核協議申報額外的關稅，是以更正之增值營業稅發票得以發出
- 遠離海關罰鍰，穩定商業管理
  - ✓ 不需擔心事後稽核與額外的財務負擔

(六) 關稅估價預先審核協議之申請

- 暫定之申報價格

- ✓ 申請人可申報暫定的貨物完稅價格，再按同意的內容申報最終完稅價格
    - 暫定申報價格之調整
      - ✓ 按關稅估價預先審核協議所作調整可以是暫定價格，可能會發還或補繳關稅
      - ✓ 需要詳細之說明
    - 預先內地稅與關稅調整
      - ✓ 同時申請關稅估價預先審核協議與預先訂價協議，海關與國稅局進行磋商
- 預先內地稅與關稅調整 (Pre-adjustment of taxes and duties)
  - (一) 導入原因
    - 減少租稅與關稅所致財務負擔 (2015 年 1 月 1 日導入)
  - (二) 法律基礎
    - 韓國關稅法第 37 條之 2
    - 國際租稅調整法第 6 條之 3
  - (三) 重點
    - 目標：關稅估價與常規交易移轉訂價
      - ✓ 關稅估價：第二種至第五種估價方法
      - ✓ 常規交易：可比較未受控價格法、再售價格法、成本加價法
    - 因為績效不彰，規則將進行更正
      - ✓ 刪除方法的相似處等
- 內地稅與關稅調整改正要求 (Rectification Claim for adjustment of taxes and duties)
  - (一) 導入原因
    - 減少租稅與關稅所致財務負擔 (2012 年 7 月 1 日導入)
  - (二) 法律基礎



- 韓國關稅法第 38 條之 4
- 國際租稅調整法第 10 條之 2

(三) 重點

- 納稅義務人可於國稅局同意調整後，向海關申請改正完稅價格
  - ✓ 按國稅機關調整，改正關稅與租稅間進口貨物價差
  - ✓ 按內地稅主管機關首長所同意之追溯申請，改正關稅與租稅間進口貨物價差
- 然而，調整之方法應符合關稅估價原則

● 調整作為暫定價格 (Adjustments as a provisional value)

(一) 導入原因

- 調整申報程序之需求
  - ✓ 私部門要求處理調整
- 自 2017 年 7 月開始，調整申報合法化
  - ✓ 以世界關務組織關於關稅估價及移轉訂價指引，與美國、加拿大等國申報程序為基礎

(二) 法律基礎

- 韓國關稅法第 28 條 (暫定價格之申報)
- 國際租稅調整法第 16 條
  - ✓ 新訂法規，第 16 條第 1 項第 2 款至第 3 款：關係人間交易，進口貨物價格可在進口後按國際租稅調整法第 5 條調整
- 韓國關稅法強制執行規則第 3 條  
必須符合下列項目
  - ✓ 進口貨物調整計畫
  - ✓ 應付調整之金額
  - ✓ 調整之訂定應客觀地計算
  - ✓ 納稅義務人必須具有關稅估價預先審核協議或預先訂價協議

- ✓ 必須在系爭貨物進口 1 個月前提出申請

### 三、 歐盟所提項目

歐盟代表提案關於技術委員會就特殊技術問題之考量程序，其所觀察 37 年以來，技術委員會已發出超過 100 個技術文件來廣泛地應用世界關務組織關稅估價協定，而技術委員會一般來說僅針對會員所提問題回應，而非採取主動。他建議技術委員會對到目前為止之技術文件，進行策略性地技術問題檢視，工作標題可為「技術委員會技術問題綜觀」。

他認為前述工作項目可從下列問題著手：過去做過甚麼？未來可以做甚麼？問題來源是甚麼、問題是甚麼、主題事件與未來潮流？

目前技術委員會的技術工作似乎有些無法預測且臨時，新的主題如電子商務逐漸興起而與關稅估價有關。而且，主要技術文件所作結論都在於完稅價格之特殊項目是否應加或應減。他建議技術委員會可提供較一般性建議，專注於受關注的新區域，並考量更廣泛的環境。

下屆會議，歐盟將針對此問題準備一份文件

#### **討論：**

處長回應歐盟的提案，表示歡迎會員國的意見，並提醒技術委員會曾討論過「技術委員會之未來方向 (*Future Direction of the Technical Committee*)」之項目，他建議可重新檢視該項目以瞭解技術委員會未來方向與工作，並採取更廣泛性之回顧。

有代表支持本提案。主席認為考量未來需求與潮流是重要的，技術委員會期待歐盟的文件與會員國的意見。

#### **結論：**

技術委員會紀錄討論過程，並同意於下次會期就工作文件進行討論。

## 議程八：未來工作計畫

秘書處建議下列項目列入第 46 屆會期：

- 確認議程
- 確認第 45 屆技術委員會會議報告
- 報告休會期間進展
  - 世界關務組織稅則暨貿易事務處處長報告
  - 世界貿易組織關稅估價委員會口頭報告
- 技術協助、能力建構及當前議題
  - 秘書處及會員國辦理技術協助/能力建構報告
  - 開發中會員國採行世界貿易組織估價協定之進展報告
  - 稅收課徵套案
- 特殊技術性問題
  - 基於關稅估價協定第 1 條 2(a)調查當時交易情況 - 在不同國家生產的產品 - 之研究案例草案 (備註：如厄瓜多同意將本問題納入關稅估價技術問題第 3 部分，則廢棄)
  - 在「快閃銷售」購買之進口貨物估價方式：由模里西斯提交
  - 基於關稅估價協定第 8 條 1(b)解析價格調整：由烏拉圭要求
  - 基於關稅估價協定第 1 條之銷售出口到進口國：由加拿大要求
- 休會期間所提出問題 (如有適合者)
  - 基於關稅估價協定第 8 條 1(c)之專利權與權利金：由烏拉圭要求
- 歐盟所提問題點，暫定標題「技術委員會技術問題綜觀」
- 其他事項
- 選舉
- 未來工作計畫
- 下次會議日期

## 議程九：下屆會期

預訂於 2018 年 4 月 23 日當周舉行。

## 肆、 心得與建議事項

- 一、 關稅估價技術委員會旨在探討世界貿易組織關稅估價協定之技術面事項，以確保世界貿易組織會員對該協定解釋及適用之一致性，而在本次會議所討論「特殊技術性問題」，包括：「在關稅估價協定與移轉訂價下之關係人交易 - 基於再售價格法之案例研究草案」、「基於關稅估價協定第 1 條 2(a) 調查當時交易情況 - 在不同國家生產的產品 - 之研究案例草案」、「在『快閃銷售』購買之進口貨物估價方式」、「基於關稅估價協定第 1 條 2(a)，使用移轉訂價文件檢視關係人交易」等 4 項，其中與移轉訂價相關議題即占 3 項，另本次會議在「其他事項」即由韓國簡報「關稅估價與移轉訂價間調和之成就」，顯見移轉訂價議題所受重視，惟除韓國外，現今僅美國、加拿大與中國大陸之海關有訂定相關關稅估價法規以因應移轉訂價議題，且均仍未能有效解決關稅估價本質與移轉訂價間歧異，是以大部分國家海關對移轉訂價議題仍採保留與觀望態度。
- 二、 本次技術委員會針對移轉訂價議題所討論之重點均在「基於關稅估價協定第 1 條 2(a) 規定認定，各案例進口貨物的實付或應付價格，是否已被買方與賣方間關係影響」，而本次會議所討論案例分別參考按經濟合作暨發展組織跨國企業與稅務機關移轉訂價指引之再售價格法 (Resale Price Method)、可比較未受控價格法 (Comparable Uncontrolled Price Methodology) 與交易邊際淨值法 (Transactional Net Margin Method) 所作移轉訂價報告來檢視當時交易環境，而非將移轉訂價報告所得進口貨物實付或應付價格，作為該協定第 1 條 2(b) 規定之測試價格，事實上，該協定第 1 條 2(c) 規定，測試價格應由進口人主動要求，且僅供比較之用。而本次技術委員會所作成此案例研究 14.2，即認已受關係人特殊關係影響，海關應依序地應用關稅估價協定第 2 條至第 7 條之替代評估方法決定完稅價格，此一見解可以案例分享或新聞稿方式廣為週知。

- 三、 本次技術委員會所作成案例研究 14.2「在關稅估價協定與移轉訂價下之關係人交易－基於再售價格法之案例研究」與先前會議所作成諮詢意見 4.17「協定第 8 條 1(c)之專利權及特許權權利金」(文件 VT1098E1b 附錄 D) 均已辦理中譯(附件四、六)，可納入知識管理平台分享。
- 四、 我國於 91 年正式成為世界貿易組織會員後，即派員出席關稅估價技術委員會會議，除有助掌握國際間關稅估價政策及實務發展趨勢外，亦增加我國海關與世界關務組織秘書處及會員代表互動及交流機會，建議宜持續派員參與。

## 伍、 附件

### 一、 第 44 屆關稅估價技術委員會會議紀要（文件 VT1098E1c）



WORLD CUSTOMS ORGANIZATION  
ORGANISATION MONDIALE DES DOUANES  
ORGANIZACIÓN MUNDIAL DE ADUANAS

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TECHNICAL COMMITTEE  
ON CUSTOMS VALUATION

VT1098E1c

-  
44<sup>th</sup> Session  
-

O. Eng.

Brussels, 12 May 2017.

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REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON  
THE 44<sup>th</sup> SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

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#### *Opening remarks*

1. The Technical Committee on Customs Valuation ("Technical Committee") held its 44<sup>th</sup> Session at the Headquarters of the World Customs Organization ("WCO"), in Brussels from 8 to 12 May 2017. The Session was chaired by Ms. Y. GULIS (United States) who extended a warm welcome to all delegates, especially those attending the Technical Committee for the first time. She wished the delegates and observers a very informative and productive Session.
2. Mr. Ping LIU, Director, Tariff and Trade Affairs Directorate, welcomed the delegates and observers present on behalf of the Secretariat. The Director observed that the turnout for this Session was very good (128 delegates and observers registered) showing the importance of the Technical Committee to the work of Customs Administrations. He noted that the Agenda reflects a good combination of topical and practical issues connected with implementing the WTO Valuation Agreement ('the Agreement') : on one hand there are complex issues such as Transfer Pricing/Related Party Transactions, Royalties and Licence fees and E- Commerce, on the other hand there are practical challenges with the fundamentals of implementing the Agreement still faced by many developing country Members. He wished the Technical Committee a fruitful Session.

**Agenda Item I :**                    **ADOPTION OF AGENDA**

(a) Provisional Agenda

Doc. VT1076E1b

3. The Chairperson summarized the provisional Agenda contained in Doc. VT1076E1b which was circulated to Members.
4. She observed that, in addition to the Theme meeting, there were seven Specific Technical Questions to be examined by the Technical Committee. She invited comments

VT1098E1c

from the delegates and asked them whether they wished to raise additional items under Agenda Item VIII, Other business.

Discussion

5. There was no proposal for any item to be included under Item VIII.

Conclusion

6. The Agenda was adopted as proposed in Doc. VT1076E1b without amendment.

(b) Suggested programme

Doc. VT1077E1a

7. The Chairperson referred to Doc. VT1077E1a which set out the suggested programme of work for the 44<sup>th</sup> Session prepared by the Secretariat.
8. The Chairperson informed the delegates that the Theme Meeting would be held on Monday according to the scheduled programme annexed to Doc VT1077E1a. She also explained that in view of the attendance of the Observer of the OECD on Wednesday 10 May only, the cases on Related Party Transactions under the Agreement and Transfer Pricing have been scheduled to be examined on that day.

Conclusion

9. The Technical Committee approved the suggested programme as set out in Doc. VT1077E1a.

**Agenda Item II :           THEME MEETING**

Doc. VT1078E1a

10. The Technical Committee decided at its 43<sup>rd</sup> Session that the topics for this Theme Meeting would be (i) Valuation Risk Management and (ii) Valuation aspects of e-commerce. The Theme Meeting was moderated by Mr. J. Birkhoff, Vice Chairperson of the Technical Committee (The Netherlands).
11. The three Members which presented on Valuation Risk Management were Australia, Canada and Gabon. Presentations on e-commerce were made by the Secretariat, EU, Japan and the ICC.
12. The Delegate of Australia focused his presentation on the enforcement part of valuation control undertaken by his Administration, highlighting the limitations of a database. He explained that the exchange of data and intelligence is an important element in combatting fraud and could be facilitated through the Global Trade Enforcement Network (GTEN) developed by the WCO.
13. In his presentation, the Delegate of Canada explained how his Administration conducts targeted compliance verification by applying risk management techniques in their Customs valuation control. The system does not include a valuation database. He mentioned a successful programme targeting undervalued textiles. He stressed the importance of the importer's role in valuation control. It is only the importer who has knowledge of elements

2.



other than the price which may be included in the Customs value, such as assists and royalties and licence fees.

14. The Delegate of Gabon shared her administration's experience with regard to the establishment of a national valuation database and its use as a risk assessment tool in its valuation control. She also provided information on a new strategy which has yet to be implemented and which takes into consideration WCO's recommended practices.
15. With respect to the topic of valuation aspect of e-commerce, the WCO Secretariat provided updated information on work being carried out on e-commerce and in particular to the work of the E-Commerce Working Group.
16. Japan presented three e-commerce transaction models based on an import transaction, transaction (sale) without import and crowd funding respectively. Goods in the second model are cleared from Customs before being sold through e-commerce platforms to individual buyers in the country of importation. The Delegate also explained the use of two types of value declaration – single and periodic – by his Administration.
17. The Delegate of EU looked back at the evolution of e-commerce since the approval of a work programme by the WTO General Council in 1998 and questioned whether the same rules on Customs valuation apply to e-commerce operations and transactions. One of the emerging e-commerce models, according to the EU Delegate, is the internal market model (Fulfillment House) similar to one of the models presented by Japan in which there is no import transaction. The Delegate identified the challenges posed to Customs and looked at the valuation methods applicable in such transactions.
18. According to the representative of the ICC, trade in tangible goods is never entirely an "online" matter: goods must first be warehoused and then, after an order is placed and accepted, delivered to customer. Delivery to customer is termed "fulfillment". Another representative of the ICC continued its presentation from a particular business perspective on the topic of e-commerce based on the "Borderfree" business model and looked at the e-commerce valuation challenges and trends.
19. The delegates interacted with the speakers through a question and answer session which followed each set of presentations. Members concluded that the exchange of practices and discussions on these interesting topics were very enriching and useful.
20. All the presentations of the Theme Meeting would be available on the WCO Members' website.

**Agenda Item III :**                    **ADOPTION OF THE TECHNICAL COMMITTEE'S 43<sup>rd</sup> SESSION REPORT**

Doc. VT1075E1b revised

21. The Chairperson drew attention to the changes made to the reporting procedure as adopted at the 42<sup>nd</sup> Session. Accordingly, the Secretariat would prepare a draft report which would be circulated to delegates (the "a" version). Comments received from delegates would then be published in the "b" version of the report. If no comments/objections are received on the comments the report would be deemed to have been approved. Only those comments/objections made by delegates to the comments on the "b" version of the report which cannot be resolved would be raised for discussion by the Chairperson at the subsequent Session.

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22. The Chairperson highlighted the comments of Uruguay on the comments initially made by the EU on the 43<sup>rd</sup> Session draft Report (revised) relating to paragraphs 25, 26, 126 and 135. After hearing the comments from EU and Uruguay and ensuing discussion, the Technical Committee agreed the following :
- (i) to maintain the original version of paragraph 25;
  - (ii) to amend the original version of paragraph 26 by deleting the sentence "He considered that the suggestion from the Chairperson of the Council regarding the duration of technical questions was rather an informal proposal and did not require substantial consideration";
  - (iii) to amend the original version of paragraph 126 by adding at the beginning of the second sentence "In the opinion of ICC" ; and
  - (iv) to amend the original version of the second sentence in paragraph 135 by adding ", in the Secretariat's view," after the word "depicts".
23. The Observer from ICC, while recognizing that ICC with observer status does not have the right to submit comments on the draft report except where there is reference to the ICC, informed the Technical Committee that he wished to amend paragraph 110 of the draft Report. The Technical Committee noted that the 'a' version of the draft Report is not currently circulated to observers and as such they do not have the opportunity to propose any amendments to the draft Report within the time frame as set out in the adopted procedures. The Technical Committee decided to consider the proposal from ICC and after discussion agreed to delete the last sentence of paragraph 110 of the draft Report and replace it by the following: "The ICC indicated that it will share a formal communication with the Secretariat with regard to the discussion of "live cases."
24. The Deputy Director stated that, with regard to the working procedure, the Secretariat is of the view that the ICC and other observers should be provided with the 'a' version of the draft Report. They should also be able to make comments on parts of the text which reflect interventions made by them.

#### Conclusion

25. The Technical Committee approved the 43<sup>rd</sup> Report with the above amendments.

#### **Agenda Item IV :           REPORTS ON INTERSESSIONAL DEVELOPMENTS**

##### (a) Director's Report

Doc. VT1079E1a

26. The Chairperson invited the Director to present the Director's Report, contained in Doc. VT1079E1a. The Director summarized the key intersessional activities included in the document.
27. The Director highlighted relevant issues emerging from the recent Policy Commission. The Policy Commission took note of the activities undertaken under the Revenue Package Phase III Action Plan which would be elaborated under Agenda Item V (c) and of the outcomes of the first meeting of the Working Group on E-Commerce, a topic which was covered under the Theme Meeting.

