

行政院及所屬各機關出國報告  
(出國類別：開會)

出席 WCO 關稅估價技術委員會第54屆  
視訊會議報告

服務機關：財政部關務署

姓名職稱：副組長 蔡宜真

稽 核 溫武彥

稽 核 張郁人

稽 核 謝孟帆

專 員 吳彩瑄

課 員 林嘉慧

派赴國家：無（視訊會議）

會議期間：111年5月3日至5日

報告日期：111年6月28日

行政院所屬各機關出席會議報告提要

會議報告名稱：

出席 WCO 關稅估價技術委員會第54屆視訊會議報告

頁數：171頁 含附件：是否

出席人員：

| <u>服務機關</u> | <u>職稱</u> | <u>姓名</u> |
|-------------|-----------|-----------|
| 財政部關務署      | 副組長       | 蔡宜真       |
| 財政部關務署      | 稽核        | 溫武彥       |
| 財政部關務署      | 稽核        | 張郁人       |
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| 財政部關務署基隆關   | 專員        | 吳彩瑄       |
| 財政部關務署基隆關   | 課員        | 林嘉慧       |

會議期間：111年5月3日至5日

會議方式：視訊會議

報告日期：111年6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，111年仍受新冠肺炎（COVID-19）疫情影響，以線上論壇（CLiK! platform）進行文件討論及諮商2階段，第3階段除透過 KUDO 平臺進行，在符合防疫條件下得以實體方式與會，本署奉派由稽核業務組蔡副組長宜真以視訊方式率員與會。

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，於 WCO 網頁提供檢視，亦透過線上論壇發布工作文件，提供會員於111年3月21日至4月8日進行討論，以及於4月11日至29日進行諮商；正式混合會議於5月3日至5日透過實體與視訊方式同時進行，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。

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## 壹、 會議概況

- 一、 會議時間：111年5月3日至5日
- 二、 會議方式：混合會議
- 三、 主席：Ms. Santa Marianela MARTE
- 四、 出席人員：

本次混合會議共 272 位代表來自 93 個會員體及觀察員參與，其中亦有代表抵達布魯塞爾以實體方式與會。

### 五、 我國與會代表：

|           |     |     |
|-----------|-----|-----|
| 財政部關務署    | 副組長 | 蔡宜真 |
| 財政部關務署    | 稽核  | 溫武彥 |
| 財政部關務署    | 稽核  | 張郁人 |
| 財政部關務署基隆關 | 稽核  | 謝孟帆 |
| 財政部關務署基隆關 | 專員  | 吳彩瑄 |
| 財政部關務署基隆關 | 課員  | 林嘉慧 |

## 貳、 會議目的

為確保世界貿易組織 WTO 會員對1994關稅暨貿易總協定第7條執行協定解釋及適用之一致性，WCO 技術委員會每年於比利時布魯塞爾舉行2次研討會，探討國際間關稅估價政策及實務發展適用關稅估價協定之技術面問題並將會議中所做成決定作成書面文件，如諮詢意見、評論、註解、研究或報告等，作為協定於技術上統一解釋與運作之準則。技術委員會並致力提供會員技術協助，旨在促進協定於國際上廣被接受，建立一套簡易且實務上符合公平正義標準之關稅估價制度。

111年仍受新冠肺炎（COVID-19）疫情影響，以線上論壇（CLiKC! platform）進行文件討論及諮商2階段，第3階段除透過 KUDO 平臺進行，在符合防疫條件下得以實體方式與會，本次混合會議共272位代表來自93個會員體及觀察員參與，其中亦有代表抵達布魯塞爾以實體方式與會。本署奉派由稽核業務組蔡副組長宜真以視訊方式率員與會。

會議討論項目包括：（一）採認技術委員會第53屆報告。（二）休會期間進展：由 WCO 稅則暨貿易事務處處長及世界貿易組織(WTO)關稅估價委員會分別報告。（三）技術協助、能力建構及當前議題：由秘書處報告，並由巴西簡報其應用 WTO 關稅估價協定之進展。（四）其他事項：由經濟合作發展組織（OECD）報告稅基侵蝕與利潤移轉之包容性架構（Inclusive Framework/Base Erosion and Profit Shifting）更新情形，秘書處報告 WCO 貿易工具（Trade Tools）及 WCO 工作小組之工作方案模型（Template for Work Programmes of WCO Working Bodies）。

關稅估價特殊技術性議題共5項，分別為「協定第1條有關之額外支付費用估價處理：模里西斯提案」、「關於載運進口貨物所用空車退回費之估價處理：北馬其頓提案」、「適用於受特許契約限制具可辨識性標誌貨物之處理：烏拉圭提案」、「適用於保險公司額外徵收貨物安全費用之處理：烏拉圭提案」與「電子商務銷售之累計折扣：烏拉圭提案」。另，休會期間斐濟及烏拉圭分別提出「獨家經銷費用之關稅估價處理」及「協定第1條註釋第4段所稱『進口貨物價格』之涵義」關稅估價問題，提請委員會評估是否列入技術性問題審查。

## 參、會議過程

### 議程一：確認議程

Adoption of Agenda

#### 一、議程草案

Provisional Agenda (VT1293Eb)

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| <p>I、Adoption of Agenda</p> <p>II、Adoption of the Technical Committee's 53rd Sessions Report</p> <p>III、Reports on intersessional developments</p> <p>a. Director's report</p> <p>b. WTO Committee on Customs Valuation report</p> <p>IV、Technical assistance, capacity building and current issues</p> <p>a. Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members</p> <p>b. Progress report on Members' application of the WTO Valuation Agreement</p> <p>c. Revenue Package Update</p> <p>V、Specific technical questions</p> <p>a. Valuation treatment of ancillary charges in relation to Article 1 of the Agreement</p> <p>b. Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods</p> <p>c. Treatment applicable to goods subject to licensing contracts for distinctive signs</p> <p>d. Treatment applicable to goods subject to additional costs imposed by the insurance company</p> <p>e. Accumulated discounts in e-commerce sales</p> <p>VI、Questions raised during the intersession</p> <p>a. Valuation treatment of exclusive distribution fees</p> <p>b. Meaning of the expression "the price for the imported goods" in accordance with paragraph 4 of the interpretative Note to Article 1</p> <p>VII、Other business</p> <p>VIII、Programme of future work</p> <p>IX、Dates of next meeting</p> |
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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VII、其他事項是否有提案討論，會員對本屆會議無提案。

**結論：**

技術委員會採認議程，並無修正。

**二、建議日程**

Suggested Programme (VT1294Ea)

| 日期              | 議程   |
|-----------------|--|
| 2022/5/3<br>星期二 | <b>I、確認議程</b><br>Adoption of Agenda<br><b>a. 議程草案</b><br>Provisional Agenda<br><b>b. 議程安排</b><br>Suggested Programme   |
|                 | <b>II、確認技術委員會第 53 屆報告</b><br>Adoption of the Technical Committee's 53 <sup>rd</sup> Sessions Report  |
|                 | <b>III、報告休會期間進展</b><br>Reports on intersessional developments<br><b>a. WCO 稅則暨貿易事務處處長報告</b><br>Director's report<br><b>b. WTO 關稅估價委員會報告</b><br>WTO Committee on Customs Valuation report   |
|                 | <b>IV、技術協助、能力建構及當前議題</b><br>Technical assistance, capacity building and current issues<br><b>a. 秘書處及會員辦理技術協助/能力建構報告</b><br>Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members<br><b>b. 會員採行協定之進展報告</b><br>Progress report on Members' application of the WTO Customs Valuation Agreement<br>(i)巴西簡報<br>Presentation by Brazil<br><b>c. 稅收課徵套案最新進展</b><br>Revenue Package Update |

|                 |   |
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|                 | <p><b>VII、其他事項</b><br/>Other business</p> <p>a. <b>稅基侵蝕與利潤移轉之包容性架構更新 - OECD 簡報</b><br/>Updates on the Inclusive Framework / Base Erosion and Profit Shifting - Presentation by the OECD</p> <hr/> <p><b>V、特殊技術性議題</b><br/>Specific technical questions</p> <p>a. <b>額外支付費用之估價處理：模里西斯提案</b><br/>Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius</p> <p>b. <b>載運進口貨物所用車箱之回程運輸費用：北馬其頓提案</b><br/>Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia</p>   |
| 2022/5/4<br>星期三 | <p><b>V、特殊技術性議題</b><br/>Specific technical questions</p> <p>c. <b>適用於受特許契約限制具可辨識性標誌貨物之處理：烏拉圭提案</b><br/>Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay</p> <hr/> <p><b>VII、其他事項</b><br/>Other business</p> <p>b. <b>WCO 貿易工具 - 秘書處簡報</b><br/>The WCO Trade Tools - Presentation by the Secretariat</p> <hr/> <p><b>V、特殊技術性議題</b><br/>Specific technical questions</p> <p>d. <b>適用於保險公司額外徵收貨物安全費用之處理：烏拉圭提案</b><br/>Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay</p> <p>e. <b>電子商務銷售之累計折扣：烏拉圭提案</b><br/>Accumulated discounts in e-commerce sales : Request by Uruguay</p> |



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| 2025/5/5<br>星期四 | <b>VII、其他事項</b><br>Other business<br><b>c. WCO 工作小組之工作方案模型</b><br>Template for Work Programmes of WCO Working Bodies   |
|                 | <b>VI、休會期間所提議題</b><br>Questions raised during the intersession<br><b>a. 獨家經銷費用之關稅估價處理：斐濟提案</b><br>Valuation treatment of exclusive distribution fees: Request by Fiji<br><b>b. 協定第 1 條註釋第 4 段所稱「進口貨物價格」之涵義：烏拉圭提案</b><br>Meaning of the expression “the price of the imported goods” according to paragraph 4 of the Interpretative Note to Article 1: Request by Uruguay |
|                 | <b>VIII、未來工作計畫</b><br>Programme of future work   |
|                 | <b>IX、下屆會期</b><br>Dates of next meeting  |

**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 53 屆報告

Adoption of the Technical Committee's 53<sup>rd</sup> Session Report  
(VT1292Ec, 附件 2)

### 討論：

在本次會議召開前，波士尼亞、加拿大、中國、美國與烏拉圭對技術委員會第 53 屆會議報告草案 a 版所提評論意見，已納入該報告草案 b 版，因其後未再收到其他評論，遂依據技術委員會第 42 屆會議所定會議報告確認程序，作成該報告草案 c 版。

在線上討論階段，中國對會議報告草案 c 版提出意見，而烏拉圭與波士尼亞在中國同意下，對第 69 與 88 段文字提出修正意見。技術委員會決議，雖然此一程序偏離了原定會議報告確認程序，仍接受對第 69 與 88 段文字所提修正，並納入該報告草案 c 版。最終會議報告為 VT1292Ec，所有修正內容均已納入。

### 結論：

技術委員會通過採認第 53 屆會議報告，包括波士尼亞與烏拉圭對中國意見所作修正。

### 議程三：休會期間進展報告

Reports on intersessional developments

#### 一、WCO 稅則暨貿易事務處處長 Mr. Konstantinos KAIPOULOS 報告

Director's report (VT1295Ea)

第 85 屆政策委員會會議摘要如下：

- (一) 2022/2025 策略規劃中強調了數位海關與數據之重要性，因此，WCO 秘書處一直在發展一項數據戰略，旨在將數據文化完全納入 WCO 核心活動及專業知識。
- (二) 政策委員會討論並就 2021 年 6 月政策委員會及理事會會議商定之全球海關數據交換平台可行性研究，針對其職權範圍未來方向提供指導。
- (三) 政策委員會考量給予各 WCO 工作小組所使用有關 WCO 套案行動計畫之替代工作計畫提案，並採認工作計畫建議模板。

#### 二、世界貿易組織關稅估價委員會報告

WTO Committee on Customs Valuation report (VT1305Ea)

世界貿易組織關稅估價委員會最近一次於 2021 年 10 月 25 日以視訊方式舉行正式會議。

WTO 秘書處提供 WTO 關稅估價委員會書面工作報告，已附於附錄 C。

#### 議程四：技術協助/能力建構及當前議題

Technical assistance, capacity building and current issues

##### 一、秘書處及會員從事技術協助/能力建構報告

Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members

##### 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，規劃相關作業，並防止重複工作。

上屆會議迄今，無會員提供其技術援助活動相關資訊，僅秘書處執行之技術援助/能力建構活動相關資訊，收錄於文件 VT1306Ea 附錄。

##### 討論：

線上討論階段，主席說明秘書處執行之技術援助/能力建構活動相關資訊，已收錄於文件 VT1306Ea 附錄，另日本以非紙本方式提交其已執行及將執行之技術援助/能力建構活動資訊予秘書處，惟未獲任何回應意見。

##### 結論：

技術委員會採認秘書處所提供之技術協助/能力建構活動資訊，與附錄 E 之日本所提供非紙本活動資訊。

##### 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 (VT1297Ea、VT1307Ea)

##### 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並提供相關進

展報告，秘書處表示，在本次會議召開前曾發布文件 VT1279Ea，邀請會員提供應用協定資訊，但無會員提供相關資訊。

巴西以口頭報告方式提供關於 WTO 關稅估價協定導入經驗與為此強化其財務程序所執行特定專案。

#### **結論：**

技術委員會採認會員應用世界貿易組織估價協定之進展報告，與巴西所做報告。

### **三、稅收課徵套案**

#### Revenue Package (VT1298Ea)

#### **背景：**

秘書處於文件 VT1298Ea 中強調 2021 年 6 月所完成稅收課徵套案第四階段。此外，稅收課徵套案第五階段之工作計畫已被提交至稅收法遵與詐欺工作小組（Working Group on Revenue Compliance and Fraud, WGRCF）尋求指導與評論，該工作計畫包括推廣及應用稅收課徵套案前數階段所開發工具，評估其有效性，並繼續就以下主題開展工作：非法金流；關稅估價、稅則分類與原產地；評估稅收課徵套案計畫之影響；打擊商業詐欺；以及事後稽核（PCA）新工具開發。WGRCF 所提評論已納入該工作計畫，並提交政策委員會尋求評論與建議。

#### **結論：**

技術委員會採認稅收課徵套案更新報告。

## 議程五：特殊技術性議題

Specific technical questions

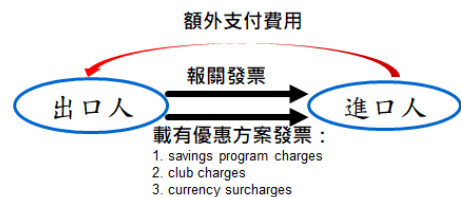
### 一、與協定第 1 條有關之額外支付費用估價處理

Valuation treatment of ancillary charges in relation to Article 1 of the Agreement (VT1299Ea、VT1309Ea)

#### 背景：

本案由模里西斯於第 49 屆會議提案  
納入討論。

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？

#### 本次討論：

我國支持修改 VT1309Ea 文件附件諮詢意見草案中相關措辭，亦同意刪除諮詢意見草案第 4 段中「進口貨物按單位支付之『savings program charges』和『club charges』無論是否達到購買目標，均不予退款，並為賣方利益而保留。因此，此類費用應被視為與進口貨物有關」等文字，因為在方案一和方案二中，可選擇是否支付「savings program charges」和「club charges」，買方可在不支付該等費用情況下以相同指定價格購買商品，因此，支付這些費用並非進口貨物銷售條件之一。

烏拉圭提出文件草案修正，加入「currency surcharge」說明及結論，認為該費用是向所有進口商收取，不支付該費用就不能購買貨物，亦即該

費用是因商品銷售條件而支付，依協定第 1 條應為「實付或應付價格」一部分。

日本參考案例研究 6.1 與 7.1，認為本文件草案應加入協定第 1 條註釋「實付或應付價格」中第 1 項，有關審查款項是否因進口貨物而支付之論述。

中國大陸認同烏拉圭應按協定第 1 條註釋第 1 點及第 4 點，與協定附件 3 第 7 項規定從不同角度解釋「實付或應付價格」定義；此外，三者應可相輔相成，並為整體且一致的考量。

