

附件 4.DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE
55th SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES
ORGANIZACIÓN MUNDIAL DE ADUANAS

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1340Eb

-
55th Session
-

O. Eng.

Brussels, 21 October 2022.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON
THE 55th SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. The Chairperson, Ms. Santa Marianela MARTE (Dominican Republic), who presided the 55th Session of the Technical Committee on Customs Valuation from the WCO Headquarters, warmly welcomed all delegates, in particular those in attendance for the first time, to the virtual phase of this Session, which was held in a hybrid format from 19 September to 21 October 2022.
2. The Director of Tariff and Trade Affairs, Mr. Konstantinos KAIPOULOS noted that he was honoured and pleased to welcome the delegates, including both those who had travelled to the WCO Headquarters to participate physically at the 55th Session of the Technical Committee and those who had joined the Session via the Zoom Platform. He observed that the hybrid format allowed for a greater number of participants and also allowed for more transparency and rich debates and noted that 93 delegations were registered for this Session. He highlighted that many comments were made during the discussion phase on the six Specific Technical Questions; some of these comments suggest that the discussions had been well advanced and therefore he hoped that an instrument would be adopted at this Session.
3. In concluding, the Director thanked the Chairperson for her dedication and availability as she continues to serve the Technical Committee, which she was chairing for the fourth time.
4. The Chairperson invited comments from the delegates on the opening remarks and the Delegate of Ukraine made a statement regarding the situation prevailing in his country. The

Delegates from Canada, the European Union, Norway, the United Kingdom and the United States took the floor to express their concern with regard to the situation in Ukraine. The written statements and comments submitted are set out in Annex D to the draft Report.

Agenda Item I: ADOPTION OF AGENDA

(a) Provisional Agenda

Doc. VT1317Eb

5. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1317Eb, published on the TCCV Meeting page, and on the 55th TCCV Session Forum Group on the CLiKC! Platform and invited delegates to raise any point that they wished to discuss under item VII of the Agenda - Other Business.
6. There was no comment on this item of the Agenda.

Conclusion

7. The Technical Committee adopted the Agenda as proposed in Doc. VT1317Eb without amendment.

(b) Suggested programme

Doc. VT1318Ea

8. The Chairperson referred to Doc. VT1318Ea, which set out the suggested programme of work for the 55th Session prepared by the Secretariat. She noted that during the discussion phase, a proposal was made by the United States and supported by China to change the order of the presentation of the ICC in the programme.
9. The Delegate of the United States reiterated the suggestion made during the discussion phase to reschedule the presentation of the ICC on Exclusive Distribution Agreements under Agenda item VII (b) (Other business) to directly precede the examination of the question under item V (e) of the Agenda submitted by Fiji on Valuation Treatment of Exclusive Distribution Fees, scheduled for Wednesday 19 October, as it is believed that the discussion of item V (e) would be more fruitful if the presentation occurred first. However, it was

expressed that there was no preference as to which day should be scheduled for the two items. **The United States' suggestion was supported by China and received no objection. (China)**

10. The Chairperson proposed to move the presentation of the ICC to Wednesday 19 October before item V (e). The representative of the ICC agreed.

Conclusion

11. The Technical Committee approved the suggested programme as set out in Doc. VT1318Ea with the above amendment.

Agenda Item II : ADOPTION OF THE TECHNICAL COMMITTEE'S 54th SESSION REPORT

Doc. VT1316Ec

12. The Chairperson introduced this Agenda item, reminding the meeting of the procedure for the adoption of the Technical Committee's Session Report, approved by Members in the course of the 42nd Session.
13. During the intersession preceding the 55th Session, Bosnia and Herzegovina, Canada, China, the European Union, Japan, the United Kingdom, the United States and Uruguay had submitted their comments on the "a" version of the draft Report on the Technical Committee's 54th Session. 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. VT1316Eb.
14. In the "b" version of the draft Report, China pointed out two typing errors in the English version, which the Secretariat took into account. After the due date for receipt of comments, as set out in the procedure for the adoption of the Report, two comments were also made by Japan and the European Union on paragraphs 62 and 165, respectively. These amendments were included in Doc. VT1316b, and a revised Doc. VT1316b was published for the purpose of examination by the Technical Committee during the hybrid session.