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28. With respect to Trade Facilitation, the Director informed the Technical Committee that the Trade Facilitation Agreement came into force on 22 February 2017 after having obtained the required number of Members ratifying it. In this context, the Policy Commission urged WCO Member Administrations to take steps at the national level through contacts with their Trade Ministries and Missions to the WTO to encourage their Governments to press for WCO involvement in the work of the WTO Committee on Trade Facilitation. The WCO has been working closely with the WTO on this matter.
29. The Policy Commission took note of the work being carried out in the areas of Customs – Tax cooperation as well as Illicit Financial Flows. It agreed that the enhanced Essential Characteristics of Customs should be provided to other institutions in charge of tax issues to help them recognize the importance of Customs in a Revenue and Customs Agency. With regard to Illicit Financial Flows, the Secretariat has proactively liaised with the Chinese and German G20 Presidencies, as well as the OECD, in an effort to make further progress on this issue. The German Presidency has proposed that the issue be discussed at the G20 Finance Track and the Secretariat will be involved in the conference on "G20 Africa Partnership".
30. During the intersession, the WCO hosted the 71<sup>st</sup> Fellowship programme for French Speakers. Three fellows from Haiti, Mauritania and Niger chose Customs Valuation as their field of study. The Committee on Customs Valuation continued to examine the proposal of Uruguay to amend Decision 4.1 in its last meeting, held in October 2016.
31. In addition to the technical assistance programme of the Secretariat since the 43<sup>rd</sup> Session, as provided in Annex II of Doc. VT1090E1a, the Secretariat further informed the Technical Committee about its attendance at the TP Minds International Conference as a guest speaker and its contribution to the revision of the UN Transfer Pricing Manual for Developing Countries. In addition, the Secretariat shared information about a new publication by the World Bank Group – "Transfer Pricing and Developing Economies" – which might be of interest to Members.
32. With respect to staff changes the Director apprised the Technical Committee of the arrival of Mr Benson LIM from Singapore as Technical Attaché in the Tariff and Trade Affairs Directorate (Valuation) and the departure of Mr Jorn HINDSDAL, Deputy Director, in June 2017. He took the opportunity to express his deep appreciation for Mr. HINDSDAL's support to the Directorate's work in serving the Technical Committee and other bodies relating to Tariff and Trade Affairs.
33. Delegates were also encouraged to ensure the valuation Contact Point lists and Index of Reference Materials were up to date and to advise the Secretariat accordingly of any updates.

#### Discussion

34. The Delegate of Uruguay thanked the Director for updating the Technical Committee on intersessional developments since the 43<sup>rd</sup> Session. He also welcomed the arrival of Mr. Benson LIM in the Secretariat.

#### Conclusion

35. The Technical Committee took note of the Director's Report and ensuing observations.

(b) WTO Committee on Customs Valuation Report

36. The Observer for the World Trade Organization (WTO) presented the report on behalf of the Committee on Customs Valuation (CCV). She updated the Technical Committee on three issues related to the activities of the Committee, namely: 1) the status of notifications; 2) the application of the Committee Decisions, in particular the proposal by Uruguay to update the Carrier Media Decision (Decision 4.1); and 3) the delivery of technical assistance.
37. She reported that the status of notifications is now systematically compiled in a report with the symbol G/VAL/W/232 and available on WTO's website. She flagged that receipt of notifications continues to be slow as well as the pace of their examination. As of now, thirty five Members have not submitted a copy of their national legislation and sixty have not submitted answers to the check list of issues and she asked for the contribution of delegates to assist in this matter.
38. As regards to the proposal by Uruguay to amend the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment, she reported that one Member has required more time to consider the consequence of this proposal. This item is on the agenda of the coming CCV session for discussion.
39. In terms of technical assistance, she stated that the WTO has carried out a few training activities on Customs valuation at both national and regional levels since her last report. A national Customs valuation workshop is planned to take place in Guatemala in June 2017.
40. Full details of the WTO report can be found at Annex C to this Report. The next meeting of the CCV is scheduled for 15 May 2017.

Discussion

41. The Delegate of Uruguay thanked the Observer for her detailed presentation on the work of the CCV and observed that the case submitted by Uruguay to the CCV has been discussed for 5 years in Geneva and a decision is still pending. He stated that his Administration and importers are looking forward for a decision on this matter.

Conclusion

42. The Technical Committee took note of the WTO oral report and the comments made by Uruguay.

**Agenda Item V :**                    **TECHNICAL ASSISTANCE, CAPACITY BUILDING AND CURRENT ISSUES**

- (a) Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members

Docs. VT1080E1a and VT1090E1a

Background

43. Acting on the decision of the Technical Committee, the Secretariat had monitored the technical assistance/capacity building activities scheduled and/or delivered by Members and had forwarded the results to all Members, to help them with their planning and to prevent duplication of effort.

6.

44. Since the last session, the Chinese and Japanese Customs Administrations had provided information about their technical assistance activities. That information, together with information on the technical assistance/capacity building activities undertaken by the Secretariat, was set out in Annexes I and II respectively to Doc. VT1090E1a.

#### Discussion

45. The Secretariat provided the Technical Committee with information on its technical assistance and capacity building activities scheduled for the month of June 2017, as follows :
- a Training Workshop on Customs Valuation and the Revenue Package would be held for countries in the Asia/Pacific Region in Kobe, Japan, from 5 to 9 June; and
  - a Workshop on Advance Rulings would be organized in Swaziland from 12 to 14 June for the members of the South African Customs Union.

#### Conclusion

46. The Technical Committee took note of the report on technical assistance activities as well as of the other information supplied by the Secretariat.

(b) Progress report on developing countries' application of the WTO Valuation Agreement

Doc. VT1081E1a

#### Background

47. In pursuance of a decision taken by the Technical Committee, the Secretariat had monitored progress with the application of the WTO Valuation Agreement by various Members and had published status reports on the subject.
48. In advance of the session, the Secretariat had issued Doc. VT1081E1a asking Customs administrations to provide information on the progress made in their countries with regard to the application of the WTO Valuation Agreement.
49. No Members had sent written comments in response to Doc. VT1081E1a during the intersession.

#### Conclusion

50. The Technical Committee took note of the progress made with regard to the application of the WTO Valuation Agreement.

(c) Revenue Package

Doc. VT1082E1a

51. The Chairperson invited the Secretariat to provide an update on the work undertaken in respect of the Revenue Package programme.

VT1098E1c

52. The Secretariat provided a brief overview of the Revenue Package programme, designed to assist Members with fair and efficient revenue collection. Members were reminded that all the materials developed under this programme are available via the Members' website and on compact discs, available from the Secretariat on request.
53. An update was given on the activities being conducted under Phase III of the programme. Information was provided on two Regional Offices of Capacity Building websites (East and Southern Africa and Asia Pacific) which provide access to all the Revenue Package materials. Members are encouraged to provide case studies on their valuation control systems to supplement those already available.
54. The Secretariat also gave a presentation on its activities in the field of post-clearance audit, as featured in the Revenue Package. The WCO Guidelines on Post-Clearance Audit, Volumes 1 and 2, were developed under Phase I. A diagnostic tool for PCA was developed in Phase II. Summaries were given of the Implementation Guidance on PCA, produced under Phase III, and endorsed by the Enforcement Committee in March 2016 and "How to audit Typology", endorsed by the Enforcement Committee in March 2017. Examples were given of valuation irregularities which may be more efficiently detected by use of PCA. In particular, it was highlighted that the invoice often does not reflect all elements which are to be included in the Customs value; PCA gives the ability to look at all aspects of the transaction. Additionally, it provides the ability to examine multiple transactions over a long period which leads to greater efficiency.
55. The PCA tools are available via the Members' website. The Secretariat representative emphasized that PCA is the most effective tool for valuation control and encouraged delegates to raise awareness of the WCO's tools on PCA. The presentation will be made available on the Members' website.

#### Conclusion

56. The Technical Committee took note of the presentations and discussion. The Revenue Package will be placed on the agenda of the next Session.

#### Agenda Item VI :            **SPECIFIC TECHNICAL QUESTIONS**

- (a) Related party transactions under the Agreement and Transfer Pricing – case based on resale price method – request by China

Docs VT1083E1a and VT1091E1a

#### Background

57. The Chairperson introduced the case submitted by China regarding a related party transaction where information has been provided to Customs from a transfer pricing study based on the resale price method. Following the last Session, a revised text was circulated to Members in the Annex to Doc. VT 1083E1a, inviting Members' comments. In response, written comments were provided by Chile, China, Ecuador and Uruguay which are reproduced in Annexes I to IV of Doc. VT1091E1a. The latest draft of the case is reproduced in Annex V to Doc. VT1091E1a, reflecting Members' suggestions and discussions between the Secretariat, China and other countries. The Chairperson reminded the Technical Committee that a consensus had been reached on the conclusion and much of the document had been finalised; it now remained to examine the text shown in bold in the document on which agreement had not yet been reached.

8.

### Discussion

58. The Chairperson gave the floor to the Delegate of China who thanked Members for their contributions and explained the background to the changes made to the draft text since the last Session, which took into account various proposals made by Members.
59. The Delegate confirmed China's agreement to deleting the text which referred to selection of an alternative method of valuation. The Delegate of Chile, who in its written comments preferred to keep this text, indicated that on reflection it would agree with China on this point. Amendments were duly made to the relevant paragraphs of the document, in particular paragraphs 19 to 21 were deleted and the "Issue for Determination" and "Conclusion" were modified accordingly.
60. The outstanding issues in the text were examined by the Technical Committee and in each case drafting changes were agreed. The Observer from the OECD made a number of proposals to improve the text to ensure transfer pricing terminology and practices were accurately reflected, which were accepted.
61. Some discussion took place concerning the proposed footnote to paragraph 9 which makes reference to the position of transfer pricing adjustments, namely that normally a compensating adjustment would be made. Some delegates considered this was an important point to capture in this document. One delegate agreed that this was an important point however advocated that it should not be dealt with in brief via a footnote but in the context of new documents and discussions where it could be considered in more depth. Following a proposal from the Secretariat to amend the text of the main body of the document (adding the phrase "in this particular case" in paragraph 9), the Technical Committee agreed to delete the footnote.
62. The Delegate of China thanked all delegates and the Secretariat for their valuable contributions in finalizing the text of this document.
63. As drafting was concluded towards the end of the Session there was insufficient time to present final versions of the text in the three languages for Members' to review. It was therefore not possible to adopt the text at this Session.

### Conclusion

64. The Technical Committee concluded examination of the text. The question will remain on the Agenda and the new instrument can be adopted at the next Session, subject to Members' scrutiny of the finalized text in English, French and Spanish. The Secretariat will circulate the finalized text in a working document following this Session.

(b) Condition of sales, objective and quantifiable data : Request submitted by Mexico

Docs. VT1084E1a and VT1092E1a

### Background

65. The Chairperson summarised the work carried out by the Technical Committee on the question submitted by Mexico since the 40<sup>th</sup> Session to date.

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66. In the question produced in Annex to Doc VT0993E1a, the two issues to be addressed were :
- (a) whether the royalties paid to the franchisor should be included in the Customs value of the imported inputs; and
  - (b) whether the transaction value method could be used to determine the Customs value of the imported inputs in case of unavailability of objective and quantifiable data.
67. The Technical Committee started analysing this question at the 41<sup>st</sup> Session. At the 43<sup>rd</sup> Session, the Technical Committee reached consensus on the conclusion of the case and invited Mexico to work with the Secretariat to determine the appropriate instrument to address the question and to draft the instrument for consideration by the Technical Committee at its 44<sup>th</sup> Session.
68. The Secretariat worked with Mexico during the intersession and prepared a draft Advisory Opinion, which was considered an appropriate instrument to deal with this question. The Draft Advisory Opinion was published in the Annex to Doc. VT1085E1a and Members were invited to submit their written comments. The Draft Advisory Opinion was also posted on the CLiKC platform for informal discussion.
69. Written comments received from Chile, China, Ecuador, the United States and Uruguay were reproduced in the Annexes to Doc. VT1092E1a.
70. Ecuador has questioned the relevance of issuing another instrument for this question, which is considered similar to Advisory Opinion 4.9. However, the Chairperson reminded the Technical Committee that it has already agreed on a conclusion on the issue and it has decided to develop an instrument based on this question. Therefore, the Technical Committee was invited to examine the draft Advisory Opinion, taking into consideration the written comments.

#### Discussion

71. The Technical Committee started with examining the title of the instrument, followed by a paragraph-by-paragraph examination.
72. There were three titles proposed – two by China and one by the Secretariat respectively as follows :
- (i). Royalties and licence fees under Article 8.1 (c) of the Agreement;
  - (ii). Royalties and licence fees under Article 8.1 (c) of the Agreement. (Royalties paid under franchise agreement); and
  - (iii). Treatment of royalties and licence fees paid under a franchise agreement.
73. In order to be consistent with the format of the titles of Advisory Opinions 4.1 to 4.16, which all relate to royalties and licence fees, the Technical Committee agreed to adopt the same format and decided that the title should be "Royalties and licence fees under Article 8.1 (c) of the Agreement".
74. After examining the need for a definition of the terms "brands and system" in the Advisory Opinion, the Technical Committee agreed that a reference to the meaning of these terms in this specific context would be helpful.
75. The Technical Committee continued the paragraph by paragraph examination of the text of the draft Advisory Opinion, taking into consideration the written proposals made by Chile, China, the United States and Uruguay and other suggestions by delegates at the Session. In order to be consistent throughout the instrument, the Technical Committee
- 10.



decided to use the term "inputs" instead of "goods", and "stores and brands" in the plural as mentioned in the franchise agreement.

76. The Technical Committee made drafting changes to make the text clear and simple and to reflect the facts of the case, as suggested by many delegates who took the floor, after considering all the comments and observations made by delegates at the Session.

#### Conclusion

77. The Technical Committee adopted the new instrument, Advisory Opinion 4.17, which is annexed to this draft Report (Annex D) and will be presented to the WCO Council for approval in July 2017.

- (c) Examining the circumstances surrounding the sale under the provisions of Article 1.2 (a) – goods produced in different countries : Submitted by Ecuador

Docs. VT1085E1a and VT1093E1a

#### Background

78. The Chairperson introduced the question submitted by Ecuador which relates to the examination of the circumstances surrounding the sale in a related party transaction under the provisions of Article 1.2 (a). In this question, in order to demonstrate that the relationship has not influenced the price, the importer provided Customs with a transfer pricing study prepared on the basis of the Comparable Uncontrolled Price method (CUP), a transfer pricing methodology.
79. The issue raised by Ecuador is whether in the examination of the circumstances surrounding the sale, Customs Administration may consider a transfer pricing study which compares a related party transaction with an unrelated transaction to goods that originate in a country other than that of the imported goods and are sold to a country other than the country of importation.
80. Ecuador amended the text of the question during the intersession, reproduced in Annex I to Doc. VT1085E1a, in response to the comments made by delegates at the 43<sup>rd</sup> Session of the Technical Committee. Written comments received from China were annexed to Doc. VT1093E1a.

#### Discussion

81. Following the written comments made by China, the Delegate of Ecuador requested to delete any reference to the price being set freely on the international market and wished to stick to the facts of the case, maintaining reference to the transfer pricing study and the CUP Methodology which she stated is the essential part of the question. She asked the Technical Committee to examine the question in the context of Article 1.2(a) of the Agreement.
82. The Delegate of China reiterated her concern about using the CUP Methodology which would expand the scope of test values as provided in Article 1.2 (b) of the Agreement. She noted that the illustrative examples of Interpretative Note to Article 1.2 (a) focus more on the non-price elements of the transaction rather than the price itself. CUP involves comparison of prices.
83. One delegate stated that Article 1.2 (a) of the Agreement does not preclude the examination of the case. This was supported by another delegate who stated that the provision of test values is an option given to the importer. In this particular case, the transfer

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pricing study is being provided to Customs for examining the circumstances surrounding the sale. Customs could examine all relevant additional information provided by the importer to determine whether the price actually paid or payable is acceptable and should not limit itself to the three test values of Article 1.2 (b). One delegate commented that in this particular case the importer did not provide any test values required for the application of Article 1.2 (b).

84. One observer noted that Article 1.2 (a) should be read in the broadest sense and this allows Customs to examine any relevant documentation including a transfer pricing study.
85. The Chairperson directed the Technical Committee to the Interpretative Note to Article 1, paragraph 2, which sets out illustrative examples and also to Commentary 23.1 which provides guidance on the use of a transfer pricing study provided by importers for examining the circumstances surrounding the sale under Article 1.2 (a) of the Agreement. Accordingly, the Technical Committee is not limited to these illustrative examples. She invited the Technical Committee to consider whether a transfer pricing study based on only one transaction where the goods are sold from a country of exportation and to a country of importation different from those of the goods being valued, is relevant and sufficient for Customs to examine the circumstances surrounding the sale and to conclude whether the price has been influenced by the relationship. In response, one delegate said that the answer is no because the goods being compared are not identical or similar to the goods being valued. Another delegate expressed serious doubts that it would be possible to conclude that the price has not been influenced by the relationship on the basis of the limited information provided in the transfer pricing study.
86. One delegate explained that in such a situation, if it was a real case, her administration would request more information from the importer, based on Article 17 of the Agreement, in order to conduct a holistic examination of the circumstances surrounding the sale. The Chairperson reminded the Technical Committee that this question is based not on a real case but on an example based on the CUP methodology of the OECD Transfer Pricing Guidelines and therefore more information would not be available.
87. One delegate suggested that for the sake of efficiency, as this question has been examined for a couple of Sessions and it appeared unlikely that a consensus could be reached on this case, Ecuador could consider agreeing to place this question in Part III of the Conspectus of Technical Valuation Questions.
88. The Delegate of Ecuador responded that she would need to refer this suggestion to her Headquarters for a decision.