### **結論：**

本案對文件草案數段文字仍未能獲得最終結論，委員會決議本案於下屆會議繼續討論。

## **二、關於載運進口貨物所用空車退回費之估價處理**

Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods (VT1300Ea、VT1310Ea)

### **背景：**

本案由北馬其頓於第 49 屆會議提案納入討論。

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？

### **本次討論：**

本次會議北馬其頓仍未能提供進一步細節，為避免被列入「暫停未來



討論之提案」，北馬其頓同意委員會建議納入其他可能情境，國際商會（International Chamber of Commerce, ICC）亦願依貿易實務研提數個可能情境以協助本案之進行。

### 結論：

委員會決議本案於下屆會議繼續討論。

## 三、適用於受特許契約限制具可辨識性標誌貨物之處理

Treatment applicable to goods subject to licensing contracts for distinctive signs (VT1301Ea、VT1311Ea)

### 背景：

本案由烏拉圭於第 53 屆會議提案納入討論。

ICO 與 ZCO 均屬 P 集團。P 品牌為 ZCO 所有，ICO 為 P 品牌獨家代理商，ICO 與 ZCO 簽訂特許次合約。

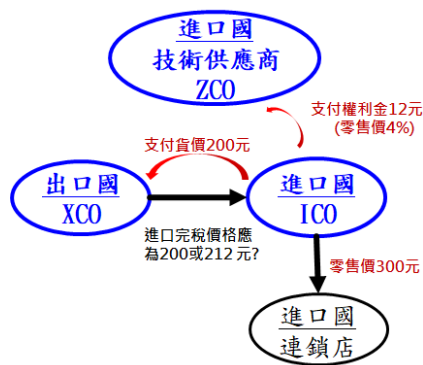
ICO 支付 ZCO 銷售額 4% 為權利金。

ICO 以每件 200 元自 XCO 購買服裝，須於國內以每件 300 元販賣，並且支付 ZCO 每件 12 元權利金。

本案中進口貨物之完稅價格如何決定？

### 本次討論：

烏拉圭認為本案符合案例研究 2.2 狀況 1，唯一區別是特許權使用費支付與可辨識性標誌所有權人（ZCO）而非出口人（XCO），惟仍可視為對出口人間接付款；另本案與諮詢意見 4.17 進口原料未獲專利且不受知識產權保護者不同，認為應依據協定第 8 條第 1 項第(d)款，將本案特許權使用費計入完稅價格；此外，本案買賣關係並未影響交易價格，爰無移轉訂價適用問題。





中國大陸與 OECD 認為隨著全球貿易不斷發展，集團公司持有使用顯著標誌等許可，並與集團負責製造或銷售公司合作，在具有顯著標誌連鎖店中銷售，而產生與專利、商標、版權和發行權等相關特許權使用費問題，並影響跨國集團利潤分配之移轉訂價問題。

### 結論：

本案尚須釐清買賣雙方關係是否適用移轉訂價，與顯著標誌及商標 P 對合約及特許使用費之影響，故決議本案於下屆會議繼續討論。

## 四、適用於保險公司額外徵收貨物安全費用之處理

Treatment applicable to goods subject to additional costs imposed by the insurance company (VT1302Ea、VT1312Ea)

### 背景：

本案由烏拉圭於第 53 屆會議提案納入討論。

ICO 向 XCO 購買 J 物品，雙方無特殊關係。J 之銷售價格為 1,000 元。

ICO 負擔貨物運費 100 元及運送保險費 50 元，因為 J 失竊風險高，保險公司要求 ICO 須額外負擔武裝警衛陪伴貨物運送服務。ICO 因此安排了武裝警衛陪伴貨物運送服務，計 120 元。

武裝警衛費用是否納入完稅價格？

### 本次討論：

日本認為本案有關保險公司額外徵收之貨物安全費用應視為與進口貨物運輸有關費用，而依協定第 8 條第 2 項第(b)款加計於完稅價格中。歐盟亦認同日本看法。

烏拉圭認為依據協定總則之原則，特別是「……海關價值必須基於簡



單和公平之標準，即與商業用途相一致……」，將該費用成本作為第 8 條第 2 項第(c)款保險費之調整，更為合適。

### 結論：

本案陷入僵局無法達成共識，主席徵求各國意見後決定將此問題放入「關稅估價技術問題大綱」第三部分「暫停未來討論之提案」。

## 五、電子商務銷售之累計折扣

Accumulated discounts in e-commerce sales (VT1303Ea、VT1313Ea)

### 背景：

本案烏拉圭於第 53 屆會議提案納入討論。

ICO 透過 X 國之電子商務平台向出口商 XCO 購買物品進口，雙方無特殊關係。

賣方 XCO 以折扣券之方式提供買方 ICO 次筆消費之折扣優惠，只要在次筆消費時於 XCO 之電子商務平台上使用折扣碼即可折抵部分消費價格。

享有折扣之進口貨物完稅價格如何決定？



### 本次討論：

我國認為，由先前交易條件產生之折扣點數可用於折抵後續購物之付款來看，此議題應先釐清買賣雙方在電子商務平台中之角色，及該折扣點數是否構成諮詢意見 15.1 之數量折扣。

烏拉圭提出 6 個案例，可歸納 2 種情境，第 1 為折扣可認定為回溯性折扣而應計入下次消費之完稅價格，第 2 為折扣為非回溯性折扣，屬賣方之行銷策略，而不應計入下次消費之完稅價格。

中國大陸提出紅利點數折抵下次消費之案例，其認為該點數可視為回

溯性折扣而應計入下次消費之完稅價格。

以色列提出 3 個案例，折扣券及 2 種不同之免運費行銷策略，其認為應視運費是否對交易價格有重大影響而決定是否計入完稅價格。

**結論：**

委員會同意前述各案例，惟仍須更多細節，故決議本案於下屆會議繼續討論。

## 議程六：休會期間所提議題

Questions raised during the intersession

### 一、獨家經銷費用之關稅估價處理

Valuation treatment of exclusive distribution fees  
(VT1314Ea)

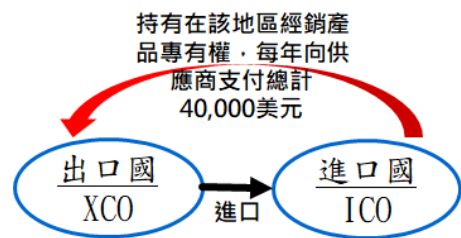
#### 背景：

本案由斐濟提案，建議納入關稅估價技術性問題討論。

ICO 參與具商標貨物之獨家經銷權協議。該協議為期 12 個月，並視業績展期至未來 12 個月

ICO 需在 12 個月期間購買至少 4 個 40 尺完整貨櫃之糖果產品

因獨家經銷權所產生之固定年費，是否應視為協定第 8 條第 1 項(c)款規定所稱進口貨物實付或應付價格之調整？



#### 結論：

委員會決議本案列入下屆會期關稅估價技術性問題予以審查。

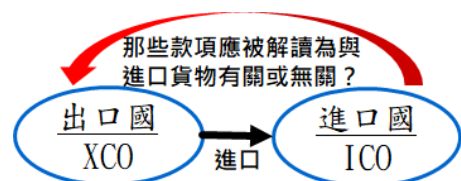
### 二、協定第 1 條註釋第 4 段所稱「進口貨物價格」之涵義

Meaning of the expression “the price of the imported goods” according to paragraph 4 of the Interpretative Note to Article 1 (VT1315Ea)

#### 背景：

本案由烏拉圭提案，建議納入關稅估價技術性問題討論。

協定第 1 條註釋第 4 段規定：「實付或應付之價格係指進口貨物之價格。因



此，買方付予賣方之紅利或其他款項，若與進口貨物無關，則非為完稅價格之一部分」。

釐清協定第 1 條註釋第 4 段所稱「進口貨物價格」之涵義？

**結論：**

委員會決議本案列入下屆會期關稅估價技術性問題予以審查。

## 議程七：其他事項

Other business

### 一、稅基侵蝕與利潤移轉之包容性架構更新 – OECD 簡報

Updates on the Inclusive Framework / Base Erosion and Profit Shifting - Presentation by the OECD

### 二、WCO 貿易工具 – 秘書處簡報

The WCO Trade Tools - Presentation by the Secretariat

### 三、WCO 工作小組之工作方案模型

Template for Work Programmes of WCO Working Bodies

## 議程八：未來工作計畫

Programme of future work

秘書處告知技術委員會，下列項目列入第 55 屆會期

### I. 確認議程

### II. 採認第 54 屆技術委員會會議報告

### III. 報告休會期間進展

### IV. 技術協助、能力建構及當前議題

### V. 特殊技術性議題

- (a) 與協定第 1 條有關之額外支付費用估價處理：模里西斯提案
- (b) 關於載運進口貨物所用空車退回費之估價處理：北馬其頓提案
- (c) 適用於受特許契約限制具可辨識性標誌貨物之處理：烏拉圭提案
- (d) 電子商務銷售之累計折扣：烏拉圭提案
- (e) 獨家經銷費用之關稅估價處理：斐濟提案
- (f) 協定第 1 條註釋第 4 段所稱「進口貨物價格」之涵義：烏拉圭提案

### VI. 休會期間所提出議題

### VII. 其他事項

### VIII. 選舉

### IX. 未來工作計畫

### X. 下次會議日期

## 議程九：下屆會期

Dates of next meeting

秘書處告知技術委員會，第 55 屆會議預訂於 2022 年 10 月 17 至 21 日舉行。

## 肆、心得與建議

### 一、累積國際會議經驗，儲備國際級關稅估價人才

WCO TCCV 自第 50/51 屆會議以來因疫情關係改以視訊方式參與，本署因無須囿於出國經費限制派員人數，歷經 4 屆會議，已有多位與會人員非首次參與，且對延續性特殊技術性議題均能掌握重點與時機，適時表達我國看法，另對首次提出建議納入討論之特殊技術性議題，亦能主動表達支持。不論從參與國際事務，抑或從關稅估價專業知識角度，均能充實本署國際級關稅估價人才庫。

### 二、強化國貿及財稅知能，掌握關稅估價脈動

近年特殊技術性議題，多涉及應加計費用處理，例如：與協定第 1 條有關之額外支付費用估價處理、適用於受特許契約限制具可辨識性標誌貨物之處理等，而這些問題除可能涉及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外，亦可能涉及 OECD 或 ICC 等組織對個案基本觀點之不同，遂衍生出委員會對協定第 1 條註釋第 4 段所稱「進口貨物價格」涵義等關稅估價基本定義進一步釐清之探討，是以關稅估價將如何隨著國貿及財稅而調整，有待進一步觀察。

### 三、分享關稅估價知識，強化國際參與

WCO TCCV 所討論關稅估價議題作成技術文件後，均納入關稅估價彙編供 WTO 會員國遵循，我國既屬 WTO 會員，該彙編理應廣泛作為我國海關人員估價參考，未來不論該會議以實體或視訊方式進行，建議均能持續指派同仁代表出席，積極參與議題討論，強化國際參與。

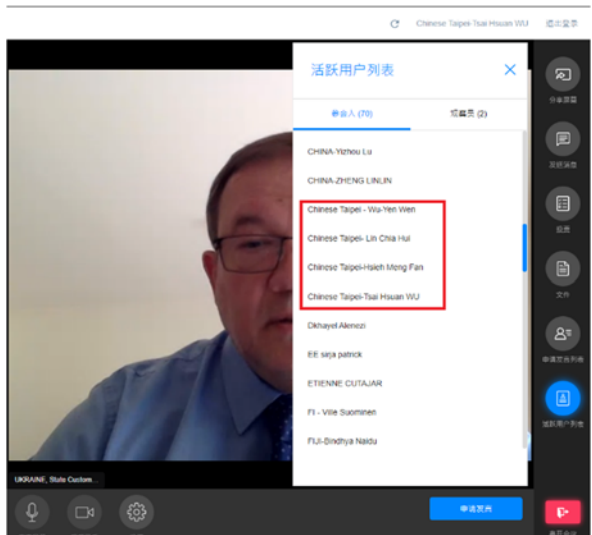
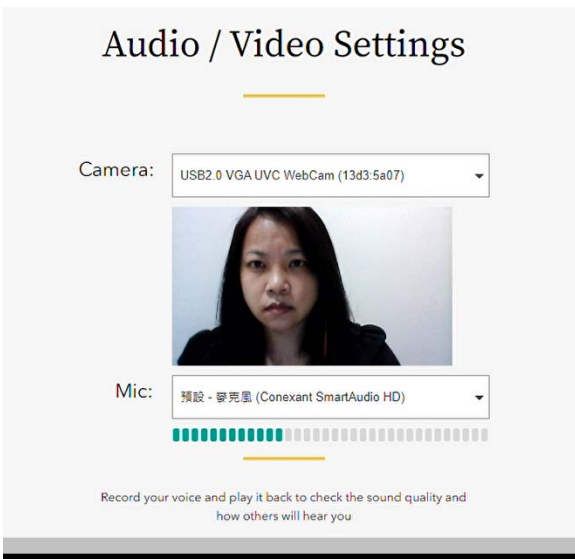


## 伍、 附件

### 附件 1：本署出席會議討論特殊技術性議題情形

| 項次 | 特殊技術性議題  | 文件                   | 主辦  |
|----|--|----------------------|-----|
| a. | Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius  | VT1299Ea<br>VT1309Ea | 吳彩瑄 |
| b. | Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia | VT1300E<br>VT1310E   | 吳彩瑄 |
| c. | Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay  | VT1301E<br>VT1311E   | 張郁人 |
| d. | Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay                                    | VT1302E<br>VT1312E   | 謝孟帆 |
| e. | Accumulated discounts in e-commerce sales : Request by Uruguay   | VT1303E<br>VT1313E   | 林嘉慧 |

| 項次 | 休會期間所提議題   | 文件      | 主辦  |
|----|--|---------|-----|
| a. | Valuation treatment of exclusive distribution fees: Request by Fiji  | VT1314E | 溫武彥 |
| b. | Meaning of the expression “the price of the imported goods” according to paragraph 4 of the Interpretative Note to Article 1: Request by Uruguay | VT1315E |     |





TECHNICAL COMMITTEE  
 ON CUSTOMS VALUATION

VT1292Ec

-  
 53<sup>rd</sup> Session

O. Eng.

Brussels, 20 October 2021.

REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON  
 THE 53<sup>rd</sup> SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

*Opening remarks*

1. The Chairperson, Ms. Santa Marianela MARTE (Dominican Republic), warmly welcomed all delegates, in particular those in attendance for the first time, to the virtual phase of the 53<sup>rd</sup> Session of the Technical Committee on Customs Valuation, which was again held in a blended format from 20 September to 20 October 2021.
2. The Director of the Tariff and Trade Affairs Directorate, Mr. Konstantinos KAIPOULOS joined the Chairperson in welcoming the delegates and noted the high level of registration for this Session - 93 Member and observer countries including 2 international organizations with 265 delegates.
3. Highlighting the productive work of the Technical Committee in adopting 2 Advisory Opinions at the previous session, he observed that the online discussion and consultation phases had been very useful in the examination of the 3 Specific Technical Questions and in the consideration of the 3 new questions which were submitted during the intersession.
4. The Director thanked the Chairperson for her leadership and open mindedness, as well as the delegate's flexibility and contribution during the online discussion and consultation phases. He assured the Technical Committee of the support of the WCO Secretariat in its work.
5. Regarding the future session format, the Director informed the delegates about the discussion held at the Secretariat to possibly organize hybrid sessions, where delegates could come into the sessions in Brussels at the WCO headquarter or attend online. Delegates will be updated with any related decision.
6. He wished the delegates a productive and fruitful session and announced the arrival of a new Professional Associate, Mr. Edem Leonard Cosmos from Ghana, in the Valuation Sub-Directorate.

**Agenda Item I: ADOPTION OF AGENDA**

(a) Provisional Agenda

Doc. VT1275Ec

7. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1275Ec, published on the TCCV Meeting page and on the 53<sup>rd</sup> TCCV Session Forum Group on the CLiKC! Platform. She noted that no written comments were made during the discussion phase.
8. Delegates were invited to raise any point that they wished to discuss under item VII 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. VT1275Ec without amendment.

