



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1150E1a

-
47th Session
-

O. Eng.

Brussels, 23 July 2018.

**REVIEW OF WORKING METHODS FOR DEALING WITH TECHNICAL QUESTIONS
OF THE TECHNICAL COMMITTEE**

(Item VII on the Agenda)

Reference documents:

VT1137E1b (TCCV/46 – Draft Report)

I. BACKGROUND

1. At the 46th Session, the European Union (EU) raised an issue under ‘Other business’ concerning the working methods for dealing with technical questions of the Technical Committee. Prior to the meeting, a non-paper had been provided by the EU which was circulated to Members. The text is reproduced in Annex I to this document.

II. SECRETARIAT COMMENTS

2. The key points raised by the EU concern : the nature and source of technical questions, establishing of criteria for new questions (including the development of a generator mechanism) and, consideration of the impact of emerging issues and technologies. Additionally, it is proposed that the Secretariat could function as both a research facility and as co-ordination platform.
3. The Secretariat notes that a key part of the Technical Committee’s mandate is to examine “*specific technical questions*” and to give advice on “*appropriate solutions based upon the facts presented*”, as stated in Annex II of the WTO Valuation Agreement (paragraph 2). A further responsibility is: “*to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement*”.
4. To assist Members, the Secretariat has conducted an analysis of all technical questions considered by the Technical Committee and summarized them by topic. This is based on the Conspectus of Technical Valuation Questions. See Annex II to this document.

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

5. It can be seen that the majority of questions examined are related to the transaction value; either Article 1 or Article 8. It has been commented in the past that a deeper study of the Conspectus could be another way to generate questions for the Technical Committee; for example, should some of the instruments issued in the past be reviewed and updated if necessary? Should questions consigned to Part III of the Conspectus be considered for reexamination if some time has passed since the original examination took place? The Secretariat welcomes the Technical Committee's views on this aspect.

6. Regarding the EU key points, the Secretariat provides the following comments:

Sources of technical questions

7. Regarding the consideration of sources other than Members for new questions, the Secretariat would be willing and able to contribute questions for consideration of the Technical Committee which have come to its attention, for example via contact with Members and technical assistance activities. The question also arises whether the private sector (via the ICC) should play a role in this process. The Secretariat considers that if the Technical Committee was open to this idea, the ICC, for example, could be invited to propose high level business topics or themes which could be considered by the Technical Committee for development as technical questions. The Secretariat further notes that it is important to ensure that the focus remains on: *“technical problems arising in the day-to-day administration of the customs valuation system of Members”*.

Establishment of criteria for the selection of technical questions and a ‘generator mechanism’

8. The EU has suggested that criteria be established in regard to the selection of issues to be scheduled for consideration by the Technical Committee. Examples are given of such criteria:

- *Economic relevance*. The Secretariat comments that both Members and the ICC may be positioned to make useful input on this aspect.
- *Degree of difficulty for Customs administrations* in dealing with specific situations. The Secretariat notes that this could be difficult to assess or measure as it involves some subjectivity and perceptions could vary from country to country.

9. It is further suggested that a generator mechanism be developed which puts forward questions, based on criteria developed by the Technical Committee. The Secretariat suggests that consideration is first given to what procedural changes should be introduced regarding the submission and examination of technical questions. Then, as necessary, the idea of a generator mechanism could be considered accordingly.

10. Topics suitable for examination by the Technical Committee could be considered in areas of concern where sufficient guidance has not been provided or specific national practices have not been shared; examples of these may include free zone issues and aspects of transport costs.

Consideration of the impact of emerging issues and technologies

11. The EU proposes that the Technical Committee takes into account developments in modern business models and technologies. Examples given include global value chains and e-commerce. The Secretariat considers this is an important aspect of repositioning the Technical Committee to be equipped to deal with modern commercial challenges. The Technical Committee as well as the ICC could make helpful contributions in this regard through, for example, theme meetings. The Secretariat can follow, and contribute to, the relevant discussions in other WCO working bodies, such as the e-commerce Working Group. These Working Groups may also be invited to update the Technical Committee on their work

which potentially could have relevance to the valuation of imported goods. The Technical Committee could consider use of a virtual working group on the CLiKC platform to discuss and analyze cases that could be examined by the Technical Committee following theme meeting discussions and developments regarding new business/commercial models, including new technologies.

12. Procedural changes could be implemented via an update to the Technical Committee Working Procedures document and review of the template for submission of a question. The current Working Procedures document and template are available via this page on the Members' website : <http://www.wcoomd.org/en/topics/valuation/resources.aspx>

13. Regarding review mechanisms, this could take place by conducting a review of updated Working Procedures after a period of, say, a year.

Proposal that the Secretariat could function as a research facility and a co-ordination platform

14. The EU suggests that the Secretariat functions as both a research facility and as a co-ordination platform, collecting and collating suggestions, requests and ideas put forward by Members and other stakeholders. While the Secretariat has been doing work of a similar nature, this, however, is likely to have resource implications and would need to be discussed within the Secretariat and at relevant WCO working bodies, such as the Finance Committee. The WCO's CLiKC platform could be used as a forum for Secretariat and Member discussions in this area.

Meeting the capacity building needs of Members

15. As indicated above, another obligation of the Technical Committee is to help meet Members' technical assistance needs. The Secretariat observes that, while technical assistance provided over the past 38 years has built significant capacity for fully implementing the Agreement by developing countries as a whole, these needs are now as great as they were for some when the Agreement was first introduced. The challenges of applying the transaction value, in some developing countries in particular, remain. In this regard, the Secretariat highlights the need for implementation of the rich source of tools and materials developed under the Revenue Package programme, including a diagnostic tool on Customs valuation infrastructure, the Practical Guide for Valuation Controls and Practical Implementation of the WTO Valuation Agreement: A Brief Guide For Least-Developed Countries.