#### Conclusion

89. The Technical Committee decided to keep this question on the Agenda to provide an opportunity to the Delegate of Ecuador to consult her Headquarters for a decision.

#### (d) International Marketing Fee : Request by Colombia

Docs. VT1086E1a and VT1094E1a

#### Background

90. The Chairperson introduced the question concerning the International Marketing Fee (IMF). She referred to working document VT1094E1a containing the written comments by China, Ecuador and Uruguay, which had been sent to the Secretariat during the intersession, and the improved text presenting the facts of the question under consideration.

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91. She informed the Technical Committee that the International Chamber of Commerce (ICC) had sent a letter to the Secretariat during the intersession to share its views on proceedings "pending" as specific technical questions. The letter had been distributed to delegates during the session in the form of a non-paper.

Summary of discussion

92. The Chairperson invited the Technical Committee to give its opinion first on the concerns raised by the ICC in its letter before examining the question submitted by Colombia. The concerns essentially focused on : (1) the examination by the Technical Committee of legal proceedings pending before the competent authorities; (2) the binding nature of the information and advice of the Technical Committee; (3) compliance with the confidentiality of information concerning contractual arrangements or marketing strategies or other valuable information belonging to a private undertaking; and (4) submission by the ICC of comments on Technical Committee draft instruments.
93. In response to the question as to whether the Technical Committee might examine legal proceedings pending in the competent courts of a Member, the delegates who took the floor referred to paragraph 2 (d) of Annex II to the Agreement which recognized the competence of the Technical Committee : to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or by the WTO Committee on Customs Valuation. This provision of the Agreement did not differentiate between the treatment that the Technical Committee should reserve for proceedings brought before a court and that for other proceedings which were not. The Technical Committee endeavoured to deal with all specific technical questions submitted to it for consideration by Members on an equitable basis and required Members to provide accurate and sufficient relevant facts.
94. In response to the second concern of the ICC, the delegates recalled that the information and advice of the Technical Committee (published in the form of Advisory Opinions, Commentaries, Explanatory Notes, Case Studies or Studies) was not binding. That information and the advice of the Technical Committee could become binding, however, if it were incorporated into the national legislation of a Member.
95. In response to the third concern of the ICC, the delegates maintained that specific technical questions were examined on the basis of relevant facts freely submitted by Members. They ensured that such examinations were carried out in strict compliance with the confidentiality of information provided by Members.
96. In response to the request by the ICC, in its capacity as a representative of private-sector undertakings, to be allowed to submit its comments on Technical Committee draft instruments, the delegates felt that the request went beyond the role of Observer which the ICC should play within the Technical Committee.
97. In response to the comments made by one delegate, the Director drew the attention of the Technical Committee to paragraphs 110, 112 and 113 of the Report of its last session (VT1075E1c), which reflected the Technical Committee's agreement to further consider this question on the basis of a new text that accurately and correctly presented all the relevant facts. He pointed out that the Secretariat was acting on the decision of the Technical Committee by receiving the ICC's comments and transmitting them to the Technical Committee, to which no objection had been raised at the last session. In the view of the Secretariat, the Technical Committee would be acting within its mandate as prescribed in the Agreement by examining the Colombian case as presented. However, it was up to the Technical Committee to decide since it had already pronounced on this particular point.

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98. Following the discussions prompted by the ICC's concerns set out in its letter to the Secretariat, some delegates concluded that such concerns were inadmissible. The Technical Committee continued examining the question submitted by Colombia on the International Marketing Fee (IMF).
99. After discussing the matter with the Delegate of Colombia, some delegates concluded that the information as a whole sent by Colombia from the Committee's 42<sup>nd</sup> to 44<sup>th</sup> Sessions was not sufficiently precise and indeed not consistent with the realities of the commercial world. They considered that such information did not allow an effective examination of the question of the treatment – from a Customs valuation perspective – of the International Marketing Fee (IMF) payment by the licensee to the licensor in return for marketing the trademark globally. Other delegates, however, felt that the information provided was perfectly sufficient and that the International Marketing Fee (IMF) should be added to the Customs value, in line with the provisions set out in Article 8.1(d) of the Agreement.
100. Due to the fact that it seemed clear a consensus would not be reached, a delegate proposed that the question should be incorporated into Part III of the Conspectus of Technical Valuation Questions. The Delegate of Colombia accepted this proposal.

#### Conclusion

101. The Technical Committee took note of the discussions that had taken place on the concerns raised by the ICC in its letter to the Secretariat concerning proceedings "pending" as specific technical questions.
102. The Committee decided to include this question in Part III of the Conspectus of Technical Valuation Questions.

(e) Valuation of imported goods purchased in "Flash sales" : submitted by Mauritius

Docs. VT1087E1a and VT1095E1a

#### Background

103. The Chairperson summarized this question submitted by the Mauritius Administration concerning the valuation of imported goods purchased in "flash sales". She informed the Technical Committee that the facts of the case were presented in the Annex to working document VT1087E1a. In response to the working document, the Administrations of China, Ecuador, the United States and Uruguay had sent the Secretariat written comments which were set out in Annexes I, II, III and IV, respectively, to working document VT1095E1a. In advance of the session the Mauritius Administration, which was not represented at the meeting, had sent the Secretariat its responses to the written comments submitted by the above-mentioned Customs administrations. These responses had been distributed to delegates during the session in the form of a non-paper.
104. The key question submitted to the Technical Committee for examination, which was set out in paragraph 4 of the Annex to working document VT1087E1a, was whether Customs should regard the price of US\$ 11.99 for an imported smartphone purchased electronically in a "flash sale" and paid for through PayPal as a discounted price, bearing in mind that the value of an identical smartphone imported into Mauritius not through e-commerce was approximately \$ 200.
105. This key question incorporated the following sub-question : if Customs did accept this price of US\$ 11.99 as a discounted price to be used for the application of the provisions of

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Article 1 of the Agreement, should it also use that price for determining the value of identical or similar goods for which no transaction value existed ?

Discussion

106. Delegates described the special circumstances of "flash sales", which were limited quantity offers made available on a short-term basis at discounted prices to make them attractive. They also referred to certain special regimes introduced by some Customs administrations for the clearance of postal parcels and express delivery consignments, before looking in more detail at the key issue of the Customs valuation of imported goods purchased through "flash sales".
107. During the discussions, delegates expressed differing views regarding the Customs valuation of imported goods purchased through "flash sales":
- (a) Certain delegates indicated that they had introduced special regimes or simplified procedures for the clearance of postal parcels and express delivery consignments. Under these procedures, they applied Customs valuation systems which were different from the one laid down in the Agreement.
  - (b) Others argued that no distinction should be made between goods purchased through "flash sales" and goods imported under the general system. Consequently, they regarded a "flash sale" price as a discounted price available to any purchaser, which should be accepted as the basis for valuation under the provisions of Article 1 of the Agreement. They also considered that this discounted price could be used when applying the comparative methods provided for in Articles 2 and 3 of the Agreement, bearing in mind the conditions of application set out in Articles 2.1 (b) and 3.1 (b).
  - (c) The ICC pointed out that there were a number of legitimate commercial reasons which might lead a seller to offer goods for sale at very low prices, including the commercial strategy used as described in the case at issue. This was why the price of an article which might seem abnormally low when compared with other prices for the same article, could still be genuine.
  - (d) While agreeing that the discounted price would be accepted as the basis for valuation under the provisions of Article 1 of the Agreement, certain delegates maintained that this discounted price should not be used when applying the comparative methods provided for in Articles 2 and 3 of the Agreement.
  - (e) However, other delegates argued that the discounts granted might be attributable not to the goods being sold in a "flash sale" and paid for using Paypal, but to the risk factors related to e-commerce. They questioned whether the discounts granted under the specific conditions of a "flash sale" would be acceptable for Customs valuation purposes. In their view, the discounted price made in a "flash sale" should not be accepted as the basis for determining the transaction value.
  - (f) Finally, reacting to comments about using Customs valuation systems which differed from the one laid down in the Agreement when valuing certain postal parcels and express delivery consignments, a delegate pointed out that the Agreement remained the sole legal framework constituting the reference for the customs valuation of imported goods, for all WTO Member countries. Article 22 of the Agreement required Members to ensure that all their valuation-related laws, regulations and administrative procedures were in conformity with the provisions of the Agreement.

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Conclusion

108. The Technical Committee decided to continue its discussions on this question at the 45<sup>th</sup> Session. The Chairperson said she hoped that there would be a delegate from Mauritius at the Technical Committee's next session, to answer Members' questions in person.

(f) Use of Transfer Pricing documentation to examine related party transactions according to Article 1.2 (a) of the Agreement : submitted by Uruguay

Docs. VT1088E1a and VT1096E1a

Background

109. The Chairperson introduced the issue under consideration. In this question dealing with related parties transactions, the seller does not sell its products to unrelated buyers nor does the buyer buy goods from unrelated sellers. In order to determine whether the transaction value is acceptable, a Transfer Pricing study based on Transactional Net Margin Method ("TNMM") has been examined by Customs to determine, by examining the circumstances surrounding the sale, whether the relationship has influenced the price.
110. Comments and observations were made by some delegates at the 43<sup>rd</sup> Session, particularly on the form, basis and methodology used to arrive at the conclusion reached. Subsequently, Uruguay provided two texts for examination, published in Doc. VT1088E1a, which Members were invited to examine and provide comments on. The first text is the original version presented as a draft Case Study during the 43<sup>rd</sup> Session while the second is of a more generic form presented as a draft Advisory Opinion, taking into account the comments made by Delegates at the 43<sup>rd</sup> Session.
111. Written comments were received from Canada, China, Ecuador and Uruguay and are reproduced in the annexes to Doc. VT1096E1a.

Discussion

112. The Delegate of Uruguay explained that the aim of submitting this case is to cover types of situations presented to Customs administrations by related party transactions and to emphasize the obligations to use the provisions of the Agreement in the valuation of imported goods. Transfer pricing documents are prepared for tax purposes and in this case, based on the study in question a different conclusion is reached, namely that the price was not influenced by the relationship, whereas, under the Agreement, the price of the imported goods had indeed been influenced. Therefore, Uruguay felt that the Technical Committee should have an instrument that emphasizes that for Customs valuation, the obligation is to use the Agreement in the valuation of imported goods in such cases.
113. One delegate, while agreeing that Customs valuation should be based on the Agreement, noted that there are already two instruments which make this clear (Commentary 23.1 and Case Study 14.1); the two proposed texts therefore do not have added value. In addition, the draft Case Study contains contradictory information that is not consistent with commercial practices.
114. The Observer from the OECD explained that there is a list of factors which could explain the price difference between the importer and comparable companies. She agreed with the Delegate of Uruguay's comments that because the tests for transfer pricing and Customs valuation are not the same, it is possible to arrive at different conclusions between
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the two different regimes and the transfer pricing study could be found to be insufficient in determining the Customs value of the imported goods. However, as both methods aim to determine whether the relationship has influenced the price, there is a possible risk in the Technical Committee expressing the view that on one hand, the transfer pricing study concludes that the relationship did not influence the price but on the other hand Customs valuation provisions lead to a different conclusion being reached; this could lead to the perception that one of the methods is not correct.

115. The International Chamber of Commerce (ICC) commented that the analysis based on only one distributor of similar goods rather than the eight distributors of goods of the same kind as mentioned in the transfer pricing study, appears to suggest that the analysis is not done on the basis of "circumstances of sale" but rather on a "test value" basis.
116. One delegate commented that she understood that the purpose of this case was to illustrate how Customs should deal with situations where there are conflicts in the conclusions reached between the Agreement and OECD Transfer Pricing Guidelines. This is a practical issue and one of the challenges faced by Customs and it is therefore important to have an instrument that addresses how Customs should deal with situations when the transfer pricing study is not sufficient to prove that the relationship has not influenced the price. Another delegate noted that it can be difficult for companies to understand that the transfer pricing study is not necessarily adequate to satisfy Customs.
117. Some delegates commented that this question presents an important issue to their Administrations and that the Technical Committee should continue its examination at the next Session.
118. Some delegates also commented that the Technical Committee should examine the issue in question before deciding on the type of instrument to be issued.
119. The Observer from the OECD commented that she understood the need for a case study to act as a counterweight to state that the Agreement would take precedence in the Customs valuation of imported goods in these cases. She also commented that an instrument could be prepared to cover a situation where the transfer pricing study was done in a way that is acceptable to tax authorities but is insufficient or irrelevant for Customs valuation. This would make the point that the Agreement must take precedence for Customs valuation in these cases and not leave it open to any misunderstanding or misrepresentation that a particular transfer pricing study which is acceptable to tax authorities must automatically be acceptable to Customs.
120. The Technical Committee agreed that a new document could be prepared which focuses on the point that although a transfer pricing study may have been accepted by Tax authorities to support an arms' length price, this does not imply that Customs would necessarily accept this as proof that the price has not been influenced under the principles of the WTO Agreement.

#### Conclusion

121. The Technical Committee decided to continue to examine the question at the next Session. Uruguay agreed to work with the Secretariat to modify the document accordingly, taking into account comments and suggestions from delegates and observers.

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- (g) Interpretation of the term "to the port or place of importation" in Article 8.2 (a) and (b) of the Agreement : submitted by Uruguay

Docs. VT1089E1a and VT1097E1a

#### Background

122. The Chairperson introduced the issue under consideration, concerning the interpretation of the term "to" in Article 8.2 (a) and (b) of the Agreement. During the intersession, the Secretariat proposed to amend the title of the question to "Interpretation of the term 'to the port or place of importation' in Article 8.2 (a) and (b)" for a more focused discussion on the issue. The question is annexed to Doc. VT1089E1a and Members were invited to examine and submit their comments to the Secretariat. Subsequently, written comments were received from Uruguay and these comments were set out in the Annex to Doc. VT1097E1a.

#### Discussion

123. The Delegate of Uruguay stated that the aim of submitting this case was to invite the Technical Committee to consider whether it was necessary to adopt an instrument defining "to the port or place of importation" as different Members have different interpretations and an instrument would provide a more consistent interpretation. He also mentioned that his Administration does not have a particular position or definition on this matter and is agreeable to placing this question to Part III of the Conspectus of Valuation Technical Questions if the Technical Committee does not wish to further examine this question.
124. One delegate commented that according to the definition of "importation" in the Glossary of International Customs Terms, importation is interpreted as the act of bringing the goods into the Customs territory and not the act of Customs clearance of the goods. As such, only transport and related costs that are incurred in bringing the goods into the Customs territory would be included in the Customs value. He is agreeable to the Delegate of Uruguay's suggestion that this question could be placed in Part III of the Conspectus of Valuation Technical Questions if the Technical Committee agrees to do so.

#### Conclusion

125. The Technical Committee agreed to put the question in Part III of the Conspectus of Valuation Technical Questions.

#### **Agenda Item VII : QUESTIONS RAISED DURING THE INTERSESSION**

126. There were no questions raised during the Intersession.

#### **Agenda Item VIII : OTHER BUSINESS**

127. There were no items for consideration under this item of the Agenda.

#### **Agenda Item IX : ELECTIONS**

128. In accordance with the new procedures, the outgoing Chairperson conducted the elections for the Chairperson and two vice Chairpersons.

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129. The Delegate of Argentina nominated Mr. J. Birkhoff from the Netherlands as Chairperson. The Delegates of China, Kenya and Nigeria seconded the nomination. Mr. Birkhoff was elected by acclamation as Chairperson of the Technical Committee for a period of one year.
130. The Delegate of China nominated Mr. J-F. Bedard from Canada as Vice Chairperson of the Technical Committee. The nomination was seconded by the Delegates of Gabon and Ghana. Mr. Bedard was elected as Vice Chairperson of the Technical Committee for one year.
131. The Delegate of EU nominated Mrs. S.M. Marte de Los Santos from the Dominican Republic as Vice Chairperson. The nomination was seconded by the Delegate of Vietnam. Mrs. Marte de Los Santos was elected as Vice Chairperson of the Technical Committee for one year.