15. The amendment proposed by the European Union was accepted by the Technical Committee. On the other hand, there were differing views within the Technical Committee on the amendment proposed by Japan. Japan demonstrated flexibility and withdrew its proposal for the amendment of paragraph 62, after which the Technical Committee was able to reach consensus on this Agenda item and to adopt the draft Report on its 54th Session. A “c” version of the Report will be published on the Members’ website and submitted to the Council for approval.

Conclusion

16. The Technical Committee approved the Report of its 54th Session, taking into account the amendment to paragraph 165 proposed by the European Union.

Agenda Item III: REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director’s Report

Doc. VT1319Ea

17. The Chairperson invited the Director to present the Director’s Report, contained in Doc. VT1319Ea. The Director summarized the key intersessional activities included in the document which relate to the following main topics:
 - (a) Policy Commission and Council Sessions
 - (b) Hybrid Meeting Sessions
 - (c) Technical Assistance/Capacity Building Activities
 - (d) Revenue Package
 - (e) Future activities of the Valuation Sub-Directorate
18. Under the Policy Commission’s and Council’s Sessions, the Director provided information to the delegates on the following:
 - (i) The official visit of HRH Princess Astrid of Belgium and the Deputy Prime Minister and Minister of Finance of Belgium, Mr. Vincent Van Peteghem, on the occasion of the Commemoration of the 70th Anniversary of the WCO and the tribute paid to the work of the WCO by Mr. Van Peteghem;
 - (ii) The Council’s approval of TCCV Reports and of Advisory Opinions 4.18, 4.19 and 24.1 adopted by the TCCV;

- (iii) The two adjustments to the work programme template for WCO bodies that were recommended by the Policy Commission and endorsed by the Council in relation to the harmonization and reporting of WCO work programmes;
 - (iv) The approval of the WCO Strategic Plan 2022-2025 and Implementation Plan 2022-2023 and the new focus areas namely technology and innovation, green customs and governance and accountability;
 - (v) The approval of the WCO Data Strategy which includes three building blocks, namely, data sharing, creating communities of practice, and assisting Members with their transition to data;
 - (vi) The annual review of the *E-Commerce Business Models* and *E-Commerce Stakeholders: Roles and Responsibilities* documents during financial year 2022/2023 and the endorsement by the Policy Commission of the 3rd edition of the *Compendium of Case Studies on E-Commerce*. On this occasion the Director encouraged Members to continue sharing their related case studies, best practices and initiatives, especially with respect to implementation of the E-Commerce FoS;
 - (vii) The work related to the WCO Green Customs Strategy carried out by the Secretariat and the integration of an ecological dimension into the activities of the WCO which continued to grow in recent years. Most recent examples include the Global Conference on Green Customs held on 27-28 June 2022, the ongoing Study on the implications for Customs administrations of the transition to a circular economy and the series of Greening the HS Symposia aiming at the identification of environmentally preferable or damaging goods.
19. The Director informed the Committee that a proposal to extend the meeting hours for hybrid meetings was examined and the extended hours will be tested in selected meetings and, if successful, it will be implemented on a case by case basis across other WCO meetings. Members will be updated on any changes to future meetings.
20. Regarding technical assistance activities, the Technical Committee was updated on the holding of a Pre-accreditation Expert Trainers on Customs Valuation Workshop for the MENA Region, which took place in Jeddah, Saudi Arabia in June 2022 with the support of the ZATCA.
21. Additionally the Director briefed the delegates about the outcome of the Revenue Package, as well as on future activities which included a Symposium on Customs Valuation and E-Commerce.

22. Several delegates took the floor to congratulate the Director for his clear and comprehensive report as well as its contents and the technical assistance activities undertaken by the Secretariat to support Member Customs Administrations. One delegate noted that the Technical Committee has already approved one instrument on e-commerce, and is currently examining another case related to e-commerce, ~~and proposed to cooperate~~ **advocated cooperation** on the data **exchange** strategy ~~related to e-commerce~~ and encouraged all Members to do so **in order to facilitate Customs value control (Uruguay)**. One delegate asked about the impact of green customs on Customs valuation. The Director responded to the issues raised by delegates in relation to his Report.