16. In this regard, the Technical Committee may also wish to consider whether the Customs Valuation Control Handbook (last updated in 2007) remains useful and relevant, taking into account the tools developed under the Revenue Package.

III. CONCLUSION

17. Members are invited to examine the comments by the EU and the Secretariat and submit their suggestions and comments in electronic form to the Secretariat (e-mail address: valuation@wcoomd.org) not later than **9 September 2018**. Comments received in response to this document will be published and circulated to Members of the Technical Committee for consideration at the 47th Session.

CONTRIBUTION FROM THE EUROPEAN UNION

(Circulated as a non-paper at the 46th Session)

Technical issues discussion document

The Technical Committee on Customs Valuation (TCCV) has provided an essential contribution to the application of the WTO Agreement on Customs Valuation.

Principally, the focus is on the work of the TCCV in relation to Technical Questions, which are a corner stone of the work of the Committee. The output of the TCCV in relation to technical questions is considerable and has long-lasting impact and durability. The future work of the TCCV, in particular in relation to Technical Questions, will continue to be an important contribution. It is appropriate to consider how to plan for this future work.

It is hoped that this paper can serve as part of a contribution to a discussion in this context.

Mandate of the Committee

The Mandate of the TCCV is laid down in the WTO Customs Valuation Agreement (Annex II of the WTO Customs Valuation Agreement). This mandate is clear. The TCCV shall inter alia ensure, at a technical level, uniformity in interpretation and application of the CVA.¹

A cornerstone of the work of TCCV work is therefore to examine “*specific technical questions*” and to give advice (i.e., via Advisory Opinions) on *appropriate solutions based on the facts presented*.

Similarly, the TCCV is tasked with providing “*information and advice*” as requested by any Member. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes.

These tasks come under the general title of “Technical Questions”.

The outcome of work in the TCCV is available inter alia in the Customs Valuation Compendium. Cases where the TCCV has not been able to produce outcomes are catalogued in the Conspectus.

As the TCCV has completed almost 4 decades of work in this context, it is timely to:

- 1) have an overview of work done, and
- 2) launch a discussion on the future activities of the TCCV in relation to Technical Work.

¹ The TCCV may also “exercise such other responsibilities as the WTO Committee on Customs Valuation may assign to it”.

Nature and Sources of technical questions

A wide diversity of issues are raised at the TCCV. These range from questions related to the actual legal texts themselves, to questions involving international trade law and trade practices, or commercial accounting practices, or to customs requirements and procedures.

Sources

Members are of course much to the fore in bringing issues to the table, both in the form of:

1. how to assess and reach an opinion on specific circumstances (e.g. fact patterns) which arise in international trade;
2. how to describe and analyse broader issues which come up when trade and business models and practices generate economic events which require treatment (including decisions) in accordance with the principles and rules of the WTO Agreement on Customs Valuation.

Selection of issues

As a practical matter, it is useful to consider how to plan for future work in this context. For example, should some criteria be used in the selection of issues to be scheduled for consideration by the TCCV? What should these criteria be? For example, should economic relevance or degree of difficulty for customs administrations in dealing with specific situations be a criterion?

New Developments

When the CVA was concluded, some business models or technologies that exist today were not widely used. Is there a need to take into account developments in this context? In addition to new (or adapted) business models, recent trends indicate that Global Value chains, e-commerce, Digital Trade/Economy, Disruptive (so-called) technologies, etc. may have to be given more in-depth consideration.

New Questions

Members are entitled to bring new questions to the TCCV. The TCCV is the only global platform which provides a means for Members to consider, examine, discuss and debate how to assess and to conclude specific cases in a harmonious manner.

At the same time, there should not be an over-reliance on Members as the only source of issues/topics/questions to be considered in the Committee.

Questions to consider

- 1) Should the bringing forward and submission of technical questions continue in the same manner as before?

- 2) Should some changes be considered in relation to the sources, ways and means of identifying new issues for consideration by the TCCV, and if so:
 - a. What changes could be considered
 - b. Who implements such changes
 - c. What review mechanisms?

- 3) Is it possible to put in place a generator mechanism which puts forward questions and issues for consideration, based on criteria that are developed and adapted by the TCCV?

Criteria for new questions?

It may be useful to have criteria for the consideration of specific technical questions.

The Secretariat could function as both a research facility and as co-ordination platform, listening to Members, collection and collation of suggestions and requests, ideas put forward by Members and stakeholders, in this regard.

* * *

**Summary of WTO Committee on Customs Valuation
Decisions and Technical Committee instruments**

	Categories	Instruments						Part I.	Part II.	Part III.	Total
		Decisions	A.O	Com.	C.S	E.N	ST				
1	Article 1	1	11	17	9	4		42	3	16	61
2	Alternative methods		2	3	1	2		8		1	9
3	Article 7		4				2	6			6
4	Article 8	4	18	9	7	2		40	1	10	51
5	Articles 9 et seq. (excluding Article 15)	2	6					8			8
6	Article 15		1		2	1		4	1	3	8
	Total	7	42	29	19	9	2	108	5	30	143

Number of technical questions: Instruments, Part II and III of the Conspectus:

Instruments:

Decisions	7
AO	42
Commentaries	25
Explanatory Notes	6
Case studies	18
Studies	2
Total	100
Part II of the Conspectus	4
Part III of the Conspectus	25

Notes:

An instrument or question can be categorized in more than one category

Part I: Questions concluded (instruments)

Part II: Questions on the Technical Committee's programme of work

Part III: Questions raised, pending future work