**Agenda Item X : PROGRAMME OF FUTURE WORK**

132. The Deputy Director stated that the following items would be included on the Agenda for the 45<sup>th</sup> Session :
- Adoption of Agenda/Suggested programme
  - Adoption of the Technical Committee's 44th Session Report
  - Reports on intersessional developments
    - Director's Report
    - WTO Committee on Customs Valuation oral report
  - Technical assistance, capacity building and current issues
    - Report on technical assistance/capacity building activities undertaken by the Secretariat and Members
    - Progress reports from developing country Members' on practical application of the WTO Valuation Agreement
    - Revenue Package
  - Specific technical questions
    - Related Party transactions under the Agreement and Transfer Pricing – case based on resale price method example : submitted by China
    - Examining the circumstances surrounding the sales under the provisions of Article 1.2 (a) – goods produced in different countries : submitted by Ecuador
    - Valuation of imported goods purchased in "Flash Sales" : submitted by Mauritius
    - Use of Transfer Pricing documentation to examine related party transactions according to Article 1.2(a) of the Agreement : submitted by Uruguay
  - Questions raised during the intersession (*as appropriate*)
  - Other business
  - Programme of future work
  - Dates of next meeting

**Agenda Item XI : DATES OF NEXT MEETING**

133. The Deputy Director announced that the 45<sup>th</sup> Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 23 to 27 October 2017.

*Concluding Remarks*

134. Delegates thanked the outgoing Chairperson, Ms. Yuliya GULIS, for her strong leadership of the Technical Committee on Customs Valuation during the past three years. They also thanked Mr Jorn Hindsdal, Deputy Director, who is retiring soon, for his contribution to the work of the Tariff and Trade Affairs Directorate and to this Committee and Mrs. Paula LOPEZ NOVELLA, Interpreter who is leaving the WCO Secretariat.
135. Delegates and the Secretariat also extended their thanks and appreciation to Dr. H. O. VICENTE, the distinguished Delegate of Argentina who attended his last Technical Committee Session as delegate of Argentina. They paid tribute to his peerless contributions to the work of the Technical Committee and his kind support and encouragement to others which embody the spirit of the Committee. Dr. Vicente first represented his country at the WCO in 1977 at the Permanent Technical Committee and later at the Technical Committee on Customs Valuation under the Tokyo Round. He continued to be a delegate to the Technical Committee on Customs Valuation after 1995 and was Chairperson from 1998 to 2000. He has been closely associated with the work on Customs valuation for many years.
136. The Chairperson and the Deputy Director, on behalf of the Director, thanked delegates, the Secretariat and support staff for their efforts during the week. The Deputy Director added finally that it had been a great pleasure to work at the Secretariat and with the Technical Committee, before the Chairperson formally declared the 44<sup>th</sup> Session closed.

Y. GULIS,  
Chairperson.

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二、 第 45 屆關稅估價技術委員會會議報告（文件 VT1117E1b）



WORLD CUSTOMS ORGANIZATION  
ORGANISATION MONDIALE DES DOUANES  
ORGANIZACIÓN MUNDIAL DE ADUANAS

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TECHNICAL COMMITTEE  
ON CUSTOMS VALUATION

VT1117E1b

-  
45<sup>th</sup> Session

O. Eng.

-  
Brussels, 25 October 2017.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON  
THE 45<sup>th</sup> SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

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*Opening remarks*

1. The Technical Committee on Customs Valuation ("Technical Committee") held its 45<sup>th</sup> Session at the Headquarters of the World Customs Organization ("WCO"), in Brussels from 23 to 25 October 2017. The Session was chaired by Mr. Jan Birkhoff (Netherlands) who extended a warm welcome to all delegates, especially those attending the Technical Committee for the first time. He wished the delegates and observers a very ~~informative~~ **instructive** and productive Session. (Uruguay)
2. Mr. Ping LIU, Director, Tariff and Trade Affairs Directorate, welcomed in his opening address all the participants and the new Chairperson, Mr. Birkhoff.
3. The Director noted that this session has been scheduled for only four days in view of the shorter agenda and commented that the Secretariat had worked with the Chairperson and Members to ensure a balanced programme of work with a combination of technical questions and sharing Members' practical experience of the implementation of the WTO Agreement on Customs Valuation (The Agreement). The submission of new questions by

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Canada and Uruguay during the intersession was well appreciated and since it has been working efficiently over the past sessions and able to resolve issues on a steady basis, the Technical Committee would need to have more questions to examine. He encouraged all the delegates to submit more questions and actively participate in the discussions and wished the Technical Committee a productive and successful meeting.

4. The Chairperson also gave the floor to the new Deputy Director, Tariff and Trade Affairs, Mrs. Gael Grooby, who thanked the Technical Committee for the warm welcome and stressed the growing importance of valuation in modern commerce.

**Agenda Item I :**                    **ADOPTION OF AGENDA**

(a) Provisional Agenda

Doc. VT1099E1c

5. The Chairperson summarized the provisional Agenda contained in Doc. VT1099E1c which was circulated to Members, and invited the delegates for their comments on the Agenda. (Argentina)
6. He observed that there would be two presentations relating to transfer pricing by the Korea Customs Service and the Organisation for Economic Cooperation and Development (OECD) under Agenda Item VII - Other Business and invited delegates to inform the Technical Committee if they wish to raise additional issues under Agenda Item VII before the adoption of the Agenda.

Discussion

7. The Delegate of the European Union proposed to include an item relating to how the Technical Committee deals with technical questions in the future.

Conclusion

8. The Technical Committee agreed to the inclusion of the issue raised by the European Union in the Agenda as proposed in Doc. VT1099E1c. The Agenda was adopted with this amendment.

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(b) Suggested programme

Doc. VT1100E1a

9. The Chairperson referred to Doc. VT1100E1a which sets out the suggested programme of work for the 45<sup>th</sup> Session prepared by the Secretariat.
10. The Chairperson informed the delegates that the presentations on Transfer Pricing have been scheduled for Tuesday 24 October. He ~~also~~ further explained that in view of the attendance of the Observer of the Organization for Economic Cooperation and Development (OECD) on Tuesday 24 October, the examination of cases on Related Party Transactions under the Agreement and Transfer Pricing has also been scheduled on that day. (Argentina)

Conclusion

11. The Technical Committee approved the suggested programme as set out in Doc. VT1100E1a.

**Agenda Item II :**                    **ADOPTION OF THE TECHNICAL COMMITTEE'S 44<sup>th</sup> SESSION REPORT**

Doc. VT1098E1c

12. The Chairperson drew attention to the changes made to the reporting procedure as adopted at the 42<sup>nd</sup> Session. Accordingly, the Secretariat would prepare a draft report which would be circulated to delegates (the "a" version). Comments received from delegates would then be published in the "b" version of the report. If no comments/objections are received on the comments the report would be deemed to have been approved. Only those comments/objections made by delegates to the comments on the "b" version of the report which cannot be resolved would be raised for discussion by the Chairperson at the subsequent Session.
13. The Chairperson highlighted the comments of Canada and the United States on the comments initially made by Uruguay on the 44<sup>th</sup> Session draft Report (b – revised version) relating to paragraphs 98 and 101 as well as to paragraph 112 in which there were two different drafting proposals made by Argentina and Uruguay respectively. After hearing the points raised by Canada, the United States and Uruguay on paragraphs 98 and 101 and

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comments made by other delegates on this issue, the Technical Committee agreed to the proposal of amending the first sentence of paragraph 98 as proposed by the Delegate of Uruguay to read as follows: "*Following the discussions prompted by the ICC's concerns set out in its letter to the Secretariat, some delegates concluded that such concerns were inadmissible.*" Reconsidering the changes proposed to paragraph 98, the Delegate of Uruguay agreed to withdraw the proposal to replace the expressions "took note of the discussions that had taken place on" with the expression "rejected" and revert to the original version of paragraph 101. One delegate questioned the meaning of the expression "took note".

14. Regarding the drafting proposal of the last sentence at paragraph 112, the Delegate of Uruguay agreed and supported the proposal of Argentina.
15. The Secretariat made a proposal to delete the expressions "du Comité technique" at paragraph 99 of the French version of the Report to align the three versions of the Report.

#### Conclusion

16. The Technical Committee approved the 44<sup>th</sup> Report with the above amendments.

#### **Agenda Item III :           REPORTS ON INTERSESSIONAL DEVELOPMENTS**

##### (a) Director's Report

Doc. VT1101E1a

17. The Chairperson invited the Director to present the Director's Report, contained in Doc. VT1101E1a. The Director summarized the key intersessional activities included in the document.
18. The Director briefed the Technical Committee on his report to the Policy Commission and Council held from 3 – 5 July and 6 - 8 July 2017 respectively. He reported that the Policy Commission took note of the activities undertaken by the Secretariat regarding the implementation of the Revenue Package Phase III Action Plan and that the Council approved Advisory Opinion 4.17 and the reports of the 42<sup>nd</sup> and 43<sup>rd</sup> Sessions of the Technical Committee. He informed the Technical Committee that the electronic version of the

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Compendium has already been updated with Advisory Opinion 4.17, and the corresponding paper based amending supplement will be available shortly.

19. The Technical Committee was updated on the work being carried out by the Secretariat with regard to the study report on Illicit Financial Flows (IFFs) as mandated by the G20 at its summit held in Hangzhou, China in September 2016 and on other revenue/valuation related activities which the Secretariat attended.
20. The Director informed the Technical Committee about the latest changes of staff in the Directorate. In this context he presented two new staff, namely Mrs. Gael Grooby from Australia, Deputy Director, and Ms. Indri Suprptojo from Indonesia, Professional Associate. Both joined the Secretariat during the intersession.
21. During the intersession, the WCO hosted the 73<sup>rd</sup> WCO Fellowship Programme for English Speakers between 18 September and 13 October. Two fellows from Ghana and Uganda chose Customs Valuation as their field of study.
22. Delegates were also encouraged to ensure the valuation Contact Point lists and Index of Reference Materials were up to date and to advise the Secretariat accordingly of any updates.

#### Discussion

23. One delegate thanked the Director for updating the Technical Committee on intersessional developments since the 44<sup>th</sup> Session and welcomed the reinforcement of the Secretariat with the arrival of the two new staff. Whilst supporting the recent publication of newly adopted instruments of the Technical Committee on the WCO's website, he asked whether there has been a change in the policy regarding publication by WCO. In response, the Director clarified that there has been no change in WCO's publication policy. The instruments will be published in the WCO Customs Valuation Compendium and sold as decided by the Finance Committee and the Council. However, in line with the efforts of the Technical Committee and the WCO to increase transparency, new instruments adopted by the Technical Committee will be published on WCO's website.
24. Another delegate welcomed the extremely interesting and pertinent report and asked how Members could obtain more information about these activities which the WCO Secretariat attended and contribute on the topic of IFFs. The Director explained that activities referred to in paragraphs 14 and 16 of his Report are being provided to the Technical Committee for information. With regards to whether more information should be

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provided, he noted that these events are open to all Members who can attend them as far as possible. The Secretariat's role in such events is mostly to promote the work of the Technical Committee. The Secretariat may, in the future if requested by the Technical Committee, share any information regarding the summary/outcome of such meetings to the extent possible.

25. With respect to the question on IFFs, the Director noted that, while the delegate sees a role that the Technical Committee could play on IFFs, he had the impression that the Technical Committee, in its last Session, did not wish to discuss this matter as it was seen to be an enforcement activity, concerning fraud. For this reason, the issue was not presented as a dedicated agenda item but as part of the Director's report. In fact, the Action Plan on IFFs was developed mainly by Enforcement and the only work relevant to the Technical Committee referred to in the Action Plan was the Guide to Customs Valuation and Transfer Pricing. Further, the issue of IFFs is being dealt with at the Policy Commission which had already approved the Action Plan and Study Report outline on IFFs. Members who see the link between Customs Valuation and IFFs and wish to contribute to this work were invited to coordinate with their colleagues who attend the Policy Commission and the Council to make sure that their concerns are reflected adequately at these forums.

26. The Delegate of China reported that, with respect to the progress in the implementation of the Revenue Package Phase III Programme, her Administration has worked closely with the Secretariat to present a document in the form of a case study on its Customs Valuation Control Programme. This case study is being finalized and the Administration is happy to share its experience and help developing countries with their valuation control programme.

#### Conclusion

27. The Technical Committee took note of the Director's Report, ensuing discussions and observations.

#### (b) WTO Committee on Customs Valuation Report

28. The Observer for the World Trade Organization (WTO) presented the report on behalf of the Committee on Customs Valuation (CCV), which held a meeting during the intersession on 15 May 2017 under the Chairmanship of Dr. Yasser Korani (Egypt). At this Session, Ms Luciana Nader from Uruguay was elected as the Chairperson for 2017-2018. The Observer updated the Technical Committee on issues related to the activities of the CCV, 6.



namely: the status of notifications including the application of the Committee Decisions, the proposal by Uruguay to update the Carrier Media Decision (Decision 4.1), and the delivery of technical assistance.

29. She reported that the status of notifications is now systematically compiled in a report with the symbol G/VAL/W/232/Rev.7. and is available on WTO's website. New notifications were submitted by Kazakhstan and Malawi in January and May 2017 respectively. The CCV concluded the review of the national legislations of Cape Verde, Colombia, Montenegro and Nicaragua at its meeting in May 2017. She acknowledged the positive contribution of Members of the Technical Committee to the work of the CCV in relation to the submission of legislation and responses to check list of issues and reiterated her request for their assistance with this matter.
30. As regards to the proposal by Uruguay to update the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment, she reported that discussion on this topic was suspended at the 15 May meeting of the CCV until its next meeting in November 2017. In relation to the implementation of the Agreement, the Committee took note of two issues relating to the alleged use of reference price system in connection with the valuation of goods and the valuation of paper by one Member. The Committee is also reviewing the report on preshipment inspection (PSI), a triennial exercise.
31. Full details of the WTO report can be found at Annex C to this Report. The next meeting of the CCV is scheduled for 6 November 2017.

#### Discussion

32. In response to questions about the case on valuation of paper as made by one Member ~~and the scope of the report on PSI~~, (Uruguay), the Observer clarified that it has not been formally raised as a case yet and it was raised by only one Member. She also clarified that all aspects of PSI Inspection would come under the triennial review by the CCV, including the aspect of dispute settlement and independent body.

#### Conclusion

33. The Technical Committee took note of the WTO oral report and the discussions which followed.

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**Agenda Item IV : TECHNICAL ASSISTANCE, CAPACITY BUILDING AND CURRENT ISSUES**

- (a) Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members

Docs. VT1102E1a and VT1112E1a

Background

34. Acting on the decision of the Technical Committee, the Secretariat had monitored the technical assistance/capacity building activities scheduled and/or delivered by Members and had forwarded the results to all Members, to help them with their planning and to prevent duplication of effort.
35. Since the last session, the United States and Japanese Customs Administrations had provided information about their technical assistance activities. That information, together with information on the technical assistance/capacity building activities undertaken by the Secretariat, was set out in Annexes I and II to Doc. VT1112E1a.

Summary of discussion

36. The Secretariat provided the Technical Committee with information on its technical assistance and capacity building activities scheduled for the first half of 2018, as follows:
- From 5 to 9 March 2018, a Joint WCO/OECD Regional Workshop on Customs Valuation and Transfer Pricing would be held in Bogota (Colombia) for countries of the Americas and Caribbean region. The WCO would issue invitations to Customs administrations, while the OECD would invite Tax authorities to take part; and
  - From 28 May to 1 June 2018, an Accreditation Workshop for Customs Valuation Expert Trainers would be held in Azerbaijan for the Europe region's English-speaking countries.

Conclusion

37. The Technical Committee took note of the report on technical assistance activities as well as of the other information supplied by the Secretariat.

8.

(b) Progress report on developing countries' application of the WTO Valuation Agreement

Doc. VT1103E1a

Background

38. In pursuance of a decision taken by the Technical Committee, the Secretariat had monitored progress with the application of the WTO Valuation Agreement by various Members and had published status reports on the subject.
39. In advance of the session, the Secretariat had issued Doc. VT1103E1a inviting Customs administrations to provide information on the progress made in their countries with regard to the application of the WTO Valuation Agreement.
40. During the intersession, two Members, the Dominican Republic and Pakistan, offered to present on the item at the 45<sup>th</sup> Session of the Technical Committee. The Dominican Republic gave a presentation on: "Progress report on the implementation of the Agreement on WTO Customs valuation" and Pakistan gave a presentation on: "WTO Valuation Agreement implementation through automation".

Presentation by the Dominican Republic

41. The Delegate of the Dominican Republic began her presentation by describing several measures that had been implemented to modernize her Customs Administration and to facilitate trade; namely, single Customs declaration, risk analysis to selectively control Customs clearance, Authorized Economic Operator (AEO) and Post Clearance Audit.
42. She continued by focusing on the adoption of the Agreement in her Administration that involved modifying the Administration's structure and the national legislation. The Dominican Republic fully applied the Agreement after a two year reservation, as allowed by Article 20 of the Agreement. Accordingly, the Administration had issued a decree of the Regulation for Customs Valuation in 2001, which was reviewed in 2011, and had incorporated Decision 6.1 of the Committee on Customs Valuation and several Technical Committee instruments into its national legislation.

43. The Delegate reported progress in the implementation of the Agreement, particularly in the area of royalties. Buyers who are paying royalties, in which the amount could only be determined after the imported goods are sold, now have the possibility to declare these royalties **at a later time (Uruguay)**, without any penalty, under a voluntary self-assessment scheme elaborated by the Administration. Furthermore, her Administration is focusing on valuation-related risks, as, according to a recent survey, undervaluation is the most frequent fraud with the greatest impact on revenue. The delegate concluded by explaining future challenges for her Administration which covered mutual Customs assistance agreements and information exchange aimed at improving the risk-based importer targeting model and price database, strengthening its post control/PCA role in fraud detection, and providing differential treatment for informal trade.
44. Some delegates sought additional information with respect to the price database and its usage when applying the subsidiary methods set out in Article 2 and Article 3 of the Agreement, and Mutual Customs Assistance Agreement and information exchange conducted by the Dominican Republic.

