

出席國際視訊會議報告

出席 WCO 關稅估價技術委員會第52屆 視訊會議報告

出席人員：

<u>服務機關</u>	<u>職稱</u>	<u>姓名</u>
財政部關務署	組長	陳玉景
財政部關務署	簡任稽核	柳善聰
財政部關務署	科長	李光惠
財政部關務署	稽核	溫武彥
財政部關務署	專員	蔡俐雯
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財政部關務署基隆關	專員	羅靖閔
財政部關務署基隆關	課員	李柏義

會議期間：110年5月17日至19日

報告日期：110年8月

行政院所屬各機關出席視訊會議報告提要

會議報告名稱：

出席 WCO 關稅估價技術委員會第52屆視訊會議報告

頁數：180頁 含附件：是否

出席人員：

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財政部關務署	組長	陳玉景
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財政部關務署基隆關	課員	李柏義

會議期間：110年5月17日至19日

會議方式：視訊會議

報告日期：110年8月

關鍵詞：世界貿易組織、世界關務組織、關稅估價技術委員會、WTO、WCO、TCCV

摘要：

世界關務組織（WCO）關稅估價技術委員會（TCCV，下稱技術委員會）每年於比利時布魯塞爾舉行2次例會，110年受國際間新冠肺炎（COVID-19）疫情影響，仍持續以線上論壇（CLiKC! platform）進行文件討論及諮商2階段，再透過 KUDO 平臺進行3日視訊會議，本署奉派由稽核業務組陳組長玉景率員與會。

本次會議循往例由秘書處彙集各界意見及評論製作工

作文件，發布於 WCO 網頁提供檢視，秘書處並透過 CLiKC! platform，將工作文件發布於該平臺，提供會員於110年4月5日至23日進行討論，以及於4月26日至5月14日進行諮商；正式視訊會議於5月17日至19日透過 KUDO 平臺進行，會議主要討論關稅估價特殊技術性議題，進行方式係由主席依據文件諮商結論，邀請會員代表進行口頭說明及討論，以就賸餘未達共識之議題尋求共識，或由主席作成結論。

本次視訊會議共84個會員體參與，並有阿爾及利亞、白俄羅斯、波士斯尼亞與赫塞哥維納、科摩羅、伊拉克、科索沃、塞爾維亞、國際商會（ICC）及世界貿易組織（WTO）等以觀察員身分參與會議。會議重點及討論摘要：（一）採認技術委員會第50/51屆報告。（二）主題會議。（三）休會期間進展報告。（四）技術協助/能力建構及當前議題。（五）特殊技術性議題。（六）休會期間所提議題。（七）其他事項。（八）未來工作計畫。

會議中共討論6個關稅估價特殊技術性議題，分別為「協定¹第1條所稱出口銷售至進口國：加拿大提案」、「協定第8條1(c)之專利權及特許權權利金：烏拉圭提案」、「協定第8條1(c)之專利權及特許權權利金（專利權—所得稅）：中國大陸提案」、「買方自有商標進口貨物適用之估價方式：烏拉圭提案」、「庫存保護計畫費用之估價處理：模里西斯提案」、「載運進口貨物所用車箱之回程運輸費用：北馬其頓提案」，其中第1個議題暫停未來討論，第3、4等2個議題分別作成技術文件諮詢意見4.18及24.1，第2、5、6等3個議題因會員尚未達成共識，決議延至第53屆會議討論。

¹ 本報告內所稱協定係指「1994年關稅暨貿易總協定第7條施行協定」。

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壹、會議概況

一、會議時間：110年5月17日至19日

二、會議方式：視訊會議

三、主席：Ms. Marianela Marte

四、出席人員：

計有 84 個會員代表出席，並有阿爾及利亞、白俄羅斯、波士斯尼亞與赫塞哥維納、科摩羅、伊拉克、科索沃、塞爾維亞、ICC 及 WTO 等以觀察員身分參與會議。

五、我國與會代表：

財政部關務署	組長	陳玉景
財政部關務署	簡任稽核	柳善聰
財政部關務署	科長	李光惠
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貳、會議議程

日期	議程
2021/5/17 星期一	I、確認議程 Adoption of Agenda a. 議程草案 Provisional Agenda b. 議程安排 Suggested Programme
	II、確認技術委員會第 50/51 屆報告 Adoption of the Technical Committee's 50 th /51 st Sessions Report
	III、主題會議 Theme meeting
2021/5/18 星期二	IV、報告休會期間進展 Reports on intersessional developments a. WCO 稅則暨貿易事務處處長報告 Director's report b. WTO 關稅估價委員會報告 WTO Committee on Customs Valuation report
	V、技術協助、能力建構及當前議題 Technical assistance, capacity building and current issues a. 秘書處及會員辦理技術協助/能力建構報告 Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members b. 會員採行協定之進展報告 Progress report on Members' application of the WTO Customs Valuation Agreement c. 稅收課徵套案最新進展 Revenue Package Update
	VI、特殊技術性議題 Specific technical questions d. 買方自有商標進口貨物適用之估價方式：烏拉圭提案 Valuation treatment of imported goods Bearing the buyer's own trademark a. 協定第 1 條所稱出口銷售至進口國：加拿大提案 Sale for Export to the Country of Importation under Article 1 c. 協定第 8 條 1(c)之專利權及特許權權利金（專利權—所得稅）：中國大陸提案 Royalties and licence fees under Article 8.1(c) of the Agreement (Royalty—Income Tax)

<p>2021/5/19 星期三</p>	<p>VI、特殊技術性議題 Specific technical questions</p> <p>b. 協定第 8 條 1(c)之專利權及特許權權利金：烏拉圭提案 Royalties and licence fees under Article 8.1(c) of the Agreement</p> <p>e. 庫存保護計畫費用之估價處理：模里西斯提案 Valuation treatment of charged paid related to an Inventory Protection Program</p> <p>f. 載運進口貨物所用車箱之回程運輸費用：北馬其頓提案 Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods</p>
	<p>VII、休會期間所提議題 Questions raised during the intersession</p>
	<p>VIII、其他事項 Other business</p>
	<p>IX、未來工作計畫 Programme of future work</p>
	<p>X、下屆會期 Dates of next meeting</p>

參、議程摘要及討論

議程一：確認議程

Adoption of Agenda

一、議程草案

Provisional Agenda (VT1251Eb)

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| <ul style="list-style-type: none">I、Adoption of AgendaII、Adoption of the Technical Committee's 50th/51st Sessions ReportIII、Theme MeetingIV、Reports on intersessional developments<ul style="list-style-type: none">a. Director's reportb. WTO Committee on Customs Valuation reportV、Technical assistance, capacity building and current issues<ul style="list-style-type: none">a. Report on the technical assistance/capacity building activities undertaken by the Secretariat and Membersb. Progress report on Members' application of the WTO Valuation Agreementc. Revenue Package UpdateVI、Specific technical questions<ul style="list-style-type: none">a. Sale for Export to the Country of Importation under Article 1b. Royalties and licence fees under Article 8.1(c) of the Agreementc. Royalties and licence fees under Article 8.1(c) of the Agreement (Royalty – Income Tax)d. Valuation treatment of imported goods bearing the buyer's own trademarke. Valuation treatment of charges paid related to an Inventory Protection Programf. Cost of transport for the return of carriages used in the transportation of imported goodsVII、Questions raised during the intersessionVIII、Other businessIX、Programme of future workX、Dates of next meeting |
|--|

討論：

主席前於線上討論階段請會員檢視議程及表示意見，會員並無修正意見；並於視訊會議中詢問

會員於議程VIII、其他事項是否有提案討論，會員亦無提案。

結論：

技術委員會採認議程，並無修正。

二、建議日程

Suggested Programme (VT1253Ea)

日期	議程
2021/5/17 (星期一)	I ~ III
2021/5/18 (星期二)	IV ~ VI
2021/5/19 (星期三)	VI ~ X

討論：

主席前於線上討論階段請會員檢視建議日程，會員並無意見；主席於視訊會議中再請會員檢視建議日程，會員並未表示修正意見。

結論：

技術委員會通過建議日程，並無修正。

議程二：採認技術委員會第 50/51 屆報告

Adoption of the Technical Committee's 50th/51st Session Report
(VT1249Ec, 附件 2)

討論：

在本次會議召開前，會員對技術委員會第 50/51 屆會議報告草案 VT1249Ea 所提評論意見，已於納入該報告草案並以紅字標示修正處後，另作成報告草案 VT1249Eb，因其後未再收到其他評論，遂作成報告草案 VT1249Ec，並公布於會員網站。

結論：

技術委員會通過採認第 50/51 屆會議報告 VT1249Ec，並無修正。

議程三：主題會議

Theme meeting (VT1254Ea 及 VT1265Ea)

技術委員會在第 49 屆會議決定於第 50 屆會議辦理主題會議，主題包括「事後稽核」(Post Clearance Audit (PCA)) 及「WTO 關稅估價協定第 7 條適用問題」(The issues in the application of Article 7 of the WTO Customs Valuation Agreement)，由於新冠肺炎疫情，延至第 52 屆會議辦理。

「事後稽核」主題由象牙海岸、日本及國際商會簡報；「WTO 關稅估價協定第 7 條適用問題」主題由剛果民主共和國、日本、中國大陸及國際商會進行簡報。技術委員會兩位副主席分別擔任兩項主題之主持人。

議程四：休會期間進展報告

Reports on intersessional developments

一、處長報告

Director's report (VT1255Ea)

政策委員會第 83 屆會議於 2020 年 12 月 7 日至 9 日舉行，理事會第 137 屆會議於 2020 年 12 月 10 日至 12 日舉行，因新冠肺炎疫情，兩項會議均以視訊方式召開。與關稅估價相關議題包括處長向理事會陳報技術委員會於 2020 年 10 月所召開之第 50/51 屆會議已通過採認第 49 屆會議報告，並敦請理事會通過該會議報告。

政策委員會之報告及理事會會議紀錄草案分別載錄於文件 SP0731Eb 和 SC0198Ea，並已分別發布在 WCO 會員網站。

稅收課徵套案第四階段將在 2021 年 6 月前完成，在議程五第三項下有詳細報告內容。

二、世界貿易組織關稅估價委員會報告

WTO Committee on Customs Valuation report

世界貿易組織關稅估價委員會最近一次於 2020 年 10 月 19 日以視訊方式舉行正式會議，討論與「資料處理設備錄有軟體之媒體估價內容」決定有關之四項通知。

WTO 秘書處所提供 WTO 關稅估價委員會書面工作報告，已附於附錄 C。

議程五：技術協助/能力建構及當前議題

Technical assistance, capacity building and current issues

一、秘書處及會員從事技術協助/能力建構報告

Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members (VT1256Ea、VT1266Ea)

背景：

根據技術委員會決議，秘書處已管控並通報會員所安排及開展之技術援助/能力建構活動，以便為所有會員提供有用資訊，以規劃相關作業，並防止重複工作。

上屆會議迄今，日本代表提供其技術援助活動相關資訊，該資訊及秘書處所執行之技術援助/能力建構活動相關資訊，已收錄於文件 VT1266Ea 附錄 I 及 II。

討論：

主席表示秘書處及會員所執行之技術援助/能力建構活動相關資訊，未收到任何意見。

結論：

技術委員會採納秘書處所提技術協助/能力建構報告。

二、會員應用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 (VT1257Ea、VT1267Ea)

背景：

依據技術委員會決議，秘書處負責督促各會員應用協定及提供相關進展報告，秘書處表示，在本次會議召開前曾發布文件 VT1257Ea，邀請會員提供應用協定之資

訊，但無會員提供相關資訊。

結論：

技術委員會採納會員應用世界貿易組織估價協定之進展報告。

三、稅收課徵套案

Revenue Package (VT1258Ea)

背景：

秘書處已更新技術委員會稅收課徵套案第四階段行動計畫，並收錄於技術委員會第 50/51 屆會議文件 VT1225Ea 中。今年將完成稅收課徵套案之第四階段，並於 2021 年 6 月期間所召開政策委員會及理事會中提出。稅收課徵套案第四階段完整報告將於技術委員會第 53 屆會議提供。

關稅暨貿易事務處因應新冠肺炎疫情而進行業務調整，包括重新規劃能力建構課程及活動以適合線上模式，細節收錄於文件 VT1258Ea 附錄。

結論：

技術委員會採納稅收課徵套案更新報告。

議程六：特殊技術性議題

Specific technical questions

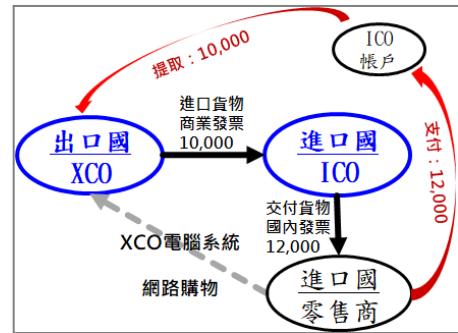
一、協定第 1 條所稱出口銷售至進口國：加拿大提案

Sale for Export to the Country of Importation under Article 1
(VT1259Ea 與 VT1268Ea)

背景：

本案於第 45 屆提交技術委員會，自第 46 屆會議起持續討論並修正相關文案內容。

進口國 ICO 係出口國 XCO 之子公司，進口國零售商透過 XCO 電腦系統下訂單完成交易後，由 XCO 電腦系統開立 2 張發票，其一為 XCO 開給 ICO 之發票，價格為 10,000 (報關發票)，另一為 ICO 開給零售商之發票，價格為 12,000。



零售商將貨款匯入 ICO 帳戶，該帳戶僅 XCO 有控制權，XCO 於該帳戶提取 10,000 後，其餘金額用於支付 ICO 佣金、通關費、稅費、國內交通費等，若尚有盈餘，仍由 XCO 決定是否留存於該帳戶。

本案由 XCO 訂價、承擔貨物虧損及貨款風險、決定交易利潤之分配，甚至可以由 XCO 直接出貨零售商而不透過 ICO。ICO 之倉庫主要作用為發貨中心，負責進口國物流作業。

協定第 1 條所稱出口銷售至進口國之交易價格，是指那一筆交易？是 XCO 與零售商間之交易，抑或是 XCO

與 ICO 間之交易？

討論：

加拿大代表及多數國家都主張，ICO 雖申報為進口人，但僅為名義上之貨物所有權人，既無議價權利、亦無承擔貨物虧損及貨款風險，甚至無法決定交易利潤之去留，實非交易之買方，爰 XCO 與 ICO 間非真實交易。相關銷售出口至輸入國之貨物交易由零售商啟動、XCO 收受訂單，該筆交易應存在於 XCO 與零售商之間，零售商支付之價格始為進口完稅價格之基礎。

烏拉圭代表提出不同看法，認為本案有 2 張發票，1 張為 XCO 與 ICO 之跨國交易發票，1 張為 ICO 與零售商國內銷售發票，即使 XCO 與 ICO 間有特殊關係且子公司對商品使用及處分受有限制，應請其證實前述情形並無影響交易價格，如不能證實，且海關未能依協定第 1 條以其交易價格核定完稅價格時，宜按協定後續條文依序核定，而非逕採用國內銷售價格為進口時之交易價格，爰出口銷售至進口國之交易應採 XCO 與 ICO 之交易，其進口貨物完稅價格為兩者之交易價格 10,000。

結論：

因無法達成共識，決定將此議題放入「關稅估價技術議題大綱」第三部分「暫停未來討論之提案」，俟貿易發展及未來類似議題提起時再行討論。

二、協定第 8 條 1(c)之專利權及特許權權利金：烏拉圭提案
Royalties and licence fees under Article 8.1(c) of the Agreement
(VT1260Ea、VT1269Ea)

背景：

本案於第 45 屆提交技術委員會，自第 46 屆會議起持續討論並修正相關文案內容。

進口商 (ICO) 向專利持有人 (XCO) 購買專利濃縮液。該專利濃縮液僅需以水稀釋成

飲料，便可使用權利商標於進口國販售。買賣雙方無特殊關係，進口商需支付專利濃縮物使用或轉售之權利金及使用該商標之權利金給權利人。



本案商標權權利金可否依協定第 8 條註釋第 3 項規定進行分攤？抑或僅能全部加計？

討論：

烏拉圭代表認為本案專利權權利金係直接且完全針對進口貨物，故應全額加計，惟商標權權利金則是除了進口貨物外，亦包含進口國內其他投入，故應按濃縮液占總成本之成數加以分攤，作為加計金額。已有國家立法規定適當比例分配，以計算與進口商品有關專利權及特許權權利金。本案有必要確定銷售成品所產生權利金總額之哪部分應專門應用於銷售成品，並注意成品飲料是在進口國以進口之專利濃縮物與非進口之其他成分（水、包裝、商業標籤等）所製造。在計算權利金調整時，應將進口國之一般公認會計原則納入考量。

日本代表提出不同看法，認為本案在此情況下無需對權利金進行任何分配。因此，建議刪除第 10 段全部內容，並對第 9 段進行修改，將權利金全部金額添加到實付或應付價格中，這是第 8 條第 3 款之明確說明。並且

建議對第 9 款最後一句進行文字修改為「本案提出之專利權使用費是製成品銷售價格之 15%，是針對專利及商標權之組合而支付的。在這兩種權利間沒有單獨之專利使用費分配或劃分。權利金是出售條件，並且全部權利金與進口商品有關，因為進口濃縮液僅用水稀釋，而不使用專利工藝，且在消費包裝上使用商標。因此，權利金僅根據第 8 條第 3 款註釋中明確規定之進口商品為基礎，權利金之全部金額應加到實付或應付之價格上。」

歐盟代表在上屆會議中認為即使權利金僅部分與進口貨物有關，只要滿足計入實付或應付金額之條件，就有協定第 8 條 1(c)適用，原因在於協定第 8 條 3 提到調整價格時應使用「客觀可計量之數據」，是協定第 8 條之適用原則。因此，只要不違反相關原則，而權利金亦可客觀並量化為與進口貨物有關及與進口貨物無關兩個部分，就可以將金額區分開來，分開攤計應屬可行。

美國代表在上屆會議中，認為不應該攤計權利金，因為分攤係規定於協定第 8 條 1(b)，僅適用於該款規範之援助項目，將分攤之適用範圍擴大到協定第 8 條，並不適當。美國代表補充，協定第 8 條 3 之規定及註釋並未明確授權任何特定之計算或分配方法，權利金之數額若已經很明確，就無須尋找其他「客觀可計量之數據」。

結論：

本案未能釐清「客觀可計量數據」，烏拉圭代表將與秘書處合作編寫諮詢意見草案更新版本，以供技術委員會進一步審議。

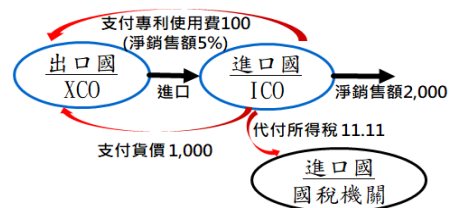
三、協定第 8 條 1(c)之專利權及特許權權利金（專利權—所得稅）：中國大陸提案