Conclusion

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

(b) WTO Committee on Customs Valuation Report

24. The Observer from the World Trade Organization reported on the work of the Committee on Customs Valuation (CCV), which held its spring meeting in May 2022 following the 54th Session of the Technical Committee on Customs Valuation. It was announced that the next formal CCV meeting, which was scheduled for October, will take place on 4 November 2022.
25. He reported that the Customs legislation of more than a third of the Membership was under the WTO CCV's review. Prior to the CCV meeting in May, more than a dozen notifications containing questions or responses regarding Customs legislation had been submitted by Members.
26. Moreover, the Chairperson of the CCV, at the meeting in May, explored with Members the possibility of organizing an experience-sharing session on the margins of upcoming meetings, which will allow Members to exchange experiences on a matter and will promote transparency and the sharing of best practices.
27. The written report from the WTO Secretariat is appended in Annex C to the draft Report.

Conclusion

28. 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

Docs. VT1320Ea and VT1329Ea

Background

29. In accordance with the Technical Committee's decision, the Secretariat had monitored the technical assistance/capacity building activities scheduled or delivered by Members and circulated the results to all Members, in order to provide them with useful information for planning purposes and to prevent duplication of effort.
30. In Doc. VT1320Ea, the Secretariat had invited the Members to submit information to it, no later than 5 August 2022, concerning their technical assistance activities. By that date, the Secretariat had not received any information about this from Members. Only information on the technical assistance/capacity building activities undertaken by the Secretariat is set out in the Annexes to Doc. VT1329Ea.

Summary of discussion

31. During the hybrid session, 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. VT1329Ea. She informed the Technical Committee that some Administrations, such as Japan, Uruguay and the United States, had provided information about technical assistance and capacity building activities delivered or scheduled to take place. At this point, she invited the Secretariat to summarize the situation.
32. The Secretariat brought it to the Committee's attention that a period is usually granted to Members to allow them to submit information about their technical assistance activities delivered or scheduled to take place during the intersession. Unfortunately, no information had been received by the due date. It was after the specified due date that the Secretariat

had received information from Japan and the United States about their technical assistance activities. Similarly, Uruguay had submitted information about a technical assistance activity carried out by the Regional Office for Capacity Building (ROCB) for the Americas and Caribbean Region. This information had been included in **Annex E to this Report and (Uruguay)** a non-paper and was made available to Members via the CLiKC! Platform.

Conclusion

33. As the Secretariat's report on this Agenda item did not give rise to any discussion by the Members, the Chairperson invited the Technical Committee to take note of this Report, the related working documents and the non-papers that would be annexed to this draft Report.

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

Docs. VT1321Ea and VT1330Ea

Background

34. Following the decision of the Technical Committee on Customs Valuation, the Secretariat had been monitoring progress with the application of the WTO Customs Valuation Agreement in various Member countries and had circulated updates on this subject.
35. During the intersession, the Secretariat had published Doc. VT1321Ea, 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.
36. Contrary to its announcement at the 54th Session, the Republic of Korea had informed the Secretariat during the intersession that, for internal reasons, it could not deliver its presentation on the experience of Korean Customs in the application of Articles 5 and 6 of the Agreement at this session. ~~Furthermore, no other Member had expressed an interest in giving a presentation on this Agenda item.~~ Peru expressed the wish to give a presentation at the 56th Session on the view of the Customs administrations of the Americas and Caribbean region on Customs valuation in the case of transactions carried out on the basis of fraudulent documents (Peru/Secretariat).

Conclusion

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

(c) Revenue Package

Doc. VT1322Ea

38. The proposed Work Plan for a Revenue Package Phase V was examined by the Working Group on Revenue Compliance and Fraud at its 8th Session in December 2021. In addition to promoting and applying existing tools developed under the previous phases of the RP and assessing their effectiveness, the proposal included 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.
39. The Policy Commission had discussed and endorsed a common template for the work programmes of WCO working bodies at its 85th Session in December 2021. The objective was to replace the action plans related to the WCO Packages by work programmes applicable to all WCO working bodies, in order to bring consistency to the approach and make working bodies accountable for their programmes efforts.
40. The template was revised in light of the recommendations of the Policy Commission at the 86th Session, which were endorsed by the Council at its 139th/140th Sessions in June 2022. The revised template is set out in the annex to Doc. VT1339Ea.