Presentation by Pakistan

45. After giving an overview of the implementation of the Agreement through its incorporation in his national legislation, the Pakistan Customs Act 1969, the Delegate explained the Customs valuation regime and the significance of Customs valuation for his Administration due to the country's reliance on import duties and the ad valorem rates that dominated its Customs tariff lines.
46. The Delegate reported that his Administration had developed WeBOC (web based one Customs), an automation system for implementing Customs valuation, which integrated Customs with its stake holder in a real time basis. The system covered access to clearance data, cases of valuation ruling and provisional assessment, and HS code alerts to assessing officers.
47. He continued by emphasizing the important role of the Customs Valuation Directorate General, which includes providing assistance to other offices, maintaining uniformity and predictability of valuation practices, deciding valuation-related matters referred by judicial forum, and issuing valuation rulings and valuation advices. He closed his presentation by explaining challenges and future strategy to develop valuation control that comply with the

WTO rules and do not lead to non-tariff barriers, by improving the Administration's modernization effort and institutional capacity.

48. Following the presentation, many delegates showed interest in the valuation rulings and valuation advices practiced in Pakistan and its challenge in data analysis and Customs cooperation. The Delegate explained that the valuation rulings were for commodities and valuation advices were consignment specific. Furthermore, he clarified that mutual assistance and cooperation within and outside his country were strategies designed to achieve a fair valuation practice.

(c) Revenue Package

Doc. VT1104E1a

49. The Chairperson invited the Secretariat to provide an update on the work undertaken in respect of the Revenue Package programme.
50. The Secretariat provided an overview of work being conducted under Phase III of the Revenue Package programme, supplementing the information contained in Doc. VT1104E1a.
51. Information was provided regarding the availability of Revenue Package materials, for example via the Clikc platform. Arabic translations have now been provided by Bahrain Customs and selected Russian translations are being carried out by the Europe Region Office of Capacity Building. Members are encouraged to provide case studies on their valuation control systems to supplement those already available.
52. China Customs has provided a new case study on its valuation control programme and will make a presentation on this at the upcoming Working Group on Revenue Compliance and Fraud (WGRCF). An update is being conducted on the WCO Guide to Customs Valuation and Transfer Pricing and various case studies, such as those relating to the valuation control systems of Brazil, India and Mauritius, are also being updated.
53. The work being conducted under Phase III will be reported to the Policy Commission and Council in June 2018.

Discussion

54. One delegate asked how the new **draft** and updated materials would be made available **for due consideration**, in particular making reference to the WCO Guide to Customs Valuation and Transfer Pricing, and **underlined the need or whether there would be an** opportunity for the Technical Committee to contribute to the new version of these documents, perhaps at the next Session. **This delegate also stressed the importance of tools and support for Least Developing Countries in the field of revenue collection and Customs valuation. (EU)**
55. Another delegate welcomed the development of a new tool on the implementation of the Agreement for Least Developing Countries (LDCs).
56. The Secretariat explained that the WGRCF had the mandate for management of the Revenue Package and said that this would be the forum to feed in comments and suggestions, as necessary. The Revenue Package Action Plan was endorsed by the Policy Commission in 2016 and the final work produced under Phase III will be reported to the Policy Commission in summer 2018. It was added that in the case of the Guide to Customs Valuation and Transfer Pricing, the information contained therein was primarily technical relating the regimes concerned and does not express opinions or give interpretations, beyond those already determined by the Technical Committee.
57. With regard to the new tool being developed on implementation of the Agreement for LDCs, the Secretariat explained that this was primarily a repackaging of existing tools and advice, designed to highlight the particular challenges faced by LDCs and provide solutions and good practices.

Conclusion

58. The Technical Committee took note of the presentations and discussion. The Revenue Package will be placed on the agenda of the next Session.

**Agenda Item V:                   SPECIFIC TECHNICAL QUESTIONS**

- (a) Related party transactions under the Agreement and Transfer Pricing – case based on resale price method – request by China

Docs VT1105E1a and VT1113E1a

**Background**

59.           The Chairperson introduced the case submitted by China regarding a related party transaction where information has been provided to Customs, taken from a transfer pricing study based on the resale price method. At the last Session, the drafting of the case was concluded, based on the English version of the text. It remained for French and Spanish versions of the aligned text to be presented to the Technical Committee. Following the Session, the Secretariat published all three language versions in Docs. VT1105E1a, VT1105F1a and VT1105S1a and Members were invited to provide comment if any linguistic issues were identified. In response, comments were received from Canada and Uruguay on the French and Spanish versions respectively. These comments were reproduced in the annexes to Doc. VT1113E1a.

**Discussion**

60.           The Technical Committee took note of the linguistic corrections proposed by Canada and Uruguay and also additional corrections made by a delegate concerning the Spanish version.

**Conclusion**

61.           The Technical Committee adopted the new instrument, Case Study 14.2, which is annexed to this draft Report (Annex D) and will be presented to the WCO Council for approval in June 2018.

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- (b) Examining the circumstances surrounding the sale under the provisions of Article 1.2 (a) – goods produced in different countries : Submitted by Ecuador

Docs. VT1106E1a and VT1114E1a

#### Background

62. At the 44<sup>th</sup> Session of the Technical Committee, one delegate proposed that Ecuador consider putting the question in Part III of the Conspectus of Technical Valuation Questions since it was unlikely that consensus could be reached on the question.
63. Furthermore, it was stated that in a real situation more information would be required to examine the question and since this question is based on a theoretical example contained in the OECD Guidelines to Transfer Pricing, no additional information would be available.
64. Ecuador considered the proposal to put the question in Part III of the Conspectus during the intersession and expressed its wish to continue the examination of the question by the Technical Committee. Ecuador provided its written comments to the observations made by China reproduced in the Annex to Doc. VT1093E1a.

#### Discussion

65. In its comments, Ecuador felt that there is no need to examine the relationship between Articles 1.2(a) and 1.2(b) as the distinction is clear and that Article 1.2(b) is quite rigid and restricted to three specified test values whereas Article 1.2(a) is less narrow and allows Customs to analyse other aspects that go beyond the examples provided in Article 1.2(a).
66. The Delegate of Ecuador summarized the comments it made contained in Doc. VT1114E1a and explained her position vis a vis the expression “regardless of where they are produced, the price of the goods involved is set freely on the international market and the goods could be bought or sold for the same price anywhere in the world”. Based on the information available from the International Coffee Organization (ICO), ICO distinguishes among four types of coffee: Robusta, Colombian Milds (Arabica), Brazilian Naturals (Arabica) and other Milds (Arabica). The differentiation is based not only on the origin but also on the variety of coffee and the production processes used. Thus, although Colombian Milds and Brazilian Naturals are both Arabica coffee they are not comparable as their production processes are different. However, according to Ecuador, a Brazilian Naturals Coffee produced in Brazil could be compared to Brazilian Naturals Coffee produced in Paraguay.

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67. Moreover, Ecuador argued that having a single comparable transaction that meets the comparability requirements would not appear to be a valid ground to determine that the evidence submitted by the importer to support that the price has not been influenced by the relationship is insufficient. The Observer from the OECD explained how the CUP method may be applied. The use of a single comparator, if very good, can be used.
68. The Delegate of China stated that she is willing to examine the question provided precise information is available. She questioned whether these prices are price indicators or real prices/transaction values when negotiating a sale contract and whether there is no other consideration. She again expressed her concerns about extending the test values to more than the three provided under the provision of Article 1.2(b) of the Agreement. She also observed that as one moves away from the transaction value and applies the other valuation methods in their hierarchical order, the degree of accuracy decreases. She suggested that the Technical Committee should look at the general aspect of the CUP methodology before going to the details of the case and expressed her concern that if such a transfer pricing study is accepted it will encourage importers to use the CUP method with only one transaction instead of providing comprehensive information to Customs to enable it to examine the circumstances surrounding the sale.
69. One delegate believed that following the new comments made by Ecuador, the Committee should focus on the scope of Article 1.2(a) of the Agreement. He referred to Article 1.2 (b) which gives the importer the right to demonstrate that its declared value is very close to the three test values and gives the mandate to Customs to accept the declared value. However, independent of Article 1.2(b), Article 1.2(a) of the Agreement allows Customs to examine the circumstances surrounding the sale in a very general way. It provides three examples and there could be more examples. Moreover, CUP methodology is not frequently used and is mostly used for commodities such as gold which, once extracted, loses its origin and its market price is determined by the quality. The information provided by Ecuador allows the Committee to deepen the examination of the case by looking for other transactions that could be applied when examining the circumstances surrounding the sale. He believed that there is not much flexibility to move on the examination of the question. He asked whether, in a similar case as presented by Ecuador where the importer does not present a transfer pricing study and Customs has no information on identical or similar transactions but has access to the market prices of the goods which are sold on the commodity market and traded at international level, this information could be used to examine the circumstances surrounding the sale to determine whether the price has been influenced by the relationship.

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70. According to another delegate, Article 1.2(b) is not an issue for this case and she referred to Commentary 23.1 which states that examination surrounding the sales is not limited to the illustrations provided in the Interpretative Note to Article 1.2. She was in favour of examining the case under Article 1.2(a) but not under the provisions of Article 1.2(b). Since all these arguments were already mentioned in the previous sessions, and it appeared to the Technical Committee that no progress was being made with this issue, she suggested to put the question in Part III of the Conspectus of Technical Valuation Questions. Another delegate supported this proposal. (Colombia)
71. One observer stated it would be helpful to have as many instruments as possible on the intersection of Transfer Pricing and Customs Valuation to provide further guidance to Customs authorities and traders.
72. The Chairperson observed that many delegates who took the floor were in favour of putting the question in Part III of the Conspectus of Technical Valuation Questions as there was no consensus as to the content of the case study and as to its outcome. He invited the Delegate of Ecuador to convey the proposal of the Technical Committee to her Administration for its consideration.

#### Conclusion

73. The Technical Committee decided to keep this question on the Agenda to provide an opportunity to the Delegate of Ecuador to consult her Headquarters for a decision. Should Ecuador confirm its agreement to place the question in Part III of the Conspectus, this question will be removed from the Agenda for the next Session.

(c) Valuation of imported goods purchased in “flash sales” – Request by Mauritius

Docs. VT1107E1a and VT1115E1a

#### Background

74. The Chairperson summarized the discussions held by the Technical Committee at its 44<sup>th</sup> Session on this question concerning the electronic purchase of imported goods. He summed up Members' differing views regarding the Customs valuation of goods purchased electronically. These views are clearly set out in paragraph 107 of the Report on the 44<sup>th</sup> Session of the Technical Committee.

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75. He referred to working document VT1087E1a, which contained the text outlining the facts of the question under consideration, and to working documents VT1095E1a and VT1115E1a containing Members' written comments. The latter working document also contained the responses issued by the Mauritius Administration to Members' written comments.

Summary of discussion

76. In the absence of a representative of the Administration of Mauritius, the delegates continued the discussions initiated by the Technical Committee at its 44<sup>th</sup> Session regarding the two Customs valuation questions:
- (1) whether Customs should regard the discounted price of US\$ 11.99 for an imported smartphone, purchased electronically in a "flash sale" and paid for through PayPal, as the basis for Customs valuation under the provisions of Article 1 of the Agreement; and
  - (2) in the affirmative, whether this highly discounted price (the normal price of a smartphone being US\$ 200) may be used to determine the transaction value of identical or similar goods for which no transaction value exists.
77. Many delegates argued that this highly discounted price for an imported smartphone purchased in a flash sale, available to any purchaser and paid for through PayPal, should be accepted as the basis for valuation under the provisions of Article 1 of the Agreement, putting forward the following reasons in support of their view:
- a. According to the introduction to the guiding principles (and recitals) of the Agreement, the Customs value should be based on *simple and equitable criteria consistent with commercial practices*. The delegates noted ~~believed~~ that "flash sales" were commercial transactions that were generally carried out via e-commerce. (EU) They offered a limited quantity of goods at attractive prices. This type of trade was a commercial practice that was growing rapidly throughout the world, both in business to consumer (B2C) and consumer to consumer (C2C) transactions;
  - b. According to the responses issued by the Mauritius Administration to Members' comments, all the conditions of application set out in Article 1 of the Agreement referred to in paragraphs 1 (a) to (d) had been met;

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- c. According to other information provided by Mauritius concerning the case under consideration, payment was effected through PayPal and Customs confirmed that the payment of US\$ 11.99 was correct;
- d. Advisory Opinion 2.1 clearly mentions that the mere fact that a price is lower than prevailing market prices for identical goods should not cause it to be rejected, subject to the provisions of Article 17 of the Agreement; and
- e. Electronic sale ensured the conditions of transparency for establishing the export price of goods.

78. Other delegates pointed out, in contrast, that the application of Article 1 of the Agreement implied that the goods to be valued had been sold for export to the country of importation. They stressed that this condition of application of Article 1 had not been met, since Internet sales via a digital platform may take place both for buyers for domestic consumption or for export to different countries of importation. There would be no specific “flash sale” for export to a country of importation since a “flash sale” did not identify a particular buyer after linking it with its country of destination.

79. In response to the reasoning referred to in the preceding paragraph, a delegate pointed out that the details of an order to purchase goods for import via e-commerce covered all the information required, including the exact delivery address. When the transaction was effective, the seller or his supplier delivered the goods to the buyer’s address in the country of importation, and that address was thus well known.

80. Delegates’ opinions also differed with respect to the question of whether this highly discounted price made at the time of the “flash sale” could be used to determine the transaction value of identical or similar goods for which there was no transaction value:

- a. Some delegations (EU) maintained that the discounted price could be used as the basis for valuation under the provisions of Articles 2 or 3 of the Agreement, provided the conditions of application of the comparative methods provided for in Articles 2.1 (b) or 3.1 (b) of the Agreement were met.
- b. Others delegations (EU) meanwhile felt that the discounted prices made in “flash sales” should not be used when applying the comparative methods provided for in Articles 2 and 3 of the Agreement. They believed that such discounted prices, which were generally

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limited quantity offers subject to exceptional conditions of access and made available on a short-term basis, should not be used for the Customs valuation of goods imported under the general system.

81. Since the Technical Committee did not reach a consensus on these two questions, the Chairperson invited Members to continue examining these questions ~~in~~ (EU) at the 46<sup>th</sup> Session so that a Technical Committee instrument could be drafted that would allow the Customs valuation of imported goods purchased via e-commerce to be standardized. He asked the Secretariat to prepare a new working document that would encompass all the relevant comments made by Members since the 44<sup>th</sup> Session. This would be used as the basis for discussion at the next session of the Technical Committee. He invited Members to contribute to the drafting of the new working document.
82. Meanwhile, in response to the concern raised by a Member regarding the consideration of questions linked to e-commerce in the work of the WCO, the Secretariat informed the Technical Committee that a Working Group on E-Commerce (WGEC) had been set up in 2016. The WCO used this Working Group to develop its e-commerce programme while taking account of trade facilitation and enforcement needs. The mandate of the WGEC was to draft directives or guidelines on the following matters linked to e-commerce: Trade Facilitation and Simplification of Procedures; Safety and Security; Revenue Collection; and Measurement and Analysis.

#### Conclusion

83. The Technical Committee agreed to continue its examination of this question at its 46<sup>th</sup> Session, on the basis of a new working document.

(d) Use of Transfer Pricing documentation to examine related party transactions according to Article 1.2 (a) of the Agreement : submitted by Uruguay

Docs. VT1108E1a and VT1116E1a

#### Background

84. The Chairperson introduced the issue under consideration, concerning the use of transfer pricing documentation to examine related party transactions according to Article 1.2 (a) of the Agreement. In this question dealing with related parties' transactions, the seller does not sell its products to unrelated buyers nor does the buyer buy goods from unrelated sellers. In order to determine whether the transaction value is acceptable, the circumstances surrounding the sale have been examined. A Transfer Pricing study based on Transactional Net Margin Method ("TNMM") has been examined by Customs to determine whether the relationship has influenced the price.
85. At the 44<sup>th</sup> Session, some delegates considered that there are already existing instruments which make it clear that Customs valuation should take precedence in valuation of imported goods and the Draft Case study set out in Annex II to Doc. VT1108E1a contains contradictory information that is not consistent with commercial practices. However, some delegates were interested in examining this question as it presents an important issue to their administrations.
86. The Technical Committee agreed that a new document could be prepared which focuses on the point that although a transfer pricing study may have been accepted by Tax authorities to support an arms' length price, this does not imply that Customs would necessarily accept it as proof that the price has not been influenced under the principles of the WTO Agreement.
87. During the intersession preceding the 45<sup>th</sup> Session, the Secretariat worked with Uruguay to prepare an amended version of the draft Case Study to reflect the comments made by delegates during the 44<sup>th</sup> Session. In this new text, the conclusion to be reached is that the information in the transfer pricing study is not adequate to determine whether the relationship has or has not influenced the price.
88. Written comments were received from Canada and are reproduced in the Annex to Doc. VT1116E1a.