(b) Suggested programme

Doc. VT1276Ea

10. The Chairperson referred to Doc. VT1276Ea, which set out the suggested programme of work for the 53<sup>rd</sup> Session prepared by the Secretariat. She noted that three questions were received during the intersession for consideration by the Technical Committee.
11. No comment was made on the suggested programme as published in Doc. VT1276Ea neither during the discussion phase nor during the virtual phase through the KUDO platform.

Conclusion

12. The Technical Committee approved the suggested programme as set out in Doc. VT1276Ea without amendment.

**Agenda Item II : ADOPTION OF THE TECHNICAL COMMITTEE'S 52<sup>nd</sup> SESSION REPORT**

Doc. VT1274Ec

13. The Chairperson reminded the delegates of the reporting procedure approved by the TCCV at its 42<sup>nd</sup> Session.
14. During the intersession preceding the 53<sup>rd</sup> Session, comments received from Canada, China, Japan, the European Union and Uruguay on the "a" version of the draft Report were incorporated in the "b" version of the draft Report and published. The comments from Members on the draft Report are highlighted in red in working document VT1274Eb.
15. Japan and Uruguay commented on paragraph 24 of the "b" version of the draft Report. After these comments were taken into account, a revised "b" version was published. Following a consultation initiated by the Chairperson, the two delegations agreed to revert to the initial 2.

version of the paragraph set out in Doc. VT1274Ea. During the virtual meeting, a comment was made by China on paragraph 83 of the English version of the draft Report.

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

#### Conclusion

17. After taking into account the comments made by China, the Technical Committee approved the Report of the 52<sup>nd</sup> Session of the Technical Committee.

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

#### (a) Director’s Report

Doc. VT1277Ea

18. The Director’s Report, contained in Doc. VT1277Ea, was published on the website and CLiKC!. The report refers to the “Policy Commission and Council Sessions” and includes “the Revenue Package”, “the WTO Committee on Customs Valuation”, “Technical assistance and capacity building activities”, and “Other activities and issues”.

#### *Policy Commission and Council Sessions*

19. The Policy Commission held its 84<sup>th</sup> Session from Monday 21 to Wednesday 23 June 2021 under the chairmanship of Mr. Ahmed AL KHALIFA (Bahrain) followed by the 138<sup>th</sup> Session of the Council which was held from 24 to 26 June 2021. Due to COVID-19 pandemic, both Sessions were held in a virtual online format.
20. In his report, the Director updated the Policy Commission and the Council about the following:
  - (i) The adoption of 2 new instruments (Advisory Opinion 4.18 on “Royalties and license fees” and Advisory Opinion 24.1 on the “Valuation treatment of imported goods bearing the buyer’s own trademark”) by the TCCV at its 52<sup>nd</sup> Session.
  - (ii) The instruments and tools available online when the integrated training program was developed in adaptation to the e-environment / digital environment. The COVID 19 Action Plan became a priority for the WCO and as such training activities were increasingly technology-based.
  - (iii) The launch of an important new tool, WCO Trade Tools, reachable on the following link: (<https://www.wcotradetools.org/>). He explained that this Tool brings together Origin, Valuation and HS. This Tool facilitates research activities by Members and interested researchers. The Director encouraged delegates to visit the website.
21. The Council endorsed the Report of the 49<sup>th</sup> Session of the Technical Committee on Customs Valuation and took note of its draft report of the 50<sup>th</sup>/51<sup>st</sup> Sessions.

#### *Revenue Package*

22. The Director highlighted the importance of the tools and instruments developed under the Revenue Package to Customs Administrations in the collection of revenue. He announced the development of a new phase V of the Revenue Package for the years 2022- 2024 after the completion of the phase IV in June 2021.

*WTO Committee on Customs Valuation*

23. The World Trade Organization (WTO) Committee on Customs Valuation (CCV) held its last meeting on 27 May 2021. A report provided by the WTO Secretariat on the work of the CCV has been posted on CLiKC!.

*Technical Assistance/Capacity Building Activities*

24. Amidst the challenges posed by the COVID-19 pandemic, the Secretariat has been making efforts to adapt its capacity building delivery to Members' needs under the 'new normal' by continuing to provide technical assistance through virtual platforms such as GoToWebinar, GoToMeeting and CLiKC!. Report on the technical assistance/capacity building activities undertaken by the Secretariat has been reported in Doc. VT1284E and covered under item IV (a) of the Agenda.

*Other activities and issues*

25. The Director invited the delegates to review the **contact point list** for exchanges of information on Customs Valuation and to advise the Secretariat of any changes.
26. In response to a comment from the Delegate of China regarding any existing programme to further innovate and keep the instruments and tools relevant to ensure effective and efficient support to Members, the Director explained that related work is under way and includes the evaluation of current tools and instruments and the examination of new approaches and of proposals for new projects to respond to new challenges ahead. The work has not been concluded yet and the Secretariat will update the Technical Committee on the outcome at the next Session.
27. The Delegate of Uruguay, on behalf of the Technical Committee, welcomed Mr. Cosmos, the new Professional Associate who has joined the Valuation Sub-Directorate, wishing him great success in his work. Highlighting how the pandemic has led to the intensive use of new technologies and virtual platforms for communication, he requested that these new technological tools continue to be used in technical assistance and capacity building activities, and especially for developing countries. He noted that, for all Members to benefit from these tools, in turn these activities should be available in different languages.
28. The Chairperson was joined by the Delegate of Uruguay to thank the Director for his informative and comprehensive report.

Conclusion

29. Technical Committee took note of the above report.

(b) WTO Committee on Customs Valuation Report

30. The WTO Secretariat reported on the work of the Committee on Customs Valuation, which held a formal meeting in virtual mode on 27 May 2021. The report makes reference to two topics, Notifications and Technical Assistance.
31. Regarding notifications, an increase in the notification activity was observed since the last session through the contribution of Members of the TCCV. However, there are still a number of national legislations that have remained under review pending the exchange of questions and responses from Members regarding legislation.

32. With respect to technical assistance support, two Regional Trade Policy Courses were facilitated by the WTO Secretariat during this year.
33. The written report from the WTO Secretariat is appended in Annex C to the draft Report.

Conclusion

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

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

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

Docs. VT1278Ea and VT1284Ea

Background

35. 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.
36. Since the last session, the Japanese Administration had provided information about its technical assistance activities. This information, together with information on the technical assistance/capacity building activities undertaken by the Secretariat, was set out in Annexes I and II respectively to Doc. VT1284Ea.

Summary of discussion

37. 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. VT1284Ea. Since no observations or comments had been made regarding this item, she invited the Technical Committee to take note of the content of the information contained in Doc. VT1284Ea and its Annexes and to move on to the next item on its programme of work.

Conclusion

38. The Technical Committee thanked Japan for its ongoing support for the training of other Members and 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. VT1279Ea and VT1285Ea

Background

VT1292Ec  
(VT/53/October 2021)

39. 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.
40. Before the session, the Secretariat had published Doc. VT1279Ea, 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.
41. During the intersession, no information had been received by the Secretariat in response to the above-mentioned working document.

#### Conclusion

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

#### (c) Revenue Package

Doc. VT1280Ea

43. The Secretariat highlighted in Doc. VT1280Ea the relevance of the Revenue Package, which was developed as a response to Members' concerns regarding declining revenue returns following WCO Council's Resolution in June 2009, in the global pandemic situation commencing in 2020. The resulting disruptions to trade and revenue collection highlighted the on-going need for robust revenue collection systems.
44. Throughout its different phases, further series of tools and materials were developed. The Action Plan for Phase IV, which was endorsed by the Policy Commission and approved by the Council in June 2019, available in the Annex to Doc. SP0678E1a, was completed in June 2021.
45. During the Phase IV of the Revenue Package, in addition to capacity building activities carried out by the Secretariat, the Comparative Study on Certification of Origin was updated and a new document on Debt Management in Customs Administrations has been published. The complete report on the completion of the Revenue Package Phase IV is available in Doc. SP0736Ea.
46. All Revenue Package tools are available via the Members' website at this link:  
<http://www.wcoomd.org/en/topics/key-issues/revenue-package/latest-updates-policy.aspx>
47. A proposal for a Phase V of the Revenue Package for 2022 - 2024 will be submitted by the Secretariat to the Working Group on Revenue Compliance and Fraud at its 8<sup>th</sup> Session for guidance.
48. No comments were received on the report and the Chairperson invited the Committee to take note of the report.

#### Conclusion

49. The Technical Committee took note of the updated report on the Revenue Package.

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

6.



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

Docs. VT1281Ea and VT1286Ea

Background

50. The Chairperson introduced this case that was submitted by Uruguay and accepted by the Technical Committee for discussion as a Specific Technical Question at its 46<sup>th</sup> Session. The case concerns a single royalty paid by the buyer for the use of the patented concentrate and the use of trademark on the finished product.
51. At its 50<sup>th</sup>/51<sup>st</sup> Sessions, the Technical Committee agreed that the issue of apportionment, which had been raised during discussion of this case, would be examined by the Technical Committee as a separate consideration in case that a relevant question is submitted by Members.
52. At the 52<sup>nd</sup> Session, a number of delegates proposed to amend the text of the draft Advisory Opinion with a view to adopting a new instrument, while another view was also expressed that the technical issues in this case have been addressed in Advisory Opinions 4.4 and 4.6.
53. During the intersession prior to the 53<sup>rd</sup> Session, Uruguay worked with the Secretariat and prepared an updated text which incorporated the comments and observations made by Members and observers at the 52<sup>nd</sup> Session. The text was set out in the Annex to Doc. VT1281Ea.
54. In response to working document VT1281Ea, Uruguay submitted written comments which were set out in Annex I to working document VT1286Ea. Uruguay, in its comments, suggested to reposition paragraph 6 and to make further amendments to paragraph 9.

Discussion

55. During the online discussion phase, Delegations carried out a paragraph by paragraph examination of the draft Advisory Opinion attached to Doc.VT1286a.
56. Uruguay, in response to Peru's suggestion, proposed to amend the cost structure in paragraph 3 of the draft Advisory Opinion, raising the price of the imported goods from 10 c.u.to 30 c.u. Uruguay's proposal was supported by Peru and China.
57. China and Japan opined that it is unnecessary to refer to generally accepted accounting principles in paragraph 8 and suggested to delete the relevant sentence, which was agreed by Uruguay after discussion on the CLiKC! platform.
58. During the virtual meeting phase, further amendments were made to paragraphs 1, 4, 5, 7, and 9 of the text of the draft Advisory Opinion in light of comments from Delegations. The Technical Committee then agreed by consensus on the amended text reproduced in Annex D to this document.

Conclusion

59. The Technical Committee adopted a new instrument, Advisory Opinion 4.19, which will be submitted to the WCO Council for approval.

(b) Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius

Docs. VT1282Ea and VT1287Ea

Background

60. The Chairperson presented this question, submitted by the Mauritian Administration at the 49<sup>th</sup> Session of the Technical Committee. This question relates to ancillary charges in relation to the imported goods, for which a second invoice has been issued by the supplier to the buyer, but which were not included in the Customs value of those goods at the time of Customs clearance. The initial text concerning the facts is set out in the Annex to Doc. VT1206E1a.
61. The discussions at the following sessions focused on whether the charges in question were mandatory or optional. Mauritius sent the information at its disposal, so that the Technical Committee could decide as to whether the ancillary charges related to the imported goods and whether their payment constituted a condition of sale of the goods.
62. At its 52<sup>nd</sup> Session, the Technical Committee continued examining the technical question submitted by the Mauritian Administration on the same issue that had been discussed at the previous sessions. However, delegates drew attention to certain contradictions in the facts about the question in the initial document set out in the Annex to Doc. VT1206E1a. In order to make up for these deficiencies, Uruguay proposed a draft Advisory Opinion to serve as a basis for the discussions. The Mauritian Administration was not fully in agreement with the draft Advisory Opinion proposed by Uruguay, even though several delegates preferred it to the initial document concerning the facts of the case. Working jointly with the Secretariat, Mauritius prepared a new document for consideration by the Technical Committee at its 53<sup>rd</sup> Session. This draft Advisory Opinion is published in the Annex to Doc. VT1282Ea.
63. In order to reflect the content of the discussions to date, and for alignment with the updated facts of the case, the Secretariat has reworded the title of the question. In response to Doc. VT1282Ea, the Administrations of Japan and Uruguay submitted written comments on the draft Advisory Opinion, which are set out in Annexes I and II to Doc. VT1287Ea.

Summary of discussion

64. During the online discussion phase of this session of the Technical Committee, the Customs Administrations of the United States, China, Brazil, Uruguay, Mauritius, Chinese Taipei and Peru and the International Chamber of Commerce commented on the question at issue submitted by Mauritius. All the comments confirmed the relevance of the question and welcomed the adoption of a document that would be extremely useful to Customs and the private sector. Almost all of the contributors took the view that this question could be resolved by taking into account the provisions of paragraph 7 of Annex III and of the Interpretative Note to Article 1 of the Agreement. Indeed, the inclusion or otherwise of the ancillary charges would depend on whether they had been paid for the imported goods and whether their payment was a condition of sale of the imported goods.
  65. The United States considered that, in order to establish whether a payment was “for the goods”, paragraph 4 of the Interpretative Note to Article 1 was also instructive, and the Agreement stipulated that it must be considered whether the payment related to the imported goods. China pointed out that it could not find any provision in the Agreement allowing such conclusions to be drawn. In its view, a payment for the imported goods was different from a payment relating to or connected with the imported goods, and it should be further discussed
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whether the former could be interpreted as the latter. In the view of the United States, the fact that the ancillary charges were invoiced per unit of imported goods and they were not refunded to the buyer, even if the purchasing targets were not achieved, was relevant for the purpose of analysing whether they related to or had a link with the imported goods. Moreover, the Delegate added that the charges could be included in the price actually paid or payable, even if they were invoiced separately from the price of the goods, as was the case in the example set out in Case Study 6.1.

66. As the expression “for the imported goods” was not defined precisely in the Agreement, the Chinese Delegation proposed that the Technical Committee should provide a uniform interpretation regarding the meaning and the scope of this wording. The United States supported a study of this kind on the scope of the expression “for the imported goods” under Article 1 and of paragraph 4 of the Interpretative Note to Article 1 of the Agreement, which would be likely to prove extremely useful to Customs and the private sector. Taking its relevance into account, this proposal was supported by the other delegates and could be discussed during the upcoming sessions. It should be pointed out that this was a new question, separate from the one submitted by Mauritius, and it did not affect how the latter was handled.
67. China mentioned that, during the intersession between the 50<sup>th</sup>/51<sup>st</sup> and the 52<sup>nd</sup> Sessions of the Technical Committee, it had suggested that, in order to deal with this question, it was essential to know whether or not the charges had been paid for the imported goods and whether the payment constituted a condition of sale of the imported goods. After analysing the facts pertaining to the question, China thought that the savings programme charges and the club charges were not paid for the imported goods but rather for the rights of receiving free units of the imported goods or gifts or hotel packages when specific purchasing targets are met. Nor did these two categories of ancillary charges constitute a condition of sale of the imported goods, as the buyer could purchase the goods without paying those charges.
68. The Chinese Delegation considered that both the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement were applicable to the question submitted by Mauritius. It pointed out that the draft Advisory Opinion had analysed whether the payments constituted a condition of sale of the imported goods, without examining whether the ancillary charges were paid for the imported goods. In order to do this, it proposed that the text should be revised to take this into account. Indeed, the Chinese Delegation maintained that, if a payment was made for the imported goods, it must also be a condition of sale of the goods, and vice versa. As far as China was concerned, these were two relevant, mutually reinforcing aspects of a single question. It was supported by the other delegates, including the Delegate of Mauritius, who was in favour of amending the text of the draft Advisory Opinion.
69. The Delegate of Uruguay considered that, in order to analyse this question, the provisions of paragraph 7 of Annex III to the Agreement were sufficient. By way of illustration, he thought that, for the identification of indirect payments imposed by the seller on the buyer as a condition of sale of the goods, there was no need to refer to paragraph 4 of the Interpretative Note to Article 1. The Delegate of China did not share the view of Uruguay. In China’s view, an indirect payment imposed by the seller on the buyer as a condition of sale of the imported goods was also a payment for the imported goods and formed part of the price actually paid or payable. On the other hand, if it is ruled out that a payment is an indirect payment, then it should indeed be analysed whether paragraph 4 to the Interpretative Note to Article 1 applies or not (in other words, whether it applies in respect of the imported goods).
70. In its comments, Brazil made a correction to the Spanish version of the draft Advisory Opinion annexed to Doc. VT1282Ea. The Delegates of Peru and Chinese Taipei agreed with

the conclusions of the draft Advisory Opinion set out in the Annex to Doc. VT1282Ea. In their view, the savings programme charges and the club charges, which were not paid as a condition of sale of the imported goods, were not part of the Customs value, either under Article 1 or under Article 8 of the Agreement. On the other hand, the currency surcharge, invoiced by the seller to all the buyers, was part of the Customs value of the imported goods as a charge imposed by the seller on the buyers as a condition of sale.