Conclusion

41. 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. VT1323Ea and VT1331Ea

Background

42. The Chairperson recalled that this question had been the subject of discussions in the Technical Committee since its 49th Session, following its submission by the Mauritius Customs Administration. It concerned ancillary charges which had been included in a second invoice issued by the supplier to the buyer in respect of the importation of goods, but which had not been included in the Customs value of those goods in the Customs declaration.
43. At its 54th Session, the discussions had continued on the basis of the updated version of the draft Advisory Opinion, forwarded by Mauritius during the intersession, which reflected the different views expressed by the delegates during the previous sessions. To facilitate discussion during the hybrid meeting phase, a single document summarizing the various amendment proposals had been drawn up and presented to the Technical Committee. As proposed by some delegates, and in order to give delegations more time for reflection and analysis with regard to this new draft Advisory Opinion, the Technical Committee had decided to defer its examination to the following session.
44. During the intersession preceding the 55th Session, the Secretariat had published in the Annex to working document VT1323Ea the new draft Advisory Opinion that the Technical Committee had started to examine during the 54th Session. The Members had been invited to examine the document and submit their written comments. In response to Doc. VT1323Ea, and as promised at the 54th Session, Canada had duly forwarded its written comments on the draft Advisory Opinion. Uruguay likewise had submitted its written comments to the Secretariat. All these comments are set out in the Annex to working document VT1331Ea.
45. In its comments, Canada had stated that it could agree to the conclusions of the draft Advisory Opinion and had likewise agreed with some changes proposed by Technical Committee Members. Canada went on to express its proposed changes to the draft Advisory Opinion, as set out in the Annex to Doc. VT1331Ea. In its comments, Uruguay had thanked the delegations which had made contributions regarding the draft Advisory Opinion and stated its position on the editorial proposals for paragraph 6.

Summary of discussion

46. During the online discussion phase on the CLiKC! Platform, which was attended virtually by many delegations, all the speakers had supported the amendments to the draft Advisory Opinion proposed by Canada and set out in the Annex to Doc. VT1331Ea and were hoping that the Technical Committee would reach a consensus on this technical question.
47. Uruguay proposed making a slight change to paragraph 4 as well as splitting it into two paragraphs, as it was quite long. China concurred with Canada on the editorial changes to paragraphs 4 and 7 and recalled that it had expressed similar opinions at previous sessions. Like other delegations, China agreed with Uruguay's proposals. While voicing its support for the Members' various amendments, the Brazilian Delegation proposed a rewording of paragraph 5 in the light of its split so as to avoid the repetition of certain expressions.
48. Amendments to paragraph 7 had been proposed by the United States, in particular concerning the insertion of a new phrase into the text of Canada's version of the draft Advisory Opinion that Uruguay had improved. China approved of this alternative wording for paragraph 7 proposed by the United States, which aims to explain further the reasoning provided in support of the conclusion. However, it queried whether some information in the second sentence should ~~not~~ (China), in fact, be mentioned first in the factual considerations before being analysed in this paragraph.
49. Canada pointed out that it was in overall agreement with the various comments and drafting proposals made during the discussion phase on the CLiKC! Platform and felt that a consensus on one instrument could seriously be envisaged during this session of the Technical Committee. To that end, Canada agreed with Japan and suggested that a new draft Advisory Opinion incorporating the various drafting amendments proposed by the Members during the online discussion phase should be produced and made available to the delegates for ease of reference and discussion during the work of the hybrid meeting phase.
50. The Chairperson held discussions with a number of delegations during the consultation phase in order to reconcile the different positions and thus pave the way for achieving a consensus. All the delegations consulted stated that they could demonstrate flexibility with a view to obtaining consensus and, ultimately, the adoption of an instrument.