#### Discussion

89. The Delegate of Uruguay explained that the intention of submitting this case is to cover types of situations where a transfer pricing study done using the TNMM method may not be compliant with the Agreement. In his opinion, the amended draft Case Study, as proposed by the Secretariat, is clearer than the original version and agrees that comparison can be
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made between different trade sectors or goods imported from different countries rather than between different commercial levels of the same trade sector and invited the Committee to further examine the question based on the information as mentioned.

90. One delegate agreed that the Technical Committee can work with the approach suggested by the Secretariat but proposed to highlight more significant differences between the importer and the comparable companies, for example, to compare between different industries or the comparable companies can sell different goods or import goods from a different country of origin etc.
91. Another delegate commented that the conclusion reached in the amended draft Case Study is similar to the conclusion mentioned in Commentary 23.1 and questioned if there was really a need to have an instrument that had the same conclusion.
92. The International Chamber of Commerce (ICC) commented that there were inconsistencies in the amended draft Case Study where if the importer and comparable companies were competing in different commercial levels, there would probably be differences in the functions, risks and assets between the importer and the comparable companies and that the transfer pricing study would have already pointed this out and suitable adjustments would have been made to ensure that the functions, risks and assets of the importer is comparable to the comparable companies.
93. The Observer from the OECD commented that although it is possible for companies operating at different commercial levels to have the same functions, assets and risks, this is highly unlikely in reality. Being from different trade sectors or commercial levels would most likely lead to the conclusion that the functions, assets and risks were in fact different and not comparable. Going back to the draft Case Study, she commented that using comparables from a different industry compared to the importer as suggested by one delegate would be more realistic.
94. The Chairperson noted that many delegates have concerns on the inconsistencies on the draft Case Study. He sought proposals from the Technical Committee to address these inconsistencies which could be a basis for a new working document for the next Session. In response, the Deputy Director suggested that one of the differences that can be made with respect to the comparables is that the importer is the only distributor of a particular make of car, for example, imported from Asia while the comparables could be distributors for makes of cars imported from other regions.

95. The Delegate from Uruguay suggested keeping the amended draft Case Study as proposed by the Secretariat, while taking into account the written comments submitted by Canada. He also sought clarifications on the commercial reality on what could be considered as significant differences between the importer and its comparable companies.
96. The Observer from the OECD commented that the country of origin is likely to be a less significant factor when using the TNMM to benchmark against entities such as a simple distributor. The countries in which the comparables are importing into could be a factor for which the functions, assets and risks could matter when looking at comparability. The TNMM is very often focused on comparability of functions, assets and risks rather than finding comparables, that is, importing the same type of products from the same country.
97. The Chairperson requested the Technical Committee to consider whether it would require a new document that will address the inconsistencies mentioned by some delegates or whether it should not have another instrument that is similar to the conclusion of Commentary 23.1.
98. The delegate from Uruguay reiterated that the intention was to have a clear document which covers the types of situations presented to Customs administrations by related party transactions and emphasize the obligations to use the provisions of the Agreement in the valuation of imported goods. He would have no objections if the Technical Committee decides to put this question into Part III of the Conspectus of Valuation Technical Questions.

#### Conclusion

99. The Technical Committee agreed to place the question in Part III of the Conspectus of Valuation Technical Questions.



**Agenda Item VI : QUESTIONS RAISED DURING THE INTERSESSION**

- (a) Royalties and licence fees under Article 8.1 (c) of the Agreement : submitted by Uruguay

Doc. VT1109E1a

Introduction

100. During the intersession, Uruguay submitted a question for possible consideration by the Technical Committee regarding royalties and licence fees under Article 8.1 (c) of the Agreement. The question is annexed to Doc. VT1109E1a.

Discussion

101. The Delegate of Uruguay stated that the aim of submitting this case was that there are presently no instruments that provide guidance on how royalties should be proportioned when there is a need to do so and considered that it is necessary to have an instrument for the benefit of both Customs administrations and the private sector.
102. Some delegates felt that the question **and issue posed** ~~in the present form is not focused on the main question and that it could~~ **call into question some** ~~lead to contradictions with the existing instruments on the topic of~~ royalties and licence fees under Article 8.1 (c).  
(EU)
103. Some delegates considered that it is important to have an instrument to provide for uniform interpretation on the apportionment of royalties and licence fees as this is an issue that is faced by their administrations.
104. One delegate suggested to revise the document to focus on the main points for discussion and to keep this question under the agenda item "Questions raised during the intersession" for the next Session. This is to enable Members to reflect further during the intersession whether there is a need to discuss this as a specific technical question.

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Conclusion

105. The Technical Committee agreed to keep this question under agenda item “Questions raised during the intersession” for the next Session. Uruguay will work with the Secretariat to revise the document, reflecting Members’ comments.

(b) Interpretation of the value of adjustments under Article 8.1 (b) of the Agreement – Request by Uruguay

Doc. VT1110E1a

Background

106. The Chairperson introduced this new question submitted by Uruguay relating to adjustments to the price actually paid or payable under Article 8.1 (b) of the Agreement. He informed delegates that the Uruguay Administration had sent the Secretariat a draft Commentary on this question for examination by the Technical Committee. This draft Commentary was set out in the Annex to working document VT1110E1a. He invited the Technical Committee to determine whether it wished to consider this case as a Specific Technical Question at its next Session.
107. The Delegate of Uruguay believed that it would be useful for Customs administrations to have a Technical Committee instrument that would provide them with the additional information required for the application of Article 8.1 (b) of the Agreement, particularly with respect to the treatment of costs incurred by the delivery of “assists” to the producer of the imported goods.

Summary of discussion

108. The Technical Committee acknowledged the relevance of this question submitted by Uruguay, which should be examined as a Specific Technical Question since it was not covered in either the Agreement or in any instrument adopted previously by the Technical Committee, as the Secretariat had pointed out.
109. A number of delegates informed the Technical Committee that their Customs administrations had regulations that had been drafted to make up for the lack of provisions in

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the Agreement concerning this specific question of the treatment of costs incurred by the delivery of "assists".

### Conclusion

110. The Technical Committee agreed that this case would be considered as a Specific Technical Question at its next Session.

- c) Sale for Export to the Country of Importation under Article 1 : Request by Canada

Doc. VT1111E1a

### Background

111. The Chairperson introduced this new technical question submitted by Canada concerning confirmation of the sale for export in a particular transaction which is summarized in Doc. VT1111E1a.

### Summary of discussion

112. The Delegate of Canada explained that this question was not based on an actual case. ~~so no contract existed~~(EU) It is, however, based on a common scenario which has been encountered. It raises questions concerning the identification of the sale for export, the actual buyer and whether or not a sale for export had in fact taken place.
113. The Delegate made reference to Commentary 22.1 which concerns successive sales but considered this was a different situation. Retailers order directly from XCO; ICO has no role in the buying process although being shown as the declared importer. Instead, ICO is acting as a distributor and promoter of the imported goods.
114. Some delegates commented that they had seen similar cases and agreed that it was difficult to identify the sale for export in such cases. One delegate suggested that, as a first step, it was important to identify who takes the financial risk, who makes the payment for the goods and who gets the benefits from the transaction. **A delegate stated that a number of clarifications were needed, and welcomed the fact that Canada had already given some clarifications at this meeting. This delegation also welcomed the contribution and expertise**

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offered by the ICC. It was noted that this was not a case of "multiple sales". The facts as presented pointed to a single transaction in this case. On this basis, his delegation could agree to taking forward the case for inclusion in the agenda of the Technical Committee as a Technical Question. As a minor matter, the issue put forward (current title) must reflect the issue raised and the discussion in the TCCV. ~~Another delegate questioned whether in fact there were multiple sales in this case. He was also against the use of the current title since it is considered too general for this particular case.~~ (EU)

115. Delegates agreed that this question should be discussed as a specific technical question because it was a significant and practical subject ~~with a special feature, namely whether ICC could be identified as a bona fide buyer.~~ (EU)
116. The Observer of the ICC explained that the case represents a trend in commercial practice and offered to provide information on this type of business arrangement at the next Session, to assist the Technical Committee in its deliberations.

#### Conclusion

117. The Technical Committee agreed that the case submitted by Canada would be discussed as a specific technical question at the next Session. Canada will work with the Secretariat to produce a new document with clarification and analysis including a diagram illustrating the transaction. The ICC will be invited to make a presentation on the business practice in this case.

#### Agenda Item VII : OTHER BUSINESS

##### Presentation by OECD

118. At the request of the Secretariat, the Observer from the OECD provided information to the Technical Committee on recent developments in the Base Erosion and Profit Shifting programme ("BEPS").
119. The Observer from the OECD gave background information on the BEPS programme which was developed as a G20 project. In 2015, the final BEPS reports were finalized which led to a number of changes to the transfer pricing guidelines. Under the BEPS "inclusive framework", launched in Japan in 2016, 103 countries have now committed to implementing

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the ~~BEPS~~ **this** programme (**Argentina**). They also have the right to participate in ongoing BEPS work and have access to transfer pricing and capacity building programmes.

120. A series of toolkits are being developed to provide further practical assistance on the BEPS recommendations.
121. The Observer from the OECD also provided information on other upcoming issues, including a review of transfer pricing of services and creation of a taskforce on the digital economy. An updated version of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations was published in July 2017.
122. In response to a question from a delegate, the Observer from the OECD provided information on the indirect transfer of assets, based on an example of a transfer of shares from one offshore company to another, where no physical transfer of goods took place.
123. One delegate raised a more general point regarding the future of the work currently being conducted by the Technical Committee in this field; in the context of the evolution of transfer pricing and new Guidelines, etc. (**Argentina**) is the OECD considering possible future steps towards harmonization of the two regimes? The Observer from the OECD, noting the very different frameworks which apply to Customs valuation and transfer pricing, said she was not aware of any current initiatives to take this forward. She added that a more fundamental change would need to be considered at a higher level, such as at G20 leaders' level, and suggested that greater Customs – Tax cooperation at the practical level be encouraged.
124. The Technical Committee took note of the presentation and discussion. The OECD presentation will be made available via the WCO Members' website.

#### Presentation by Korea

125. At the request of the Secretariat, the delegate of Korea made a presentation on its programme concerning Customs valuation and transfer pricing.
126. The main elements of the presentation concerned: 1) ACVA (Advance Customs Valuation Arrangement), 2) Pre-adjustment of taxes and duties, 3) Rectification Claim for adjustment of taxes and duties, and, 4) Adjustments as a provisional value.

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127. The speaker explained that the ACVA system was developed to establish the method for determining the Customs value of imported goods in advance, in transactions between related parties, via consultation between duty payers and Customs on request.
128. Applicants may declare the provisional value of the imported goods and make a final value declaration with the details as approved. This may result in a refund or additional payment of duties.
129. Customs and Tax authorities should consult where an ACVA and APA are to be applied simultaneously. There is an exemption from additional penalties where an ACVA application is made.
130. A system for processing of adjustments in related party transactions was given a legal basis in 2017.
131. The presentation generated a lot of interest among delegates and various questions on the legal basis for and the operation of the ACVA practices, including Customs-Tax cooperation practices were answered. The Technical Committee took note of the presentation and discussion. The presentation made by Korea will be made available via the WCO Members' website.

Item raised by European Union

132. The Delegate of the European Union made a proposal concerning the Technical Committee's procedure for considering specific technical questions. He observed that over the 37 years of application of the WTO Valuation Agreement, the Technical Committee had issued over a 100 instruments on a wide range of technical valuation questions. He pointed out that the Technical Committee typically works in a reactive way, that is, it responds to questions as and when raised by Members, rather than take a more pro-active approach. He suggested that the Technical Committee should take stock of the work conducted to date and consider whether it should take a more strategic approach to the examination of technical questions. A working title could be : 'An overview of technical questions of the Technical Committee'.
133. He went on to suggest that such an exercise could consider the following questions :  
What has been done in the past ? What could be done in the future? What are the sources of the questions received, **what is the issue, (EU)** the subject matter and future trends?
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Currently, he felt that the technical work was a little unpredictable and ad hoc; new topics are emerging that may have valuation implications such as E-commerce. Also, most of the instruments produced **conclusions (EU)** ~~opine~~ on whether or not a particular element is **in or out** of the Customs value ~~take~~. **(EU)** He suggested that the Technical Committee considers providing more general advice, focusing on new areas of interest and taking into consideration the wider environment.

134. He said that the EU would prepare a note for discussion on this issue at the next Session.

#### Discussion

135. In response to the proposal from the EU, the Director said he would welcome the views of Members and reminded the Technical Committee that some years ago an agenda item entitled: "*Future Direction of the Technical Committee*" was discussed. It could therefore be worth revisiting this work to inform the way forward and conduct a broader review of the work of the Technical Committee. He acknowledged that the Technical Committee has done a lot of good work, as reflected in the Compendium, and highlighted the need to ensure that the wider environment is taken into account, including new issues and the capacity building needs of developing countries, which continue to face challenges in implementing the Agreement.

136. Delegates spoke in support of this proposal. One delegate highlighted the ongoing need for capacity building which would help better implementation of the Agreement.

137. The Chairperson noted that it was important to consider future needs and trends and that the Technical Committee would await a document from the EU and input from Members.

#### Conclusion

138. The Technical Committee took note of the discussion and agreed to discuss this issue at the next Session, on the basis of a working document.

#### Agenda Item VIII : PROGRAMME OF FUTURE WORK

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139. The Secretariat advised that the following items would be included on the Agenda for the 45<sup>th</sup> Session :

- Adoption of Agenda/Suggested programme
- Adoption of the Technical Committee's 45<sup>th</sup> Session Report
- Reports on intersessional developments
  - Director's Report
  - WTO Committee on Customs Valuation oral report
- Technical assistance, capacity building and current issues
  - Report on technical assistance/capacity building activities undertaken by the Secretariat and Members
  - Progress reports from developing country Members on practical application of the WTO Valuation Agreement
  - Revenue Package
- Specific technical questions
  - Examining the circumstances surrounding the sales under the provisions of Article 1.2 (a) – goods produced in different countries : submitted by Ecuador (*Note : this item will be withdrawn if Ecuador agrees to place the question in Part III of the Conspectus of Technical Valuation Questions*).
  - Valuation of imported goods purchased in "Flash Sales" : submitted by Mauritius
  - Interpretation of the value of adjustments under Article 8.1 (b) of the Agreement : Request by Uruguay
  - Sale for Export to the Country of Importation under Article 1 : Request by Canada
- Questions raised during the intersession (as appropriate)
  - Royalties and licence fees under Article 8.1 (c) of the Agreement : Request by Uruguay
- Issue raised by the European Union provisionally entitled "An overview of technical questions of the Technical Committee"

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- Other business
- Elections
- Programme of future work
- Dates of next meeting

**Agenda Item XI :**            **DATES OF NEXT MEETING**

140.        The Secretariat announced that the 46<sup>th</sup> Session of the Technical Committee on Customs Valuation had been provisionally scheduled in the week starting 23 April 2018. The scheduled duration of the Session will be determined in due course.

*Concluding Remarks*

141.        The Chairperson and the Director thanked delegates, the Secretariat and support staff for their efforts during this Session before the Chairperson formally declared the 45<sup>th</sup> Session closed.

J. BIRKHOFF,  
Chairperson.

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一、 議程（文件 VT1117E1b 附錄 A）

Annex A to Doc. VT1117E1b  
(VT/45/Oct. 2017)

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二、 出席人員名單（文件 VT1117E1b 附錄 B）

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三、 世界貿易組織口頭報告（文件 VT1117E1b 附錄 C，含簡報檔）

Annex C to Doc. VT1117E1b  
(VT/45/Oct. 2017)

**Oral report by the WTO  
to the 45th Session of the Technical Committee on Customs Valuation**

**23-26 October 2017**

1. Good morning, Chair, good morning, everyone. It is a pleasure for me to present this report on behalf of the WTO Committee on Customs Valuation.
2. I would like to update you on the work of the committee since my last report at the 44th session. During the period under consideration, the Committee held a formal meeting on 15 May 2017 (G/VAL/M/64) under the Chairpersonship of Dr Yasser Korani (Egypt).