Royalties and licence fees under Article 8.1(c) of the Agreement (Royalty—Income tax) (VT1261Ea、VT1270Ea)

背景：

本案於第 46 屆會議提案後，持續討論並修正相關文案內容。

進口人（ICO）與賣方（XCO）簽訂專利使用合約，依該合約協議內容，進口人應支付專利產品在進口國淨銷售



額 5%之特許權使用費給權利人，並向進口國稅務機關代繳權利人之特許權使用費所得稅，其中按淨銷售額 5%之特許權使用費應不扣除任何費用，該使用費是已完稅之特許權使用費。如專利產品在進口國之淨銷售價格為 2,000 貨幣單位，則進口人應支付 100 貨幣單位專利權使用費，並代繳專利權使用費所得稅 $100/(1-10\%)\times 10\% \approx 11.11$ 貨幣單位。

進口人代繳之 11.11 貨幣單位所得稅，是否應依協定第 8 條 1(c)規定加計至進口貨物完稅價格？

討論：

多數會員皆同意依據協定第 8 條 1(c)規定，買方代賣方支付給進口國稅務機關之專利權使用費所得稅，應視為權利金之間接付款，因此權利金之總付款-支付給賣方權利金加計專利權使用費之所得稅應計入進口貨物之完稅價格。

技術委員會同意進入起草該議題之諮詢意見草案，並同意依據中國大陸提交技術委員會審議之草案繼續審議該議題。惟歐盟認為可使用諮詢意見 4.16 來解決中國大陸所提之議題，因此認為沒有必要對中國大陸提交之諮詢意見草案進行進一步工作，其並承諾之後將提供更多資訊以支持其立場，惟至今尚未提交。

結論：

依據協定第 8 條 1(c)規定，買方代賣方支付給進口國國稅機關之專利權使用費所得稅，應視為權利金之間接付款，並加計於完稅價格中。

本提案中權利金支付及代繳所得稅之模式與諮詢意見 4.16 並不相同，因此本提案將作成諮詢意見 4.18 附於附錄 D，並送 WCO 理事會審查列為技術文件。

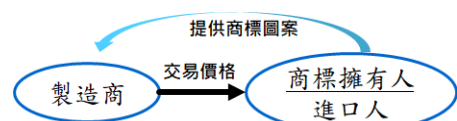
四、買方自有商標進口貨物適用之估價方式：烏拉圭提案

Treatment applicable to a situation in which the price depends on the own trademark of the buyer (VT1262Ea、VT1271Ea)

背景：

本案於第 47 屆技術委員會進行討論，並於第 48 屆會議中認為可適用協定第 1 條以買方支付之貨價作為進口貨物完稅價格，爰由烏拉圭代表研提諮詢意見草案，自第 49 屆會議起持續討論並修正相關文案內容。

進口人向賣方進口自有商標之貨物，因而無需支付商標權利金；商標圖像是由進口人以電子方式免費提供給賣方，用於進口貨物之生產；



在進口貨物上重製商標圖像之成本已包含在實付或應付價格中。

本案是否適用協定第 1 條以買方支付之貨價作為進口貨物完稅價格？如適用協定第 1 條，是否需依協定第 8 條規定調整？

討論：

中國大陸代表同意日本及加拿大代表所提本案不適用第 8 條 1(b)之理由，並說明其書面評論中所提商標圖像應根據第 8 條 1(b)(iv)或第 8 條 1(c)進行審查之議題。

歐盟代表建議不要考慮第 8 條 1(b)之適用，其認為對本條之審議將需要與商標有關藝術品或設計工作之其他資訊，並建議加入與諮詢意見 4.8 中類似聲明-「與商標有關藝術品和設計作品之供應是否根據第 8 條 1(b)規定，應被視為應課稅品是一個單獨考慮因素」。

加拿大代表同意中國大陸代表於閉會期間之書面評論，以及日本代表於討論階段所提建議，即加入通過互聯網向賣方提供圖像之手段。為了解決對這筆費用之不同意見，其建議進行文字修改，以刪除文本重複內容，並闡明為什麼第 8 條 1(b)不適用。此外，該代表提出一項修正案，以解釋商標及商譽方面之差異最終導致價格差異，其建議在案文中插入一個新段落，以重申意見，並發表於文件 VT1186E1a 附錄中。

烏拉圭代表認為，應確定買方如何免費向賣方提供商標圖像，以用於生產所進口之商品，其認為加入商標圖像非屬於協定第 8 條 1(b)(i)、(ii)及(iii)規定，且該商標是在進口國建立的，非屬協定第 8 條 1(b)(iv)規定應計入

進口貨物實付或應付價格之項目，因此本案買方所提供商標圖像，在任何情況下都非屬第 8 條 1(b)所規定應加計項目，因此應刪除第 7 段。

結論：

商標歸買方所有，因此無需為使用該商標而向任何人支付使用費或許可費，無協定第 8 條 1(c)之適用，另第 8 條 1(b)規定則應單獨考慮。

本提案將作成諮詢意見 24.1 附於附錄 E，並送 WCO 理事會審查列為技術文件。

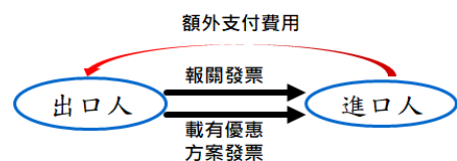
五、庫存保護計畫費用之估價處理：模里西斯提案

Valuation treatment of charges paid related to an Inventory Protection Program (VT1263Ea、VT1272Ea)

背景：

本案由模里西斯代表於第 49 屆會議提案，希望能納入特殊技術性議題討論，並於該屆會議開始持續被要求補充相關事實內容以進行討論。

國外出口人出貨給進口人時，除報關發票外，另簽發 1 張未申報發票，該發票載有賣方所提供之優惠方案，包括：(1)業績達標時可獲得免費貨物；(2)業績達標時可獲得禮物；(3)確保進口人匯率風險，即使未來該產品價格有波動，出口人仍會以同樣價格賣給進口人。



未申報發票所支付之優惠方案費用是否應計入完稅價格？該優惠方案費用是否屬折讓抵付？

討論：

波士尼亞代表認為該額外支出費用不應加計在完稅價格中，理由如下：

1. 因此項費用並不在協定第 8 條之應加計費用規範中。
2. 因完稅價格應依其貨物之實際價格判斷，但第 1 個方案之費用是屬銷售條件是否滿足有關之額外支出費用，且該方案並非強制參與（可繳可不繳，optional），表示其與貨物之實際價值無關，故不應加計於完稅價格中。
3. 關於第 2 個方案，其支出費用也是關於銷售條件是否滿足，屬於市場行銷之費用，與貨品實際價格無關，故也不應加計於完稅價格中。
4. 至於第 3 個方案之費用是用來保證商品價格穩定之保證金，亦與貨物價值無關，理應不需加計於完稅價格中。

中國大陸代表認為模里西斯代表應提供更多資料來確認交易價格是否會被上述方案影響，該額外費用支付與否若會改變交易價格，則該額外費用是否計入完稅價格就有討論空間。

烏拉圭代表認為該額外費用不應加計於完稅價格中，因該費用為選擇性支付，並非交易過程中之實付或應付價格，根據協定附件 III 第 7 段，不須加計於完稅價格中，且根據協定第 8 條，該費用不在其規範之應加費用中。

結論：

本案未能釐清交易價格是否會被相關方案影響，模里西斯代表將在烏拉圭代表及秘書處協助下，編寫諮詢

意見草案更新版本，供技術委員會進一步審議。

六、載運進口貨物所用車箱之回程運輸費用：北馬其頓提案 Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods(VT1264Ea、VT1273Ea)

背景：

本案由北馬其頓代表於第 49 屆會議所提，相關案情錄於文件 VT1207E1a 附錄中，並於該屆會議開始持續被要求補充相關事實內容以進行討論。

海關實施事後稽核時，發現被稽核人支付運貨車箱回程之國際運輸發票，即進口人在貨物進口後亦支付歸還空車箱之運輸費用。



按協定第 1 條規定決定進口貨物完稅價格時，是否應依協定第 8 條加計車箱回程之運輸費用？

討論：

烏拉圭代表認為進口人先承擔進口貨物之運輸費用，其次支付載運該等進口貨物之運輸工具返回原點之費用。此適用於依據協定第 8 條 2 將運至輸入口岸運費計入完稅價格之情形。亦即承運人向進口商提供服務，要求在兩張單獨之商業發票上為此付款，第 1 張商業發票為將貨物運至輸入口岸運費，第 2 張商業發票為歸還空車箱運輸費用。

日本代表認為北馬其頓需要補充資料。正如秘書處在文件 VT1264Ea 第 3 段中所指出，重點是判斷該議題是否屬於第 1 條、其解釋性說明及其附件 III 第 7 段實付

或應付之價格範圍或協議第 8 條 2 規定。如果議題屬前者（第 1 條，實付或應付價格），本案應繼續進行審查，並請北馬其頓提供更多資訊；如此議題屬後者（第 8 條 2，運輸成本），則採用 CIF 系統作為完稅價格基礎之會員可能對此議題感興趣，在 FOB 系統上可能不必考慮。

我國代表認為依據協定第 8 條 2 規定，各會員制訂法律時應規定將進口貨物運往進口港口或進口地點費用之全部或部分費用，加計於完稅價格內或自其中扣除。在銷售合約中應明確指出是否需要考慮運輸成本作為貨物之實付應付價格之一部分。然而在本提案中沒有提及與歸還空車廂有關之合約條款。因此，如果北馬其頓提供秘書處補充資訊並釐清事實，例如關於銷售合約之環境情況、義務以及違反合約是否影響進口貨物之銷售等，將有助於本提案之討論。其次，我國代表也同意案例研究 7.1 可能有助於分析是否將支付回程運輸費用作為銷售條件。在這種情況下，是否有可能在不支付歸還空車廂運輸費用之情況下購買貨物。關於該議題之答案可能有助於釐清將這筆費用視為協定中規定貨物之實付應付價格一部分。最後，如果歸還空車廂之費用可以從貨物之實付應付價格中獨立分離出來，且該筆費用在進口之後產生，則根據協定第 1 條之註釋，可以將其確認為進口後之運輸成本與進口商品無關，此費用不得添加到貨物之實付或應付價格中。

結論：

本提案中沒有提供歸還空車箱之合約條款或其他相關資料，難以論斷該費用是否計入完稅價格，北馬其頓

將再補充，以供技術委員會進一步審議。

議程七：休會期間所提議題

Questions raised during the intersession

無。

議程八：其他事項

Other business

無。

議程九：未來工作計畫

Programme of future work

秘書處建議下列項目列入第 53 屆會期

- ⊕ 確認議程
- ⊕ 採認第 52 屆技術委員會會議報告
- ⊕ 報告休會期間進展
- ⊕ 技術協助、能力建構及當前議題
- ⊕ 特殊技術性議題
 - 協定第 8 條 1(c) 之專利權及特許權權利金：烏拉圭提案
 - 庫存保護計畫費用之估價處理：模里西斯提案
 - 載運進口貨物所用車箱之回程運輸費用：北馬其頓提案
- ⊕ 休會期間所提出議題
- ⊕ 其他事項
- ⊕ 選舉

⊕ 未來工作計畫

⊕ 下次會議日期

議程十：下屆會期

Dates of next meeting

技術委員會第 53 屆會議預訂於 2021 年 10 月 18 至 20 日舉行。

肆、心得與建議

一、預擬研析意見，爭取會中發言

本次會議為充分準備會議發言資料，會前邀集相關同仁就特殊技術性議題逐項討論可能回應內容，俾於會中爭取發言並主動表達支持與我國作法相近國家。由於同仁適切準備，於半數議題均能妥適發言，且對主席口誤亦能適時澄清，成效良好。

二、強化關稅估價知能，掌握國際脈動

各國所提特殊技術性議題，多涉專利權及特許權權利金、因電子商務交易或因事後稽核調查發現實際交易情形及其他交易文件致發生認定疑義，與我國實務上所遭遇問題多所相似，參與此等議題討論，可與國際友人相互印證，掌握國際最新處理方式。

三、培養國際關務人才，貢獻我國經驗

WCO 關稅估價技術委員會屬技術性會議，所討論關稅估價議題均需多年討論方能達成共識後作成技術文件，以納入關稅估價彙編俾供國際間遵循，參與討論者均須深入其議題背景方能做出實質貢獻，建議未來不論該會議以實體或視訊方式進行，均能優先舉薦曾參與視訊會議之同仁代表出席與會，俾利於會議中提供評論，擴大我國能見度。

伍、附件

附件 1：關稅估價特殊技術性議題研討責任分工及研討會討論情形

項次	特殊技術性議題	文件	主辦	協辦
a.	Sale for Export to the Country of Importation under Article 1 : Request by Canada	VT1259Ea VT1268	劉怡岑	溫武彥
b.	Royalties and licence fees under Article 8.1 (c) of the Agreement : Request by Uruguay	VT1260Ea VT1269	李玉薇	蔡俐雯
c.	Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty - Income Tax) : Request by China	VT1261Ea VT1270	洪玉美	吳彩瑄
d.	Valuation treatment of imported goods bearing the buyer's own trademark : Request by Uruguay	VT1262Ea VT1271	吳彩瑄	羅靖閔
e.	Valuation treatment of charges paid related to an Inventory Protection Program : Request by Mauritius	VT1263Ea VT1272	李柏羲	洪玉美
j.	Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia	VT1264Ea VT1273	羅靖閔	李柏羲





TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1249Ec

-
50th/51st Sessions

O. Eng.

Brussels, 14 October 2020.

REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON
THE 50th/51st SESSIONS OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. Due to the COVID-19 pandemic, the organization of the 50th Session of the Technical Committee on Customs Valuation, originally scheduled to take place at WCO Headquarters from 11 to 15 May 2020, had to be reviewed in terms of the format and content of the meeting.
2. The Important Notice concerning “Proposed working arrangements for WCO meetings impacted by COVID-19”, issued on 24 April 2020, had provided Members with an overview of the proposed arrangements for WCO meetings scheduled until June 2020. However, the COVID-19 situation continued to affect travel and meetings after June.
3. In consultation with the TCCV Chairperson, the Secretariat had therefore organized combined 50th/51st Sessions of the TCCV to be held in a blended document-based and virtual meeting format.
4. The 50th/51st Sessions of the Technical Committee were held as joint Sessions from 21 September to 14 October 2020, preceded by a three-week discussion phase.
5. The Chairperson, Mr. Jan Birkhoff (Netherlands), extended a warm welcome to all delegates, in particular those attending the Technical Committee for the first time, reminded the delegates of the administrative arrangements and wished the Technical Committee a fruitful and productive Session.
6. The Director of the Tariff and Trade Affairs, Mr. Ping Liu, in his written opening remarks posted on the dedicated 50th/51st TCCV Forum Group of the CLiKC! Platform, thanked the Chairperson for his cooperation in working with the Secretariat on the preparation for this meeting and all delegates and observers for their understanding and support of the organization of this meeting.
7. He noted that the holding of this blend of a document-based session with a virtual meeting was a first in the history of the Technical Committee, observing that the document-based

sessions are more time-consuming than the usual face-to-face meeting and required extra concentration and hard work from delegations, the Chairperson and the Secretariat.

8. The Director believed that with strong commitment, active participation and a spirit of cooperation, the Technical Committee would be able to deliver what Members and stakeholders expected. He wished the Chairperson and the Technical Committee a fruitful and productive Session.

Agenda Item I: **COMMEMORATIVE OPENING**

9. A virtual commemorative opening was held on the KUDO platform to mark the 50th TCCV Session on 12 October 2020. Keynote addresses were given by Dr. Kunio Mikuriya, the Secretary General of the WCO, Mr. Yi Xiaozhun, the Deputy Director-General of the WTO, and Mr. John W.H. Denton AO, the Secretary General of the ICC. A programme of distinguished speakers followed giving multiple perspectives on the impact of the TCCV.
10. Secretary General Mikuriya noted that the adoption of the GATT Valuation Code was revolutionary. It was a switch from the use of the normal price under the Convention of the Valuation of Goods for Customs Purposes (also known as the BDV) to the use of transaction value. He underscored the importance of the Technical Committee's role in ensuring uniformity in interpretation and application of the Agreement at a technical level.
11. Dr. Mikuriya highlighted the implementation challenges Customs administrations and the international trade community continue to face since the entering into force of the Agreement 40 years ago. Such challenges, he added, lie not only in the technical complexities but also in the capacity of Customs administrations to ensure compliance, especially in developing countries. There are also challenges in keeping the Agreement up to date in light of the evolution of the global value chains, the emerging new business models, the e-commerce sector and the fast changing technologies.
12. In relation to the technical assistance provided by the WCO to its Members, he explained that the Secretariat has gone beyond explaining the technical aspects of the Agreement to covering a wider range of Customs techniques which were incorporated in the WTO Agreement on Trade Facilitation and mentioned the guidance documents developed, which form part of the WCO Revenue Package. Additionally, to specifically address the needs of the private sector, the WCO has launched the WCO Academy, with Customs valuation as one of its pioneering courses.
13. The Deputy Director-General of the WTO thanked the WCO for its excellent custodianship of the Technical Committee on Customs Valuation over the past 25 years. He urged the Technical Committee to continue its work to ensure uniformity in interpretation and application of the Agreement and to work hand in hand with the Committee in Geneva to address the changes in global trade, in particular, the reshaping of global value chains and the new and emerging business models and trade developments that occurred since the Agreement was negotiated and which could not have been foreseen at that time. He also made the linkages between the Agreement on Trade facilitation and the Customs Valuation Agreement.
14. The Secretary General of the International Chamber of Commerce, Mr. John Denton, thanked the WCO for the opportunity given to the ICC to participate in the high-level opening

session as well as to contribute to the WCO News magazine. The long and close cooperation between the ICC and the WCO in the area of Customs valuation started in 1979, he noted, when the ICC was accepted as an observer to the meetings of the TCCV. The ICC contributed to the work of the Technical Committee by explaining specific aspects of commercial practice in terms of their relevance to Customs valuation, as well as to engage with Customs representatives on specific technical issues.