51. In accordance with some delegates' wishes, the Secretariat had drawn up a draft Advisory opinion incorporating the various amendments to the text proposed by the Members during the online discussion phase. This new draft Advisory Opinion would serve as a basis for discussion during the work in the hybrid meeting phase.
52. The Chairperson reminded the Members that, during the online discussions, the delegates had reached a consensus, meaning that they could expect to have a new instrument during the session. She went on to invite the Delegates of Canada and Uruguay to explain to the Technical Committee the reasons underlying the changes made to the text in the written comments which they had forwarded to the Secretariat during the intersession and which are set out in the Annex to Doc. VT1331Ea.
53. Addressing the meeting, Canada reaffirmed its support for the document's conclusions and presented the various changes it had made to the text. It gave the reasons for the various amendment proposals and said that it agreed, give or take a few minor details, with the amendments to paragraph 7 proposed by the United States during the online discussions. The Delegate of Uruguay thanked the Secretariat for its efforts to supply the Technical Committee with an updated document incorporating Uruguay's proposed changes set out in its written comments as well as the amendment proposals that other delegations had made during the online discussion phase.
54. The document's examination began with Uruguay's substantive concern regarding the factual considerations of Programme I. Uruguay noted that the term "imported goods", referring to the free goods obtained under Programme I, was highly ambiguous and that a solution needed to be found. The delegates considered this to be a drafting issue. At the end of the discussions, the Technical Committee reached a consensus on the rewording of the whole of paragraph 1 of the document so as to ensure coherence in the factual considerations and alignment of the different language versions. The wording of paragraphs 2 and 3 was also amended slightly. In the light of those developments, the question of the treatment of free goods and other gifts obtained when the conditions are met was raised by one Member which, to resolve the issue, proposed adding a further paragraph to the document.
55. As regards paragraph 5, consensus was reached on the version of the text stemming from the comments by Canada which had been improved. The sentence added by the United States to paragraph 7 had to be changed to achieve consensus on the text. Views were

divided within the Technical Committee on the information contained in that sentence. While some delegates considered that the information derived from the factual considerations, others thought that it comprised elements of analysis. However, Mauritius did not support any change in the factual considerations of the technical question. Efforts all round had made it possible to produce a form of wording that was satisfactory to everyone. New paragraph 8 proposed by China had its wording rearranged in order to improve its content, thus making it possible to bring the examination of the question to a close.

56. The collective efforts of all parties allowed the Technical Committee to reach consensus on a final text for the draft Advisory Opinion relating to the specific technical question submitted by Mauritius. **The Secretariat proposed to adjust the format of the new instrument to a two-paragraph format, following most of the existing Advisory Opinions, with paragraph one giving a description of the facts and paragraph two giving the views of the Technical Committee. China drew the attention to Advisory Opinion 4.16 which contains 13 paragraphs, indicating some Advisory Opinions have adopted a format with more than two paragraphs. Canada supported China's proposal to keep the instrument as it was, with multiple paragraphs, as it will be easy to make reference to. ICC indicated that instruments with longer texts would support further numbering, which appeared to be a recent trend. The Director suggested that the Secretariat carry out a study to provide another template, to ensure the ease of reference. (China)**

Conclusion

57. The Technical Committee accordingly reached a consensus and completed its examination of the question submitted by Mauritius and entitled "*Valuation treatment of ancillary charges in relation to Article 1 of the Agreement*". A new instrument, namely Advisory Opinion 25.1, was thus adopted by acclamation and would be submitted to the Council for approval; **it is attached to this Report as Annex F (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. VT1324Ea and VT1332Ea