71. In response to Peru's concern about the valuation treatment of the free goods under the savings programme, China considered that this was not the purpose of the question at issue and thought that a sentence could be inserted at the end of the draft Advisory Opinion to deal with this situation. For a better understanding of the facts, the Delegate of Mauritius agreed with Peru and China that it should be specified in paragraph 5 that the buyer could always buy the goods on the same terms without paying the savings programme charges and the club charges.
72. The International Chamber of Commerce (ICC) proposed an amendment to paragraph 5 of the draft Advisory Opinion. It then listed the reasons why it considered that the savings programme charges and the club charges were not part of the price actually paid or payable, either under Article 1 of the Agreement or under Article 8. As regards the currency surcharge, the ICC thought that further information was needed in order to decide on these charges.
73. The Delegate of Mauritius returned to the reasons that had led to the conclusions of the draft Advisory Opinion. It took the view, along with the other contributors, that the two conditions, namely : (1) the fact of having been paid for the imported goods, and (2) being a condition of sale of the imported goods, both needed to be met simultaneously in order for the ancillary charges to be included in the Customs value. That was not the case for the savings programme charges and the club charges, even if the manner in which they were invoiced established their link with the imported goods and they were not refunded if the purchasing targets were not achieved. Because they were optional, they were payments that were not a condition of sale of the imported goods. As for the currency surcharge, should be added to the price actually paid or payable. Indeed, constituted a condition of sale of the imported goods, because it was invoiced to every importer of the product and was also linked to the goods as it was invoiced per unit.
74. As regards the additional information requested by the United States on Programmes I and II, Mauritius gave its assurance that it had no more information than during the previous sessions of the Technical Committee. However, it restated that : (1) the optional nature was confirmed in a communication from the seller; (2) no information was available concerning what would happen if a buyer should withdraw from Programmes I and II, as the importer was the only one for this product in the country concerned; and (3) the risk of a tactic aiming to have one part of the total price regarded as a payment for the goods and the other part as a payment for something else, in order to remove it from the Customs value, could not be excluded.
75. During the virtual meeting, the delegates agreed on the conclusions of the draft Advisory Opinion, in that the savings programme charges and the club charges should not be included in the Customs value. On the other hand, the currency surcharges were part of the Customs value, as they were paid for the imported goods and as a condition of sale of the imported goods.
76. It was now for the Committee to determine how to continue examining this question submitted by Mauritius. Uruguay proposed the broad lines along which the new document, awaiting preparation, should be constructed, which should serve as a basis for the

discussions of the Technical Committee at its next session. Mauritius agreed to work together with the Secretariat in order to amend the draft Advisory Opinion to take into account the comments made by the delegates.

### Conclusion

77. The Technical Committee decided to continue its examination of this question at its next session on the basis of an amended new draft Advisory Opinion.

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

Docs. VT1283Ea and VT1288Ea

### Background

78. The Chairperson presented this question submitted by North Macedonia which concerns the treatment of the cost of transport relating to the return of empty railway carriages that were used to transport the imported goods.
79. The Technical Committee had agreed to examine this question, submitted by North Macedonia, as a Specific Technical Question during its 49<sup>th</sup> Session. The text concerning the facts of this technical question is set out in the Annex to working document VT1207Ea, prepared for the 49<sup>th</sup> Session. According to the facts submitted by North Macedonia, during a post-clearance audit of the accounting records of an importing company, invoices were found for international transport services, namely the return of empty carriages in which the goods in question were originally imported. Those invoices had been drawn up by the transport company that had brought the imported goods. The importer initially paid an invoice for the transport of the goods, and, following the import, it paid the same transport company for the return of the same carriages.
80. For the purpose of examining this question, several Members rightly took the view that it was necessary to clarify whether the sales contract or freight contract contained any terms on costs relating to the return of empty railway carriages and whether the payment of such costs was a condition of sale of the imported goods for valuation purposes. They underlined the need for further information, which would enable them to establish whether the question submitted by North Macedonia came under the provisions relating to the price actually paid or payable laid down in Article 1 of the Agreement, 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.
81. In response to the Members' request for further information, North Macedonia provided the Secretariat with that information, which was set out in the Annex to working document VT1288Ea. It reiterated that the invoices for transport costs relating to the return of empty carriages had been issued by the transport company that had brought the imported goods; the importer had been charged for the cost of returning empty carriages due to economic circumstances, in this case reduced rail traffic; and no contracts were found or provided.

### Summary of discussion

82. At the request of some Members who sought the opinion of the ICC on the practice described in this case submitted by North Macedonia, the ICC replied that there was, in

principle, a single contract entered into with the transport company which may include a number of contract terms. The parties to the contract could still negotiate and introduce a specific term on the costs relating to the return of carriages.

83. It is clear from the discussions which took place at the 53<sup>rd</sup> Session, in which the Delegate of North Macedonia was actively involved, that no information was available to determine whether the seller required the importer to bear those costs relating to the return of the empty carriages, in which case the Technical Committee would examine whether those costs could be taken into consideration in the Customs value for the purposes of Article 1, the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement.
84. The Delegate of Uruguay asserted that no commercial logic could explain the seller's insistence that, the goods having been purchased on EXW delivery terms (at the seller's premises), the transport costs relating to the return of empty carriages that are paid to the transport company should be borne by the importer. And there was even less logic in the importer paying these costs for the return of empty carriages at the "insistence" of a third party (the seller) and not as a contractual obligation. In his view, these circumstances were not in line with commercial realities, and it seemed very likely that material information for the proper interpretation of this case was missing. (Uruguay)
85. According to the Delegate of Canada, those costs paid by the importer to the transport company for the return of empty carriages which had been used to transport the imported goods are, by nature, transportation costs after importation. Thereby, as per paragraph 3 (b) of the Note to Article 1, they shall not be included in the Customs value. Furthermore, even if those costs would be charged by the seller and included in the price actually paid or payable, those costs should not be treated as an indirect payment for the settlement of a debt owed to by the seller of the imported goods. He referred to Commentary 21.1 which provides an example where the actual freight paid to the carrier and included in the price actually paid or payable by the seller is deducted from the Customs value.
86. The Delegate of the United States maintained that, in the light of the information presented by North Macedonia, those costs paid by the importer to the transport company for the return of the empty carriages could not be included in the Customs value either under the provisions of Article 1, 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 United States inquired whether North Macedonia was interested in broadening the scope of the facts submitted as suggested by some members.
87. The Delegate of China reiterated that this question entails three sub-questions in terms of customs valuation, namely: whether "transportation cost in this case" (1) constitutes part of price actually paid or payable of imported goods under Article 1; or (2) could be considered as "the cost of transport after importation" under paragraph 3 (b) of the Interpretative Note to Article 1; or (3) falls under Article 8.2 of the Agreement in a CIF country. She indicated that, under special circumstances, the freight contract might include a term which requires the importer to pay for the return of carriages, and the imported goods might not have been transported into the importing country without paying the charges.
88. In its comments to the working document VT1288Ea, the Delegate of Bosnia and Herzegovina drew the attention to Commentary 9.1 and the meaning of the term "importation", namely the phrase "undertaken after importation". He opined that such term and phrase should be flexibly interpreted, as it stated in paragraph 6. In that regard Bosnia and Herzegovina was of the view that the term "undertaken after importation" might be interpreted as "in country of importation". During online discussion phase, the Delegate of China highlighted that opinion, furtherly elaborating that "the cost of transport of the imported
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goods to the port or place of importation” and “loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation” under Article 8.2, cannot be interpreted to cover “transportation charges relating to the return of means of transport”.

89. In addition, the Delegate of Bosnia and Herzegovina expressed its view and proposed to deepen the discussion with a view to adopting a Commentary which would cover several possible and similar scenarios, together with valuation treatments as to each scenario. This proposal was supported by the delegates of Uruguay and China.
90. At the end of the discussions held during this session on the basis of the facts presented by North Macedonia, the Technical Committee was unable to give its opinion on the treatment of transportation charges relating to the return of empty carriages.

#### Conclusion

91. At the Chairperson’s request, the Technical Committee agreed to keep this question on the Agenda for further discussion at its 54<sup>th</sup> Session.

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

- (a) Treatment applicable to goods subject to licensing contracts for distinctive signs: Request by Uruguay

Doc. VT1289Ea

#### Introduction

92. The Chairperson presented this new question submitted by Uruguay during the intersession prior to the 53<sup>rd</sup> Session. The facts pertaining to this question are set out in the Annex to working document VT1289Ea.
93. The question deals with royalties paid by the importer ICO to the licensor ZCO for the right to use particular distinctive signs and know-how, as well as ZCO’s technical assistance, in order to establish and operate the chain of P stores in the importing country. The issue to be determined is whether the royalties paid by ICO should be included in the Customs value of the imported goods bearing the P trademark which are purchased by ICO from foreign suppliers and sold in the P stores operated by ICO in the importing country. ICO, ZCO and the suppliers are wholly owned by the international economic group P and are related to each other under the terms of the Agreement.

#### Summary of discussion

94. During the online discussion phase and the virtual meeting phase, a number of Delegations supported the proposal to examine this case as a Specific Technical Question and considered that its examination will be helpful for both the Customs and the private sector.

#### Conclusion

95. The Technical Committee agreed to include this question on the Agenda of its 54<sup>th</sup> Session as a Specific Technical Question.

(b) Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay

Doc. VT1290E1a

Introduction

96. The Chairperson introduced this new question, submitted to the Secretariat by Uruguay for consideration by the Technical Committee. The text concerning this question is set out in the annex to working document VT1290Ea.
97. According to the facts pertaining to this question, set out in the Annex to the aforementioned working document, it concerns the treatment applicable to the security costs imposed by the insurance company in view of the fact that the imported goods pose a high risk of theft during international transportation. Specifically, in the insurance policy taken out by the importer, the insurance company stipulated that the latter must purchase an armed guard service to accompany the goods during transportation from their departure from the country of exportation to the place of importation in the country of importation.

Summary of discussion

98. Some Members shared their written comments on the WCO's CLiKC! platform during the online discussion phase and the exchanges of views on this question submitted by Uruguay continued during the 53<sup>rd</sup> Session.
99. The discussions that took place during these two periods were aimed primarily at obtaining greater clarity on the facts pertaining to this question. Some Members wanted to know the exact nature of the payment made by the importer to the armed guard service through a "special policy" : was it a form of insurance or a service procured under a separate contract? Did the initial contract of insurance contain clauses relating to this "special policy"? Should this payment be included in the Customs value of the imported goods under Article 8.2 (c) or not?
100. Moreover, some Members stated that this payment made to the armed guard service was different from the "War Clauses" or "Strikes Clauses" cover that might be included in some contracts of insurance for imported goods.
101. The Members unanimously supported the examination of this new question by the Technical Committee as a Specific Technical Question. They considered that, by means of this examination, it would be possible to study the scope of insurance under Article 8.2 (c) of the Agreement and to see whether this "special policy" fell within that scope.
102. Uruguay thanked the Members who supported the examination of this question. It informed the Technical Committee that this was not an actual case but a practice that existed in international trade. In response to the requests for further details made by some Members, it promised to submit to the Secretariat at a later date an improved text of its question, taking into account their comments and suggestions.

Conclusion

103. The Technical Committee decided to include this question as a Specific Technical Question to be examined at its next session.



(c) Accumulated discounts in e-commerce sales : Request by Uruguay

Doc. VT1291Ea

Introduction

104. The Chairperson of the Technical Committee presented this new question which had been submitted to the Secretariat by Uruguay during the intersession for consideration by the Technical Committee at its 53<sup>rd</sup> Session. The text setting out the facts of this case is reproduced in the Annex to working document VT1291Ea.
105. This question concerns a discount in an e-commerce transaction using an IT platform. Seller XCO grants buyer ICO a discount in the form of a voucher generated in a previous sale, providing a special code to be used for a future purchase on the same IT platform.

Summary of discussion

106. During the online discussion phase on the CLiKC! platform, a number of delegations expressed their views on the question. All the delegates commended Uruguay for submitting this question which was, in their view, worthy of consideration. After commenting on the facts of the case set out in the Annex to Doc. VT1291Ea, some delegations asked for clarification, particularly with respect to the nature of the discount voucher, the conditions under which the discount vouchers are granted, the manner in which they are applied and whether all importers could access them. Uruguay responded to all of those concerns.
107. During the virtual meeting, the Chairperson invited Uruguay to comment on or provide further clarification on the new question that it had submitted during the intersession. The Delegate of Uruguay thanked the various delegations for their support and pointed out that this case was more general than the previous ones and that it would be necessary to provide a document setting out all the options for considering how to establish the Customs value in each instance. He commented that it would all depend on the delegates' imagination. He trusted that this question would result in the adoption of an instrument that would provide a benchmark for the Customs administrations and the private sector generally.
108. In response to the Chairperson's request for the Technical Committee's views on this question, all those taking part in the meeting expressed their unanimous support for it and sought to examine it in future work.

Conclusion

109. The Technical Committee decided to include this question as a Specific Technical Question to be examined at its next session.

**Agenda Item VII: OTHER BUSINESS**

Presentation by the ICC – Commercial practices regarding transport costs

Background

110. During the intersession, the ICC offered to make a presentation on commercial practices regarding transport costs, providing background information to facilitate the discussion of the

question submitted by North Macedonia on “Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods”.

#### Presentation by the ICC

111. The Observer from the ICC made an introduction of a number of challenges faced by the shipping industry in the last 18 months. These unprecedented challenges had resulted in the increase of freight costs and new charges imposed by shipping companies, which might fall within the scope of Customs value under Article 8.2 of the Agreement.
112. Regarding freight charges, the observer noted that various charges could be incurred, and that in some cases it could be difficult to identify the nature of these charges. He observed that the commercial practice of most companies is to declare all charges related directly to the international movement of the imported goods. He added that ancillary costs that not related to the specific inbound movement are typically not treated as a part of the purchase price, therefore are not included in the declared Customs value.

#### Discussion

113. In response to questions from delegates regarding whether the freight arrangement in the North Macedonia case is normal in commercial practice, the observer from the ICC stated that there is no “normal” arrangement or industrial standards, and the freight arrangement could vary from company to company.
114. When asked whether the delivery delays caused by current challenges would force companies to shift from sea to air, the observer commented that while there may be relevant provisions in the contract to change the mode of transport in the event of delay, companies could show great flexibility in dealing with delayed shipments and resolve specific problems through negotiations.

#### Conclusion

115. The Technical Committee took note of the presentation by the ICC and the subsequent discussion.

#### **Agenda Item VIII: ELECTIONS**

116. The Secretariat informed the Committee that as provided in the Customs Valuation Agreement, the Chairperson and Vice-Chairpersons shall each hold office for a period of one year. One year has elapsed since the last election was held and it was again time to hold an election for the post of the Chairperson and two Vice-Chairpersons for the coming year.
117. The Delegate of the EU seconded by the Delegate of the US nominated Ms. Santa Marianela Marte as Chairperson of the Technical Committee on Customs Valuation for the next term. Several other delegates supported the nomination. There was no objection to the nomination and Ms. Marte was re-elected by acclamation for the post of Chairperson of the Technical Committee on Customs Valuation for one year.
118. Ms. Qianyu LIN of China was nominated by the Delegate of Uruguay as Vice-Chairperson. The Delegate of Mauritius seconded this nomination and was joined by other delegates. There was no objection to the nomination and Ms. Lin was re-elected as Vice-Chairperson by acclamation.