15. Mr. Craig T. Clark (Director, Commercial and Trade Facilitation, Regulations and Rulings, Office of Trade, United States Customs and Border Protection (CBP)) conveyed the greetings of several former Chairs of the TCCV from the United States, reviewed the past achievements of the Technical Committee and looked forward to the challenges ahead. He also shared some of his experience at the WCO as Deputy Director of the Tariff and Trade Affairs Directorate.
16. Ms. Sabine Henzler (Director, International & General Affairs, Taxation and Customs Union (TAXUD), the European Union) highlighted the importance of Customs valuation and reviewed the pioneering role that the European Union had played in the development of the Customs valuation system and the Technical Committee. She spoke highly of the Technical Committee's achievements over the past 25 years and raised several key issues that the Technical Committee might pay attention to in its future work, including transfer pricing, undervaluation, cross-border e-commerce, and the valuation of "intangibles".
17. Mr. Jean-François Bédard (Manager, Commercial and Trade Branch, Canada Border Services Agency (CBSA)) highlighted the importance of transparency and trade compliance in the implementation of the Agreement and introduced Canada's practice in these areas. The web links of CBSA's valuation main webpage, Customs Valuation Handbook, Valuation policies (43 documents), as well as Valuation rulings were shared in the presentation.
18. Mr. Katsu Shigeaki (Supervisory Valuation Specialist, National Valuation Center, Japan) shared Japan's experience in the successful implementation of the Agreement, which included four factors, i.e., uniform application of the Agreement, securing transparency, providing education and capacity building activities, and addressing new environment and challenges.
19. Ms. Lin Qianyu (Deputy Director, Division of Duty Collection, Shenzhen Customs, China) introduced China's experience in the uniform implementation of the Agreement, including the establishment of three National Supervision Bureaus for Duty Collection after the national Customs clearance reform, that began in 2017, and which had simplified Customs procedures and enhanced the uniformity in the implementation of the valuation rules. She also shared the benefits of the valuation advance ruling regulation adopted by China in 2018.
20. Mr. Leonardo Correia Lima Macedo (Judge, Administrative Tax and Customs Court, Brazil) underscored the importance of valuation data exchange and finance integration, which made it possible to narrow the gap between export and import prices. Stressing the need for further work on information exchange, he forecast that the next 25 years of the Customs valuation Agreement would be data driven and Customs clearance systems must be ready for the new era. He also shared his experience with the Technical Committee as a former delegate and Secretariat's staff.
21. Dr. Jongkon Kumlai (Director of Customs Valuation Section, Thailand Customs) focused on Customs valuation fraud and illustrated its complexity with two cases, one of which was an undervaluation case detected by the Post-Clearance Audit Division and the other a double invoicing case. Both cases were appealed to the court but eventually dismissed as the appellants could not submit any evidence to support the appeal.

22. Mr. Lungu Kiendo Didier (Customs Inspector, the Democratic Republic of Congo) recalled the support provided by the WCO in the process of resuming its Customs valuation function, which had been outsourced to a private company in 2005 due to the lack of the necessary capacity to guaranty the uniform implementation of the Agreement. He thanked the WCO for its continued support in Customs reform and capacity building, which enabled the DGDA to take back the Customs valuation function in 2016.
23. Mr. Guzman Manes, former Chairperson of the TCCV from Uruguay, presented the rules and working of the Technical Committee from an insider's point of view, as well as the limitations of the functions of the Technical Committee and suggestions for improvement.
24. The Director of the Tariff and Trade Affairs Directorate, Mr. Ping Liu, in his closing remarks, thanked all speakers for their availability to the Commemorative Opening and, in particular, the WTO and the ICC for the joint efforts put into the programme. He noted that the celebration of the 50th Session of the TCCV was a unique opportunity to review the achievements of the Technical Committee since its coming into force in 1981 and to look forward to the future. He announced the launching of a brochure and a series of cover story articles that will be published in the next issue of the WCO News magazine to mark the 50th Session of the TCCV.

Agenda Item II: **ADOPTION OF AGENDA**

(a) Provisional Agenda

Doc. VT1220Eb

25. The provisional Agenda contained in Doc. VT1220Eb, published on the TCCV Meeting page, had been placed on the 50th/51st TCCV Forum Group of the CLiKC! Platform and opened for comment by the Chairperson. All delegates who responded agreed with the provisional agenda as published in Doc. VT1220Eb.
26. No further comments or objections were made during the virtual phase.

Conclusion

27. The Technical Committee adopted the Agenda as proposed in Doc. VT1220Eb without amendment.

(b) Suggested programme

Doc. VT1221Ea

28. The Chairperson referred to Doc. VT1221Ea, which set out the suggested programme of work for the 50th /51st Sessions prepared by the Secretariat. He noted that no questions were received during the intersession.
29. The Chairperson had opened the suggested programme for comment on the Discussion Forum of CLiKC! and all delegates who responded agreed with the suggested programme as published in Doc. VT1221Ea.

30. No further comments were made during the virtual phase.

Conclusion

31. The Technical Committee approved the suggested programme as set out in Doc. VT1221Ea without amendment.

Agenda Item III: ADOPTION OF THE TECHNICAL COMMITTEE'S 49th SESSION REPORT

Doc. VT1219E1b

32. The Chairperson reminded the delegates of the reporting procedure approved by the TCCV at its 42nd Session.
33. During the intersession preceding the 50th/51st Sessions, comments received from Canada, China and Uruguay on the "a" version of the draft Report had been incorporated in the "b" version of the draft Report and published. No further comments on the comments published in the "b" version of the draft Report had been received.
34. The Chairperson had opened the Report of the 49th Session of the Technical Committee for comments or objections on the Discussion Forum of CLiKC! and all delegates who responded agreed to approve the Report as published in Doc. VT1219E1b.

Conclusion

35. The Technical Committee approved the Report of the 49th Session of the Technical Committee as published in Doc. VT1219E1b without any amendment, to be published as the "c" version.

Agenda Item IV: REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director's Report

Doc. VT1222Ea

36. The Director's Report contained in Doc. VT1222Ea was published on the website and CLiKC!. The report covers the following topics: Policy Commission and Council Sessions, the WTO Committee on Customs Valuation, Revenue Package, Technical assistance and capacity building activities, Fellowship programme, Staff changes, Historical working documents and Other issues.
37. In his written report, the Director provided an update of the Policy Commission and the Council Sessions held in December 2019 and June 2020 respectively. Due to the COVID-19, the Council Sessions were held in a document-based manner from 10 to 22 June 2020, including a virtual Heads of Delegation meeting on 25 June 2020. As the Council sessions had a shortened agenda, there was no item on Customs Valuation matters.
38. The draft Report of the Policy Commission and the draft Minutes of the Council can be found in Doc. SP0715E1 and Doc. SC0192E1 respectively published on the WCO Members' website.

39. With regard to the Revenue Package, the Policy Commission, at its 82nd Session in December 2019, took note of the updates on the progress made regarding the implementation of the Revenue Package Phase IV Action Plan endorsed at the Policy Commission and Council sessions in June 2019. Work under Phase IV is ongoing and a detailed report is available under item V(c) of the Agenda.
40. The Director referred to the work of the WTO Committee on Customs Valuation and Technical Assistance/Capacity Building Activities, which was covered in detail under other specific items of the Agenda. The report of the WTO Committee on Customs Valuation, which usually is an oral report, has been made in writing and posted on CLiKC!. He reminded the delegates of the initiatives taken by the Secretariat to continue the delivery of technical assistance to Members online in spite of the pandemic. The WCO has hosted the 80th WCO Fellowship Programme for French speakers between 27 January and 21 February 2020. Two Fellows, Mr. Yawori Apetse from Togo and Mrs. Tahiana Marina Rakotozafy from Madagascar, chose Customs valuation as their field of study. The WCO is also hosting the 82nd Fellowship Programme for English speakers from 21st September 2020 and welcoming Mr. Avtandil Zivzivadze from Georgia and Mr. Zechariah Geedehgar Munford from Liberia.
41. With regard to the publication of historical working documents of the Technical Committee on the public website of WCO, the Secretariat has continued the editing work on the outstanding Session working documents in readiness for publication. To date there are 48 sets of edited working documents from the 1st to 48th Sessions of the TCCV published on the website.
42. The Director concluded by encouraging delegates to advise the Secretariat of any changes in the Valuation Contact Point list and the Index of Reference Materials as these lists provide a valuable resource for Members.
43. There were no comments received from Delegates on this item of the Agenda and the Technical Committee was invited to take note of the Report.

Conclusion

44. The Technical Committee took note of the Director's Report.

(b) WTO Committee on Customs Valuation Report

45. The written report of the WTO Secretariat, posted on CLiKC!, provides an update on three areas concerning the work of the WTO Committee on Customs Valuation: (i) developments regarding meetings of the Committee, (ii) standing items on the agenda for a formal meeting of the Committee scheduled for 19 October; and (iii) ongoing technical assistance and training activities.
46. In her report, the observer from the WTO explained that the meeting of the Committee on Customs Valuation, which had been scheduled to take place in May 2020, had to be postponed due to the Covid-19 pandemic. It was decided to postpone the formal meeting until 19 October, to follow the meeting of the TCCV, in order to enable those Members of the TCCV who would wish to attend the Geneva Committee to do so.
47. The meeting will be conducted in person on the WTO's premises and delegations who are not physically present will be able to access the meeting remotely. She informed the

Technical Committee of the appointment of Mr. Carlos Guevara of Ecuador on 27 July 2020 as new Chair of the Committee replacing Mr. Winega Bamana of Togo.

48. The observer highlighted the four different types of notifications that the Committee will review: Members' laws and regulations; Members' responses to a check list of issues related to their legislation; Members' date of implementation of the Decision on Interest Charges; and, whether Members adopt the practice referred to in paragraph 2 of the Decision on the "Valuation of Carrier Media Bearing Software for Data Processing Equipment". She reported that more notifications were being received by the Committee and she thanked the delegates of the TCCV for their positive contribution to the work of the Committee in Geneva, in terms of encouraging the submission of legislation and responses to the Checklist of Issues.
49. Regarding technical assistance, she provided details of initiatives undertaken by the WTO Secretariat including the development of e-learning activities on Customs Valuation.
50. No comments were received by the Secretariat on this Report and the Chairperson invited the Technical Committee to take note of the Report.
51. The written report by the Observer from WTO is appended in Annex C to the Report.

Conclusion

52. The Technical Committee took note of the WTO written report.

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. VT1223Ea and VT1237Ea

Background

53. In accordance with the Technical Committee's decision, the Secretariat had monitored and communicated the technical assistance/capacity building activities scheduled or delivered by Members in order to provide useful information to all Members for planning purposes and to prevent duplication of effort.
54. Since the last session, no Member administration had provided any information about their technical assistance activities. Information on the technical assistance/capacity building activities undertaken by the Secretariat is set out in the Annex to Doc. VT1237Ea.

Discussion

55. The Delegate of Japan acknowledged that his Administration had not provided any information on its technical assistance/capacity building activities. However, it appeared that one of the activities mentioned in the Annex to Doc. VT1237Ea had been carried out jointly with Japan. The Member therefore expressed the wish that the Annex to that document should be amended as appropriate.

56. The Delegate of Guatemala welcomed the information provided by the Secretariat. He felt that it was important for the WCO to organize a virtual training session on Customs valuation for the Americas and Caribbean region.

Conclusion

57. The Technical Committee took note of the Report on the technical assistance activities provided by the Secretariat and invited the Secretariat to amend the Annex to Doc. VT1237Ea to take account of the comment by Japan.

(b) Progress report on Members' application of the WTO Customs Valuation Agreement

Docs. VT1224Ea and VT1238Ea

Background

58. Following the decision taken by the Technical Committee on Customs Valuation, the Secretariat had been monitoring progress with the application of the WTO Customs Valuation Agreement by Members and publishing reports on the subject.
59. Before the session, the Secretariat had published Doc. VT1224Ea, inviting Customs administrations to provide information on the progress made with regard to the application of the WTO Customs Valuation Agreement in their respective countries.
60. In the intersession, the Secretariat had not received any reports from Members containing information about preparations under way for the enactment of relevant national legislation, organizational/administrative changes, or requirements in respect of technical assistance. It has also not received any information on their intention of making oral presentations during the current session of the Technical Committee about their experiences regarding the application of the WTO Customs Valuation Agreement.
61. The Secretariat attributed this situation in all probability to the unprecedented health crisis caused by COVID-19 that the entire world was currently facing. This had resulted in efforts to adapt on the part of Member administrations and perhaps a shift in priorities and a readjustment of planned actions. In the medium term, the Secretariat hoped that the COVID-19 pandemic would be brought under control so that normal business could be resumed across Member administrations.

Conclusion

62. The Technical Committee took note of the Secretariat's progress report on Members' application of the WTO Customs Valuation Agreement.

(c) Revenue Package

Doc.VT1225Ea

63. In Doc. VT1225Ea, published on the WCO website as well as on CLiKC!, the Secretariat updated the Technical Committee on the state of play of the Phase IV Action Plan of the

Revenue Package for the years 2019 – 2021, endorsed by the Policy Commission and Council at the June 2019 Sessions.

64. The Action Plan consists of two parts: Part 1 includes, as in the previous phase, the continuation of promoting and applying the tools developed under the previous phases of the Revenue Package; and Part 2 is about the development of new materials and initiatives.
65. The tasks related to Part 1 of the Action Plan include working with Members and Regional Economic Communities, via technical assistance and capacity building missions, to apply the Revenue Package tools and strengthening the pool of experts.
66. For Part 2 of the Action Plan, the topics covered are: (i) Illicit Financial Flows; (ii) Harmonized System, Valuation and Origin Compliance; (iii) Assessing the impact of the Revenue Package programme; (iv) Revenue Fraud and compliance issues related to e-Commerce; and (v) Managing and collecting Customs Debts. The Secretariat updated the Technical Committee about the tasks related to each topic and the corresponding responsible lead Directorate. The updated table of the Phase IV Action Plan was annexed to Doc. VT1225Ea.
67. No comments were received on the report and the Chairperson invited the Committee to take note of the report.

Conclusion

68. The Technical Committee took note of the updated report.

Agenda Item VI: SPECIFIC TECHNICAL QUESTIONS

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

Docs. VT1226Ea and VT1239Ea

Background

69. This question was first introduced to the Technical Committee at the 45th Session and, since the 46th Session, had been examined by the Technical Committee with continuous improvement of the text to take into consideration Members' comments and observations.
70. During the 49th Session, the Delegate of Canada explained the reasons for concluding that the sale for export is the sale between XCO and the retailers. Many delegates supported Canada's position as expressed in the draft instrument.
71. However, there were still concerns that there was no document to support the conclusion reached by Canada. There were suggestions that the conclusion could be supported by the findings of Customs following enquiries carried out or the conduct of post clearance audit and the examination of the question be based on other available information such as the purchase order.
72. During the intersession, Canada worked with the Secretariat to produce an improved text taking into consideration the comments and observations made by delegates during the 49th Session. The improved text was reproduced in the Annex to Doc. VT1226Ea in which Members were invited to submit their written comments and observations.

73. In response to Doc. VT1226Ea, written comments were submitted by Japan and Uruguay. Japan contributed to the text and Uruguay rejected the conclusion reached in the draft Advisory Opinion. These comments were set out in the Annexes to Doc. VT1239Ea, which were published on the Website and CLiKC! for consideration by Members in their examination of the question.

Summary of discussion

74. During the discussion phase of the document-based session at the Discussion Forum on CLiKC!, Canada agreed with the proposal of Japan to clarify and reinforce the analysis. Canada also reiterated the explanation it had provided to support its decision that the sale for export is between XCO and the retailers and why ICO could not be considered as the buyer: namely that there was no transfer of title by ICO; all risks are born by XCO; XCO controls ICO's bank account; and not a single ICO employee is involved in any of the purchase or resale of XCO's goods to the retailers in country I.
75. The Observer from ICC made some drafting proposals so as to focus the examination of the question on the parties involved in the order and acceptance and not on the ownership or location of the computer system, including a paragraph to cater for national legislation which permits a party to be an importer without being the owner, buyer or seller. The observer provided drafting text that would substantiate the role of ICO as a sales agent rather than the buyer of the imported goods.
76. One delegate observed that the expenses incurred within the country of import, such as the cost of transportation after importation, and any duties and taxes of the country of importation can be deducted from this price, if they are identified separately from this amount. He concluded that while any in-country expenses in the country of import needed to be deducted, any profit after these costs that was realised by ICO was actually additional profit of the exporting company (XCO) and should be added to arrive at the Customs value.
77. Taking into account all these comments, the Delegate of Canada prepared an updated text which was posted on the Discussion Forum for comments by Members. Several delegates who commented on the latest version of the draft Advisory Opinion supported Canada's proposal.
78. The Chairperson consulted the Delegate of Uruguay during the consultation phase to understand the reasons of the rejection, obtain his views on the latest version of the text prepared by Canada with a view to reaching consensus. The Delegate, after consulting with his colleagues, maintained that for his delegation the sale between ICO and the retailer is a domestic sale and the sale for export is the sale between XCO and ICO.
79. During the virtual discussion's phase on KUDO, after highlighting the outcomes since the first examination of this case, the Chairperson noted that all delegations agreed to the conclusion of the draft instrument except for one delegate. In this situation, there is no consensus as to the conclusion and the Technical Committee would have to decide the way forward.
80. The Delegate of Canada, highlighting the importance of this case to many Customs Administrations, thanked the delegates and observers who contributed to the improvement of the text and those who supported the amended text. He hoped that consensus would be reached to conclude this item and considered that the changes brought in the recent version of the draft instrument clarify who could be the importer in the country of importation and why

the buyer is effectively the retailer and not ICO. He wished the Technical Committee could obtain the reasons why Uruguay could not agree with the conclusion that many delegates are supporting.

81. The Delegate of Uruguay acknowledged that the question submitted by Canada is a very interesting case that allowed for the examination of a current practice enabled by e-commerce. He noted that the reasons why Uruguay could not accept the conclusion as proposed in the draft instrument are contained in the Annex to Doc. VT1239Ea. He informed the Committee that he had further examined the latest proposal of Canada with his colleagues and academia in his country and still could not agree with the conclusion.
82. The Delegate of Uruguay, considering that he is the only one objecting to the conclusion, invited the Technical Committee to take a vote, in accordance with the provisions of Paragraph 21 of the Annex II to the Agreement, for a decision regarding this question.
83. One delegate opined that both Canada's and Uruguay's approaches are right. Based on Uruguay's approach where it is said that the price paid by the retailer includes Customs duties and can be used as a basis for internal taxes and on the premise that the sale for export is not the transaction between XCO and ICO, a practical exercise to deduce the duties from the price can be done to arrive at the Customs value. This will overcome Uruguay's concerns and apply Canada's approach.
84. The Delegate of the United States reaffirmed his administration's opposition to voting on technical questions and reiterated his full support for the instrument, reminding the Technical Committee of the amount of work carried out to explain and refine the facts of the draft instrument and wishing to convince Uruguay and any other delegations who have doubts about this instrument. He estimated that the key question is whether ICO is actually the buyer of the goods. According to the general principles of commercial law, he stated that it is not possible for an entity to sell something that it does not itself own. The actual practices of the entities involved and the commercial realities surrounding the transaction have to be looked into. The fact that ICO is labelled as the importer does not mean that it is actually the buyer. The conduct of the parties had to be looked into. The minimal involvement of ICO in the transaction demonstrates that ICO is an agent and not the buyer.
85. Other delegates who took the floor supported the instrument that deals with e-commerce transactions, though, as highlighted by another delegate, the instrument deals with only one type of such transaction. One delegate urged the Technical Committee not to depart from its usual decision taking by consensus.
86. The Delegate of Canada noted that the text of the instrument already provided for the deduction from the price of the duties of the country of importation and the transportation charges incurred in the country of importation. He did not agree that the case should be placed in Part III of the Conspectus after so much of effort to improve this document based on a real situation by a simple movement of the hand.
87. In the absence of consensus, the Chairperson proposed to maintain the question on the agenda of the 52nd Session to give time to Members to examine the latest version prepared and posted by Canada on the Discussion Forum, exchange their views via CLiKC! and decide at the next Session. Delegates agreed and the Delegate of Uruguay said that he was open to further exchanges of view with Canada, other delegates and the Secretariat during the intersession.