Background

58. The Chairperson reminded delegates that the Technical Committee had agreed, at its 49th Session, to examine this question submitted by North Macedonia as a Specific Technical Question. The matter concerned the valuation treatment of the transportation costs relating to the return of empty carriages that had been used in the transportation of imported goods.
59. During the previous sessions, the Technical Committee was confronted with a lack of information on the factual considerations needed to determine whether the costs paid for the return of the empty carriages can be considered as a further transport cost after importation of the goods in accordance with paragraph 3 (b) of the Interpretative Note to Article 1, or as the cost of transport of the imported goods to the port or place of importation in accordance with Article 8.2 (a) of the Agreement. In order to address this situation and avoid moving the question to Part III of the “Conspectus of Technical Valuation Questions”, some delegates proposed, during the 54th Session, broadening the scope of the factual considerations. North Macedonia had no objection to this approach.
60. To that end, the Technical Committee agreed to broaden the scope of the factual considerations of the question. Accordingly, the scenario presented by North Macedonia would be considered as a baseline scenario, alongside the two situations proposed by Uruguay and the scenario put forward by China. Those different scenarios were set out in the Annex to working document VT1324Ea, and the Members were invited to submit their views and written comments.
61. During the intersession preceding the 55th Session, the Secretariat received replies from the Administrations of Japan, Uruguay and China. In its comments, Japan Customs gave its appraisal of Scenario 3 set out in the Annex to Doc. VT1324Ea. In Japan’s view, it was necessary to have reference to paragraph 3 (b) of the Interpretative Note to Article 1 in order to improve analysis of that scenario. Meanwhile, Uruguay invited the Technical Committee to determine from among the options proposed by Uruguay and China the scenario to be explored in order to deal with this technical matter, since the scenario proposed by North Macedonia did not follow any commercial logic. China Customs, on the other hand, provided details concerning Scenario 3. As regards Scenarios 1 and 2, it considered that it was also necessary to provide additional information to facilitate increased insight into the facts.
62. During the intersession, North Macedonia again expressed its thanks to the Technical Committee for agreeing to examine this question concerning an issue that is especially

important for its Administration. It confirmed that it had no further information to add to that already provided other than to state that the seller made the purchase of the goods conditional on the payment of the costs relating to the return of the empty carriages. Furthermore, it hoped that, by taking up the option of considering several possible scenarios, Members would be in a position to bring this question – examined over a number of sessions already – to a conclusion during the current session.

Summary of discussion

63. Many delegations had played an active part in the online discussions concerning this question. Uruguay informed the Technical Committee that it did not support the treatment of the scenario presented by North Macedonia, since it lacked any commercial logic. North Macedonia responded by stating that there was no commercial logic in an importer committing itself to unnecessary costs and expenses when it was not obliged to do so. It added that, as per its previous comments, the exporter required payment of the cost of transport relating to the return of carriages as a condition of the transportation of the goods on the grounds that trade flows between the two countries were insignificant. Based on the explanations provided by North Macedonia, Uruguay agreed that this scenario no longer lacked commercial logic and was similar to the scenario presented by China.
64. Brazil supported the scenario proposed by Uruguay, according to which the requirement to pay the cost of returning the empty carriages was imposed by the transport company. In Brazil's opinion, regardless of whether one or two invoices were issued, an adjustment should be made in accordance with the provisions of Article 8.2 of the Agreement. Similarly, Brazil agreed that the scenario proposed by North Macedonia, according to which the requirement to pay transport costs was imposed by the seller as a condition of sale of the goods, was similar to the scenario presented by China. In the case of these two scenarios, the costs of returning the empty carriages should be included in the price actually paid or payable under Article 1 of the Agreement, paragraph 1 of the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement.
65. In response to the arguments put forward by Japan, Brazil agreed that the costs "after importation" mentioned in paragraph 3 (b) of the Interpretative Note to Article 1 referred to the costs of transport incurred within the national territory. Conversely, the scenario proposed by China referred to the costs incurred with a view to being able to transport the goods ~~within to the importing country importer's territory~~ (China). If the transport costs

relating to the return of the empty carriages were not paid, there would be no transport at all, and so it was impossible to make a distinction between these costs and the broad concept of transport. In other words, this was a condition imposed by the seller before importation, without which it would not be possible to sell the goods.