119. Mr. Laurent Blaise KABORE of Burkina Faso was nominated by the Delegate of China as Vice-Chairperson. The Delegate of Canada seconded this nomination, supported by other delegates. There was no objection to the nomination. Mr. Kabore was re-elected as Vice-Chairperson by acclamation.
120. Ms. Marte agreed to serve as Chairperson and Ms. Lin and Mr. Kabore as Vice Chairpersons for the next term.

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

121. The Secretariat informed the Technical Committee, on behalf of the Director, that the following items would be included on the Agenda for the 53<sup>rd</sup> Session:

***I. Adoption of Agenda/Suggested programme***

***II. Adoption of the Technical Committee's 53<sup>rd</sup> Session Report***

***III. Reports on intersessional developments***

- *Director's Report*
- *WTO Committee on Customs Valuation 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) *Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius*
- (b) *Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia*
- (c) *Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay*
- (d) *Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay*
- (e) *Accumulated discounts in e-commerce sales : Request by Uruguay*

***VI. Questions raised during the intersession***

***VII. Other business***

***VIII. Programme of future work***

***IX. Dates of next meeting***

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

122. The Director announced that the 54<sup>th</sup> Session of the Technical Committee on Customs Valuation was provisionally scheduled to take place from 3 to 5 May 2022 as a virtual meeting in a possible hybrid format, depending on the situation of the pandemic.

### **CLOSING REMARKS BY THE DIRECTOR**

123. The Director congratulated the Technical Committee for adopting a new instrument at this Session, and thanked all the delegates for their participation and contribution, the interest and the dynamism showed to resolve differences and achieve consensus.
124. He thanked all delegates, who through their contribution all meeting items were completed on schedule, with one new instrument adopted, that is, Advisory Opinion 4.19. This instrument will add to the 97 existing instruments to help Members in the uniform interpretation and application of the WTO Customs Valuation Agreement.
125. He extended a special thanks to the Chairperson, Ms. Santa Marianela MARTE, for her excellent work in leading the Technical Committee as well as to Uruguay for taking the initiative to submit the technical question that gave rise to this instrument and the EU for its flexibility on this subject.
126. Looking at the five specific technical questions on the agenda of the next session, the Director invited the delegates to submit in a timely manner their responses, comments and observations, to enable the Technical Committee to examine the technical questions in an efficient and effective manner and encouraged Members to follow the example of Uruguay, which rightly takes centre stage and to submit technical questions to the Technical Committee for consideration, with a view to adopting more instruments and providing guidance to Members as it is mandated.
127. The Director concluded by thanking all the staff of the Secretariat, his colleagues in the Valuation Sub-Directorate, the translators, the interpreters and the technical staff for their invaluable support.

### **CLOSING REMARKS BY THE CHAIRPERSON**

128. The Chairperson joined her voice to the kind words of the Director. She wished to see the delegates present new technical questions to be examined by the Technical Committee.
129. She thanked the delegates for their support and patience during the technical problem she faced and congratulated the Technical Committee for adopting a new Advisory Opinion, thanks to the effort and flexible spirit shown by everybody during the consultation phase and during the virtual phase and in particular by the EU.
130. She thanked the Secretariat including the interpreters and technical staff for their great effort in supporting the Technical Committee and making available the draft Advisory Opinion in the three official languages for its adoption.
131. The Chairperson concluded her remarks by congratulating the Vice Chairpersons for their re-election before declaring the meeting closed and wished to see the delegates in a face to face meeting at the next session.

S. M. MARTE

Chairperson.

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**REPORT BY THE WTO  
TO THE 53RD SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION**

**20 SEPTEMBER TO 20 OCTOBER 2021  
(BLENDED FORMAT)**

The WTO last reported to the TCCV at its 52<sup>nd</sup> Session in May 2021. On 27 May 2021, the Committee on Customs Valuation (Committee) held a formal meeting in virtual mode.

**Notifications**

The Committee reviews four 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. 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.13.

At the May 2021 meeting of the Committee, the Chair of the Committee remarked on an encouraging increase in notification activity since the Committee's previous meeting in October 2020. He noted that notifications on customs legislation had been submitted by the following six Members: Afghanistan, Colombia, Mongolia, Saint Kitts and Nevis, Solomon Islands, and the United Kingdom; and that responses to the checklist of issues regarding their customs legislation had been notified by the following six Members: Colombia, Israel, Namibia, Paraguay, Tonga, and the United Kingdom. At the May 2021 meeting of the Committee, the national legislation of 29 Members remained under review pending exchanges of questions and responses from Members regarding such 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.

**Technical assistance and training**

The WTO Secretariat continues to provide support for technical assistance and training on customs valuation matters. This year we have delivered modules on customs valuation at two Regional Trade Policy Courses – to Arab and Middle Eastern Members in January 2021 and to English-Speaking African Members and Observers in June 2021.

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**ROYALTIES AND LICENCE FEES  
UNDER ARTICLE 8.1 (c) OF THE AGREEMENT**

1. A patented concentrate is purchased by importer ICO from manufacturer XCO who is also the patent holder. The imported concentrate is simply diluted with ordinary water, not using a patented process, and is consumer-packed with a trademark owned by XCO for its sale in the importing country as a soft drink.
2. In addition to the price of the goods, ICO is required to pay to manufacturer XCO, as a condition of sale, a single royalty for the right to incorporate or use the patented concentrate in products intended for resale and for use of the trademark. The amount of the royalty was set at 15% of the sale price of the finished product, the soft drink.
3. XCO sells to ICO at a price of 30 c.u. each 0.10 litre of concentrate, which is used to produce one litre of soft drink. The production costs per litre of finished soft drink, in line with the generally accepted accounting principles of the country of importation, are :
 

|  |         |
|--|---------|
| (a) Cost of imported concentrate (price actually paid or payable to XCO per 0.10 litre):                                 | 30 c.u. |
| (b) Import cost of imported concentrate (port charges, customs duties, inland transport and other costs per 0.10 litre): | 6 c.u.  |
| (c) Cost of other inputs:  | 4 c.u.  |
| (d) Labour costs:  | 3 c.u.  |
| (e) Other production costs:  | 7 c.u.  |
| Total cost of production per litre of finished soft drink:   | 50 c.u. |
4. ICO subsequently sells the soft drink to retailers in the country of importation at a price of 100 c.u. per litre, of which it pays to XCO a single royalty of 15 c.u. as compensation for (a) incorporation or use of the imported concentrate in the production of the soft drink and (b) for use of the trademark of the soft drink.
5. With the other conditions imposed under Article 8.1(c) of the Agreement having been fulfilled, as indicated in paragraph 2, the issue is to determine whether the royalty is related to the imported goods and if so, what amount of royalty payment is to be added to the price actually paid or payable for the imported concentrate.

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\*       \*

The Technical Committee on Customs Valuation expresses the following view.

6. Advisory Opinions 4.4 and 4.6 address royalties paid for the right to incorporate or use a patented concentrate and for the right to use a trademark, respectively. The royalties in each case are considered as dutiable.
7. The royalty payment is a condition of a sale as provided in the facts and the entire royalty is related to the imported goods because the imported concentrate is simply diluted with the ordinary water, not using a patented process, and is consumer-packed with trademark of XCO for sale in the importing country as a soft drink.
8. The amount of the royalty to be added to the price actually paid or payable will result from the corresponding final amount of the royalty generated from the sale of the soft drink, per unit of imported concentrate. For this purpose, objective and quantifiable data should be used to relate

the royalty payable on the soft drink produced to the price actually paid or payable for the imported concentrate used.

9. Under the facts presented in the case, and given that payment of the royalty is not based on other factors which are totally unrelated to the imported goods, as contemplated in the Interpretative Note to paragraph 3 of Article 8 of the Agreement, it is appropriate to include it in the Customs value.
10. In this case, 0.10 litre of concentrate is used to finally produce one litre of soft drink. Accordingly, the Customs value per 0.10 litre of imported concentrate will be the price actually paid or payable for the imported concentrate, plus the required adjustment for royalties generated from the sale of a litre of soft drink.
11. In other words, the Customs value will be a total of 45 c.u. per 0.10 litre of concentrate: 30 c.u. which is the price actually paid or payable, plus 15 c.u. arising from an adjustment to that price under Article 8.1 (c) of the Agreement for the subsequent payment of the corresponding royalty.



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TECHNICAL COMMITTEE  
ON CUSTOMS VALUATION

VT1316Ea

-  
54<sup>th</sup> Session  
-

O. Eng.

Brussels, 5 May 2022.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON  
THE 54<sup>th</sup> SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

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*Opening remarks*

1. The Chairperson, Ms. Santa Marianela MARTE (Dominican Republic), who had the opportunity to be at the WCO Headquarters, warmly welcomed all delegates, in particular those in attendance for the first time, to the virtual phase of the 54<sup>th</sup> Session of the Technical Committee on Customs Valuation, which was held in a hybrid format from 21 March to 5 May 2022.
2. The Director of Tariff and Trade Affairs, Mr. Konstantinos KAIPOULOS welcomed the delegates and in particular those who attended the session in person.
3. He thanked the Chairperson for her involvement in the preparation of this session and extended his warm regards to all the delegations around the world which were interacting with the Technical Committee through their screens, in spite of the time differences and the various technical and other constraints, noting that the working methods for this session were fundamentally the same as in previous sessions, except for the hybrid format which has allowed delegates to attend this Session in person.
4. Referring to the Agenda of this Session, the Director applauded the outstanding work done during the online discussion and consultation phases. Many highly relevant comments were posted enabling great progress in examining the five specific technical questions on the Agenda. He commended the Chairperson for her dedication and determination as well as the

delegations for their constructive mind set and spirit of compromise, attributes which contributed to a very good level of discussion.

5. The attention of the Technical Committee was drawn by the Director to a matter arising out of the work done by the Policy Commission at its 85<sup>th</sup> Session which involves the planning and prioritization of activities undertaken by the Directorates and the different WCO working bodies to ensure that those activities are not duplicated, to address the identified risks and to ensure that they are consistent with the WCO Strategic Plan. He invited the Technical Committee to examine this matter, which is set out in Item VII (c) (“Other business”) on the Agenda and to incorporate its activities into the template developed for that purpose by the Secretariat.
  6. Reminding the delegates that the theme dedicated for this year “Scaling up Customs Digital Transformation by Embracing a Data Culture and Building a Data Ecosystem” is an appeal calling on Customs administrations to pave the way for increasingly digitized international trade, with emphasis on electronic transactions, he added that the digitization of information and e-commerce – a twofold aspect of the digital transformation of the economy – is increasingly impacting Customs. He noted that Customs work including valuation is also affected by its own digital transformation and invited the Technical Committee to take digital transformation into account in its work.
  7. He thanked the Technical Committee for its past work on this theme, as seen in the adoption at its 48<sup>th</sup> Session of Advisory Opinion on Flash Sales involving transactions on electronic-commerce platforms and urged Members to submit more related questions for examination by the Technical Committee.
  8. He ended by thanking the 272 delegates representing 93 countries and observer organizations who have registered for this session and in particular those delegates who have come to Brussels and hoped that the next session would be under more normal working conditions with more delegates attending in person and wished the delegates a productive and successful meeting.
  9. The Chairperson invited comments from the delegates on the opening remarks and the Delegate of Ukraine who asked for the floor made a statement regarding the situation prevailing in his country. The Delegates from Canada, the European Union, Japan, the United Kingdom and the United States took the floor to express their concern with regard to
- 2.

the situation in Ukraine. The written statements comments submitted by the EU and Japan are set out in Annex D to the draft Report.

**Agenda Item I: ADOPTION OF AGENDA**

(a) Provisional Agenda

Doc. VT1293Eb

10. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1293Eb, published on the TCCV Meeting page, and on the 54<sup>th</sup> TCCV Session Forum Group on the CLiKC! Platform.
11. Delegates were invited to raise any point that they wished to discuss under item VII of the Agenda - Other Business.
12. The Delegate of Korea proposed the sharing of work done in relation to Articles 5 and 6 of the Customs Valuation Agreement at the next Session. The Delegate from Guatemala suggested that the TCCV examine in future sessions the following terms “in substantially the same quantity” in the context of Articles 2 and 3 and to examine options other than the two referred to in the question submitted by Mauritius in item V(a) of the Agenda in another technical question.

Conclusion

13. The Technical Committee adopted the Agenda as proposed in Doc. VT1293Eb without amendment.

(b) Suggested programme

Doc. VT1294Ea

14. The Chairperson referred to Doc. VT12946Ea, which set out the suggested programme of work for the 54<sup>th</sup> Session prepared by the Secretariat. She noted that there were two presentations for Tuesday’s session, that is, Brazil’s presentation on its application of the Agreement and the OECD’s presentation regarding updates on the Inclusive Framework/

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Base Erosion and Profit Shifting. The Secretariat would deliver a presentation on the WCO Trade Tools on Wednesday 4 May.

15. The Delegate of China proposed to move item V (c) of the agenda from Wednesday to Tuesday 3<sup>rd</sup> May after the presentation by the OECD and move item V (b) scheduled for Tuesday, to Wednesday. The Delegate of Israel proposed to examine item V (e) on either Tuesday 3<sup>rd</sup> May or Wednesday 4<sup>th</sup> May. Item V (e) was already scheduled for Wednesday 4 May and no change was needed in the suggested programme.

#### Conclusion

16. The Technical Committee approved the suggested programme as set out in Doc. VT1276Ea with the above amendment.

### **Agenda Item II : ADOPTION OF THE TECHNICAL COMMITTEE'S 53<sup>rd</sup> SESSION REPORT**

Doc. VT1292Ec

17. The Chairperson began by recalling the procedure for the adoption of the Technical Committee's session Report, as approved by Members during the proceedings of its 42<sup>nd</sup> Session.
18. During the intersession preceding the 54<sup>th</sup> Session, Bosnia and Herzegovina, Canada, China, the United States and Uruguay had submitted their comments on the "a" version of the draft Report. These comments had been incorporated in the draft Report and a "b" version had then been published. The comments by Members on the draft Report are highlighted in red characters in Doc. VT1292Eb. As no further comments had been made regarding the "b" version of the draft Report, the "c" version had therefore been published by the Secretariat in accordance with the procedure for the adoption of the Report agreed by the Technical Committee at its 42<sup>nd</sup> Session.
19. During the online discussion phase, China had made comments on the "c" version of the Report which it justified by the wish to have a document that accurately reflected the content



of the discussions. Following these comments, Uruguay and Bosnia and Herzegovina had respectively made amendments to paragraphs 69 and 88, with China's agreement.

20. The Chairperson invited the Technical Committee to give its opinion on this situation which was not in keeping with the agreed procedure to be followed for adopting session Reports. The Technical Committee decided, as an exceptional measure, to depart from the procedure for adopting the Report and accepted the amendments made to paragraphs 69 and 88 of the "c" version of the Report of the 53<sup>rd</sup> Session. The final Report, with the amendments, would be published in Doc. VT1292Ec.

#### Conclusion

21. The Technical Committee approved the Report of its 53<sup>rd</sup> Session, taking into account the amendments by Bosnia and Herzegovina and Uruguay following the comments by China.

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

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

Doc. VT1295Ea

22. The Chairperson invited the Director to present the Director's Report, contained in Doc. VT1295Ea. The Director summarized the key intersessional activities included in the document.
23. The Director briefed the Technical Committee on a few items of the 85<sup>th</sup> Policy Commission (PC) Session as follows:
  - (i) The importance of digital Customs and data was highlighted in regional consultations held in relation to the 2022/2025 Strategic Plan. Therefore, the WCO Secretariat had been developing a Data Strategy aimed at fully incorporating a data culture within the WCO's core activities and expertise.
  - (ii) The Policy Commission discussed and provided guidance on the way forward regarding the Terms of Reference for a Feasibility Study on a

Global Customs Data Exchange Platform which was agreed at the June 2021 Policy Commission and Council Sessions.