Conclusion

88. The question is maintained on the Agenda of the 52nd Session of the Technical Committee.

(b) Royalties and licence fees under Article 8.1 (c) of the Agreement: Request by Uruguay

Docs. VT1227Ea and VT1240Ea

Background

89. The Chairperson introduced this case submitted by Uruguay as a Specific Technical Question, and accepted by the Technical Committee for discussion, at the 46th Session. The question referred to the payment of royalties and licence fees, calculated by reference to the sales price of products manufactured in the country of importation from imported inputs, and their relevance to the Customs value of the imported inputs necessary for the manufacture of the finished goods.
90. The text of the case had been amended in light of the comments made at previous sessions. In the current version set out in the Annex to Doc. VT1227Ea, a patented concentrate was simply diluted with ordinary water after importation, not using a patented process, and the mixture was consumer-packed and bears a trademark for its sale in the importing country as a soft drink. A single royalty was paid by the buyer for the use of the patented concentrate and the trademark on the finished product.
91. During the 49th Session, the Technical Committee had intense discussions on the apportionment of the royalties and licence fees under the Agreement, but no consensus was reached in this regard. Some delegates were of the view that there is no legal base for applying apportionment for royalties and license fees, while some other Members opined that it is allowed by the Agreement and necessary in practice.
92. During the intersession, Uruguay worked with the Secretariat and prepared an improved text, which was set out in the Annex to Doc. VT1227Ea. In response, Bosnia and Herzegovina, China, Japan and Uruguay submitted written comments.
93. In its written comments, Uruguay proposed to make further amendments to the draft Advisory Opinion, focusing on the apportionment of the royalty paid for the trademark.
94. China suggested in its written comments that a study on the issue of apportionment be undertaken.

Discussion

95. After highlighting the new proposal made by Uruguay, the Chairperson invited the Technical Committee to decide: a) whether to examine the facts of the case anew or to continue with the examination on the basis of the original text annexed to Doc. VT1227; and b) whether to carry out a study on the issue of apportionment and if so, in which form it should be conducted.
96. Uruguay highlighted the necessity to adopt an instrument dealing with quantification of the adjustment to be added to the Customs value under Article 8.1 of the Agreement. He suggested that the discussion of this case should focus on how to calculate the amount of the royalties to be added, especially the royalty paid for the right to use the trademark. He

noted that the Technical Committee, in Advisory Opinion 4.6, had decided that the royalty paid for the right to use the trademark should be added to the Customs value of the imported concentrate, but not specified whether it should be the whole amount or part of it. One delegate supported this proposal during the online discussion. However, two other delegates held the opposite opinion: that the Technical Committee should continue the examination on the basis of the original text with a view to adopting a new instrument.

97. The Delegate of the European Union, during the online discussion, shared her position regarding the apportionment of royalties and licence fees. She had the view that even if the royalties or licence fees are only partly related to the imported goods, it does not influence the application of Article 8.1 (c) provided that the conditions for its addition to the price actually paid or payable are satisfied. An appropriate apportionment should be made to separate this part of the royalties or licence fees that relates only to the imported goods from the total amount of the royalties or licence fees paid by the buyer for products produced in the country of importation with the goods being valued and other non-imported goods.
98. She stated that her position is based on the provisions of Article 8.3 which allow reaching a conclusion that the principle of using “objective and quantifiable data” when making price adjustments applies to all elements mentioned in Article 8 of the Agreement. Consequently, the Note to Article 8.3 is applicable in relation to all costs added to the price actually paid or payable, including royalties and licence fees, where necessary.
99. She added that the wording of the Note does not contradict the claim that even in cases in which the royalties or licence fees relate partly to the imported goods and partly to other factors that have nothing to do with the imported goods, still the transaction value method will be applicable in order to determine the Customs value. Such approach will be possible in the case of the existence of objective and quantifiable data necessary to separate this part of the royalties or licence fees that relate only to the imported goods from the total amount of the royalties or licence fees paid by the buyer.
100. The Delegate of the United States reiterated his position expressed at the previous session that royalties and licence fees related to imported goods, wholly or in part, should be entirely included into the price actually paid or payable, provided that all other conditions of the Article 8.1 (c) are fulfilled. He opined that the apportionment of royalties and licence fees should not be allowed under the Agreement, as the apportionment is specifically provided for in the provisions of Article 8.1 (b) and therefore should apply only in the context of assists. It would be inappropriate to extend the application of the apportionment to other adjustments under Article 8.
101. He added that the provisions of and the Note to Article 8.3 do not expressly authorize any particular method of calculation or apportionment. The purpose of these provisions is to limit the discretion of Customs and the importer in terms of the amount of the adjustment. As the amount of the royalties and licence fees is already clear in this case, there is no need to look for further “objective and quantifiable data”. The Delegate of Japan reiterated that the issue of apportionment should be interpreted in reference with the Note to Article 8.3 as stated in the written comments submitted in the intersession which was reproduced in Annex III to Doc. VT1240Ea. He continued to mention that the essential point of the trademark issue is whether the imported goods were substantially changed or not after importation. In this regard, Japan’s position is open to either the Technical Committee examining the case based on the original text as set out in the annex to Doc. VT1227Ea or examining the amended text as proposed by Uruguay in its written comments during the intersession.
102. One delegate supported EU’s opinion and recalled that the initial intention of the Technical Committee’s discussion on this case was related to the apportionment of royalties and

license. Considering the divergence of the Technical Committee on this issue, she was of the view that the Technical Committee should first decide whether the apportionment of royalties and license fees is allowed under the Agreement before discussing the specific amount to be added.

103. China's proposal to conduct a study on the issue of apportionment was supported by a number of delegates during the online discussion. A delegate considered that such study should not delay the adoption of the document currently examined by the Technical Committee.
104. Taking into account the opinions expressed by the delegates, the Chair proposed a) to continue discussing this case on the basis of the text set out in the Annex to working document VT1227Ea, and b) invited any Member to submit a new relevant question for examination by the Technical Committee on the issue of apportionment as a separate consideration. The Technical Committee agreed with the Chair's proposal.

Conclusion

105. The Technical Committee will continue discussing this case on the basis of the text set out in the Annex to Doc. VT1227Ea at the next session.

(c) Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty - Income Tax) : Request by China

Docs. VT1228E1a and VT1241E1a

Background

106. The Chairperson presented this Agenda Item, reminding Members that the question submitted by China concerned whether the royalty income tax paid by importer B/the licensee to the Tax Authority in the country of importation on behalf of seller S/the licensor formed part of the Customs value of the goods imported. If so, which provision of the Agreement would serve as a reference for the purpose of taking that tax into account in the Customs value of the goods imported?
107. He recalled that, at its preceding three sessions, the 47th, 48th and 49th Sessions, the Technical Committee had focused its discussions on the two opinions expressed by Members, namely: that the royalty income tax paid by importer B/the licensee to the Tax Authority in the country of importation for the benefit of seller S/the licensor should be deemed to be a part of the royalty and taken into account in the Customs value under Article 8.1 (c) of the Agreement (Opinion 1); or that the tax should be deemed to be an indirect payment for the goods imported, which must be included in the price actually paid or payable for the goods imported and form part of the Customs value under paragraph 1 of the Interpretative Note to Article 1 of the Agreement (Opinion 2).
108. Following the discussions, at the 49th Session, the majority of Members opted for Opinion 1, set out above, which corresponds to the position taken by China. In the absence of any clearly expressed objection at this point in the discussions, the Technical Committee decided to proceed to the drawing up of a draft instrument on the question.

109. During the intersession, China submitted an initial draft Advisory Opinion on its question for examination by the Technical Committee, which is set out in the Annex to working document VT1228Ea. To aid discussion and facilitate the adoption of the draft Advisory Opinion, China proposed some amendments to the draft Advisory Opinion, taking into account the views expressed by the Uruguayan Administration. This amended Advisory Opinion is set out in Annex I to working document VT1241Ea. Important comments intended to clarify and elaborate on the text are set out in paragraphs 9, 10 and 13.

Discussion

110. During the intersession, Members continued exchanging views on this question for examination using the WCO's CLiKC! platform. These exchanges of views were primarily about further improvements to the text of the draft Advisory Opinion submitted by China, taking into account the relevant comments made by Members. In particular, it was clearly emphasized that the payment of income tax by importer B/the licensee was not based on the contract of sale, but on the licence agreement and was made in accordance with current tax rules in the country of importation. In order to obtain the patent from licensor S, importer B/the licensee had to meet two conditions, namely payment of the royalty and payment of the income tax, and that tax formed part of the total royalty or gross royalty to be paid by the importer.
111. South Africa returned to the question of the royalty income tax being taken into account in the Customs value under the first paragraph of the Interpretative Note to Article 1 of the Agreement, while the European Union proposed that the Technical Committee should cease work on the draft instrument, considering that Advisory Opinion 4.16, adopted in 2015, to which the draft instrument referred, could be used to deal with this question.
112. In response to the written comments sent by South Africa, China and several Members invited South Africa to refer to the Report of the 49th Session, which stated in paragraph 113 that: "In so far as no Member clearly objected to the position expressed in Opinion 1, the Technical Committee agreed, at the request of the Chairperson, to move on to the stage of drawing up a draft instrument on this question. The Chairperson invited China to prepare the draft instrument to be submitted for examination by the Technical Committee at its 50th Session." Reopening the discussions on Opinion 2 was therefore now out of the question.
113. The proposal of the European Union, on the other hand, gave rise to concerns expressed by Members during the discussions. They wanted to hear the arguments in support of the position taken by the European Union. In response to the European Union's new position, China recalled the scenario illustrated in Advisory Opinion 4.16 and the valuable analysis and conclusions made in that instrument, highlighting that these analysis and conclusions may not be sufficient in dealing with the scenario presented in the current case.
114. Taking the floor at the virtual meeting, China said that its question related to a situation that was similar, but not identical, to the one covered in Advisory Opinion 4.16. The difference between the two scenarios lays in the fact that Advisory Opinion 4.16 dealt with a case in which the income tax of 25 currency units was deducted from the royalty of 100 currency units payable for the use of a trademark – the royalty of 100 currency units payable under the licence agreement was a gross royalty with income tax of 25 currency units included; whereas the question for examination concerned a case in which settlement of the royalty income tax (of 11.11 currency units) was a separate payment in addition to the net royalty of 100 currency units paid by the buyer to the seller for commercial use of the patent. In the case illustrated in Advisory Opinion 4.16, the licensor received a net royalty of 75 currency units; and in the case submitted by China, the licensor received a net royalty of 100 currency

units, and payment of the income tax of 11.11 currency units was made by the importer/licensee in addition to the royalty payment and could not be deducted from the net royalty payment. In China's view, this difference justified the drafting of a new instrument of the Technical Committee to supplement Advisory Opinion 4.16. China's position was supported by several Member countries.

115. The European Union, having been invited to present further arguments in favour of the proposal it had made to the Technical Committee to cease work on the draft instrument, on the basis that Advisory Opinion 4.16 could be used for the purpose of dealing with this question, undertook to provide more information at a later time on the reasons for continuing or abandoning work on the draft Advisory Opinion.
116. Several Members supported China's position and were in favour of work continuing on this case on the basis of the latest draft Advisory Opinion submitted by China.

Conclusion

117. The discussions on this question for examination would continue during the next session, after the Technical Committee has heard the arguments to be put forward by the European Union in favour of its position.
118. The Technical Committee agreed to keep this question submitted by China on the Agenda for its next session.

(d) Commissions payable under Promotion and Marketing Service Agreements : Request by Uruguay

Docs. VT1229Ea and VT1242Ea

Background

119. This case was submitted by Uruguay for consideration by the Technical Committee at the 47th Session. The issue of this question concerned the valuation of imported inputs for which a "commission" was paid by the buyer to a promoter under a Promotion and Marketing Service Agreement.
120. At the 49th Session, several delegates requested further clarification regarding the links among the contracts in this case. In response, the Delegate of Uruguay stated that the contracts were simple and straightforward and did not contain detailed information, adding that this question was based on real cases.
121. During the intersession, Uruguay worked with the Secretariat and prepared a new text taking into account the suggestion made at the 49th Session. The amended text was set out in the Annex to Doc. VT1229Ea. In response, China submitted written comments which were set out in the Annex to Doc. VT1242Ea.

Discussion

122. During the online discussion phase on CLiKC!, several delegates asked for more information and clarification for the determination of the case. Uruguay proposed to move this case to

Part III of the Conspectus of technical valuation questions because of the impossibility of providing such information.

123. One delegate supported Uruguay's proposal, taking into account that more clarification and specific information that were needed before reaching a conclusion were not available.
124. Uruguay stated that this case was based on a real case with a very basic contract; therefore no additional information could be submitted. In response to a delegate's question on Uruguay's position in that real case, Uruguay explained that the importer had changed the contract in that case, so the situation was no longer applicable to its Administration.
125. There was no objection to the proposal of Uruguay to move the question to Part III of the Conspectus.

Conclusion

126. The Technical Committee agreed to place this case to Part III of the Conspectus of technical valuation questions.
 - (e) Treatment applicable to a situation in which the price depends on the own trademark of the buyer: Submitted by Uruguay.

(Docs. VT1230Ea and VT1243Ea)

Background

127. This question refers to the determination of the Customs value of an imported product bearing the importer's own trademark when, at the same time, the same product with another trademark was presented for importation at a different price.
128. At the 48th Session, the Technical Committee agreed that Article 1 of the Agreement would be applicable and agreed that an instrument would be useful to Members and Trade. The Delegate of Uruguay drafted an Advisory Opinion for examination by the Technical Committee at its 49th Session.
129. During the 49th Session, the delegates started the examination of the draft Advisory Opinion including the title. Two proposals for the title were maintained in square brackets for later consideration.
130. The written proposal of Japan, as set out in Doc. VT1213E1a, was set as a basis to draft the first paragraph of the draft instrument. This paragraph was modified following drafting proposals made by the delegates during the examination. Particular attention was given in the proposed text to the way the trademark was provided to the seller. It was decided that more time was required to study the treatment of the trademark on the Customs value.
131. In the intersession prior to the 50th Session, Uruguay updated the draft advisory opinion as set out in the annex to Doc. VT1230Ea taking into consideration the comments made at the 49th Session. China submitted its written observations thereon which were reproduced in the annex to Doc. VT1243Ea.

Summary of discussion

132. During the discussion phase of the document-based session on the CLiKC! Discussion Forum, all the delegates who submitted written comments agreed with the title proposed by the Secretariat – “Valuation treatment of imported goods bearing the buyer’s own trademark”.
133. The Delegate of Canada agreed with the written comments made by China, during the intersession, and the suggestion of Japan, made during the discussion phase, to insert the means by which the image had been provided to the seller as being via the internet in order to address the diverging opinions about the treatment of this cost. He suggested various editorial changes to remove the duplications in the text and clarify why Article 8.1 (b) is not applicable in agreement with the changes were suggested. Additionally, the delegate suggested an amendment to explain that the differences in both the trademark and reputation that ultimately result in differences of the price. He also suggested to insert a new paragraph in the text to reiterate the comments that his delegation had made and was published in Annex I to doc. VT1186E1a.
134. The Delegate of China provided the reasons for agreeing with the proposal of Japan and Canada regarding the non-applicability of Article 8.1 (b) in this case and explained that a reference had been made to Article 8.1 (c) in her written comments in consideration of the issue raised at the 49th Session of whether the image of trademark should be examined under Article 8.1 (b) (iv) or Article 8.1 (c).
135. The Delegate of the European Union supported the continuation of work under this item and suggested to refrain from considering the application of Article 8.1 (b). In her opinion, the consideration of this Article would require additional information concerning artwork or design work related to the trademark. She suggested the insertion of a similar statement as in Advisory Opinion 4.8 - *“Whether the supply of the art and design work relating to the trademark would qualify as dutiable under the provisions of Article 8.1 (b) is a separate consideration”*.
136. There were divergent views regarding the text proposed by Canada concerning “the differences in both the trademark and reputation that ultimately result in differences of the price”. Referring to paragraph 2 (b) of the draft Advisory Opinion, in which a conclusion is made regarding an adjustment under Article 8.1 (b) (iv), the EU Delegate opined that there are legal and practical aspects of the issue that should be examined more deeply before any definitive conclusions on this subject are presented in the draft instrument. She gave some practical implications of this conclusion.
137. In an attempt to assist the Technical Committee to come to consensus, one delegate supported the proposal of the EU to delete the reference to the adjustment under Article 8.1 (b) and to consider this issue as a separate one since the main question of the case is whether Article 1 is acceptable. The delegate supported the insertion of the statement proposed by the EU (paragraph 135 above).
138. Taking into consideration all the comments and editing proposals made on CLiKC, the Delegate of Canada prepared a clean copy on October 9 that was translated into the three official languages of the Technical Committee and posted on CLiKC! for consideration by the delegates.
139. During the virtual phase, the Delegate of Canada explained that in the clean version of the draft Advisory Opinion, the proposal from the EU was used as a basis since it was clearer, more logical and had a sequential flow and included all the comments made previously by

other delegates. He added a new paragraph 4, which was one deleted in the proposal made by the EU earlier and asked whether it was intentional or accidental as it gave the essence why the transaction value should be applied in this case. He noted that changes made at paragraphs 6 and 7 were editorial in nature, and notified the Committee of a translation issue in paragraph 5 in the French version.

140. The EU Delegate recognized the mistake of deleting that part in the text that supports the application of the transaction value method under Article 1 and agreed with the proposal of the US and the clean version proposed by Canada. In general, delegates agreed with the clean version.
141. A few concerns were raised on the text, including the second part of the last sentence at paragraph 5 of the draft and the usefulness of reinserting the statement of Uruguay in document VT1152E1a – “In this case, no adjustment under Article 8.1 (b) is applicable, since the importer does not provide the exporter with any design or artwork free of charge, and the trademark of buyer I has no value outside the importing country.” in examining further the draft Advisory Opinion for any possible impact and paragraph 7. The placing of paragraph 7 in the draft and whether the text taken from A.O. 4.8 has its place in this draft instrument were the concerns regarding this paragraph.
142. The Chairperson, bearing in mind that there was no consensus on the clean text as presented, proposed to put the second part of the last sentence at paragraph 5 and paragraph 7 in square brackets for consideration at the next Session and invited the delegates to exchange further during the intersession via CLiKC!.