66. In Canada's opinion, regardless of whether the requirement to pay the costs relating to the return of the empty carriages was imposed by the seller or by the transport company, it was evident that they were transport costs. Given that the return of the empty carriages was a transport movement that took place after arrival at the port or the place of importation, the related costs therefore constituted costs of transport after importation. As a result, in accordance with Article 8.2 (a) and paragraph 3 (b) of the Interpretative Note to Article 1, these costs should not and could not be included in the Customs value; this position was also supported by Japan. Canada noted that the provisions of the Agreement were very clear and prohibited the inclusion of these costs of transport after importation in the Customs value, regardless of whether or not they constituted a condition of sale. The only situation where these costs could be included in the Customs value would be a situation where these costs had already been included as part of the price actually paid or payable, but could not be distinguished from the latter.
67. The European Union then carried out an analysis of the three scenarios that had been proposed, and concluded that, if the cost of transport relating to the return of empty carriages was distinguished from the price actually paid or payable for the imported goods, it would not be included in the Customs value under paragraph 3 (b) of the Interpretative Note to Article 1 of the Agreement.
68. Based on the comments made by Members during the online discussions, two virtually irreconcilable positions could be identified. Some Members concurred with the opinion put forward by Uruguay, China and Brazil; conversely, others supported the position held by Japan and Canada. A debate took place between China and Canada in the form of comments exchanged between the two countries propounding differing interpretations of the provisions of paragraphs 6 and 7 of Commentary 9.1, but a uniform interpretation was not reached.
69. During the hybrid meeting, the Chairperson invited North Macedonia and the delegations that had submitted written comments during the intersession to explain to the Members of the Technical Committee the reasons behind their comments.

70. Uruguay noted that several delegations had outlined their positions on this question during the online discussion phase. It had not been possible, however, to reach a consensus on the matter on the basis of these discussions, since views differed **widely-substantially and were diametrically opposed (Uruguay)**. Given that it was unlikely that the delegates would change their minds, Uruguay believed that there were two avenues open to the Technical Committee with a view to resolving the problem. The matter could be put to the vote, or the question could be moved to Part III of the “Conspectus of Technical Valuation Questions”. Uruguay subsequently added that a third option would be to continue examining this question at the next session of the Technical Committee. Uruguay’s proposal to move this question to Part III of the “Conspectus of Technical Valuation Questions” in Customs was supported by the other delegations.
71. China acknowledged that the question submitted by North Macedonia was extremely interesting, and that, even though opinions differed within the Technical Committee, the delegates had been able to engage in mutually beneficial discussions. In view of the fact that the Members of the Technical Committee had not managed to reach an agreement, China proposed that consideration should be given to the option of moving this question to Part III of the “Conspectus of Technical Valuation Questions”.
72. Canada confirmed the position it had outlined in its written comments and reiterated during the online discussions held via the CLiKC! Platform. While acknowledging the differences of opinion on the question, Canada believed that the drafting of an instrument on this question would be extremely useful for Members and the private sector, and that it would be a shame to have to discontinue the examination of this matter; nevertheless, it was prepared to accept the consensual decision adopted by the Technical Committee. Norway concurred with Canada’s opinion.
73. Uruguay reminded the delegates that the time for presenting matters of fact had passed, and that it was now time to decide whether to continue examining this question, whether to proceed to a vote or whether to move the question to Part III of the “Conspectus of Technical Valuation Questions”, given that, in spite of the lengthy discussions that had taken place since the question had been raised, opinions remained fundamentally opposed.
74. The United States reminded Members that the Technical Committee had always operated on the basis of consensus. It would therefore be more appropriate to discontinue the

examination of this question and to move it to Part III of the “Conspectus of Technical Valuation Questions” on a consensual basis. The position put forward by the United States was backed by China, Guatemala, the United Kingdom and the European Union.

75. ~~The delegate of China opined that the commercial practice concerning the return of empty carriages seemed to be connected with “Shipper Owned Container” the use of which became more frequently since the outbreak of COVID-19. She suggested that the Technical Committee could put off taking a final decision on the question until they had heard further presentation from the ICC, as another option (China).~~ The observer from the International Chamber of Commerce (ICC) proposed giving a presentation on transport-related matters if so desired by the Technical Committee, taking into account their broader context. ~~She suggested to the Members of the Technical Committee that they should put off taking a final decision on the question until they had heard this presentation. China backed the ICC’s proposal, and proposed that the Technical Committee should not take a final decision on the question until it had familiarized itself with the ICC’s presentation (China).~~ Uruguay expressed doubts regarding the impact of this presentation, since the disagreement between the delegates resulted from differing interpretations of the provisions of the Agreement rather than from contextual factors linked to transport-related questions. It was therefore unlikely that the ICC’s presentation would alter the situation. In the interests of efficiency on the part of the Technical Committee, Uruguay proposed that the question submitted by North Macedonia should be moved to Part III of the “Conspectus of Technical Valuation Questions”.
76. The Chairperson proposed to the Technical Committee that this question be moved to Part III of the “Conspectus of Technical Valuation Questions”. This did not prevent the ICC from making its presentation on the broader context of transport-related matters if it wished to do so. The Chairperson’s proposal was supported by Uruguay, the European Union and Guatemala.