**Notifications**

3. As Members might recall, the Committee on Customs Valuation reviews four different types of notifications, which include: Members' laws and regulations; the responses to check list of issues; the date of implementation of the Decision on Interest Charges; and, whether Members apply paragraph 2 of Decision 4.1. The status of notifications is now systematically compiled in a report, the most recent version being issued this week in document G/VAL/W/232/Rev.7.
4. During the period under review, new notifications were submitted by Kazakhstan (G/VAL/N/1/KAZ/1) in January 2017 and by Malawi (G/VAL/N/1/MLI/2) in May 2017.
5. At the meeting of 15 May, the Committee continued the examination of the national legislations of 18 Members. It concluded the review of the national legislations of Cabo Verde, Colombia, Montenegro and Nicaragua, and agreed to revert at the next meeting to the examination of the legislations of the following Members: the Kingdom of Bahrain; Belize; Ecuador; The Gambia; Guinea; Honduras; Kazakhstan; Malawi; Nepal; Nigeria; Russian Federation; Rwanda; Solomon Islands; and, Sri Lanka.
6. To date, 99 Members have notified their national legislation on customs valuation, including 16 Members which have submitted communications indicating that their legislation notified under the Tokyo Round Customs Valuation Agreement remained valid under the WTO Customs Valuation Agreement (both figures count the European Union as one). In addition, 68 Members have provided responses to the checklist of issues. There are 36 Members which have not yet made either of these two notifications (see document G/VAL/W/232/Rev.7).
7. The status of the checklist of issues notifications is contained also in document G/VAL/W/232/Rev.7. Since my last report, new notifications were received from Malawi (G/VAL/N/2/MWI/1) and Nicaragua (G/VAL/N/2/NIC/1).
8. The current compliance rate is approximately 76%, with 36 Members still to notify their legislation. Only 30 notifications of changes to their national legislation on customs valuation have been notified by 27 Members since 1995.
9. Notifications on the application of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods and of paragraph 2 of the Decision on the Valuation

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of Carrier Media Bearing Software for Data Processing Equipment (G/VAL/5) were summarized by the Secretariat in documents G/VAL/W/5/Rev. Since my last report, new notifications were submitted by Malawi (G/VAL/N/3/MWI/1) and Nicaragua (G/VAL/N/3/NIC/1).

10. The Committee suspended, at the 15 May meeting, its ongoing discussions on a proposal by Uruguay (G/VAL/W/241/Rev.1) to update the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment until the next meeting of the Committee. Additional documents related to this item include a related proposal by Switzerland (G/VAL/W/254), a report with statistics on imports of those products (G/VAL/W/249), which was prepared by the Secretariat at the Committee's request, and Uruguay's responses to questions raised by one delegation (G/VAL/W/264).
11. No decisions were taken by the Committee during the period under review.
12. I would like to acknowledge the positive contribution of Members of the TCCV to the work of the Committee in Geneva, in terms of encouraging the submission of legislation and responses to the Checklist of Issues. I would continue to request their assistance with this matter.
13. At its 15 May meeting, the Committee agreed to remove from the agenda the item "Paragraph 12 of the Doha Ministerial Declaration WT/MIN/(01)/Dec/1): Implementation-related issues" (meeting of 15 May). Trade concerns raised by members during the meeting comprised the alleged use of a reference price system in connection with the valuation of goods, and the determination by a Member of the customs value of paper.

#### **Technical assistance**

14. Training on customs valuation was carried out as part of the following WTO activities: a regional market access workshop for the Arab region delivered in Kuwait; WTO Regional Trade Policy Courses in English-speaking Africa, French-speaking Africa, Asia, the Caribbean, CEECAC and Latin America; a WTO Advanced Trade Policy Course in Geneva.
15. Again, I would like to remind Members of the TCCV that requests for technical assistance can be made by individual WTO Members at any time, and a national activity designed to meet the needs of the recipient will be organized. We have been making efforts to systematically hold joint WCO/WTO activities, and these have been well received by beneficiaries.

#### **The Preshipment Agreement**

16. With regard to the Agreement on Preshipment, the Secretariat circulated a report consolidating the status of all the notifications which had been received on preshipment inspection (G/PSI/N/1/Rev.2/Add.4). The Committee took note of issues raised by a member regarding the status of notification of PSI by other members.
17. The Committee took note of the latest report by the International Federation of Inspection Agencies (IFIA) concerning countries that use preshipment inspection services which was circulated in document G/VAL/W/63/Rev.20.
18. The Committee agreed to undertake the Fourth Triennial Review pursuant to Article 6 of the PSI Agreement, which will be carried out at the meeting of the Committee on 6 November 2017.

C/2.

**Final remarks**

19. At the meeting of 15 May Ms Luciana Nader (Uruguay) was elected as the new Chair of the committee for 2017/2018.
20. This brings me to the end of my oral report.

\* \* \*





# BEPS UPDATE

Melinda Brown  
Senior Advisor – Transfer Pricing  
Centre for Tax Policy and Administration



## Changes in the international tax environment

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- BEPS final reports published October 2015
  - Many changes in the international tax “rules”
- Also significant changes in the institutional frameworks
  - BEPS was a G20 project
  - International tax work at the OECD has become increasingly inclusive
- Inclusive framework on BEPS
  - 103 member jurisdictions
    - Agree to implement BEPS
    - Participate in BEPS work on an equal footing
    - Access to capacity building support

## Toolkits

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- Mandate from Development Working Group of the G20
  - Addressing base erosion and profit shifting issues of particular relevance to low income countries
  - Toolkits being developed by the Platform for Collaboration on Tax (OECD, World Bank Group, IMF, UN)
    - [Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment](#)
    - [Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses](#)
    - [Taxation of Offshore Indirect Transfers](#)
    - Implementing Effective Transfer Pricing Documentation Regimes
    - Tax Treaty Negotiation
    - BEPS Risk Assessment
    - Base Eroding Payments
    - Supply Chain Restructuring

## BEPS Implementation – 4 Minimum Standards

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- Action 5: Harmful Tax Practices
  - i.e. harmful preferential (tax incentive) regimes
  - Peer review process underway
- Action 6: Treaty abuse
  - Changes to bilateral double tax agreements may be needed to prevent treaty shopping
  - Multilateral Instrument demonstrated a way of simultaneously updating a large number of bilateral double tax agreements
  - First signing ceremony in June 2017, more signatories expected. Currently, >70 jurisdictions have signed, covering >1100 bilateral double tax agreements



## BEPS Implementation – 4 Minimum Standards

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- Action 13: Country-by-Country Reporting
  - Minimum Standard based on:
    - Consistency of implementation (identical reporting template, same threshold for filing, same timing)
    - Ensuring confidentiality of data received and exchanged between governments
    - Appropriate use of data (only for high level risk assessment, economic/statistical analysis)
  - 3-stage peer review process
    - 2017 peer review to focus on domestic legal frameworks in place for consistency and confidentiality.
      - First CbC Reports will be filed and exchanged between jurisdictions by mid-2018
    - 2018 peer review: focus on confidentiality and governance frameworks for appropriate use
    - 2019 peer review of all elements of the minimum standard



## BEPS Implementation – 4 Minimum Standards


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- Action 14: Improving Dispute Resolution
  - [Peer review process underway](#)
  - First batch of peer review assessments available online
  - Peer review reports assess compliance with minimum standard countries have agreed to on improving dispute resolution; identify recommendations for improvements




## Transfer pricing

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- BEPS Actions 8-10 and 13 Reports officially incorporated into OECD TP Guidelines in May 2016
  - Fully consolidated, printed version of the OECD TP Guidelines published in July 2017
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## Transfer pricing – BEPS work-streams

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- Revision of the guidance on transactional profit split method
  - Attributing profits to permanent establishments
    - Following revised PE thresholds recommended in BEPS Action 7
  - Implementation guidance for approach on Hard to Value Intangibles
    - (Chapter VI OECD TP Guidelines)
  - Transfer pricing of financial transactions
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## Transfer pricing – revision of the guidance on profit split

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- Started under BEPS project
- 3<sup>rd</sup> discussion draft released June 2017
  - 400 pages of comments
  - Public consultation in Paris 6 November
- Working Party 6 meets in November to try to finalise the revised draft



## Transfer pricing – financial transactions

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- Difficult issue
  - Interactions with thin capitalisation / interest limitation rules in most countries
- Focus on non-financial services businesses
  - Loan pricing
  - Guarantees
  - Cash pooling arrangements
  - Captive insurance arrangements
- Targeting release of a discussion draft for public comment early 2018





## Transfer pricing – what's next?

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- Transfer pricing of services
  - Chapter VII of the OECD TP Guidelines (1999)
  - The only technical chapter of the Guidelines that has not been recently revised
  - Will need to take account of increasing digitalisation of the economy
    - E.g. services provided digitally / remotely



## Digitalisation of the economy

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- One of the original drivers of the BEPS project
  - Action 1 report: diagnosis rather than prescription
  - Relied on other BEPS actions (e.g. on transfer pricing, PE threshold) to address digital businesses
- Continued pressure to address taxation of digital business models
  - Unilateral actions (EU and elsewhere)
- Task Force on Digital Economy mandated to provide recommendations to G20. Interim report April 2018.
  - Currently consulting
    - E.g. role of data and other user inputs in value creation in highly digitalised business models?
    - Will need to ensure a holistic solution: e.g. if a digital PE is proposed, will also need to consider how to attribute profits to that PE

**THANK YOU**

#### 四、 案例研究 14.2 (文件 VT1117E1b 附錄 D, 含中譯)

Annex D to Doc VT1117E1b  
(VT/45/Oct. 2017)

### CASE STUDY 14.2

## USE OF TRANSFER PRICING DOCUMENTATION WHEN EXAMINING RELATED PARTY TRANSACTIONS UNDER ARTICLE 1.2 (a) OF THE AGREEMENT

### Introduction

1. This document describes a case where Customs took into account information provided in a company's transfer pricing report, as well as additional information, when determining whether or not the price actually paid or payable for imported goods had been influenced by the relationship between the buyer and the seller under Article 1.2 (a) of the Agreement. (Secretariat)

This case study does not indicate, imply, or establish any obligation on Customs authorities to utilize the OECD Guidelines and the documentation resulting from the application of the OECD Guidelines in interpreting and applying the WTO Valuation Agreement.

### Facts of Transaction

2. XCO of country X sells luxury bags to ICO, a distributor of country I. Both XCO and ICO are wholly-owned subsidiaries of ACO, the headquarters of a multinational enterprise and the brand-owner of the luxury bags. Neither XCO nor other companies related to ACO sell the identical or similar luxury bags to unrelated buyers in country I. ICO is the only importer of the luxury bags sold by XCO to country I. Thus, all luxury bags imported into country I by ICO are purchased from XCO.
3. In 2012, ICO declared the price of imported luxury bags based on the value on the invoice issued by XCO. The commercial documents submitted to Customs of country I indicated that there was no special circumstances or additional payments which would prevent the use of the transaction value as set out in subparagraphs (a) to (c) of Article 1 of the Agreement or require an additional adjustment prescribed by Article 8 to the import price.
4. In 2013, Customs in country I conducted a Post-Clearance Audit to verify ICO's declared import price, because it had doubts about the acceptability of the price. ICO's transfer pricing policy showed that the import price of all luxury bags was determined using the Resale Price Method (in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organisation for Economic Co-operation and Development). At the end of each year, ICO calculated the import price of luxury bags based on the resale price and the targeted gross margin for the next year as recommended by XCO. After the targeted gross margin for 2012 was determined at 40%, ICO then calculated the import price of luxury bags to be imported in 2012 by using the Resale Price Method according to the formula:  $Import Price = recommended Resale Price \times (1 - Targeted Gross Margin) / (1 + Duty Rate)$ .

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5. ICO is a simple or routine distributor. The marketing strategy for the sales of bags in country I is in fact established by XCO. XCO also advises on the levels of inventory to be maintained, and establishes the recommended sales price of the bags sold by ICO, including the discounting policy to be used by ICO. XCO has also invested heavily in developing valuable intangible assets associated with the bags. As a result, XCO assumes the market risk and price risk in relation to the sales of the bags in country I.
6. The luxury bag market of country I where the imported goods were resold has been very competitive. However, in 2012, the actual sales income of ICO far exceeded the estimated income since more bags were sold at full price, and fewer at a discounted price, than anticipated. Consequently, ICO's gross margin in 2012 was 64 % which was higher than the targeted gross margin stated in ICO's transfer pricing policy. During the audit, Customs asked ICO to provide further information in order to review the acceptability of its declared import price.
7. ICO did not provide test values required for the application of Article 1.2 (b) and (c), as a means of demonstrating that the relationship did not influence the price. However, ICO submitted a transfer pricing report, which used the Resale Price Method that compared ICO's gross margin with the gross margins earned by comparable companies in their transactions with unrelated parties (i.e. comparable uncontrolled transactions). The transfer pricing report was prepared by an independent firm following the process set out in accordance with the OECD Transfer Pricing Guidelines.
8. According to the transfer pricing report, ICO does not employ any valuable, unique intangible assets or assumed any significant risk. The transfer pricing report submitted by ICO selected eight comparable companies located in country I. The functional analysis indicated that the eight selected comparable companies imported comparable products from country X, performed similar functions, assumed similar risks and did not employ any valuable intangible assets, just as ICO.
9. The transfer pricing report indicated that the arm's length (inter-quartile) range of gross margins earned by the selected comparable companies in 2012 was between 35 %-46 %, with a median of 43 %. Therefore, the 64 % gross margin earned by ICO did not fall within the arm's length inter-quartile range. At the time Customs conducted its valuation audit, it was established that, in this particular case, ICO had not made any transfer pricing adjustments in this regard.

#### **Issue for Determination**

10. Does the transfer pricing report, supplied in this case, provide information which enables Customs to conclude whether or not the price actually paid or payable for the imported goods is influenced by the relationship of the parties under Article 1 of the Agreement?

#### **Analysis**

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11. Under Article 1 of the Agreement, a transaction value is acceptable as the Customs value when the buyer and the seller are not related, or if related, the relationship does not influence the price. Where the buyer and seller are related, Article 1.2 of the Agreement provides two ways of establishing the acceptability of the transaction value when Customs have doubts concerning the price: (1) the circumstances surrounding the sale shall be examined to determine whether the relationship influenced the price (Article 1.2 (a)); or (2) the importer demonstrates that the value closely approximates one of three test values (Article 1.2 (b)).
12. In this case, as indicated in paragraph 7, the importer did not provide test values therefore Customs examined the circumstances surrounding the sale.
13. The Interpretative Note to Article 1.2 of the Agreement provides that in examining the circumstances surrounding the sale, "the customs administrations should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and the seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price."
14. When examining the circumstances surrounding the sale concerning companies using Resale Price Method, a comparison of the gross margin of the company in question with the gross margin of comparable companies could indicate whether or not the declared price had been settled in a manner consistent with the normal pricing practices of the industry.
15. Based on the functional analysis, there was no significant difference between ICO and all eight comparable companies because these comparable companies:
  - are all located in country I;
  - perform similar distribution functions, assume similar risks and do not employ any valuable intangible assets, which are similar to ICO;
  - import comparable products similarly manufactured in country X.

In addition, an adequate level of product comparability was observed and these comparable companies are deemed to be suitable for Customs valuation purposes.

16. According to the transfer pricing report, the arm's length inter-quartile range of the gross margin earned by the comparable companies was between 35 %-46 % with a median of 43 %. However, in 2012, ICO earned a gross margin of 64 % which was much higher than the normal gross margins of comparable companies in this industry. It should also be noted that the luxury bag market of importing country I was competitive, so that the operating profit and expenses of ICO should be similar to those of the comparable companies given that there was no substantial difference between ICO and the eight comparable companies. Therefore ICO's high gross margin in 2012 was not commensurate with its functions, assets and risks.
17. Thus, by virtue of ICO earning a higher margin, and considering ICO has not made any compensating adjustments, Customs arrived at the conclusion that the import price was not settled in a manner consistent with the normal pricing practices of the industry in question. The Customs value of goods imported in 2012 had been declared at a lower price and should be re-determined accordingly by application of the alternative methods of valuation in a sequential order.