Conclusion

143. There was no objection to the proposal of the Chairperson and the question was maintained on the Agenda for further examination by the Technical Committee at its 52nd Session.

f) Valuation of imported goods sold at discounted prices to accredited buyers related to the seller : Request by Egypt

Docs. VT1231E1a and VT1244E1a

Background

144. The Chairperson summarized this question submitted by Egypt, which the Technical Committee at its 47th Session had agreed to examine as a Specific Technical Question. The question concerned the valuation of imported goods sold at discounted prices to accredited buyers. The text outlining the facts of this question is set out in the Annex to Doc. VT1175E1a, prepared for the 48th Session.
145. Since the 48th Session, in response to the above-mentioned document, certain Members had requested further information and clarifications that were required for the examination of this question. Egypt had not provided any response to the requests from Members and was not able to attend any session of the Technical Committee in order to respond to Members' questions on the spot.

Discussion

146. As at its 48th Session, the Technical Committee was unable to examine this question in the absence of sufficient information concerning the facts and because no Delegate from Egypt was present at the Session.
147. At the request of the Chairperson, Members agreed that this question should be placed in Part III of the Conspectus of Technical Valuation Questions.

Conclusion

148. The Technical Committee agreed that this question submitted by Egypt should be placed in Part III of the Conspectus of Technical Valuation Questions.

(g) Valuation treatment of amounts paid for access rights to TV bouquet : Request by Cameroon

Docs. VT1232E1a and VT1245E1a

Background

149. The Chairperson presented this question submitted by Cameroon, which the Technical Committee had agreed at its 48th Session would be examined as a Specific Technical Question. It concerns the valuation treatment under the Agreement of amounts paid for access rights to a TV bouquet.
150. This question was the subject of a dispute between the Cameroon Customs Administration and a private company established in Cameroon.
151. For the purpose of examining this question, relevant information about the facts was shared with the Technical Committee in the working documents for the 48th and 49th Sessions. Other documents required for examining this question could be consulted on the WCO Members' website, in the usual location. These documents were the "sales commission contract" and the "transfer pricing documentation", which were supplied by Cameroon. Moreover, in order to inform the discussion of this question, the ICC gave a PowerPoint presentation about this emerging business model based on importation of audiovisual reception equipment and broadcasting rights. This presentation was also published on the WCO Members' website.
152. The Technical Committee had made progress on examining this question on the valuation treatment under the Agreement of amounts paid by subscribers for access rights to a TV bouquet, net of commission paid to the importing company ICO.
153. During the intersession, Cameroon had sent an official letter to the WCO Secretariat, informing it that the dispute between itself and the private company concerned had been settled through a compromise procedure. Cameroon therefore requested that this question be removed from the list of the Technical Committee.
154. Having regard to the above and, in particular, in response to the request from Cameroon, the Chairperson proposed to the Technical Committee that this question should be placed in Part III of the Conspectus of Technical Valuation Questions.

Discussion

155. No objection was raised by the Technical Committee as regards Cameroon's decision to discontinue the examination of its question. The Members agreed to the proposal made by the Chairperson that this question should be placed in Part III of the Conspectus of Technical Valuation Questions.
156. However, given that this emerging business model of providing online services was set to expand and having regard to the need to standardize the interpretation and application of the provisions of the Agreement relating to the questions arising from this business model, several Members and the ICC supported the idea that an instrument of the Technical Committee should be drafted to determine the valuation treatment of such online services under the Agreement.

Conclusion

157. The Technical Committee agreed that this question submitted by Cameroon should be placed in Part III of the Conspectus of Technical Valuation Questions.
158. The Chairperson invited Members to submit a similar case for review by the Technical Committee with a view to the production of an instrument of the Technical Committee providing guidance to Customs administrations on how to deal with the questions arising from this new business model.

(h) Customs Value – Intra-group Sales: Request by Ghana

Docs. VT1233Ea and VT1246Ea

Background

159. The Technical Committee agreed to examine this case, submitted by Ghana as a Specific Technical Question, at its 48th Session. The question referred to a situation involving intra-group transactions where two invoices with different prices for the same consignment were found by Customs during the examination of the commercial documents submitted by the importer.
160. During the intersession prior to the 49th session, Ghana further confirmed that the two invoices in this case were issued to different companies. One invoice was issued by HOX (the distributor) to GOX (the importer) and another one was issued by IOX (the manufacturer) to HOX.
161. At the 49th Session, several delegates expressed the view that more information was needed for the examination of this case and that it would be difficult for the Technical Committee to engage in further discussions in the absence of that information.
162. During the intersession, the Secretariat followed up with Ghana and in the absence of inputs from Ghana, no working document could be prepared by the Secretariat for Members to examine and provide their comments.

Discussion

163. During the on-line discussion, all the delegates that made comments agreed to remove this item from the Agenda.

164. At the virtual meeting of the 50th /51st Session, Ghana was not present to provide further information. There was no objection to remove this case from the Agenda.

Conclusion

165. The Technical Committee agreed to place this case to Part III of the Conspectus of technical valuation questions.

(i) Valuation treatment of charges paid related to an Inventory Protection Programme : Request by Mauritius

Docs. VT1234Ea and VT1247Ea

Background

166. The Chairperson presented this question submitted by the Mauritian Customs Administration, which the Technical Committee, at its 49th Session, had decided to examine as a Specific Technical Question. The question concerned ancillary charges related to an Inventory Protection Programme, which the buyer had to pay upon joining the programme. The text of the case in question is set out in the Annex to Doc. VT1206E1a.

167. In response to Doc. VT1234Ea, Bosnia and Herzegovina, China and Uruguay had submitted written comments during the intersession, which are set out in Annexes I, II and III to Doc. VT1247Ea. In its comments, the Administration of Bosnia and Herzegovina stressed that all the circumstances surrounding the sale of the goods and the nature of charges of this kind should be examined carefully, in order to determine whether or not these charges should be included in the Customs value. The Chinese Administration invited the Mauritian Administration to further clarify, among other matters, the nature of the charges covered by the Inventory Protection Programme, in order to check that the title of the working document corresponded to the facts of the case being examined. The Uruguayan Administration, for its part, based its analysis of the question submitted by Mauritius on the concept of the “total payment”, as provided for in the Interpretative Note to Article 1.

Discussion

168. During exchanges of views in the course of the discussion phase of the current document-based session of the Committee, Mauritius had provided some outline responses to the comments by Bosnia and Herzegovina, China and Uruguay. In the light of the clarifications provided by Mauritius, China agreed that the title of the technical question could be retained, and suggested that the texts should be adjusted accordingly.

169. One delegate felt that the case at issue was very interesting, a view supported by other delegates. He was certain, moreover, that it would be useful to have a guidance tool to assist in Customs valuation for imported goods in similar circumstances, given that none of the existing instruments of the Technical Committee dealt with this question. One delegate promised to return with further comments at the next session of the Technical Committee.

170. All the delegates who made comments wanted to receive further information from Mauritius. In the view of the delegates, determining whether or not the ancillary costs were part of the Customs value of the imported goods depended on the response to two major concerns. These revolved around the question of whether the ancillary charges related to the imported

goods, on the one hand, and whether they constituted a condition of sale of the imported goods, on the other.

171. The speakers considered that, although, in respect of the first concern, the relationship between the payment of the ancillary charges and the imported goods was established, it was less clear whether the payment was a condition of sale of the goods. The delegates pointed out that the optional nature of these charges was at odds with their being a condition of sale of the imported goods.
172. Some delegates considered that the currency surcharges invoiced to all the distributors as a mandatory payment did constitute part of the price actually paid or payable for the imported goods when they were cleared through Customs. This would not be the case for the other two categories of charges, namely the charges under the Inventory Protection Programme and the club charges. In any event, they hoped that Mauritius would provide them with further details, in particular the clauses of the contracts of sale and distribution relating to the conditions for joining the Inventory Protection Programme and all the implications thereof.

Conclusion

173. The Technical Committee agreed to keep this question on the Agenda for its next session and to discuss it in the light of further information on the facts provided by Mauritius.

- (j) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia

Docs. VT1235E1a and VT1248Ea

Introduction

174. The Chairperson presented this question, submitted by North Macedonia, which the Technical Committee, at its 49th Session, had agreed to examine as a Specific Technical Question. It refers to the valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods. The text concerning the facts of this question is set out in the Annex to working document VT1207E1a.
175. In the case submitted by North Macedonia, the imported goods were shipped by rail. This is therefore a matter of the valuation treatment of the cost of transport relating to the return of empty railway carriages that were used to transport imported goods.
176. During the intersession, the Secretariat received the written comments submitted by Bosnia and Herzegovina, China and Uruguay in response to working document VT1235Ea. These comments are set out in Annexes I to III to working document VT1248Ea. In their comments, these three Member countries requested further information concerning the facts of this question for examination, in particular regarding the terms of contract relating to the return of empty railway carriages in the sales contract or, possibly, the freight contract. This further information was necessary in order to determine whether the cost of transport for the return of empty railway carriages could be considered in the context of the Interpretative Note to Article 1 and Annex III, paragraph 7, to the Agreement or in the context of the provisions of Article 8.2 of the Agreement.

Discussion

177. During the intersession, China and the European Union shared their views concerning the examination of this question on the WCO's CLiKC! platform. They pointed out the provisions

in the Agreement to which the Technical Committee could refer to in the examination of the question, subject to the further information to be supplied by North Macedonia.

178. The Secretariat had not received any response from North Macedonia to the request for further information made by the aforementioned Members and Guatemala. The Delegate of North Macedonia had not taken part in the current session of the Technical Committee in order to present his question and to reply to any questions from the Members.
179. The Technical Committee was therefore unable to examine this question on the Agenda of its current session.
180. However, some Members considered that this case was of interest in the context of the application of Article 8.2 of the Agreement. Accordingly, they were in favour of keeping this question on the Agenda of the Technical Committee.

Conclusion

181. At the request of the Chairperson, the Technical Committee agreed that this question should be kept on its Agenda with a view to its examination at the next session.

Agenda Item VII: QUESTIONS RAISED DURING THE INTERSESSION

182. There were no questions raised during the Intersession.

Agenda Item VIII: OTHER BUSINESS

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

Agenda Item IX: ELECTIONS

184. Elections were held for the positions of Chairperson and the two Vice Chairpersons of the Technical Committee on Customs Valuation, in accordance with Annex II of the Agreement, for the year 2021. It was noted that while officers have previously been elected for the two meetings over a financial year, the rescheduling of meetings and consequential delay in the elections meant that their term would run for the two meetings over the next calendar year.
185. Ms. Santa Marianela MARTE of the Dominican Republic was nominated by the Delegate of the United States for Chairperson. The Delegate of Japan seconded this proposal and Ms. Marte was elected Chairperson by acclamation.
186. Ms. Qianyu LIN of China was nominated by the Delegate of Canada as Vice-Chairperson. The Delegate of the Democratic Republic of Congo seconded this nomination. Ms. Lin was elected as Vice-Chairperson by acclamation.
187. Mr. Laurent Blaise KABORE of Burkina Faso was nominated by the Delegate of the European Union as Vice-Chairperson. The Delegate of Uruguay seconded this nomination. Mr. Kabore was elected as Vice-Chairperson by acclamation.

188. The elected Chairperson and Vice Chairpersons accepted their elections.

Agenda Item X: PROGRAMME OF FUTURE WORK

189. The Chairperson invited the Secretariat to present the programme of future work. The following items would be included on the Agenda for the 52nd Session:

I. Adoption of Agenda/Suggested programme

II. Adoption of the Technical Committee's 50/51 Sessions Report

III. Theme meeting

IV. Reports on intersessional developments

- Director's Report*
- WTO Committee on Customs Valuation oral report*

V. Technical assistance, capacity building and current issues

- Report on technical assistance/capacity building activities undertaken by the Secretariat and Members*
- Progress reports from Members' on practical application of the WTO Valuation Agreement*
- Revenue Package*

VI. Specific technical questions

- (a) Sale for Export to the Country of Importation under Article 1 : Request by Canada*
- (b) Royalties and licence fees under Article 8.1 (c) of the Agreement : Request by Uruguay*
- (c) Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty-Income Tax) : Request by China*
- (d) Treatment applicable to a situation in which the price depends on the own trademark of the buyer : Request by Uruguay*
- (e) Valuation treatment of charged paid related to an Inventory Protection Program : Request by Mauritius*
- (f) Cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia*

VII. Questions raised during the intersession (as appropriate)

VIII. Other business

IX. Programme of future work

X. Dates of next meeting

Agenda Item XI: DATES OF NEXT MEETING

190. The Director announced that the 52nd Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 17 – 21 May 2021. The scheduled duration of the Session will be determined in due course.

CLOSING REMARKS BY THE DIRECTOR

191. The Director, in his closing remarks, first congratulated the new Chairperson and Vice-Chairpersons of the Technical Committee.
192. He then congratulated Mr. Jan Birkhoff, the outgoing Chairperson of the Technical Committee for having ably led the Committee during the past 3 years and managing the blended meeting in a skillful manner, so that all scheduled items were completed according to schedule despite the various challenges that had been experienced. He pointed out that there was a lot more work to do for a blended meeting, for both Members, observers and the Secretariat, and definitely much more was demanded from the Chairperson than in an in-person meeting.
193. Despite no instrument being adopted at this session, there were good discussions under the leadership of the Chairperson both on CLiKC! and KUDO platforms that the Director believed will pave the way for further discussion and decisions by the Technical Committee. The Director also expressed his appreciation to all delegates for their tremendous efforts and understanding that enabled the running of an efficient meeting in spite of the various constraints within which the Committee and the Secretariat had to operate.
194. Regarding the outcome of the celebration of the 50th Session of the TCCV, the Director announced that a web article has been published on the WCO Website. He presented a new brochure that was prepared to mark the 50th Session of the TCCV. The updated brochure, which was posted on the WCO website, had a professional design touch with more information narrating the history and achievements of the Technical Committee and the Tariff and Trade Affairs (TTA) Directorate.
195. He informed that this Session would be his very last Technical Committee meeting, as his 5-year term would finish at the end of the year. The Technical Committee had been an important part of his 36 years of professional life, having attended 37 meetings of the Technical Committee, either as a delegate or Secretariat staff. He recalled his long association with Customs valuation starting in 1985 as a participant in a two-week training course on Customs valuation at the WCO HQ, then attending as a delegate all the Technical Committee Sessions from 1988 to 1992, leading the negotiations of China's implementation of the Agreement in relation to China's accession to the WTO from 1993 to 1998, serving the Technical Committee on the Secretariat staff from 1998 for 8 years, serving as Chairperson of the Committee on Customs Valuation in Geneva in 2015, and rejoining the WCO Secretariat as Director in 2016 serving the Technical Committee until now.
196. He paid tribute to all his predecessors and former Chairpersons of the Technical Committee that he had the privilege to work with over the past 30 years. He thanked all the delegates and Secretariat colleagues for the rich experience gained in working with them, giving him great satisfaction and sense of fulfilment. He feels proud to be associated with the achievements of the Technical Committee and the TTA Directorate, recalling that around 100 instruments had been adopted and more than 350 capacity building activities had been delivered by the WCO over the last 40 years. He thanked all those who have supported the

TTA Directorate and, in particular, the present and former staff of the Valuation Sub-Directorate for its hard work, through whom the strategic goals of the WCO on Customs valuation are realized. He also thanked the WTO, through the observer, for the extremely benefiting experience, either while he was working in Brussels or Geneva, not only in the area of Customs valuation but also on wider issues such as rules of origin, market access, accession negotiations, E-commerce and trade facilitation.

197. The Director informed the Technical Committee that an election for the new Director will be held at the Council session in December 2020. In the likely event that the new Director will not be able to arrive in January 2021, arrangement has been made for another elected official, the Deputy Secretary General Mr. Ricardo Trevino, to oversee the transition in the TTA Directorate.
198. Mr. Ricardo Trevino congratulated all the delegates and acknowledged the work done by the Chairperson for the last two years and he is confident that the newly elected Chairperson will do a great job. Extending the commitment of the WCO management to support the work of the TTA Directorate including the work of the Technical Committee, he assured the delegates a smooth transition until the new Director assumes his position with the support of the strong and capable team within the TTA.
199. He also congratulated the Director for the work he has done and acknowledged the huge legacy that the Director is leaving to the Secretariat.

CLOSING REMARKS BY THE CHAIRPERSON

200. On behalf of the Technical Committee, the Chairperson thanked the Deputy Secretary General and the Director for their support. He stated that he was honoured working with the Director and impressed by his wide and long experience.
201. He thanked the delegates and the Secretariat for their support and declared the Session closed.

J. BIRKHOFF,
Chairperson.

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Report by the WTO to the 50th Session of the Technical Committee on Customs Valuation

12 to 14 October 2020

The WTO last reported to the TCCV at its 49th Session in November 2019. This report provides an update on three areas concerning the work of the WTO Committee on Customs Valuation: (i) developments regarding meetings of the Committee, (ii) standing items on the agenda for a formal meeting of the Committee that is to be held next week; and (iii) ongoing technical assistance and training activities.

Meetings of the Committee on Customs Valuation

The meeting of the Committee on Customs Valuation, which had been scheduled to take place in May 2020, had to be postponed due to the Covid-19 pandemic. On 4 June, the Chair of the Committee convened a virtual informal meeting to seek guidance from Members on how to proceed with the work of the Committee, and in particular to consider whether to hold a formal meeting in July. Following consultations with Members, and in light of the extraordinary circumstances regarding the Covid-19 pandemic, it was decided to postpone the formal meeting until 19 October to follow the meeting of the TCCV. The meeting will be conducted in person on the WTO's premises and delegations who are not physically present will be able to access the meeting remotely. In that connection, we would also note that on 27 July a new Chair of the Committee – Mr Carlos Guevara of Ecuador – was appointed to replace Mr Winega Bamana of Togo.

In addition, in the afternoon of 19 October, following the meeting of the Committee, a webinar will take place to commemorate the 25th anniversary of the Customs Valuation Agreement and to take a look at future issues and challenges facing Members in connection with the Agreement. The webinar will be open to capital-based customs officials.

Agenda for the October meeting of the Committee on Customs Valuation

At its meeting on 19 October, the Committee on Customs Valuation will take up a number of standing items on its agenda. The Committee reviews four different types of notifications, which include: Members' laws and regulations; Members' responses to a check list of issues related to their legislation; Members' date of implementation of the Decision on Interest Charges; and, whether Members adopt the practice referred to in paragraph 2 of the Decision on the "Valuation of Carrier Media Bearing Software for Data Processing Equipment". The status of these notifications is systematically compiled in two reports, the most recent versions of which are contained in documents G/VAL/W/232/Rev.12 and G/VAL/W/5/Rev.32.

Since the WTO reported to the 49th Session of the TCCV, Vanuatu notified their customs legislation for the first time, and the European Union notified an amendment to its legislation. With these additional notifications, the Committee will have 23 national legislations for review at its meeting next week. The Committee is awaiting responses since 2017 from a number of Members in order for the review of their legislation to continue.