(iii) The Policy Commission reflected on the proposal related to the replacement of the WCO Packages' Action Plans with work programmes to be used by each WCO working body and endorsed the proposed template for the work programmes.

24. With regard to Revenue Package, the Director invited the Technical Committee to consider the Phase V proposals in the interim. He urged delegates to follow up with their administrations to share their practices concerning debt and its management with a view to enriching the document "Debt Management in Customs Administrations". The delegates were also informed that the Secretariat is developing a "post implementation" diagnostic tool on the Technical Guidelines on Advance Rulings for Classification, Origin and Valuation, which will allow administrations to assess the conformity of their national legislation compared to the requirements of Article 3 of the TFA.
25. Under "Other activities and issues", the Director informed the delegates of the updates of the e-learning Customs Valuation modules on CLiKC! Platform, as well as the works of the Working Group on Performance Measurement (WGPM) regarding the evaluation of the relevant WCO instruments and tools.
26. With regard to the future activities of the Valuation Sub-Directorate, the Director indicated that a thorough examination of possible future activities of the Valuation Sub-Directorate was undertaken with a view to gearing its action on areas that could potentially have an impact on valuation work such as e-commerce, circular economy and technological development.
27. In the short term, a webinar will be organized to address digitalization and its impact on Customs valuation and its control, and activities of technical assistance and capacity building, subject to available resources, would be intensified. In this context, an accreditation workshop would be held for the WCO MENA Region to increase the number of Arabic speaking accredited expert trainers on Customs valuation to meet the requests of Members. The Secretariat has also found that there is a need for more Spanish-speaking accredited Customs valuation expert trainers. Hence, the Director invited Members interested in supporting such a workshop, to contact the Secretariat.

28. Over the longer term, the Valuation Sub-Directorate will continue to look into ways to leverage the implementation of TFA to properly implement the CVA in areas such as publication, communication and advance rulings and to promote Customs to Customs cooperation. In the same vein, the Secretariat will continue to strengthen its collaboration with the WTO Secretariat.
29. Moreover, work in co-operation with the Compliance Sub-directorate on reviewing training materials and tools will continue with a view to making future proposals to develop or update tools. This is aimed at building revenue protection capabilities based on data analytics methods, cross-directorate synergies and best practices.
30. The Director also stated that the Secretariat will continue to be involved in the broader work of the WCO in emerging areas such as the data strategy, updates to the e-commerce guidance and work on other emerging policy issues and will keep the Technical Committee aware of what is happening generally and involved in any issues with potential impacts on valuation.
31. A number of Delegations took the floor to thank the Secretariat for its work during the intersession. Uruguay noted the importance of training carried out on e-platforms during the pandemic and encouraged the Secretariat to continue this approach. China spoke highly of the introduction of future activities in the Director's report, which would enable the Technical Committee to follow the development of these activities and ensure that the efforts of the Committee is in consistent with those of the Secretariat.
32. The Director thanked Members for their support to the Secretariat, especially their financial contributions, which are critical to the WCO's capacity building activities.

### Conclusion

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

(b) WTO Committee on Customs Valuation Report

Doc. VT1305Ea

34. The Observer from the World Trade Organization reported on the work of the Committee on Customs Valuation, which had held a formal meeting in virtual mode on 25 October 2021 following the 54<sup>th</sup> session of the TCCV. In his report, he updated the Technical Committee about the following two topics, Notifications and Technical Assistance.
35. The four types of notifications reviewed by the Committee on Customs Valuation included the following: 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.
36. An increase in the notification activity was observed since the last session through the contribution of Members of the TCCV and the review of a number of national legislations is still ongoing pending the exchange of questions and responses from Members regarding legislation.
37. With respect to technical assistance activities, he reported that three Regional Trade Policy Courses were facilitated by the WTO Secretariat since January 2021.
38. The written report from the WTO Secretariat is appended in Annex C to the draft Report.

Conclusion

39. The Technical Committee took note of the report.

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

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

### Background

40. 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.
41. Since the last session, no Member administrations had provided any information about their technical assistance activities. Only information on the technical assistance/capacity building activities undertaken by the Secretariat is set out in the Annexes to Doc. VT1306Ea.

### Summary of discussion

42. During the virtual meeting, the Chairperson of the Technical Committee recalled that information on technical assistance/capacity building activities undertaken by the Secretariat was contained in the Annex to Doc. VT1306Ea. She further stated that Japan had sent the Secretariat a non-paper on its technical assistance/capacity building activities delivered or scheduled to take place during the intersession. The Chairperson informed delegates that no further observations or comments had been made regarding this item, either during the intersession or during the online discussion phase. As no delegates asked to take the floor, the Chairperson brought the discussions under this Agenda item to a close.

### Conclusion

43. The Technical Committee took note of the Secretariat's report on technical assistance and capacity building activities and of the non-paper forwarded by Japan and set out in Annex E to the draft Report.

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

Docs. VT1297Ea and VT1307Ea

### Background

44. 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.

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45. Before the session, the Secretariat had published Doc. VT1279Ea, 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.
46. Brazil offered to make an oral presentation on its experience of implementing the WTO Customs Valuation Agreement, and more specifically on the project developed by Brazil to enhance its fiscal procedures in this respect.

#### Presentation

47. The Delegate of Brazil began with a brief introduction of the Federal Revenue of Brazil, highlighting the difficulties of implementing Customs controls in all ten fiscal regions of Brazil in accordance with standard procedures. The Customs Valuation Project was therefore introduced with a view to increasing the number and the efficiency of the PCA, as well as to promote uniformity among the procedures of Customs offices.
48. As per an assessment conducted at the beginning of the Customs Valuation Project, Brazil identified a number of main challenges in Customs valuation area, such as identifying identical or similar goods, verifying the declared price of related party transactions and adjustments under Article 8. Lack of experts in the valuation team and poor cooperation of importers were also significant problems to be solved.
49. In order to address the above issue, Brazil updated its national legislation, risk management system and IT system. Administrative and legal cases and advance rulings were compiled for audit reference, and reference models were introduced to promote importers' compliance and Customs cooperation. Moreover, various relevant WCO manuals and guidelines were made available to Customs agents to enhance their knowledge of valuation.
50. Capacity Building training was another important part of Customs Valuation Project, where practical cases were shared and various presentations were made to address technical issues such as Transfer Pricing, royalties and licence fees, as well as to discuss new instruments adopted by the TCCV.
51. In addition, a new Normative Instruction would be enacted soon in Brazil which includes the Decisions of the WTO CCV, as well as the instruments adopted by the Technical Committee.

52. The Delegate of Brazil also introduced a pilot project to be started on Customs valuation, which would identify suspected incorrect declarations based on studies of the national economy, and then audit operations would be carried out accordingly. This project was expected to enhance the uniformity of Customs procedures during the application of the Agreement.

#### Conclusion

53. The Technical Committee took note of Brazil's presentation.

#### (c) Revenue Package

Doc. VT1298Ea

54. The Secretariat highlighted in Doc. VT1298Ea the completion of the Revenue Package Phase IV in June 2021 and the tools and materials that were developed during the previous phases.
55. Additionally, a work plan for a Revenue Package Phase V was proposed to the Working Group on Revenue Compliance and Fraud (WGRCF) for guidance and comments. The proposed work plan includes the promotion and application of the existing tools developed under the previous phases of the RP and assessment of their effectiveness besides the continuation of work on the following topics: illicit financial flows; valuation, classification and origin; assessing the impact of the Revenue Package programme; fighting commercial fraud; and new tool development for PCA.
56. Comments made by the WGRCF were taken into consideration to update the proposed work plan which was to be submitted to the Policy Commission for further comments and advice.
57. At its 85th Session, the Policy Commission, agreed for a corporate approach be defined to avoid duplication of efforts, with a view to increasing the accountability of working bodies, including the TCCV, and making sure that their activities were consistent with the WCO Strategic Plan.

58. Details on the methodology proposed in regard to the planning and prioritization of activities undertaken at the WCO working bodies to ensure activities are consistent with the WCO Strategic Plan may be found in Doc. VT1304Ea under Item VII of the Agenda.

#### Conclusion

59. The Technical Committee took note of the updated report on the Revenue Package.

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

- (a) Valuation treatment of ancillary charges in relation to Article 1 of the Agreement – Request by Mauritius

Docs. VT1299Ea and VT1309Ea

#### Background

60. The Chairperson recalled that this question had been the subject of discussions in the Technical Committee since the 49<sup>th</sup> Session, following its submission by the Mauritius Administration. It concerned ancillary charges which had been included in a second invoice issued by the supplier to the buyer for the importation of goods. However, during a post-clearance audit, Mauritius Customs established that the charges in question had not been included in the Customs value of the said goods in the Customs declaration. The initial text presenting the issue is set out in the Annex to Doc. VT1206E1a.
61. At its 53<sup>rd</sup> Session, the Technical Committee concluded that the Customs value should include the currency surcharge only, which was invoiced to all buyers. On the other hand, the savings programme charges and the club charges were not included in the Customs value: those charges were not paid either for the imported goods or as a condition of their sale. Furthermore, the savings programme charges and club charges were not covered by the exhaustive list of items that could be added to the Customs value under Article 8.
62. During the intersession, Mauritius worked with the Secretariat and forwarded to it a new draft Advisory Opinion which was set out in the Annex to Doc. VT1299Ea. The Technical Committee was to examine the draft and ultimately reach a consensus on its wording with a 12.



view to finalizing a new instrument for adoption. In response to Doc. VT1299Ea, Uruguay submitted its comments, which were set out in the Annex to Doc. VT1309Ea. In those comments, Uruguay pledged its support in general terms for the draft text but suggested some editing adjustments for improving the content. To summarize, Uruguay suggested inserting a question into paragraph 3, deleting one sentence from paragraph 4 and amending paragraph 5 by substituting the final sentence. Uruguay also proposed some minor amendments to paragraph 7.

#### Summary of discussions

63. During the online discussion phase, the question submitted by Mauritius concerning the “*Valuation treatment of ancillary charges in relation to Article 1 of the Agreement*” was the subject of comments by Japan, China, Guatemala, Uruguay, Brazil, Mauritius, Chinese Taipei, the United States, Peru, Indonesia and the ICC. The comments made essentially comprised amendments to be made to the draft Advisory Opinion set out in the Annex to Doc. VT1299Ea or expressions of support for those amendments.
64. In its analysis of the question, Japan Customs considered that, when a charge was paid as a “condition of sale of the imported goods”, that meant that the payment was made “for the imported goods”. Moreover, Japan relied on that premise in proposing that paragraphs 5 and 7 of the draft Advisory Opinion annexed to Doc. VT1299Ea should be reworded. As regards paragraph 4, Japan’s suggestion was to delete the following sentences: “The savings program charges and club charges paid on a per unit basis of the imported goods are not refunded whether or not the purchasing target is met and remains for the benefit of the seller. Such charges should therefore be considered as being related to the imported goods.”
65. China stated that it concurred with Japan’s point of view. However, it proposed making slightly different amendments to paragraphs 4, 5 and 7 of the draft Advisory Opinion. It suggested merging paragraphs 4 and 5 for streamlining purposes and deleting the phrases referring to “related to the imported goods”. China Customs still wished to keep the first sentence of paragraph 5: “The savings program charges and club charges are not paid for the imported goods [...]”. As regards paragraph 7, China agreed with the ideas expressed by Japan but proposed a reorganization of the text, changing the order of the sentences to create a more logical and coherent conclusion.

66. An amendment proposal put forward by the United States reflected the views of many other delegations, including China and Mauritius. They felt it necessary to add that the goods were offered equally, under exactly the same conditions of sale, whether or not the buyer opted to join either programme. In other words, a buyer that chose to join either of the two programmes did not benefit from more favourable conditions (in respect of payment or delivery, etc.) than a buyer that did not join.
67. Taking into account the various comments made, including those submitted by Uruguay, Japan and China, the Mauritius Customs Administration proposed amendments to the draft Advisory Opinion. Japan supported the amendments proposed by Mauritius. They incorporated Uruguay's suggestion in relation to paragraph 3, Japan's proposed rewording of paragraph 4 and China's suggestion to merge paragraphs 4 and 5.
68. The International Chamber of Commerce adopted the same position as the other speakers on the conclusions regarding the charges under Programmes I and II. Concerning the currency surcharge, it suggested that the Technical Committee should ensure that the conclusions reached in relation to this type of charge were the outcome of highly rigorous analysis whose result was obtained indisputably on the basis of clear and precise information.
69. The consultation phase with the different delegations provided an opportunity to gain a relatively precise insight into their various positions regarding the amendments to be made to the draft Advisory Opinion. According to one delegation, it was important to obtain the views of the other delegates on those amendments at the hybrid meeting. It was universally agreed that it would be more practical to conduct discussions on the basis of a single document. The amendment proposal put forward by Uruguay and set out in the Annex to Doc. VT1309E1 was accepted as the basic document. For the purposes of the virtual meeting, an overview of the various amendments was drawn up by the Secretariat, in collaboration with Mauritius and Uruguay, and made available to the delegates in the three working languages of the Technical Committee on the CLiKC! platform.
70. The European Union requested time to become fully acquainted with the new document before submitting its comments. Its request was supported by Canada, the United States and the United Kingdom. The Technical Committee accordingly postponed the examination of the question to allow all stakeholders to familiarize themselves with it. Upon resumption of the discussions on this question, Japan and China presented their proposed amendments.

Canada welcomed the excellent work that had been completed and accepted the conclusions of the draft Advisory Opinion along with the various amendments to the text. It sought a reference in the text to paragraph 4 of the Interpretative Note to Article 1 of the Agreement. Canada pledged to contribute to its improvement at the next session by submitting proposals for the redrafting of some paragraphs. The proposed re-examination of the question at the next session received the support of the European Union and United States. In the light of those views, the Chairperson suggested that the Technical Committee continue the discussions on this question at the next session.

### Conclusion

71. The Technical Committee decided to continue the examination of this question at its next session, taking into account the summary of the amendment proposals drawn up by the Secretariat in cooperation with Mauritius and Uruguay.

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

Docs. VT1300Ea and VT1310Ea

### Background

72. The Chairperson introduced this question, submitted by North Macedonia, that the Technical Committee had agreed to examine as a Specific Technical Question during its 49<sup>th</sup> Session. It concerned the valuation treatment of the cost of transport for the return of empty carriages used in the transportation of imported goods. The text concerning the facts of this technical question is set out in the Annex to working document VT1207Ea for the 49<sup>th</sup> Session.
73. According to the issue presented by North Macedonia, during post-clearance audit of the accounting records of the importing company, invoices were found for the services performed for international transport, namely the return of empty carriages by which the goods in question were originally delivered. Those invoices had been drawn up by the transport company that had brought the imported goods. The importer initially paid an invoice for the transport of the goods, and, following the import, it paid the same transport company for the return of the same carriages.

74. During the work of the 53<sup>rd</sup> Session, North Macedonia clarified the facts regarding its question, and some Members of the Technical Committee expressed their views on the treatment to be afforded to this question under consideration. Generally speaking, the Members sought clear information on the terms of the sales contract relating to the freight in order to establish whether the question submitted by North Macedonia came under the provisions relating to the price actually paid or payable laid down in Article 1 of the Agreement and its corollaries, namely the Interpretative Note to Article 1 and paragraph 7 to Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. Following discussion, it was clear that Members held differing views on the position to be adopted in relation to the question.
75. According to some Members, insufficient information was available to determine whether the seller required the importer to bear those costs relating to the return of the empty carriages. For other Members, no commercial logic could explain the seller's insistence that the transport costs relating to the return of empty carriages that are paid to the transport company should be borne by the importer. A further group of Members took the view that those charges were costs of transport after importation and, as such, could not be included in the Customs value either under the provisions of Article 1, the Interpretative Note to Article 1 and paragraph 7 to Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. The Delegation of the United States asked whether North Macedonia would be willing to broaden the scope of the facts it had presented, as suggested by some Members. The Committee therefore had not reached a consensus on that question at that stage.
76. In response to working document VT1300Ea, Uruguay considered that, without a change in the facts presented by North Macedonia, this question would have to be moved to Part III of the Conspectus of Technical Valuation Questions because it did not constitute rational behaviour in the commercial world. Uruguay felt that its proposed modification of the facts would afford the question a degree of commercial logic which could result in the drafting of an instrument.