### Conclusion

18. In examining the circumstances surrounding the sale between ICO and XCO under the provisions of Article 1.2 (a) of the Agreement through the review of the transfer pricing report, Customs concluded that the declared import price was not settled in a manner consistent with the normal pricing practices of the industry and thus had been influenced by the relationship between the buyer and seller. Therefore, the Customs value should be determined by application of the alternative methods of appraisement in a sequential order.
  19. It should be noted that the use of a transfer pricing report as a possible basis for examining the circumstances surrounding the sale should be considered on a case by case basis as specified in Commentary 23.1.
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## 案例研究 14.2

### 當基於關稅估價協定第 1 條 2(a)規定檢視關係人交易時使用移轉訂價報告

#### 簡介

1. 本文件係描述當海關基於關稅估價協定第 1 條 2(a)規定認定進口貨物的實付或應付價格是否已被買方與賣方間關係影響時，將一個公司移轉訂價報告所提供資訊與額外資訊納入考量之個案。

本研究案例並不指示、暗示或確立任何義務，使海關主管機關應採用 OECD 指引，與應用 OECD 指引於解釋及應用 WTO 關稅估價協定所產生文件。

#### 交易事實

2. X 國出口公司 (XCO) 銷售奢華包給 I 國配銷商進口公司 (ICO)。XCO 與 ICO 均為一跨國企業總部與奢華包商標擁有者 ACO，所獨資擁有子公司。XCO 及其他與 ACO 有關公司均不銷售同樣或類似奢華包給 I 國內之無關係買家。ICO 為由 XCO 銷售奢華包到 I 國之唯一進口人。是以，所有由 ICO 進口到 I 國之奢華包，均向 XCO 購買。
3. 2012 年 ICO 按 XCO 開立發票所載價格申報進口奢華包，且在其提交給 I 國海關商業文件中並未顯示有任何特殊事項或額外款項，致無法依關稅估價協定第 1 條 1(a)至(c)適用交易價格，或需按該協定第 8 條規定調整進口價格之情況。
4. 2013 年 I 國海關對 ICO 所申報進口價格可接受性有所質疑，遂進行事後稽核以確認之。ICO 移轉訂價政策顯示所有奢華包之進口價格係使用再售價格法（依據 OECD 跨國企業與稅務機關移轉訂價指引辦理）決定。每年年終，ICO 基於 XCO 所建議次年銷售價格與目標毛利率，以計算奢華包進口價格。當 2012 年目標毛利率被決定為 40%，ICO 遂依據公式：進口價格 = 建議銷售價格 \* (1 - 目標毛利率) / (1+關稅稅率)，使用再售價格法計算 2012 年奢華包進口價格。
5. ICO 係一單純的或為常規的配銷商，事實上其在 I 國銷售包包市場策略是由 XCO 訂定。XCO 甚至建議 ICO 應保持之庫存水準，並規定其包包建議銷售價格，包括 ICO 使用之折扣策略。XCO 甚至大量投資以開發與包包相關之具高價值非實體資產。結論是，XCO 承擔在 I 國與包包銷售有關的市場風險與價格風險。
6. I 國奢華包在進口貨物之再銷售市場非常競爭。然而相較於預估，2012 年有較多包包以原價銷售，且較少包包以折扣價格銷售，導致 ICO 實際銷售收入遠超過預估收入。連帶地，2012 年 ICO 的毛利率為 64%，高於 ICO 移轉價格政策所述目標毛利率。在稽核過程中，海關要求 ICO 進一步提出資訊以檢視其申報進口價格之可接受度。

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7. ICO 並未提出應用關稅估價協定第 1 條 2(b)與(c)規定所需測試價格，以作為證明其關係並未影響交易價格之工具。然而，ICO 提出一份移轉訂價報告，該報告使用再售價格法比較 ICO 與可比較公司與無關係夥伴交易（亦即，可比較未受控交易）的毛利率。此一移轉訂價報告是由一獨立公司按 OECD 移轉訂價指引所定程序辦理。
8. 依據移轉訂價報告，ICO 並未使用任何具價值且獨特之無形資產，或承擔任何明顯風險。由 ICO 所提交移轉訂價報告，選擇了 1 國 8 間可比較公司。在功能性分析當中，顯示了這 8 家被選中可比較公司自 X 國進口可比較貨品，且如 ICO 在業務上，執行類似功能，擔負類似風險，且未使用任何具價值無形資產。
9. 移轉訂價報告顯示，2012 年被選中可比較公司合規交易毛利率（四分位）範圍介於 35% 至 46%，中位數為 43%。是以，ICO 獲利毛利率 64%，並未落入合規交易之四分位範圍。當海關進行價格稽核時，已確立的是，在此案例中 ICO 並未據此而調整任何移轉訂價。

#### 待確認爭點

10. 此一案例之移轉訂價報告所提供資訊，按關稅估價協定第 1 條，是否足以讓海關決定進口貨物之實付或應付價格已受關係人特殊關係影響？

#### 分析

11. 按關稅估價協定第 1 條，當買賣雙方無特殊關係，或雖有特殊關係而該等特殊關係並不影響價格時，交易價格可接受為完稅價格。當買賣雙方有特殊關係時，海關如對交易價格有懷疑，按關稅估價協定第 1 條第 2 項，有 2 種方法可確立交易價格之可接受性：(1)對此類案件應調查當時交易情況，以證明特殊關係並不影響其交易價格（第 1 條 2(a)）；或(2)進口人舉證其交易價格非常接近 3 種測試價格之 1（第 1 條 2(b)）。
12. 在本案例中，如第 7 段所述，進口人並未提供測試價格，海關於是就當時交易情況進行調查。
13. 關稅估價協定第 1 條第 2 項之註譯規定，當調查當時交易情況，“海關當局應準備好檢視相關交易觀點，包括雙方關係之實況及系爭價格是以何方式得出，以決定特殊關係是否影響交易價格”。
14. 當對使用再售價格法公司之當時交易情況進行調查，將有疑慮公司毛利率與可比較公司毛利率相較，可指出申報價格是否已按產業常規定價實務一致之方法結算。
15. 基於功能性分析，在 ICO 與所有 8 家可比較公司間並無明顯差異，因為此等可比較公司：
  - 均位於 I 國；
  - 與 ICO 相似，執行相同的配銷功能，承擔相似的風險而未投入任何具高價值非實體資產；

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- 進口相似於在 X 國生產的可比較貨物。

除此之外，產品可比較性被相當程度地觀測著，且此等可比較公司被認為適合於關稅估價目的。

16. 依據移轉訂價報告，可比較公司獲利毛利率之合規四分位範圍介於 35%至 46%，中位數為 43%。然而，2012 年 ICO 獲利毛利率 64%，大幅高於該產業可比較公司常規定價實務之四分位範圍。同時應注意的是，在 I 進口國奢華包市場競爭激烈，由於 ICO 與 8 家可比較公司並無顯著差異，所以 ICO 之營業利潤與支出應與產業中可比較公司相似。是以 2012 年 ICO 的高毛利率與其功能、資產與風險並不相稱。
17. 是以，由於 ICO 實質上獲利較高且考量 ICO 並未完成任何抵銷調整，海關作成進口價格並未按產業常規定價實務一致方法結算之結論。2012 年所申報進口貨物之完稅價格較低而應相對地予以依序地應用替代估價方法重新決定。

### 結論

18. 當經由檢視移轉訂價報告，基於關稅估價協定第 1 條 2(a)規定調查 ICO 與 XCO 間當時交易情況，海關總結，此一申報進口價格並未符合產業一般定價實務，因此買方與賣方間特殊關係已影響該價格。所以，海關應依序地應用替代評估方法決定完稅價格。
19. 應注意當使用移轉訂價報告作為檢視當時交易情況之可能基礎時，應按評論 23.1 所述基於個案考量。
-

五、 韓國報告：關稅估價與移轉訂價間調和之成就（簡報檔）



관세청  
KOREA CUSTOMS  
SERVICE

# The efforts of harmonization between customs valuation and transfer pricing

Oct 24, 2017

Korea Customs Service

## 목차

- 1 ACVA (Advance Customs Valuation Arrangement)
- 2 Pre-adjustment of taxes and duties
- 3 Rectification Claim for adjustment of taxes and duties
- 4 Adjustments as a provisional value



관세청  
KOREA CUSTOMS SERVICE

## History of effort for harmonization

	Advance Ruling		Rectification	Pre-adjustment	Declaration of Provisional Value
<b>C.V</b> (Korea Customs Act)		Art.37 (ACVA)	Art. 38-4	Art.37-2	Art. 28
<b>T.P</b> (Adjustment of International Taxes Act)	Art.6 (APA)		Art. 10-2	Art. 6-3	
<b>Year</b>	1997	2008	2012	2015	2017

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## Comparison between ACVA and APA

Title	ACVA	APA (Advance Pricing Agreements)
<b>Legal grounds</b>	<ul style="list-style-type: none"> <li>WTO Valuation agreement</li> <li>KCA art 37</li> </ul>	<ul style="list-style-type: none"> <li>OECD Guideline</li> <li>Adjustment of International Taxes Act. Art 6</li> </ul>
<b>Procedure</b>	<ul style="list-style-type: none"> <li>mostly similar (Advance consultation, Application, Document checking, Notification of results, duty of yearly report, duty of confidentiality, etc)</li> </ul>	
<b>Confirmation Target</b>	<ul style="list-style-type: none"> <li>Goods in transactions between related parties</li> </ul>	<ul style="list-style-type: none"> <li>Transactions of taxable period(yearly)</li> </ul>
<b>Confirmation Period</b>	<ul style="list-style-type: none"> <li>Before importation of the goods</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 5 years retroactively applied</li> </ul>
<b>Application Period</b>	<ul style="list-style-type: none"> <li>Before value declaration</li> </ul>	<ul style="list-style-type: none"> <li>Not later than the end of the first taxable year</li> </ul>

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# 1 Advance Customs Valuation Arrangement for Related Parties (ACVA)

## I . Advance Customs Valuation Arrangement



### 1. Defnltlon

- To determine the method in advance for determining the customs value of imported goods in transaction between related parties through consultation between duty payers and customs on request from the duty payers.
- To secure a business stability to MNE for unexpected imposition of customs duties by PCA

## I . Advance Customs Valuation Arrangement



### 2. Legal grounds

- ❖ Korea Customs Act. Art 37, par 1, sub 3
- ❖ The Enforcement decree of KCA. Art 31 par 1 ~ 4
- ❖ The Notification of decision of CV. Art 61 ~ 67
- ❖ The Order of Advance Price Ruling in related parties

## I . Advance Customs Valuation Arrangement



### 3. Major points

- Applicant : Duty payer who imports goods from related parties
- Goods : The goods which will be applied by new transfer price policy
- The time of applicant : Before importation of the goods
- Processing : 1 year
- Term of validity : 3 years after issuing the certificate

## I . Advance Customs Valuation Arrangement



### 4. Operational facts

- ◆ processing figures

➤ So far, totally 44 cases done from 65 cases received

	'07	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	SUM
Application	3	1	0	5	5	3	4	8	15	9	12	65
Approval			2	3		4	3	5	4	6	4	31
withdrawal Rejection				1	1		1		3	7		13

## I . Advance Customs Valuation Arrangement



### 5. ACVA Benefits

- ◆ Suspension of PCA

➤ On request from the applicant business, customs would suspend PCA during the ACVA examination period

- ◆ Exemption of additional penalty duties

➤ With provisional dutiable value declaration available from the time of ACVA application, additional tax on deficient duty payment is waived at the time of declaring final dutiable value

➤ Additional tax on negligent declaration (equivalent to 1/10 of dutiable value) is waived in case customs value is corrected for goods whose import declaration was made before ACVA application



### 5. ACVA Benefits

- ❖ Issuing an amended VAT invoice
  - After issuing the statement of ACVA the applicant declares additional customs tax by the ACVA. then, an amended VAT can be issued
- ❖ Stable Business Management from Customs Penalties
  - No worries on PCA and additional financial burdens



### 6. ACVA applications

- ❖ Provisional value declaration
  - Applicants may declare the provisional value of the goods, and make a final value declaration with the approved details
- ❖ Adjustments as a provisional value
  - Adjustment by ACVA might be a provisional value, which could be refund or additional payment of duties.  
\* Detailed Explanations will be followed



### 6. ACVA applications

- Pre-adjustment between taxes and duties
  - To apply ACVA and APA\* simultaneously  
Customs authorities and Tax office has a consultation of it
    - ※ Advance Price Agreement
      - Commissioner of the National Tax Service may accept the arm-length price method for tax purpose.

\* Detailed Explanations will be followed

## 2 Pre-adjustment between taxes and duties



## II . Pre-adjustment between taxes and duties



### 1. Reason of Implementation

- To reduce financial burdens of taxes and duties  
(Implemented Jan.1. 2015)



### 2. Legal grounds

- ❖ Korea Customs Act. Art. 37-2
- ❖ Adjustment of International Taxes Act. Art. 6-3

## II . Pre-adjustment between taxes and duties



### 3. Major points

- Targets : Similarity of methods between C.V and  
Arm's Length Transfer Prices
  - (C.V) Second ~ Fifth value method
  - (Arm's Length) CUP, Resale Price, Cost Plus
- Due to lack of performance, there is going to amend the rule  
→ Deleting the Similarity of methods, etc



# 3 Rectification Claim for Adjustment of Taxes and duties

## III. Rectification claim for Adjustment of Taxes and duties



### 1. Reason of Implementation

- To reduce financial burdens of taxes and duties (implemented, July. 1. 2012)



### 2. Legal grounds

- ❖ Korea Customs Act. Art. 38-4
- ❖ Adjustment of International Taxes Act. Art. 10-2

## III. Rectification claim for Adjustment of Taxes and duties



### 3. Major points

- Tax payer can file a rectification after adjustment of Tax offices
  - ① The value gap of imported goods between Customs and tax by adjustment of tax authorities
  - ② The value gap of imported goods between Customs and Prior approval of retroactive application by Commissioner of NTS
- However, The method of adjustment should be in compliance with Customs Valuation Principle.



## Adjustments as a Provisional Value





## IV. Adjustments as a provisional value



### 1. Reason of Implementation

- ◆ Necessity of declaration procedure for adjustment
  - \* **Many requests of dealing an adjustment from biz sectors**
- ◆ Legalized the declaration of adjustment from July, 2017
  - \* Based on the WCO Guide to customs valuation and Transfer pricing and declaration procedures in US, Canada etc.

## IV. Adjustments as a provisional value



### 2. Legal grounds

- ◆ Korea Customs Act. Art. 28(Declaration of provisional value)
- ◆ **The Enforcement decree of KCA. Art.16**

**[Newly regulated.(Art. 16 Par.1 Sub 2-3)]**

The price of the imported goods is expected to adjust after importation by the Adjustment of international Taxes Act. Art 5 in the transactions among related parties

## IV. Adjustments as a provisional value



### 2. Legal grounds

- ◆ The enforcement regulation of KCA. Art.3

[Application Eligibility(Art3. Par2. Newly adopted) ]

Followings should be fulfilled

1. **the adjustment plan of importing goods**
2. **the amount Of adjustment should be payed**
3. the allocation of adjustment could **be calculated objectively**
4. Duty payers are to be one of **ACVA** or **APA**
5. Application should be 1 month early to import the goods in question

# Q & A

Thank you.



六、 諮詢意見 4.17 (文件 VT1098E1b 附錄 D, 含中譯)

Annex D to Doc VT1098E1b  
(VT/44/May 2017)

**Advisory Opinion 4.17**

**Royalties and licence fees under Article 8.1 (c) of the Agreement**

1. Company A (importer, buyer and franchisee) in country I entered into a franchise agreement with company B (exporter, seller, franchisor) of country E to operate stores under the brands of the Franchisor in country I. Under the franchise agreement, company A may buy only from company B, or from those authorized by company B, the inputs it must use in order to manufacture in country I the products which company A sells in its stores. The inputs are unpatented and are not protected by any intellectual property rights. In addition, company A may purchase the inputs from third party suppliers selling at lower prices, where duly authorized by company B to meet the quality requirements. As a condition of the franchise agreement, company A pays company B for the use of the brands and system, royalties which are calculated as a percentage of company A's gross sales of final products manufactured using inputs imported by company A.

In this case, when the imported inputs are not protected by patent or by any intellectual property rights as mentioned above, 'brands' means the registered brands or service marks and other commercial symbols in the operation of the stores. 'System' refers to business systems and processes connected to the operation of the stores.

The issue is whether the royalties paid under the franchise agreement are to be added to the price actually paid or payable under Article 8.1(c) of the Agreement for the imported goods.

2. The Technical Committee on Customs Valuation expressed the following view :

In the determination of the Customs value under the provisions of Article 1 of the Agreement, there shall be added to the price actually paid or payable for the imported goods royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable, as provided in Article 8.1(c) of the Agreement.

In this case, the imported goods (inputs) being valued, though necessary and essential to the manufacture of the products and required to be purchased from the franchisor or from a third party authorized by the franchisor to meet the quality requirements, are not branded goods nor are they patented, or manufactured under a patented process, for which a payment is made.

The payment of royalties is not related to the imported goods but is related to the use of the brands and system of the franchisor in the manufacture and sale of the products bearing the intellectual property (brand) of the franchisor.

The royalties paid by the franchisee are not to be added to the price actually paid or payable for the imported goods under the provisions of Article 8.1(c).

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D.

## 諮詢意見 4.17

### 協定第 8 條 1(c)之專利權及特許權權利金

1. I 國 A 公司（進口人、買方與特許經營者）與 E 國 B 公司（出口人、賣方與特許權擁有者）簽訂特許經營協議，在 I 國經營特許權擁有者品牌之商店。在此特許經營協議下，A 公司僅能向 B 公司或由 B 公司授權者購買材料以用於 I 國生產製造產品，並於 A 公司之商店銷售。該等材料並無專利權，且未受任何智慧財產權保護。此外，A 公司可向經 B 公司適當授權達品質要求之第三方供應商購買低價材料。作為特許經營協議之條件，A 公司支付 B 公司款項以使用其商標與系統，專利權係以由 A 公司進口材料生產製造成品之銷售利潤百分比計算。

在此案例，如上所述，當進口的材料並未獲得專利權或任何智慧財產權保護，“商標”意指商店在營運時使用之註冊商標或服務符號，與其他商業標誌。“系統”是指與商店營運關聯之商業系統與程序。

爭點在於按此特許經營協議支付之權利金，是否應被計入協定第 8 條 1(c)進口貨物之實付或應付價格。

2. 關稅估價技術委員會觀點如下：

依據協定第 1 條規定決定完稅價格時，與進口貨物有關，且依交易條件應由買方直接或間接支付之權利金者，如協定第 8 條 1(c)所述，其未包括於實付或應付價格者，應被計入完稅價格。

在本案例中，該等待估進口貨物（材料），雖然在成品之生產製造上是必要的與不可或缺的，且須向特許權擁有者或其授權達品質要求之第三方購買，然其既非屬商標貨品亦非具專利權或經由具專利權程序所生產製造。

權利金之支付與進口貨物無關，但與在產品之生產製造與銷售中使用了與特許權擁有者之商標與系統等智慧財產（商標）權有關。

由特許經營者所付權利金，不應被計入協定第 8 條 1(c)規定進口貨物之實付或應付價格。