As always, the WTO wishes 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. The Committee would continue to request their assistance with this matter in terms of encouraging notification of their

legislation to the Committee and to providing responses to questions that are raised by members in relation to the legislation.

In addition, the Committee is expected at the 19 October meeting to launch a triennial review of the PSI Agreement as required under the Customs Valuation Agreement.

Technical assistance and training

The WTO Secretariat continues to provide support for technical assistance and training on customs valuation matters. A regional workshop had been organized with ECOWAS to take place in April to promote awareness of the CVA with the private sector. Unfortunately, that workshop was postponed due to Covid-19, but participants are exploring alternate dates late this year for what is likely to be a virtual session. Additionally, in early September a module on customs valuation was delivered as part of the online Regional Trade Policy Course currently being provided to Caribbean Members. And the Secretariat is in the process of preparing e-learning activities on features of the Customs Valuation Agreement.



TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1274Eb

-
52nd Session
-

O. Eng.

Brussels, 19 May 2021.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON
THE 52nd SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. Due to the COVID-19 pandemic, the 52nd Session of the TCCV was again held in a blended format, where the document-based discussion and consultation were held on the CLiKC! platform, followed by a three-day virtual meeting on the KUDO platform.
2. The Chairperson, Ms. Marianela Marte (Dominican Republic), extended a warm welcome to all delegates to this virtual meeting, in particular those attending the Technical Committee for the first time. She added that it is a fantastic opportunity to meet together and thanked all those who have worked hard to enable the organisation of this TCCV session in the current crisis.
3. The Director of the Tariff and Trade Affairs, Mr. Konstantinos KAIPOULOS welcomed the delegates who are participating in the 52nd session of the Technical Committee on Customs Valuation, despite the difficulties related to time differences, and gave a brief introduction of himself to the Technical Committee
4. The Director highlighted that more than two hundred and thirty delegates from member countries and observers including international organisations had registered for this session. He observed that the documentary phase had been very successful with a lot of exchanges

between delegates and congratulated the Chairperson and all the delegates for the success of the documentary and consultation phases.

5. The Director thanked the delegates who have volunteered to present on the topics of the Theme Meeting and the two Vice-Chairpersons who had accepted the role of moderators. He wished the Technical Committee successful discussions while examining the six specific technical questions on the agenda and in obtaining consensus to adopt instruments that would provide advice for Members.

Homage to late Mr. Ian CREMER

6. In order to pay tribute to late Mr. Ian Cremer, who passed away in December 2020 shortly after leaving the WCO Secretariat, the Chairperson invited the delegates to observe one minute silence. The Secretariat and the Delegates of the European Union and China made allocutions in remembrance of him as a delegate and Chairperson of the TCCV **as well as a professional mentor in Customs valuation after ~~before~~ (China)** joining the WCO Secretariat. Multiple delegates joined in sharing their tribute to late Ian Cremer.

Agenda Item I: ADOPTION OF AGENDA

(a) Provisional Agenda

Doc. VT1251Eb

7. The provisional Agenda contained in Doc. VT1251Eb, published on the TCCV Meeting page, had been placed on the 52nd TCCV Session Forum Group on the CLiKC! Platform and opened for comment by the Chairperson. No written comments were made during the discussion phase.
8. The Chairperson invited delegates to raise any point that they wished to discuss under item VIII of the Agenda - Other Business. No further comments or objections were made during the virtual phase.

Conclusion

9. The Technical Committee adopted the Agenda as proposed in Doc. VT1251Eb without amendment.

(b) Suggested programme

Doc. VT1253Ea

10. The Chairperson referred to Doc. VT1253Ea, which set out the suggested programme of work for the 52nd Session prepared by the Secretariat. She noted that no questions were received during the intersession.
11. The Chairperson had opened the suggested programme for comment on the Discussion Forum of CLiKC!. No comment was made on the suggested programme as published in Doc. VT1253Ea.
12. No further comments were made during the virtual phase.

Conclusion

13. The Technical Committee approved the suggested programme as set out in Doc. VT1253Ea without amendment.

Agenda Item II: ADOPTION OF THE TECHNICAL COMMITTEE'S 50th/51st SESSIONS REPORT

Doc. VT1249Ec

14. The Chairperson reminded the delegates of the reporting procedure approved by the TCCV at its 42nd Session.
15. During the intersession preceding the 52nd Session, comments received from Canada, China, Japan, Uruguay, and the United States, on the "a" version of the draft Report were incorporated in the "b" version of the draft Report and published. No further comments on

the “b” version of the draft Report were received. The comments from Members on the draft Report are highlighted in red in working document VT1249Eb.

16. The “b” version of the draft report was edited into a ‘c’ version which was published on the WCO Members Website.

Conclusion

17. The Technical Committee approved the Report of the 50th/51st Sessions of the Technical Committee as published in Doc. VT1249Ec without any amendment.

Agenda Item III:

THEME MEETING

Docs. VT1254Ea and VT1265Ea

18. The Technical Committee at its 49th Session agreed to hold a Theme Meeting at its 50th Session, with two topics: “Post Clearance Audit (PCA)”; and “The issues in the application of Article 7 of the WTO Customs Valuation Agreement”.
19. Due to the COVID-19 pandemic, the Theme Meeting programmed for the 50th Session was postponed to the 52nd Session.
20. At the 52nd Session Côte d'Ivoire, Japan and the ICC delivered presentations on Post Clearance Audit. Presentations on issues in the application of Article 7 of the WTO Customs Valuation Agreement were made by Japan, China and the ICC. The two set of presentations and ensuing question and answer sections were moderated respectively by Ms. Qianyu LIN and Mr. Laurent Blaise KABORE, Vice-Chairs of the Technical Committee.
21. The Delegate of Côte d'Ivoire introduced her administration's legal and operational frameworks for PCA, as well as the different means adopted by the Customs Administration to effectively implement PCA. She affirmed the positive impact of PCA in increasing tax

revenue. She also pointed out the challenges in its implementation and put forward a number of measures to address these challenges.

22. In his presentation, the Delegate of Japan recognized that PCA is essential to address potential risks **regarding not only such as** incorrect invoices **but also correct invoices when** ~~and~~ **(Japan)** identifying costs that should be included in the price actually paid or payable or adjusted under Article 8. He also highlighted the importance of cooperation between valuation, clearance and PCA sections in order to achieve effective valuation control.
23. From the private sector's perspective, the ICC viewed PCA as a means to measure and improve compliance of the private sector operators, and, like advance rulings, as an opportunity to seek review of a valuation issue. The Delegate shared in his presentation a number of best practices preferred by private sectors in PCA systems, including tie-in with AEO or "trusted trader" programs, public availability of audit process and procedures, and reconciliation with income tax authorities amongst others.
24. With regard to Article 7, the Delegate of Japan focused his presentation on its application in the context of cross-border e-commerce, which was expanding rapidly in Japan, posing challenges for the Customs valuation and clearance sections of Japan Customs, as well as the stakeholders. The Delegate introduced a model case of e-commerce where the Customs value is based on "planned sale price" **once imported into the purchaser's country (Uruguay)**. Japan Customs, in determining the Customs value of the imported goods under Article 7, adopted the "planned sale price" already imported (Uruguay) as the basis, and calculated the Customs value of the imported goods by deducting the selling commissions or profits and expenses, the transportation costs, and the Customs duties and other national taxes at the importation.
25. The Delegate of China introduced the legal provisions in China regarding **application of** Article 7, as well as the general principles **and practical experience** in its **implementation** ~~application-(China)~~, in her presentation. A hypothetical transfer pricing case was provided to illustrate the practical application of Article 7, in which the Customs value is determined under Article 7, using deductive value method with reasonable flexibility, **taking into account the quantifiable data obtained from transfer pricing documentation. (China)**

26. The ICC analysed the three provisions of Article 7 from the private sector's point of view, and shared its concerns regarding the practical application of these provisions, such as lack of data at the time of importation, misuse of databases, and no or poor written explanations, which may undermine the objectives of the Agreement.
27. The delegates interacted with the speakers through a question and answer session following each set of presentations. Members concluded that the exchange of practices and discussions on these two topics had been very enriching and useful.
28. It was noted that all of the PowerPoint presentations made during the Theme Meeting would be made available on the WCO Members' website.

Agenda Item IV:

REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director's Report

Doc. VT1255Ea

29. The Director's Report, contained in Doc. VT1255Ea, was published on the website and CLiKC!. The report covers the following topics: "Policy Commission and Council Sessions", "the WTO Committee on Customs Valuation", "Revenue Package", "Technical assistance and capacity building activities", "Fellowship programme", "Staff changes" and "Other activities and issues".
30. In his written report, the Director provided an update on the Policy Commission and the Council Sessions held in December 2020. Due to COVID-19 pandemic, both Sessions were held in a virtual online format.
31. The Director reported to the Council that work in TTA during the passing year had been marked by a focus on reorganising the work and priorities in order to ensure that the main WCO strategic goals in the area of TTA were achieved despite the restrictions imposed due to the COVID-19 pandemic. This included running meetings of working bodies online,

incorporating document-based consultations where needed, and the reworking of capacity building courses and activities to suit online delivery.

32. In relation to Valuation-related work, the Director reported the adoption by the Technical Committee on Customs Valuation at its 50th/51st Sessions in October 2020 of its Report of the 49th Session (Doc. VT1219) and invited the Council to approve it.
33. The draft Report of the Policy Commission and the draft Minutes of the Council can be found in Doc. SP0731Eb and Doc. SC0198Ea respectively published on the WCO Members' website.
34. With regard to the Revenue Package, its Phase IV is due to be completed by June 2021. The TTA Directorate has worked to fulfil all the related tasks for which it had the responsibility and has prepared a document on "Debt management in Customs Administrations" compiling the practices of 15 Customs Administrations. The Director invited Members to enrich this document by sharing their practices for the benefit of the Customs community.
35. The Director referred to the work of the WTO Committee on Customs Valuation and Technical Assistance/Capacity Building Activities which are covered in detail under other specific items of the Agenda. The report of the WTO Committee on Customs Valuation submitted by the WTO Secretariat has been posted on CLiKC!. He reminded the delegates of the efforts undertaken by the Secretariat to adapt its capacity building activities to provide technical assistance through virtual platforms such as GoToWebinar, GoToMeeting and CLiKC!. Details of the technical assistance/capacity building activities undertaken by the Secretariat has been reported in Doc. VT1266E and covered under item V (a) of the Agenda
36. The WCO hosted the 83rd WCO Fellowship Programme for French speakers between 25 January and 12 February 2021. One Fellow, Mr. Gamal Nasser OMAR MAHAMOUD from Comoros, chose Customs valuation as his field of study.
37. The Director concluded his written report by encouraging delegates to advise the Secretariat of any changes in the Valuation Contact Point list and the Index of Reference Materials as these lists provide a valuable resource for Members.

38. There were no comments received from Delegates on the agenda item, but various delegations expressed their appreciation to the Director for his comprehensive report, gave him a warm welcome and wished him every success in his management. The Technical Committee was then (Uruguay) invited to take note of the Report.

Conclusion

39. The Technical Committee took note of the Director's Report.

(b) WTO Committee on Customs Valuation Report

40. The written report of the WTO Secretariat, posted on CLiKC! focussed on the following areas: "Notifications", "25th Anniversary of the Agreement on Customs Valuation" and "Technical assistance and training".
41. The Committee held a formal meeting in virtual mode on 19 October 2020 and reviewed the four types of notifications by reference to: (i) Members' laws and regulations; (ii) Members' responses to a check list of issues related to their legislation; (iii) Members' date of implementation of the Decision on Interest Charges; and, (iv) whether Members adopt the practice referred to in paragraph 2 of the Decision on the "Valuation of Carrier Media Bearing Software for Data Processing Equipment".
42. Four additional notifications and three responses to the checklist of issues had been received by the Committee since the last report. The WTO Secretariat acknowledged the positive contribution of Members of the TCCV in encouraging the submission of legislation and responses to the Checklist of Issues.
43. To commemorate the 25th Anniversary of the Customs Valuation Agreement, a seminar was held on 17 November 2020. The webinar featured WTO members and other customs experts presenting their experiences and perspectives on various historical experiences with aspects of the Agreement and on certain perspectives regarding the Agreement going forward.

44. With regard to its technical assistance and training on customs valuation activities, the WTO Secretariat updated the Technical Committee on activities in which modules on customs valuation were delivered at regional level.
45. No comments were received by the Secretariat on this Report and the Chairperson invited the Technical Committee to take note of the Report.
46. The written report from the WTO Secretariat is appended in Annex C to the Report.

Conclusion

47. The Technical Committee took note of the WTO written report.

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. VT1256Ea and VT1266Ea

Background

48. In accordance with the Technical Committee's decision, the Secretariat had monitored and communicated the technical assistance/capacity building activities scheduled or delivered by Members in order to provide useful information to all Members for planning purposes and to prevent duplication of effort.
49. Since the last session, the Japanese Administration had provided information about its 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. VT1266Ea.

Summary of discussion

50. During the virtual meeting, the Chairperson of the Technical Committee recalled that information on technical assistance/capacity building activities undertaken by the Secretariat and Members was contained in Annexes I and II to Doc. VT1266Ea. She informed delegates that no comments had been received on this subject. Having noted that no delegation wished to take the floor, she brought the discussion on this Agenda item to a close.

Conclusion

51. The Technical Committee took note of the Secretariat's report on technical assistance/capacity building activities.

(b) Progress report on Members' application of the WTO
Customs Valuation Agreement

Docs. VT1257Ea and VT1267Ea

Background

52. Following the decision taken by the Technical Committee on Customs Valuation, the Secretariat had been monitoring progress with the application of the WTO Customs Valuation Agreement by Members and issuing reports on the subject.
53. Before the session, the Secretariat had published Doc. VT1257Ea, inviting Customs administrations to provide information on the progress made with regard to the application of the WTO Customs Valuation Agreement in their respective countries.
54. No Customs administration had submitted information in response to the above-mentioned working document.

Conclusion

55. The Technical Committee took note of the progress report on Members' application of the WTO Customs Valuation Agreement.

(c) Revenue Package

Doc.VT1258Ea

56. The Secretariat reported that a comprehensive updated report, including details regarding the various activities being conducted under the Revenue Package Phase IV Action Plan, was provided at the 50th/51st Sessions in Doc. VT1225Ea.
57. It noted that as this year will mark the completion of the Revenue Package Phase IV, a complete report would be presented to the Policy Commission and Council at its June 2021 Session. A complete report on Phase IV of the Revenue Package would be available at the 53rd Session of the TCCV.
58. In response to the challenges posed by the COVID-19 pandemic, work in the Tariff and Trade Affairs Directorate had been reorganized, including the reworking of capacity building courses and activities to suit online delivery. Seventeen missions, including training workshops related to Customs Valuation, have been carried out under Phase IV of the Revenue Package. Details were published in the Annex to Doc. VT1258Ea.
59. No comments were received on the report and the Chairperson invited the Committee to take note of the report.

Conclusion

60. The Technical Committee took note of the updated report.

Agenda Item VI:

SPECIFIC TECHNICAL QUESTIONS

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

Docs. VT1259Ea and VT1268Ea

Background

61. This question was first introduced to the Technical Committee at the 45th Session and, since the 46th Session, had been examined by the Technical Committee with continuous improvement of the text to take into consideration Members' comments and observations.
62. During the 50th/51st Sessions, all but one delegates who commented on the updated text of the draft Advisory Opinion supported Canada's proposal that the sale for export to the country of importation is the one between the seller and the retailers.
63. The Delegate of Uruguay maintained that he could not agree with the conclusion of the **proposed** text, i.e. that the relevant sale for export **to the country of import (Uruguay)** is the sale from XCO directly to the retailers.
64. In the absence of consensus, the Chairperson proposed to maintain the question on the agenda of the 52nd Session to give time to Members to examine the latest version prepared and posted by Canada on the Discussion Forum, exchange their views via CLiKC! and decide at the next Session.
65. The updated text prepared by Canada and posted on the Discussion Forum at the 50th/51st Sessions was set out in the Annex to the working document VT1259Ea and Members were invited to submit their written suggestions and comments thereon.
66. In response to working document VT1259Ea, Japan and Uruguay submitted their written comments on the updated text, which were reproduced in Annexes I and II to Doc VT1268Ea respectively.

Summary of Discussion

67. During the Discussion Phase of the 52nd Session, the Delegate of Japan responded to the written comments made by Uruguay, as set out in the Annex to Doc.1268Ea. Japan supported the conclusion as set out in Annex VT1259Ea.
68. In response, the Delegate of Uruguay shared his point of view on the transaction. In his interpretation, when an electronic purchase order was confirmed through XCO's computer

system, an internal sale would be configured in the country of import from ICO (which is a subsidiary of XCO) to retailers, of a merchandise previously imported by ICO and maintained his position that he cannot accept the conclusion proposed ~~in the text~~ and suggested moving to a vote on the document presented by Canada, as provided for in Article 21 of Annex II to the Agreement (Uruguay).

69. Two other delegates who posted their comments did not agree with the conclusion proposed by Canada. ICC suggested two edits on the text of the 49th Session.
70. The Delegate of Canada observed, in his written comments posted on the Discussion Forum and in his oral intervention during the virtual phase, that much progress has been achieved in the past 5 sessions and it appeared that document VT1259 reflected an outcome that the vast majority of WTO Members represented in this committee could agree with. Considering the comments made by Uruguay in document VT1268 and its further comments on CLiKC, he was of the view that the Technical Committee has reached an impasse, despite a number of previous attempts to reconcile these differences of interpretation.
71. The Delegate estimated that the resolution proposed by Uruguay in VT1268 was untenable in the given set of facts of the case as it failed to apply the provisions and the spirit of the Customs Valuation Agreement, did not take into consideration Advisory Opinion 14.1 and Case Study 9.1 adopted by the Technical Committee and ran counter to the provisions and spirit of the Agreement, namely that the basis to determine the customs value of imported goods should, as far as possible, be the transaction value of the goods to be valued and thus the customs value is based on the price actually paid or payable for the imported goods.
72. He noted that although the delegates of the Technical Committee had worked together to clarify the facts, analysis and conclusion, and respond to various concerns, Uruguay had not changed its position, regardless of whether the vast majority of Customs Administrations agree that there is only one true sale and the transaction value method is applicable. In this situation, and in the absence of an alternative solution, the Delegate of Canada proposed to place the question in Part III of the Conspectus.
73. The Delegates of the United States, European Union and the observer from ICC, who all took the floor at the virtual phase, supported the draft text and conclusion proposed by Canada and highlighted the importance of having an instrument on this issue to Customs and business. However, as the Technical Committee was unable to reach consensus, the

Delegate of China proposed to accept the proposal of Canada to put the question in Part III of the Conspectus. There was no objection to the proposal from China.

Conclusion

74. The Technical Committee agreed to conclude the examination of this question, remove it from the Agenda of the next session and place it in Part III of the Conspectus of Technical Valuation Questions.