#### Summary of discussions

77. During the online discussion phase of the 54<sup>th</sup> Session of the TCCV, China, Uruguay, Japan, Bosnia and Herzegovina, Brazil, North Macedonia, Indonesia and the ICC each presented comments on the question submitted by North Macedonia. All speakers acknowledged the
- 16.

relevance of the topic and the need to produce an instrument, because the subject had not been addressed thus far in the Technical Committee's work. However, some delegates expressed concern that the lack of sufficient information on the facts of this interesting question might compel the Technical Committee to move it to Part III of the Conspectus of Technical Valuation Questions. Various Members, including Japan, sought to have the nature of the cost clarified, namely determining whether the cost was included in the price actually paid or payable under Article 1 of the Agreement, the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement, or whether it was treated as an adjustment under the provisions of Article 8.2 of the Agreement.

78. The specific question of determining whether the "cost of transport relating to the return of empty railway carriages" covers the "cost of transport after importation" as laid down in paragraph 3 (b) of the Interpretative Note to Article 1 or the "cost of transport of the imported goods to the port or place of importation" also continued to be a matter of concern for Members. On that question, China had expressed two positions which were shared by Uruguay. The first involved interpreting "the cost of transport of the imported goods to the port or place of importation" under Article 8.2 (a) of the Agreement as covering "the cost of transport of the imported goods before their arrival at the port or place of importation". It was explained that the cost of returning the empty carriages to the exporting country after the importation of the goods did not constitute such an adjustment because it was borne after the arrival of the goods at the place of importation. The second position was that payment of the cost of transport relating to the return of carriages was a condition of the transportation of the goods in the country of importation. In that case, the cost could be regarded as part of the cost of transport under Article 8.2.
79. To avoid the impasse of Part III of the Conspectus of Technical Valuation Questions, some delegates (Bosnia and Herzegovina, North Macedonia, Brazil, Uruguay and China) proposed broadening the scope of the question to cover a number of scenarios. To that end, in response to an appeal from one delegate, the ICC expressed its willingness to assist with identifying possible scenarios covered by this question.
80. It was apparent from the various comments that the first scenario could be the situation presented by North Macedonia. Added to that were the two situations proposed by Uruguay in the Annex to Doc. VT1310. Taking those various scenarios into account and with a view to facilitating the discussions, it would be necessary to provide clarification (a) on the relevant Incoterm and (b) as to whether the transport contract stipulated payment of the "cost of

return transport” as a condition of the transportation of the imported goods. China added a further scenario, where the transport costs relating to the return of the empty carriages would be set out in the contract of sale between the seller and the buyer. In other words, the seller would request that the importer bear the costs relating to the return of the empty carriages, with the result that the payment could be included in the price actually paid or payable for the imported goods under Article 1.

81. During the virtual and face-to-face meeting (in the hybrid format), North Macedonia confirmed to the Technical Committee that it had no further information on the facts of the question. It commented that it had no objection to a broadening of the scope of the facts, as proposed by some delegates, if that was the prerequisite for the drafting of an instrument. Many delegations supported that proposal.

#### Conclusion

82. The Technical Committee took the view that it should continue to examine this question, broadening the scope of the facts, at its 55<sup>th</sup> Session.

#### (c) Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay

Docs. VT1301Ea and VT1311Ea

#### Background

83. The Chairperson presented the question submitted by Uruguay, which the Technical Committee had agreed at its 53<sup>rd</sup> Session to examine as a Specific Technical Question.
84. The question deals with Customs valuation treatment of royalties paid by the importer to the licensor for the right to use particular distinctive signs and know-how, as well as licensor’s technical assistance, in order to establish and operate chain stores where the imported goods are sold in the importing country. The importer, the licensor and the suppliers of the imported goods are related under the terms of the Agreement.
85. During the intersession, the Secretariat worked with Uruguay to redraft the case to facilitate the examination. The text is set out in the Annex to working document VT1301Ea.

86. Turkey submitted written comments in response to Doc.VT1301Ea, which are set out in Annex I to working document VT1311Ea.

Summary of discussion

87. During the online discussion phase, China proposed to analyse this case from a transfer pricing perspective as the transactions took place between subsidiaries of a multinational enterprise, while some Delegations were of the view that Article 8.1(c) or (d) could apply in this case.
88. Uruguay, during the virtual session, reiterated that the analysis of this case should be based on the contract which provides that the royalties are paid for the distinctive signs and operation of the chain stores, rather than for the trademark.
89. In addition, Uruguay opined that this case is totally different from Advisory Opinion 4.17 in which the imported inputs are not patented and not protected by intellectual property rights and the importing company can buy from third-party suppliers at lower prices with the selling company's agreement.
90. China did not agree to consider the royalty in this case under Article 8.1 (c) as there was not enough information to establish a relationship between the royalty payment and the imported goods, nor did China agreed to include the royalty under Article 8.1 (d), as the payment is made for distinctive signs, knowhow and technical assistance, and therefore could not be treated as subsequent proceeds.
91. The OECD opined that it is premature to draw a conclusion on this case in the absence of key information, such as whether the exporter owns the marketing intangible and whether the value of intangible has been reflected in the price of the imported goods. From transfer pricing perspective, this information may be found in the master file which provides an overview of an MNE's global operations, and taxpayers could also be requested for further clarifications in this regard.
92. ICC noted that in practice, it is common for one royalty to cover a variety of intangibles, and it could be difficult for companies and Customs to allocate part of the royalty to certain intangibles.

Conclusion

93. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 55<sup>th</sup> Session.

(d) Treatment applicable to goods subject to additional costs imposed by the insurance company: Request by Uruguay

Docs. VT1302Ea and VT1312Ea

Background

94. The Chairperson presented this question submitted by Uruguay which concerns the treatment of an additional cost imposed by the insurance company.
95. The Technical Committee during its 53<sup>rd</sup> session, agreed to examine this question as a Specific Technical Question. The text concerning the facts of this question submitted by Uruguay was set out in the Annex to working document VT1290Ea, issued for the 53<sup>rd</sup> Session. According to the facts as stated, the question concerned the treatment applicable to the security costs that were imposed by the insurance company as the imported goods posed a high risk of theft during international transportation. Specifically, in addition to the initial insurance policy taken out by the importer, the insurance company required the importer to take out a “special policy” to purchase an armed guard service to accompany the goods during transportation from their departure from the country of exportation to the place of importation.
96. While considering this question raised during the intersession at the 53<sup>rd</sup> TCCV Session, the delegates asked for additional information regarding: the exact nature of the payment made by the importer to the armed guard service through a “special policy”; whether the initial contract of insurance contained clauses relating to this “special policy”; and whether this payment should be included in the Customs value of the imported goods under Article 8.2 (c).
97. No written comments in response to Doc. VT1302Ea was received during the intersession.

Summary of discussion



98. During the online discussion phase of the 54<sup>th</sup> TCCV Session, comments on this case were received from several delegates. Uruguay thanked the Delegate of Brazil for its support and for pointing out the typological error made during the discussion phase. He explained the importance of this question to Members that have opted to include the elements of Article 8.2 to arrive at the Customs value. Referring to paragraph 7 of Annex III of the Agreement, the Delegate of Uruguay reminded that in this case, it was not the seller, but rather the insurance company that had imposed on the buyer, as a condition of sale of its insurance service, the payment to a third party (to the security company) of a service accompanying the goods with an armed guard.
99. The EU supported the opinion of Japan that the scope of insurance cost under Article 8.2 (c) is provided in Advisory Opinion 13.1 which interprets cost of insurance as referring solely to insurance costs incurred for the goods during the operations specified in Article 8.2 (a) and (b) of the Agreement. They considered that the cost of the armed guard service should not be an insurance cost, but may be considered as handling cost related to the transportation of imported cargo as stipulated in Article 8.2 (b) of the Agreement.
100. In its comments, China agreed with Japan that the additional costs paid for “armed guard service” is very different from “the cost of insurance” in relation to the transport of goods, that the payment of “armed guard service” is a condition of insurance contract and should not be included in the Customs value of the imported goods as any form of insurance. China observed that there is no definition of handling charges in the Agreement and was of the view that the armed guard service by nature is not within the meaning of “loading, unloading and handling” operations associated with the transport of the imported goods and, in the absence of a definition of handling charges, could not accept its addition to the price actually paid or payable under Article 8.2 (b) as suggested by Japan.
101. The Delegate of Indonesia opined that the cost for armed guard service should not be part of the Customs value.
102. The Observer from ICC distinguished between two kinds of insurance in international trade: a cargo insurance, which is taken out by the shipper, and a civil liability insurance, taken out by the transporter. He opined that this case focuses on the first kind and gave a number of risks that the shipper may decide to be protected from by a cargo insurance.

103. He added that insurers may also impose additional conditions to the shipper in order to guarantee the requested level of insurance which could include an armed guard service especially for high valued goods. The cost for the armed guard service could be included in the global insurance fee or broken down on the insurance service invoice. He highlighted that the armed guard service provided during transportation of high-valued goods is not limited to the international transportation flow, but also covers risks present in the country of importation after customs clearance, up to the point of delivery.
104. Another common practice for the transport of high-valued goods, consisted of operators requesting the services of specific transport service providers specialized in the transportation of rare or high-valued goods, which provide, as a standard service, additional security during transportation. Additional security includes armed guarded service, and the cost of the latter is usually automatically included in the global transportation fee.
105. The Delegate of the US pointed out that the US has opted for a FOB system of customs valuation and do not include elements listed in Article 8.2 of the Agreement in the valuation of goods. She added that additional cost for an armed guard to accompany the goods during international transport is not dutiable whether paid by the importer to an insurance company or to a security company. If the price included the insurance cost and security costs a deduction will be allowed if the importer produces evidence of the actual costs for these services. She believed that it would not be appropriate to read the conditions of sale elements in paragraph 7 of Annex III into other provisions of the Agreement like insurance and freight.
106. Noting that the comments made pointed towards considering the armed guard cost as a transport related costs under 8.2 (b), the Delegate of Uruguay said he could agree with the comments only if there is a change in the text that would specify that the armed guard service is not imposed by the insurance company but by the transport company. He however, disagreed to considering the armed guard service as a handling cost and suggested to move the question to part III of the conspectus for the sake of efficiency of the Technical Committee.
107. The proposal was supported by Guatemala.

### Conclusion

108. The Technical Committee agreed to move this Specific Technical Question to Part III of the Conspectus and to be examined at a later time.

(e) Accumulated discounts in e-commerce sales –  
Request by Uruguay

Docs. VT1303Ea and VT1313Ea

Background

109. The Chairperson presented the question submitted by Uruguay, which the Technical Committee had agreed to examine as a Specific Technical Question at the 53<sup>rd</sup> Session. It concerns a discount in an e-commerce transaction using an IT platform. Seller XCO grants buyer ICO a discount in the form of a voucher generated in a previous sale, providing a special code to be used for a future purchase on the same IT platform. The facts relating to the question were set out in the Annex to working document VT1291Ea.
110. During the intersession, Uruguay forwarded to the Secretariat its analysis of the question, in which it presented the facts along with a corresponding final position. Uruguay's analysis was set out in the Annex to Doc. VT1303Ea, and the Members were invited to submit comments for inclusion in a working document to be examined by the Technical Committee at its 54<sup>th</sup> Session. No comments were received in response to Uruguay's proposals.

Summary of discussions

111. During the online discussion phase of the 54<sup>th</sup> Session of the TCCV, the question submitted by Uruguay on the "*accumulated discounts in e-commerce sales*" coming under Item V (e) on the Agenda was the subject of comments by China, Chinese Taipei, Uruguay, Israel, Peru, Indonesia and Brazil. Like other delegates, China sought further details and clarification on the six factual situations mentioned by Uruguay in the Annex to Doc. VT1303Ea and shared its thoughts on the technical issues associated with this question. It proposed adding another situation to those mentioned by Uruguay. The proposed situation concerned the "discount points" obtained from previous purchases which could be used to reduce a proportion of the payment for future purchases. Three new situations were also proposed by Israel Customs, the details of which would be incorporated into the other situations.
112. The various new situations presented as well as the previous ones set out in the Annex to Doc. VT1303Ea were analysed by the delegates. In some situations, the discount voucher could be regarded as a means of payment, that is to say, a fixed monetary amount which can be used for any subsequent transaction. Furthermore, it was important to clarify whether the seller operated on its own platform or that of a third party and whether the discount voucher

was granted by the seller or via the independent platform. Some delegates maintained that the analysis would differ depending on the situation involved.

113. After answering some of the requests for clarification made by the delegates, the Delegate of Uruguay voiced her support for adding the new situations proposed by China and Israel, even though she did not share the conclusions of one of those delegations. She also proposed removing factual situation No. 3 presented in the Annex to Doc. VT1303Ea since it did not reflect commercial reality.
114. During the hybrid meeting, Uruguay recalled that this question did not arise out of a real situation and was completely open-ended. Furthermore, it was for the Members to flesh it out with as many scenarios as possible in order to cover a broad range of possible situations. Israel suggested including the three situations it had presented during the online discussions in a document for more in-depth discussion at the next session. Israel's suggestion was supported by other Members, including China which, moreover, pledged to provide clarification on its proposed scenario to achieve the further clarity requested by various Members. The International Chamber of Commerce suggested whether this question might present the opportunity for the Technical Committee to revisit the scope of the discounts and, more specifically, the boundaries of their acceptability.
115. Following a number of requests for further information on the various scenarios, Uruguay reminded the Members that their assistance was requested in providing the additional information on the different scenarios based on their own experiences. The Chairperson echoed those remarks, confirming that the situations in question were a work in progress and the delegations were invited to contribute to those efforts. She suggested including the situations proposed by Israel and China in a document for examination at the next session.

#### Conclusion

116. The Technical Committee decided to continue discussions on this question at its next session on the basis of a document which would include the scenarios already proposed by some Members.

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

- (a) Valuation treatment of exclusive distribution fees: Request by Fiji

Doc. VT1314Ea

### Introduction

117. The Chairperson presented the new question submitted by Fiji during the intersession prior to the 54<sup>th</sup> Session. The facts pertaining to this question are set out in the Annex to working document VT1314Ea.
118. The question deals with an annual payment made by the buyer to the seller for exclusive distribution rights of trademarked products in the importing country's territory.

### Summary of discussion

119. Fiji took the floor to request the assistance of the Technical Committee in resolving this challenging case and looked forward to the adoption of an instrument.
120. A number of delegations supported the proposal to examine this case as a Specific Technical Question at the next session, which echoed the comments received from delegations on the CLiKC! platform during the online discussion phase.
121. The ICC proposed to make a presentation at the next session to introduce usual practice of private sectors in exclusive distribution agreement, which was agreed by the Technical Committee.

### Conclusion

122. The Technical Committee agreed to include this question on the Agenda of its 55<sup>th</sup> Session as a Specific Technical Question.

(b) Meaning of the expression "the price of the imported goods" according to paragraph 4 of the Interpretative Note to Article 1: Request by Uruguay

Doc. VT1315Ea

### Introduction

123. The Chairperson introduced this new question, submitted by Uruguay for consideration by the Technical Committee. The text concerning this question was set out in the annex to working document VT1315Ea.
124. This question stemmed from the 53rd Session of the TCCV when delegates had examined the question submitted by Mauritius concerning the Valuation treatment of ancillary charges in relation to Article 1 of the Agreement to determine whether this element should be part of the Customs value. In their analysis, they had referred to the price actually paid or payable for the imported goods.
125. It was highlighted that the expression “for the imported goods” is not precisely defined in the Agreement and many delegates supported a study on the scope of this expression under Article 1 and paragraph 4 of the Interpretative Note to Article 1 - price actually paid or payable - of the Agreement.
126. Uruguay had proposed a text for examination by the Technical Committee in the form of a Commentary, set out in the annex to Doc. VT1315Ea.
127. At this Session, the Technical Committee had to decide whether it accepted that it would examine the question as a Specific Technical Question.