(b) Royalties and licence fees under Article 8.1 (c) of the Agreement: Request by Uruguay

Docs. VT1260Ea and VT1269Ea

Background

75. The Chairperson introduced the case submitted by Uruguay and accepted by the Technical Committee as a Specific Technical Question for examination at the 46th Session. The text of the case had been amended after its introduction in light of the comments made at previous sessions. In the version provided in the Annex to Doc. VT1227Ea, a patented concentrate was simply diluted with ordinary water after importation, not using a patented process, and the mixture was consumer-packed and bore a trademark for its sale in the importing country as a soft drink. A single royalty was paid by the buyer for the use of the patented concentrate and the trademark on the finished product.
76. During the intersession prior to the 50th/51st Sessions, Uruguay proposed to make further amendments to the draft Advisory Opinion, focusing on the apportionment of the royalty paid for the trademark.
77. At the conclusion of the 50th/51st Sessions, the Technical Committee agreed to continue examining this case on the basis of the text set out in the Annex to working document VT1227Ea with the view of adopting a new instrument, and the issue of apportionment would be examined by the Technical Committee as a separate consideration if a relevant question was submitted by Members.

78. During the intersession prior to the 52nd Session, Uruguay worked with the Secretariat and prepared an updated text which incorporated the comments and observations made by Members and observers at the 50th/51st Sessions. The text was set out in the Annex to Doc. VT1260Ea. In response, Japan and Uruguay submitted written comments which were set out in Annexes I and II to Doc. VT1269Ea.
79. Japan, in its written comments, proposed further amendments to the draft Advisory Opinion. Uruguay suggested that the amount of the royalty to be added to the price paid or payable for the imported goods should be calculated in accordance with the generally accepted accounting principles of the country of importation.

Discussion

80. Uruguay stated that it was necessary to adopt an instrument dealing with the amount of the royalties and licence fees to be added to the price to determine the Customs value, in view of the fact that no current instrument deals with this issue. He suggested that the Technical Committee continue the discussion on the basis of working document VT1227Ea.
81. Japan updated its comments made at previous sessions and proposed a number of amendments to the text of the draft Advisory Opinion regarding paragraphs 1, 6,7,8,9 and 10. Japan's proposal was supported by Guatemala.
82. The Delegate of China reiterated her comments made at previous sessions that paragraph 5 was part of the conclusion rather than a fact of the case, and so should be merged into paragraph 9. With regard to paragraph 10, China was of the view that the whole paragraph should be deleted to avoid confusion regarding the issue of apportionment. The EU and the ICC supported the proposal of China.
83. The Delegate of Canada reminded the Technical Committee that the draft Advisory Opinion was intended to address the issue of apportionment. He questioned whether it was necessary to introduce a new instrument if the conclusion of this case is to include the whole amount of the royalty payment, while the two royalties in this case have been dealt with in Advisories 4.4 and 4.6 respectively.

84. The Delegate of the ICC noted that even if apportionment of the royalties was not necessary, the case would still provide instruction to business and Customs to address issues with respect to the use of one single royalty paid to cover the grant of multiple rights.
85. The Delegate of Japan opined that his proposal at paragraph 10, which referred to apportionment of adjustment under Article 8, could add more value to the case. However, he indicated that Japan will accept the decision of the Technical Committee related to this paragraph.

Conclusion

86. The Technical Committee agreed to keep this case on the agenda for examination at the next session.

(c) Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty – Income tax) – Request by China

Docs. VT1261Ea and VT1270Ea

Background

87. The Chairperson introduced this Agenda item, reminding Members that the Technical Committee had originally agreed to examine the request by China concerning “Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty – Income tax)” as a specific technical question at its 46th Session.
88. The question asked by China is whether the income tax on a royalty, paid by importer B/licensee to the tax authority of the country of importation on behalf of the seller S/licensor under the licence agreement between them, is part of the Customs value of the imported goods. If so, which provision of the Agreement decides how that tax is treated in relation to the Customs value of the goods imported?
89. At its three previous sessions, the 47th, 48th and 49th Sessions, the Technical Committee had focused its discussions on the two opinions expressed by Members, which were as follows: either the income tax on a royalty, paid by importer B/licensee to the tax authority in the country of importation, should be considered as **an indirect part of a (China) royalty** and

included in the Customs value under the terms of Article 8.1 (c) of the Agreement (Opinion 1); or the tax should be considered as an indirect payment for the goods imported, ~~to which~~ **must** be included in the price actually paid or payable for the goods imported, ~~in which case it should be included in the~~ **and form part of the (China)** Customs value under paragraph 1 of the Interpretative Note to Article 1 of the Agreement (Opinion 2).

90. Following the discussions held at the 49th Session, the Technical Committee had opted for Opinion 1, which China favoured. In the absence of any clear objection, the Technical Committee had decided to move on to the stage of preparing a draft instrument on the matter. During the intersession ~~preceding~~ **preceding following** the 49th Session, the Secretariat worked with China to produce the draft Advisory Opinion ~~reproduced~~ **reproduced** as ~~the set out in the~~ **the set out in the** Annex to working document VT1198E1a, which was then improved a number of **times** in response to Members' comments.
91. At the 50th/51st Sessions of the Technical Committee, the European Union had suggested that there was no need for further work on the draft instrument, reasoning that Advisory Opinion 4.16, adopted in 2015, and referred to **in by (China)** the draft instrument, could be used to deal with this question. The EU undertook to provide more information at a later time in support of its position.
92. However, China, Canada, Japan, the United States, Uruguay and a number of other countries thought it was extremely useful for Customs administrations and the private sector to have an instrument that provided guidance on the scenario set out in the case under consideration. The Technical Committee thus agreed to look first at the arguments promised by the European Union for later, before deciding whether or not to do further work on the draft Advisory Opinion submitted by China.
93. China said that its question related to a situation that was similar, but not identical, to the one covered in Advisory Opinion 4.16. The difference between the two scenarios lay in the fact that Advisory Opinion 4.16 dealt with a case where income tax of 25 currency units was deducted from the royalty of 100 currency units payable for use of the trademark: the royalty of 100 currency units payable under the licence agreement was a gross royalty, which included income tax of 25 currency units; whereas the question under consideration dealt with a case where the payment of income tax on the royalty (11.11 currency units) was a separate payment additional to the net royalty of 100 currency units paid by the buyer to the

seller for commercial use of the patent. ~~In the case outlined in Advisory Opinion 4.16, the licensor received a net royalty of 75 currency units, while the income tax was paid to the Tax Authority and was deducted from the gross royalty of 100 currency units (China); and in the case submitted by China, the licensor received a net royalty of 100 currency units; the income tax of 11.11 currency units was paid by the importer/licensee on top of the royalty payment and could not be deducted from the net royalty payment. (Uruguay)~~ China thought that this difference warranted the drafting of a new instrument by the Technical Committee, to ~~expand and complete~~ supplement (China) Advisory Opinion 4.16. China's position was backed by a number of Members.

Summary of discussion

- ~~94 — During the period prior to the 52nd Session, the European Union declared its support for the position adopted by China and several Members of the Technical Committee. The EU put forward its suggestions for further improvements to the draft Advisory Opinion submitted by China. (China)~~
94. 95 During the online discussion phase of the 52nd Session (China), Members continued their discussions on this question via the WCO CLiKC! platform. Some Members provided more of the detail needed, along with other editorial improvements to the text of the draft instrument submitted by China. China restated its case that the Technical Committee should draft a new instrument to ~~expand and complete~~ supplement (China) Advisory Opinion 4.16.
95. In the consultation phase prior to the virtual meeting, the European Union expressed its support for the continuation of the work on the Draft Advisory Opinion, renewing its position on this Agenda item (China).
96. At the virtual meeting of (China) the 52nd Session, Members continued their work on improving the text of that instrument, encouraged by the European Union's support, through oral contributions as well as online discussions via the CLiKC! platform. Canada provided some amendment proposals to the text, highlighting that the Committee should avoid giving a new or more restrictive definition, application or interpretation to the broad scope of the wording provided by paragraph 3 (c) of the Interpretative Note to Article 1 (China). Their continuous (China) efforts culminated in a definitive version of the draft Advisory Opinion on this question submitted by China, and its adoption by the Technical Committee.

Conclusion

97. The Technical Committee adopted a new instrument, Advisory Opinion 4.18 as set out in Annex D to the Report, which will be submitted to the WCO Council for approval.

- (d) Treatment applicable to a situation in which the price depends on the own trademark of the buyer: Submitted by Uruguay.

(Docs. VT1262Ea and VT1271Ea)

Background

98. This question refers to the determination of the Customs value of an imported product bearing the importer's own trademark when, at the same time, the same product with another trademark was presented for importation at a different price. The question was introduced at the 47th Session.
99. At the 48th Session, the Technical Committee agreed that Article 1 of the Agreement would be applicable and invited the Delegate of Uruguay to draft an Advisory Opinion for examination by the Technical Committee at its 49th Session.
100. During the 49th Session, the delegates started the examination of the draft Advisory Opinion, including the title. The written proposal of Japan, as set out in Doc. VT1213E1a, which was set as a basis on which to draft the first paragraph of the draft instrument, was modified following drafting proposals made by the delegates during the examination. Particular attention was given in the proposed text to the way the trademark was provided to the seller.
101. In the intersession prior to the 50th Session, Uruguay updated the draft advisory opinion, as set out in the annex to Doc. VT1230Ea, taking into consideration the comments made at the 49th Session. China submitted its written observations thereon which were reproduced in the annex to Doc. VT1243Ea.
102. At the 50th/51st Sessions the Technical Committee agreed with the title and continued the examination of the draft text of the advisory opinion taking into account the written comments made thereon by Members. There was no consensus on the last sentence of paragraph 5

and paragraph 7 of the improved clean text set out in the Annex to the Doc. VT1262Ea, so these were put between square brackets for consideration by the Technical Committee at its 52nd Session.

103. During the ensuing intersession, in its written comments reproduced in Annex I to Doc.VT1271Ea, Uruguay supported the draft Advisory Opinion set out in Annex I to Doc. VT1262. but proposed to remove paragraph 7 as it could create confusion in the mind of users of this proposed instrument in the future.

Summary of discussion

104. During the discussion phase delegates examined the part of paragraphs 5 and 7 placed in between square brackets in doc. VT1262Ea. Several delegates submitted their comments on these two parts to help in finalising the draft instrument while others made editorial suggestions on its form.
105. During the virtual phase, the Technical Committee continued with a line by line examination of the clean new version of the draft instrument. After making a few amendments to the text, the Technical Committee agreed by consensus to the amended text, reproduced in Annex E to this document.
106. The Technical Committee adopted a new instrument, Advisory Opinion 24.1, as set out in Annex E, which will be submitted to the WCO Council for approval.

Conclusion

107. The Technical Committee adopted a new instrument, Advisory Opinion 24.1, as set out in Annex E, which will be submitted to the WCO Council for approval.

(e) Valuation treatment of charges paid related to an Inventory Protection Programme - Request by Mauritius

Docs. VT1263Ea and VT1272Ea

Background

108. Mauritius submitted this question to the Technical Committee, which agreed to examine it as a Specific Technical Question at its 49th Session. This question related to ancillary charges, for which a second invoice had been issued by the supplier to the buyer for the importation of the goods, but which were not included in the Customs value of those goods at the time of Customs clearance. The initial text concerning the facts was set out in the Annex to Doc. VT1206E1a.
109. At the 49th Session, delegates had expressed the wish to have certain clarifications concerning the facts of the case at issue that they found very interesting. Because there was no Mauritian delegation present at that session of the Technical Committee, the concerns of the delegates could not be met.
110. In the course of the 50th/51st Sessions of the Technical Committee, discussions had focused on whether the ancillary costs related to the imported goods and whether their payment constituted a condition of sale of the goods. In order to decide on these two aspects, the delegates requested Mauritius to provide further information on the facts, for example by consulting the contracts of sale and distribution.
111. The Mauritian Administration stated that it did not have any further information on the matter. However, it considered that these ancillary charges, incurred as part of an Inventory Protection Programme, which the buyer was obliged to pay when it **had opted to joined (China)** the programme, should be added to the Customs value of the imported goods. In this way, it hoped to be assured that charges forming an integral part of the price actually paid or payable for the imported goods did not by this means avoid the duties and charges payable on them.
112. In response to Doc. VT1263Ea, during the intersession, Bosnia and Herzegovina and Uruguay had sent in written comments, which were set out in Annexes I and II to Doc. VT1272Ea.

Summary of discussion

113. During the stage of online exchanges on the CLiKC! platform, discussions had continued with a view to addressing the lack of clarity as to whether the charges at issue were mandatory or optional. In this connection, Uruguay proposed a draft Advisory Opinion to the Technical Committee. Uruguay's proposal received the support of Mexico, Guatemala and

Bosnia and Herzegovina, which all wished to see progress in the discussion of this interesting question in order to reach a consensus and in the longer term possibly to adopt an instrument.

114. China ~~wished to make some~~ ~~commenteds~~ about the content of Docs. VT1263Ea and VT1272Ea ~~as to regarding the two fundamental questions in this case, namely (China)~~ whether the ancillary charges were related to the goods to be valued and whether their payment constituted a condition of sale of the imported goods. ~~China was of the view that the first fundamental question should be “whether the ancillary charges were paid for the goods to be valued” instead of “whether the ancillary charges were related to the goods to be valued”. Through an in-depth analysis of the facts, (China)~~ China considered that the charges under the savings programme and the club charges were not paid for the imported goods. ~~It justified its position by the fact that, whether these charges were paid or not, this did not affect the access by company X to the imported goods under its contract of sale.~~ (China)
115. The second concern was whether payment of the charges constituted a condition of sale of the imported goods. As regards this concern, China said that it had not received an answer to the question it had raised during the preceding session of the Technical Committee as to whether the importer could buy the imported goods at the same price without paying the ancillary charges. ~~However, F~~from (China) an analysis of the facts of the matter submitted by Mauritius, China had reached the conclusion that the charges paid under the savings programme and the club charges were not a condition of sale of the imported goods. As regards the currency surcharge, China regretted that it was unable to decide on these charges, given certain contradictions that it had noted in the facts.
116. Concerning the draft Advisory Opinion proposed by Uruguay, China noted that the facts were clearly set out and did not have the contradictions mentioned above. However, it pointed out major differences compared with the original version and wondered whether Mauritius would agree to the amendments introduced by Uruguay. As regards the analysis section of the draft Advisory Opinion, it suggested a number of amendments, including reversing the order of paragraphs 4 and 5.
117. Mauritius thanked the Secretariat for its support and the delegates who had contributed to the online discussions. It informed the Technical Committee that the importer stated that

there was no contract of sale, but simply an agreement setting out and governing the distribution rights of the products. There was no mention in this agreement of the ancillary charges. However, Mauritius maintained that the charges under the savings programme and the club charges were related to the imported goods, as they were paid per unit of goods imported. Similarly, the payments made could be regarded as mandatory since the amounts paid were not refunded even if the purchasing targets were not met. Mauritius therefore considered that these charges formed part of the price actually paid or payable for the imported goods. The same applied to the currency surcharge costs, for which there was a letter from the supplier stating that they applied to all importers. While thanking Uruguay for having proposed a draft Advisory Opinion, Mauritius hoped that the Technical Committee would continue the discussions on the basis of the initial text.

118. The view of the International Chamber of Commerce (ICC) on this question of great importance to the private sector was drawn from Advisory Opinion 4.17. The ICC considered that the ancillary charges did not relate to the imported goods but were amounts paid in order to benefit from specific rights. These were the right to make savings on future purchases depending on bulk purchases and the right to participate in the incentive programme as regards the club charges, or the right to protect oneself from exchange rates, known as a “hedging strategy”.
119. In response to the clarifications provided by Mauritius concerning the mandatory nature of the currency surcharge costs, the ICC considered that these could be an optional charge in which all the distributors had chosen to participate. Moreover, and contrary to the opinion of Mauritius, the ICC affirmed that this payment was generally regarded as being in the interest of the buyer for the right to lock in the exchange rate, as distinct from a payment for the imported goods.
120. In conclusion, the ICC pointed out that, even if the charges were mandatory, they were subject to duty only if they were part of the price actually paid or payable under Article 1 of the Agreement. Moreover, they had to relate to the imported goods, as mentioned in the Interpretative Notes to Article 1, paragraphs 1 and 4. In other words, according to the ICC, besides payment of the charges being related to the imported goods and being a condition of the sale, it would also be necessary that it be made “for the imported goods” in order to form part of the price actually paid or payable.
121. The European Union continued to consider that the currency surcharge invoiced to all the distributors as a mandatory payment was part of the price actually paid or payable for the

imported goods under Article 1 of the Agreement. But, as far as the Inventory Protection Programme (IPP) and the club charges were concerned, the European Union stated that it had not yet reached a final opinion. It seemed to the European Union that it conflicted with the optional nature of the charges that they were not refundable if the buyer did not meet the criteria to benefit from the two programmes (IPP and club charges).

122. During the phase of virtual discussion on KUDO, the Chairperson of the Technical Committee gave a brief overview of the question and orientated the delegates as to the stage the discussions had reached. She then gave the floor to Mauritius so that it could let the Technical Committee know whether it was in agreement to continue the discussions on the basis of the draft Advisory Opinion proposed by Uruguay.
123. In the light of the additional information obtained on the currency surcharge, the Mauritian Administration suggested an amendment to the title of the question at issue. China gave its support to the change in the title, in relation to which it had, moreover, expressed reservations during the preceding session on the modification that had been made. Canada commented on the observations of the ICC and ~~promised to return to this interesting question at the next session~~ suggested that, rather than Advisory Opinion 4.17, Commentary 20.1, particularly paragraphs 7 and 9 thereof, which provide a practical interpretation of paragraph 2 of the Note to Article 1, may provide the most useful rationale to be applied to the analysis of the facts of this present case (Canada). Several delegations expressed their wish, via the “chat” function on KUDO, to continue the discussions on this question and to arrive at an instrument. Mauritius was in agreement to work with the Secretariat and Uruguay to provide the Technical Committee with a draft working document at its next session.

Conclusion

124. The question was kept on the Agenda for the 53rd Session of the Technical Committee.
- (f) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods – Request by North Macedonia

Background

125. The Chairperson introduced this question from North Macedonia concerning the valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods. The essence of the question was set out in the Annex to Doc. VT1207E1a, prepared for the 49th Session.
126. In the case submitted by North Macedonia, the imported goods were carried by train. The question is thus how to treat the transportation costs of returning the empty railway carriages in which the imported goods were delivered.
127. At the 50th/51st Sessions of the Technical Committee, some Members repeated their request for further information about the facts of this question under consideration, in particular the terms relating to the return of empty railway carriages in the sales contract or, possibly, the freight contract. The Secretariat did not receive a reply from North Macedonia, and no delegate from that country was able to take part in the Technical Committee's 50th/51st Sessions to answer Members' questions. Consequently, the Technical Committee had not been able to move its examination of this question forward.
128. Some Members felt that this case was of interest in regard to the application of Article 8.2 of the Agreement, and the Technical Committee thus agreed to keep this question on the Agenda for its 52nd Session.
129. During the intersession, the Secretariat published Doc. VT1264Ea, in which it again invited North Macedonia to send it the further information Members had requested.
130. In response to the above document, the Customs Administrations of Bosnia and Herzegovina, Japan and Uruguay submitted their comments to the Secretariat in writing, and these ~~are~~ (China) were set out in the Annexes to working document VT1264Ea. They pointed out that the additional information requested was necessary, as it would clarify whether the question submitted by North Macedonia came under the provisions on price actually paid or payable under Article 1 of the Agreement, under the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. The Customs Administration of Uruguay proposed a draft instrument on this question by North Macedonia. This draft instrument was set out in the File Repository on

the CLiKC! Platform. The Administrations of China and the United States thought that this draft instrument proposed by Uruguay was too much of a deviation from the question submitted by North Macedonia.

Summary of discussion

131. During the period prior to the **virtual (China)** session, North Macedonia shared its observations and views on the matter on the CLiKC! platform. It told the Technical Committee that no sales contract had been found, only invoices issued to the importer of the goods in North Macedonia. The Delegate supposed that, as there was not much traffic in the rail sector, and for financial reasons, the seller of the goods had insisted that the importer should bear the cost of returning the empty carriages. He also told the Technical Committee that his Customs Administration thought that this cost should not be included in the Customs value because it was unrelated to the delivery of the goods.
132. The Customs Administrations of Bosnia and Herzegovina, China, the United States, Guatemala, Mexico and Uruguay also shared their observations on the same platform. They all agreed that the question under consideration should be discussed further, with a view to adopting a Technical Committee instrument that would provide valuable insights for Customs officials and the business world generally.
133. During the discussions held as part of the 52nd Session, North Macedonia again outlined the views it had shared on the CLiKC! platform as set out above.
134. The Delegate of Canada said that the **transportation** costs and charges named in Article 8.2 of the Agreement were those incurred up to the port or place of importation. **In addition, paragraph 3 (b) of the Note to Article 1 states that the Customs value shall not include the cost of transport after importation.(Canada)** Thus, the costs of returning empty carriages, borne by the buyer after importation, should not be included in the Customs value ~~under Article 8.2 of the Agreement. Clarification was needed of whether these costs and charges for returning empty carriages had been paid by the buyer as a condition of sale of the goods imported, in which case the Technical Committee would need to look at whether or not they might be part of the price actually paid or payable (Canada).~~ The United States and Chinese Taipei agreed with Canada. Chinese Taipei added that the sales contract should be looked at to see if the costs and charges concerned were paid by the buyer to the seller as a

condition of the sale. This would determine whether they were part of the price actually paid or payable.

135. The Delegate of China presented a similar case in her Administration's valuation practice, according to which payment for the return of empty tanks to the place of exportation was made a condition of the sale of the imported goods in the sales contract and constituted part of the price actually paid or payable for imported goods. She reiterated the previous comments submitted via the platform concerning three technical issues that needed to be examined.(China)
136. Delegates agreed to continue their examination of this question from North Macedonia, taking account of the comments made by Canada. They repeated their request for further information on the terms of the sales contract concerning the return of empty carriages.
137. North Macedonia promised to provide the further information requested by Members at a later date.

Conclusion

138. At the Chairperson's request, the Technical Committee agreed to keep this question on its Agenda for further discussion at its 53rd Session.

Agenda Item VII: QUESTIONS RAISED DURING THE INTERSESSION

139. The Chairperson of the Technical Committee informed delegates that no new questions had been received by the Secretariat during the period leading up to the 52nd Session. She took the opportunity to invite Members to submit questions, as it was important for the Technical Committee to have new questions to examine. She then brought the discussions under this Agenda item to a close.

Agenda Item VIII: OTHER BUSINESS

140. The Chairperson informed delegates that there were no questions to be examined under this Agenda item. Also, she recalled that during the adoption of the Agenda no delegates had

said they wished to raise any additional questions under this item. Consequently, she brought the discussions under this Agenda item to a close.

Agenda Item IX: PROGRAMME OF FUTURE WORK

141. The Chairperson invited the Secretariat to present the programme of future work. The Deputy Director, Tariff and Trade Affairs informed the Technical Committee, on behalf of the Director, that the following items would be included on the Agenda for the 53rd Session:

I. Adoption of Agenda/Suggested programme

II. Adoption of the Technical Committee's 52nd Session Report

III. Reports on intersessional developments

- Director's Report*
- WTO Committee on Customs Valuation oral report*

IV. Technical assistance, capacity building and current issues

- Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members*
- Progress report on Members' application of the WTO Customs Valuation Agreement*
- Revenue Package update*

V. Specific technical questions

- (a) Royalties and licence fees under Article 8.1 (c) of the Agreement: Request by Uruguay*
- (b) Valuation treatment of charges paid related to an Inventory Protection Programme: Request by Mauritius*
- (c) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods: Request by North Macedonia*

VI. Questions raised during the intersession (if any)

VII. Other business

VIII. Elections

IX. Programme of future work

X. Dates of next meeting

Agenda Item X: DATES OF NEXT MEETING

142. The Deputy Director announced that the 53rd Session of the Technical Committee on Customs Valuation was scheduled to take place from 18 to 20 October 2021 as a virtual meeting. She added that the planned dates might be subject to change if there were positive developments with the health situation leading to the recommencement of in-person meetings. However, at this stage it was expected that the meeting would be virtual.

CLOSING REMARKS BY THE DIRECTOR

143. The Director thanked the Chairperson and all the delegates for their kind words following his election as head of the Tariff and Trade Affairs Directorate. He said he was sure he could count on everyone's support to perform his duties as effectively as possible. He had very much enjoyed taking part in this meeting and had followed the discussions with great interest. He hoped there would be progress in the valuation field in the future, particularly through capacity building in national administrations. He recalled that Customs valuation was very important as it played a key role in the collection of revenue by administrations.
144. The Director congratulated the Technical Committee on the adoption of two new instruments, and thanked all the delegates for their contributions and their very lively participation. He commended the interest and dynamism shown by delegates in the exchanges held during and after the discussion phase, to reconcile positions and reach consensus.

145. He noted that this virtual meeting had been run on a tight timetable, but, thanks to the delegates' efforts, all the items tabled had been dealt with in the time available, and two new instruments - namely Advisory Opinions 24.1 and 4.18 - had been adopted. They would be added to the 95 existing instruments assisting Members with the uniform interpretation and application of the WTO Valuation Agreement.
146. The Director specifically thanked the Technical Committee's Chairperson, Ms. Santa Marianela MARTE, for her excellent work, especially during the consultation phase where she had played a key role in resolving differences.
147. He also expressed his gratitude to all the theme meeting speakers and moderators for their valuable contributions. He hoped the information that delegates had obtained from the theme meeting would be put to good use by their administrations when dealing with certain valuation questions.
148. The Director pointed out that there would be three specific technical questions on the Agenda for the next session. He invited delegates to submit their comments and observations in good time, so that the Technical Committee could examine these technical questions efficiently and effectively. He encouraged Members to submit further technical questions to the Technical Committee for examination, with a view to the adoption of more instruments and the provision of guidance to the Members. He gave Members his assurance that the Secretariat would do its best to assist the Technical Committee in this regard, and said he looked forward to seeing them all in Brussels in the future, pandemic permitting.
149. The Director concluded by thanking all the staff of the Secretariat, his colleagues in the Valuation Sub-Directorate, the translators, the interpreters and the technicians for their support.

CLOSING REMARKS BY THE CHAIRPERSON

150. The Technical Committee Chairperson congratulated and thanked all the delegates for their support, and for the excellent work accomplished during the session. Good results had been

achieved thanks to their valuable contributions to the discussions, which had been very interesting and of high quality.

151. She thanked the Secretariat for its constant and invaluable support in pursuit of the achievement of the Technical Committee's objectives, not forgetting the interpreters whose assistance made it possible to break through the language barrier, enabling the participants to understand each other and communicate effectively. She also conveyed her thanks to the technical support staff, who had been able to meet the technological challenges in order to provide the best possible conditions for the conduct of this virtual session.
152. She remarked that this had been her first meeting as Chairperson of the Technical Committee, and she wanted to thank all the delegates for their patience and support.
153. Turning to the theme meeting, she said it had been an enriching experience and an opportunity for participants to learn from each other. She expressed her thanks to the theme meeting moderators.
154. She then declared the meeting closed and said she looked forward to seeing the delegates at the next session, which hopefully could take place in-person if the pandemic situation allowed.

S. M. MARTE

Chairperson.

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**REPORT BY THE WTO
TO THE 52ND SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION
5 APRIL TO 19 MAY 2021
(BLENDED FORMAT)**

The WTO last reported to the TCCV at its 50th/51st Sessions in October 2020. On 19 October 2020, the Committee on Customs Valuation (Committee) held a formal meeting in virtual mode.

Notifications

The Committee reviews four different types of notifications, which include: Members' laws and regulations; Members' responses to a Checklist of Issues related to their legislation; Members' date of implementation of the Decision on Interest Charges; and, whether Members adopt the practice referred to in paragraph 2 of the Decision on the "Valuation of Carrier Media Bearing Software for Data Processing Equipment". The status of notifications regarding Members' customs legislation is systematically compiled in a report, the most recent version being document G/VAL/W/232/Rev.12.

Since the WTO report to the 50th/51st Sessions of the TCCV, four Members (Mongolia, Saint Kitts and Nevis, Tonga, and the United Kingdom) have provided notifications regarding their customs legislation, and three Members have notified their responses to the Checklist of Issues (Israel, Namibia, and the United Kingdom). At the October 2020 meeting of the Committee, the national legislation of 24 Members was under review. The Committee is awaiting responses from a number of Members in connection with the review of their legislation.

As always, we wish to acknowledge the positive contribution of Members of the TCCV in encouraging the submission of legislation and responses to the Checklist of Issues. The Committee continues to appreciate this assistance in encouraging the submission of these

notifications as well as the responses to questions raised by Members before the Committee in relation to notified legislation.

25th Anniversary of the Agreement on Customs Valuation

On 17 November 2020, a webinar was held commemorating the 25th Anniversary of the Customs Valuation Agreement. The webinar was comprised of two sessions and featured WTO members and other customs experts presenting their experiences and perspectives on the Agreement – the first session focused on various historical experiences with aspects of the Agreement, and the second session focused on certain perspectives regarding the Agreement going forward. Each session was followed by reactions and discussion among participants.

Technical assistance and training

The WTO Secretariat continues to provide support for technical assistance and training on customs valuation matters. We recently delivered modules on customs valuation at two Regional Trade Policy Courses – to Caribbean Members back in September 2020, and to Arab and Middle Eastern Members in January 2021. Currently, the Secretariat is preparing an introductory e-learning course on core features of the Customs Valuation Agreement.

Advisory Opinion 4.18

ROYALTIES AND LICENCE FEES

UNDER ARTICLE 8.1 (c) OF THE AGREEMENT

1. Importer/buyer/licensee B of country of importation I enters into a licence agreement with supplier/seller/licensor S of country of exportation X for the use of a patent. As part of this arrangement, the parties agree that:

- the royalty payable by B to S for the commercial use of the patent licensed in the agreement will be calculated by applying a rate of five percent (5%) of the net sale price of the patented goods in the country of importation;
- in addition to the royalty payment, B must pay the royalty income tax on behalf of S to the Tax Authority in the country of importation in accordance with the domestic tax rules;
- the royalty payment must be made without any deduction.

Accordingly, the royalty payment of five per cent (5 %) agreed between licensee B and licensor S is a tax-exclusive royalty, otherwise known as a net royalty. In other words, licensee B must pay both the royalty payment of five per cent (5 %) to licensor S, and the royalty income tax obligation of S to the Tax Authority.

Subsequently, S and B enter into a contract for the international sale of product P at a price of one thousand (1000) currency units. Under the contract, the patent has been incorporated in product P, such that the corresponding royalty may be considered to be related to the goods. In addition, the price does not include the royalty, which is paid as a condition of sale of the goods. Accordingly, all the requirements provided for in Article 8.1 (c) of the Agreement are met.

Given that the net sale price of product P in country I is two thousand (2000) currency units, the net royalty which B owes S for use of the patent is one hundred (100) currency units.

In accordance with the domestic tax rules in force in the country of importation I, the income derived from the royalty payment is subject to income tax, which is referred to as a “non-resident income tax”. The income tax amount is calculated by applying a nominal rate of ten percent (10%) of the total royalty income. The taxpayer is licensor S, and licensee B is the withholding agent who pays the income tax on behalf of licensor S under a requirement to withhold tax at source. The tax base for calculating the royalty income tax is the total royalty income generated by licensor S in the country of importation, which is known as gross royalty inclusive of income tax.

Therefore, the royalty income subject to income tax shall be the sum of the net royalty received by licensor S and the royalty income tax paid to the Tax Authority by licensee B; with the royalty income tax as part of the licensor’s gross royalty income. According to the calculation method established by the domestic tax rules: the withholding royalty income tax = net royalty / (1 - income tax rate %) × income tax rate%. Based on the information above, the royalty income tax = $100 / (1 - 10\%) \times 10\% \approx 11.11$ currency units.

Accordingly, B pays out a total of one thousand one hundred and eleven and eleven-hundredths (1111.11) currency units: one thousand (1000) currency units corresponding to the price of product P, one hundred (100) currency units for the net royalty remitted to S, and eleven and eleven-hundredths (11.11) currency units for the income tax payment remitted to the Tax Authority. However, S receives only one thousand and one hundred (1100) currency units, including one thousand (1000) currency units for product P, and one hundred (100) currency units for the net royalty.

The issue brought before the Technical Committee is whether 11.11 currency units of income tax paid by buyer/licensee B is part of the Customs value for the imported goods under Article 8.1(c).

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

Based on the facts, the royalty fees (paid by buyer/licensee B under the licence agreement) are related to the imported goods, have been paid as a condition of sale of the imported goods and have not been included in the price actually paid or payable. Therefore, the royalty payment should be added to the price actually paid or payable under Article 8.1 (c) of the Agreement.

In accordance with the domestic tax rules in force in country of importation I, the income derived from the royalty payment is subject to income tax, with the taxpayer being the licensor and the licensee being the withholding agent. Additionally, the licence agreement also requires B to pay the income tax on behalf of S to the Tax Authority and the net royalty payment should be made without any deduction. As a result, buyer/licensee B pays 11.11 currency units to the Tax Authority together with 100 currency units to S, the sum of which form the licensee's gross royalty payment.

Therefore, in satisfying its gross royalty obligation, inclusive of income tax, the buyer/licensee B makes two payments for the commercial use of the patent. The first is in the amount of 100 currency units for the net royalty calculated by applying the fixed rate of the net sale price of the patented goods as set out in the licence agreement. The second is in the amount of 11.11 currency units for the withholding royalty income tax. Both payments are made for the right to use the patent under the licence agreement. The 11.11 currency units are paid by the licensee to the Tax Authority on behalf of the licensor, and this royalty income tax is considered as part of the licensor's royalty income for tax purposes. Consequently, as the 11.11 currency units form part of the licensor's gross royalty income, they likewise form part of the licensee's gross royalty payment for Customs valuation purposes.

Article 8.1 (c) of the Agreement provides that, in determining the Customs value, there shall be added to the price actually paid or payable royalties and licence fees "that the buyer must pay, either directly or indirectly". Given that all the requirements provided for in Article 8.1 (c) of the Agreement are met in this case, the entire gross royalty payment, inclusive of income tax, totaling 111.11 currency units should be added to the Customs value of the imported goods.

Similar to the conclusion in paragraph 12 of Advisory Opinion 4.16, which addresses a gross royalty payment inclusive of income tax, the solution proposed in this case does not involve including in the Customs value of the goods the amount of a tax of the type referred to in Paragraph 3 (c) of the Interpretative Note to Article 1, i.e. duties and taxes of the country of

importation, but rather the total amount of royalty payments inclusive of income tax agreed between the licensor and the licensee.

According to Article 8.1 (c) of the Agreement, the 11.11 currency units paid by the buyer/licensee to the Tax Authority on behalf of licensor should be regarded as part of the royalty payment, and thus the total gross payment of royalty inclusive of income tax – in the amount of 111.11 currency units – should be added to the Customs value. Therefore, the Customs value for the imported goods in this case is 1111.11 currency units.

Advisory Opinion 24.1

VALUATION TREATMENT OF IMPORTED GOODS BEARING

THE BUYER'S OWN TRADEMARK

1. The question was raised whether a price for imported goods bearing the buyer's own trademark can be accepted for the purposes of applying Article 1 of the Agreement in a situation where:

(a) The trademark is owned by the buyer, and no royalty or licence fee has been paid to another entity for its use.

(b) The trademark was provided free of charge by the buyer in the form of an image sent to the seller, e.g. electronically via the Internet, so that it might then be used in the production of the goods being imported.

(c) The cost of reproducing the trademark's image or logo on the imported goods is included in the price actually paid or payable to the seller.

(d) The price of goods bearing the buyer's trademark is different from the price of the same goods bearing the seller's trademark when they are sold by the same seller to the same buyer or to other buyers from the same country of importation, and which have also been:

i. produced in the same country;

ii. exported at or about the same time; and

iii. sold at the same commercial level and in the same quantities.

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2. The Technical Committee on Customs Valuation considered this issue and reached the conclusion that the mere fact that a price is different to the prices of goods which are apparently the same but have different trademarks should not be grounds for its rejection under Article 1, albeit without prejudice to the provisions in Article 17 of the Agreement.

The General Introductory Commentary of the Agreement stipulates that the basis for valuation of goods for Customs purposes should be the transaction value of the goods being valued, and that the Customs value should be based on simple and equitable criteria consistent with commercial practices. Therefore, each importation of goods should be examined on its own merits and characteristics.

Based on the facts, there is no indication that special circumstances exist as set out in subparagraphs (a) to (d) of Article 1 of the Agreement that would prevent the use of transaction value. In particular, the provision in Article 1.1(b) of the Agreement is met; and it therefore cannot be construed that the existence of different trademarks on goods which are apparently the same constitutes some condition or consideration for which a value cannot be determined with respect to the goods being imported.

Additionally, although the definition of “similar goods” under Article 15.2(b) of the Agreement applies only in instances where the transaction value method is rejected, this definition does provide insights into the conclusion why the mere fact that a price is different between two similar goods bearing different trademarks is not a reason for rejecting the transaction value. Namely, two of the factors to be considered in determining whether two goods are similar include their reputation and the existence of a trademark. These factors demonstrate how the goods may not be similar and could explain a difference in the prices in the present case.

Furthermore, Article 8.1(c) of the Agreement would not be applicable, as the trademark is owned by the buyer, and no royalty or licence fee has to be paid to another entity for its use.

附件 9：本署人員於 WCO 關稅估價技術委員會視訊會議參與及發言情形