#### Summary of discussion

##### **Online Discussion Phase**

128. During the discussion phase written comments on the text were received on the WCO’s CLiKC! platform from China, Japan, Bosnia and Herzegovina and the ICC. All Members including Bosnia and Herzegovina were favourable for the question to be upgraded as a specific technical question for examination at the next TCCV Session.
  129. China had posted an alternative text for consideration by the Technical Committee and Bosnia and Herzegovina had suggested to extend the scope of the question to include “related to the imported goods”. Japan had enquired about the possibility of discussing the commentaries in themselves after solving the Mauritius case. The Observer from ICC had suggested another approach in the examining of this question by establishing the relevant operating principles in a Commentary, which could then be followed by specific case studies. ICC had also submitted a historical review of paragraph 7 of Annex III.
- 26.

### **Virtual Phase**

130. During the virtual phase, the Delegate of Uruguay thanked China for its improved text. The Delegate of China thanked the Delegate of Bosnia and Herzegovina, who reiterated his proposal to extend the scope of the question as this extension would enable the Technical Committee to understand the concepts of payment for the imported goods and payment related to the imported goods under Article 1, paragraphs 1 and 4 of the Note to Article 1 of Annex I (Interpretative Note) and paragraph 7 of Annex III of the Agreement
131. The Delegate of Japan suggested completing the examination of the question of Mauritius first and to examine the question submitted by Uruguay subsequently as the Mauritian case could be a stepping stone to considering the concept of the price for the imported goods. The delegate also highlighted the different levels of knowledge by Customs about transfer pricing when the Commentary 23.1, and subsequently Case Studies 14.1 and 14.2, were adopted as compared to the level of knowledge by Customs on the price actually paid for the imported goods which has been examined since the early years when the Agreement was implemented.
132. Referring to Paragraph 66 of the Report of the 53<sup>rd</sup> Session of the TCCV, the Delegate of China highlighted that the Technical Committee had agreed that the question on the “price for the imported goods” would be a new question separate from the question submitted by Mauritius and the current issue would not affect how the new question would be handled. She also added that the focus on the new question would be on the general aspect while the focus on the Mauritian question is to apply the principles in a specific case. While understanding the reasoning of the proposal from the ICC, taking into account the number of sessions during which the Mauritian case had been examined, she considered that there was no reason to stop examining the question and suggested the realistic way was to proceed with both cases concurrently.
133. Several delegates supported the examination of this question as a Specific Technical Question.

### Conclusion

134. The Technical Committee decided to include this question as a Specific Technical Question to be examined at its next session.

**Agenda Item VII: OTHER BUSINESS**

(a) Presentation by the OECD – Inclusive framework on  
BEPS

Background

135. During the intersession, the OECD was invited to make a presentation regarding updates on the Inclusive Framework / Base Erosion and Profit Shifting.

Presentation by the OECD

136. The Observer from the OECD introduced the work of the OECD in the international tax area, in particular, the current activities of the Inclusive Framework (IF) on BEPS. He highlighted the BEPS Action Plan regarding Digitalization, which was launched in 2013, and the production of the Two-Pillar Solution in 2021 to address the tax challenges arising from the digitalization of the economy.
137. The Two Pillar Solution brought fundamental changes to international tax: Pillar One allows market jurisdictions to tax global companies even if they don't have a physical presence there, while Pillar Two sets a global minimum corporate tax rate of 15%. Developing countries were active during the negotiations and were expected to have a lot to gain if they can implement it effectively.
138. With regard to the implementation of the Two Pillar Solution, the OECD was working on instruments and guidance on Pillar One with a view to signing a multilateral convention on implementation of Amount A by mid-2022 and finalizing the work on Amount B by the end of 2022. An implementation package on Pillar Two was also under development.
139. Moreover, the Observer wished to draw attention to two focus areas in the implementation of the Two Pillar Solution, that is, VAT and tax incentives. For the former, the OECD was developing toolkits for different regions respectively; while for the latter, analysis would be made on the impact of Pillar Two on tax incentives offered by developing countries and how they could adjust their tax policy accordingly.

Discussion

28.



140. In response to questions from delegates regarding the impact of Two Pillar Solution on Customs valuation and whether the arm's length principle could still apply, the Observer from the OECD stated that Amount A of Pillar One relates only to the largest and most profitable companies, and the arm's length principle is still applicable for other companies. As to the impact on Customs, he was of the view that Two Pillar Solution, in particular Pillar Two, may lead private sectors to simplify their supply chain, as it is no longer profitable to use financial centres to allocate profits to low-tax jurisdictions.
141. When asked to what extent the transfer pricing rules could be used for Customs valuation purposes, the Observer commented that despite the fact that transfer pricing and Customs valuation are provided for in different frame works, transfer pricing principles could help Customs to determine whether the declared price is influenced by the relationship between the transaction parties.

#### Conclusion

142. The Technical Committee took note of the presentation by the OECD and the subsequent discussion.

#### (b) The WCO Trade Tools

##### Presentation by the Secretariat

143. The WCO Secretariat made a presentation on the WCO Trade Tools, the official platform developed by the WCO where Valuation, HS and Origin tools could be accessed by both Customs and traders to facilitate international trade.
144. The platform is a powerful tool which, inter alia, facilitates the work of actors within international trade to classify products, find applicable origin rules and consult the valuation decisions and tools. It thereby provides support to the exportation/importation of goods.
145. The Secretariat gave a live demonstration on how to access the WCO Valuation Compendium and to navigate through Article VII and the Agreement, Decisions, TCCV texts, Alphabetical index and Subject index.

146. Members were encouraged to sign up to the platform and it was noted that WCO Members can access reduced prices.

### Conclusion

147. The Technical Committee took note of the presentation by the Secretariat.

### (c) Templates for work programmes of WCO Working bodies

#### Background

148. At its 85<sup>th</sup> Session held in December 2021, the Policy Commission examined the WCO packages and their respective Action Plans and other work programmes and the WCO Strategic plan.
149. It was found that these programmes were all different in terms of their structure and time frames and were not aligned with the Strategic Plan. It had therefore been suggested that a corporate approach be defined to avoid duplication of effort, with a view to increase the accountability of working bodies and making sure that their activities were consistent with the WCO Strategic Plan.
150. This approach would also provide a potential way forward in addressing some of the red risks identified, such as the prioritization of topics and the lack of consideration of technical committees. The Policy Commission endorsed the template developed by the Secretariat for the work programmes.
151. The Secretariat had prepared an initial draft to assist the Technical Committee for its consideration. The activities were completed based on Annex II of the WTO Customs Valuation Agreement and the current work of the TCCV. This document can be found in Annex I to Doc VT1304Ea.

#### Discussion

152. The Deputy Director explained that the direction that is being taken is to move the work into work plans underneath the WCO working bodies. Each Committee will take on the ownership for what it is going to produce or endorse. She indicated that the way the
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Secretariat would support the work, for example, drafting the working documents and tools, would remain, but the Committee would have a clearer view of the processes as it would be deciding the work plan related to itself.

153. She added that as the implementation will take effect as from July 2023, there is still more time for the work plan to be endorsed by each relevant body before June 2023 but there is need to come up with an agreed package. The Tariff and Trade Affairs Directorate (TTA) has gone through each Committee including the Harmonized System Committee, RSC and Technical Committee on Rules of Origin's work plan and had prepared plans based upon their current rules of procedure, scope and other documents and is doing the same with the TCCV.
154. During the Discussion phase, the Delegate of Uruguay submitted the following three proposals for consideration by the Technical Committee:
- (a) Develop a "Thematic Meeting" at the TCCV on technical analysis of customs valuation, once a year or every two sessions.
  - (b) Present a report to the TCCV of (at least) one member on the progress in the application of the WTO Valuation Agreement, once a year or every two sessions.
  - (c) Submit a report to the TCCV from (at least) one member on a final court decision in their country on customs valuation, once a year or every two sessions.
155. At the virtual phase of the Session, the Delegate of the EU supported the adoption of the Template for Work Programmes of WCO Working Bodies, endorsed the activities undertaken as continuous process in Annex I of Doc. VT1304Ea and thanked the Delegate of Uruguay for his proposals for a more elaborate discussion in the next Session. The Delegate of Brazil supported the Work Programmes as well as the proposal to share judicial decisions which would be very helpful to Customs Administrations.
156. The Delegate of China referred to the responsibilities of the Technical Committee as listed in the WTO Customs Valuation Agreement which includes to examine technical questions and to provide guidance on valuation issues. She agreed with the EU that this Technical Committee is working on a continuous basis and with the template for activities undertaken as continuous process.
157. However, she drew the attention of the delegates about one element in the template which refers to the key performance indicators (KPI). She was concerned that if an input was

inserted in the template, it would mean that this item would be subject to a performance assessment by the Policy Commission. Referring to the second proposal of Uruguay, she felt that it would mean that we have to ensure that a Member presents its progress report on the implementation of the Agreement or else the Technical Committee will not pass the KPI and urged the Technical Committee to be cautious before adding a new element in the template. The Delegate of Guatemala supported the views of China with respect to the KPI.

158. The Deputy Director explained that in the recent past there was already a KPI for the TCCV based on the number of instruments adopted by the TCCV. However, this was not easily visible to the TCCV. The Secretariat added that in the template, it was up to the Committee how it drafted its KPIs and these could be formulated in a way suitable to the work. However, it was clarified that the template needed to be fully completed, including this field.
159. In response to an issue raised by the ICC, the Deputy Director replied that it was for the Technical Committee to decide whether it would include the experience sharing by other bodies if it decided to make experience sharing part of the outcomes in the template.

#### Conclusion

160. The proposals submitted by Uruguay will be included in the working document to be further examined by the Technical Committee at its next session.

#### Agenda Item VIII:

#### PROGRAMME OF FUTURE WORK

161. The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 55<sup>th</sup> Session:

- I. Adoption of Agenda/Suggested programme**
- II. Adoption of the Technical Committee's 54<sup>th</sup> Session Report**
- III. Reports on intersessional developments**
  - Director's Report
  - WTO Committee on Customs Valuation 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) Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius
- (b) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia
- (c) Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay
- (d) Accumulated discounts in e-commerce sales : Request by Uruguay
- (e) Valuation treatment of exclusive distribution fees: Request by Fiji
- (f) Meaning of the expression "the price for the imported goods" in accordance with paragraph 4 of the Interpretative Note to Article 1: Request by Uruguay

**VI. Questions raised during the intersession**

**VII. Other business**

**VIII. Election**

**IX. Programme of future work**

**X. Dates of next meeting**

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

162. The Secretariat informed the Technical Committee that the 55<sup>th</sup> Session of the Technical Committee on Customs Valuation is provisionally scheduled to take place from 17 to 21 October 2022.

**CLOSING REMARKS BY THE DIRECTOR**

163. The Director thanked all delegates for their contribution and interest in trying to resolve differences and reach consensus. He particularly thanked the Chairperson, Ms. Santa Marianela MARTE, for her excellent work during the session.
164. Quoting “what matters is the journey, not the destination” in Homer’s epic poem, the Director spoke highly of the experience shared by the delegates in the discussion phase even though the TCCV did not reach a consensus to adopt any instrument and encouraged them to contribute during this intellectual journey at the TCCV sessions. That being said, he remind that the destination is of course also important. Ultimately, legal instruments adopted by TCCV, enable Members to interpret and apply the WTO Customs Valuation Agreement uniformly and thus facilitate the international trade.
165. The Director noted that there will be six specific technical questions on the agenda of the next session, and invited the delegates to submit timely comments to enable the Technical Committee to examine the technical questions in an efficient and effective manner.
166. The Director concluded by thanking all the staff of the Secretariat, his colleagues in the Valuation Sub-Directorate, the translators, the interpreters and the technical staff for their support.

**CLOSING REMARKS BY THE CHAIRPERSON**

167. The Chairperson joined the Director to thank the delegates of the Technical Committee. She also extended her thanks to the Secretariat for its outstanding work and efforts to make sure that the Committee could held a hybrid session and discuss the technical questions online before the session .

168. She thanked the interpreters and technical staff for their great effort in supporting the Technical Committee throughout the session.

169. The Chairperson concluded her remarks by declaring the meeting closed.

S. M. MARTE  
Chairperson.

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REPORT BY THE WTO  
TO THE 54TH SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

21 MARCH TO 5 MAY 2022  
(BLENDED FORMAT)

The WTO last reported to the TCCV at its 53<sup>rd</sup> Session in October 2021. Following the TCCV meeting, the Committee on Customs Valuation (Committee) held its autumn formal meeting on 25 October 2021. The next formal meeting of the Committee will be convened on 17 May 2022.

### **Notifications**

The Committee reviews four 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. 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.14.

At the October 2021 meeting of the Committee, the Chairperson of the Committee (Mr Buddhi Prasad UPADHYAYA of Nepal) remarked on the continued encouraging trend in notification activity over the course of recent meetings of the Committee. He noted that, since the previous formal meeting in May 2021, notifications on customs legislation had been submitted by the following four Members: Benin, El Salvador, Iceland, and Viet Nam; and that responses to the checklist of issues regarding their customs legislation had been notified by the following three Members: El Salvador, the Gambia, and Guatemala. Since the fall meeting in 2020, there has been an increase of over 40% of the agenda items (from 24 to 34) concerning the national customs legislation of Members that remained under review pending exchanges of questions and responses before the Committee.

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.

### **Technical assistance and training**

The WTO Secretariat remains available to provide support for technical assistance and training on customs valuation matters to WTO Members. In 2021, modules on customs valuation were offered at three Regional Trade Policy Courses – to Arab and Middle Eastern Members in January 2021; to English-Speaking African Members and Observers in June 2021; and to Latin American Members in September 2021.

Written statements regarding situation in Ukraine

European Union

The European Union and its Member States condemn in the strongest possible terms the unprovoked and unjustified military aggression by the Russian Federation and the involvement of Belarus against Ukraine in this aggression. This unacceptable action undermines international security and stability. It is also a gross violation of the vision and values of the World Customs Organisation (WCO) and the European Union and its Member States wish to express their full solidarity with Ukraine and the Ukrainian people at this particularly serious time.

This condemnation is echoed and shared in many international organisations, most notably by the General Assembly of the United Nations, and it is important that the WCO also expresses its unequivocal rejection of violations of international law.

We therefore consider that all available options should be identified and pursued to limit and restrict the participation of the Russian Federation and Belarus in the work of the WCO until conditions are restored to ensure the territorial integrity, sovereignty and independence of Ukraine.

Japan

Japan would also like to express our full solidarity with Ukraine and the Ukrainian people, and echoes and support the statements made by the European Union, the United States, the United Kingdom, and Canada. We condemn in the strongest terms Russian Federation's acts of aggression.

**NON-PAPER**

**TECHNICAL ASSISTANCE/CAPACITY BUILDING ACTIVITIES**  
**UNDERTAKEN BY MEMBERS**

**Japan**

1. Japan has conducted technical assistance / capacity building activities online to enhance the knowledge of Customs Valuation / Post-Clearance Audit (PCA) and to support the implementation of the WTO Valuation Agreement.
2. The details of the technical assistance / capacity building activities, which Japan has carried out since the last session and is planning to implement by 29 April 2022, are listed below.

| <b>Period of dispatch</b>               | <b>Course</b> | <b>Recipient Country</b>                                      | <b>Number of Experts</b> |
|---|---------------|---|--------------------------|
| November 9, 2021 ~ November 11, 2021 *1 | Valuation     | Indonesia   | 6                        |
| March 11 and 18, 2022 *1                | PCA           | Myanmar   | 4                        |
| April 11, 2022 ~ April 14, 2022 *1      | Valuation     | Cote d'Ivoire   | To be Determined         |
| April 25, 2022 ~ April 29, 2022 *2      | Valuation     | Fiji, Papua New Guinea, Samoa, Timor-Leste, Tonga and Vanuatu | To be Determined         |

\*1 Scheme: Japan Customs

\*2 Scheme: JICA (Japan International Cooperation Agency)/WCO

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