Conclusion

77. The Committee agreed to move this Specific Technical Question to Part III of the “Conspectus of Technical Valuation Questions” with a view to its possible re-examination at a later date.

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

Docs. VT1325Ea and VT1333Ea

Background

78. The Chairperson presented this question submitted by Uruguay, which the Technical Committee had agreed at its 53rd Session to examine as a Specific Technical Question.
79. The question, as originally submitted, 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.
80. At the 54th Session, some delegates were of the opinion that the royalties in this case might be examined in accordance with Article 8.1(c) or (d). Another opinion raised was that this could be a transfer pricing case in which case further information would be needed to consider whether the relationship between the seller and the buyer has influenced the price.
81. During the intersession, Uruguay proposed that the facts of the case be changed so that the importer (ICO) is not related to the licensor (ZCO) or the seller (XCO), which could focus the Technical Committee's examination of the case exclusively on the **Customs valuation of the transaction regarding distinctive signs, rather than on the possible impact of the relationship between the buyer and seller on the price of the imported goods and the application of the transfer pricing arrangements (Uruguay).**

Summary of discussion

82. Regarding amendments to the facts of this case, Argentina, Brazil, China, Dominican Republic, the European Union, Mexico and the United States submitted comments during the online discussion phase in support of Uruguay's proposal.

83. The Technical Committee agreed during the virtual session to continue the discussion of this case on the new facts proposed by Uruguay where the ~~seller and the buyer are importer is~~ unrelated ~~to~~ but the seller and the licensor are related (Uruguay).
84. Regarding the valuation treatment of the 4% fee in this case, during the virtual session the United States expressed the view that it should be considered as royalties and licence fees under Article 8.1(c) of the Agreement as it is described in the contract as a payment for rights, rather than as further payment for the goods themselves.
85. The view of the United States' was echoed by Japan and Dominican Republic, and was consistent with comments made by a number of Delegations during the online discussion phase with the exception of Uruguay, who was of the view that the 4% payment should be analysed under Article 8.1(d).
86. Brazil opined that all conditions of the application of Article 8.1 (c) were met in this case; therefore the 4% fee should be included in the Customs value of the imported goods, while the European Union, though supporting examining this payment under Article 8.1 (c), was of the opinion that whether these conditions are fulfilled should be further discussed.
87. After discussion, the Technical Committee agreed to examine this case pursuant to Article 8.1(c) of the Agreement.
88. China expressed its concern on the scope of the sub-licensing contract between ZCO and ICO. Although it has been stated in this case that the 4% payment is made for the right to use the distinctive signs, know-how and technical assistance, it might also cover the right to use the trademarks of the licensor, which is common in commercial practice, especially when the trademark is attached to the imported goods as in this case.
89. Taking into account comments and observations of Members, Uruguay proposed to prepare an updated draft by the next session with the contribution of relevant delegations, so that the Technical Committee could proceed with the discussion of this case on the basis of a ~~concrete~~ document with other facts (Uruguay).

Conclusion

90. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 56th Session.

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

Docs. VT1326Ea and VT1334Ea

Background

91. At its 53rd Session, the Technical Committee agreed to include this question submitted by Uruguay as a Specific Technical Question to be examined at its next session. The question concerns discounts for an e-commerce transaction on an electronic platform. The facts of the case were set out in the Annex to working document VT1291Ea.
92. During the intersession preceding the 54th Session, Uruguay worked with the Secretariat and submitted its analysis of the question, set out in the Annex to working document VT1303Ea. Uruguay proposed six factual situations designed to illustrate the question under consideration.
93. At the 54th Session, Uruguay responded to requests from delegates for clarification on those factual situations. New situations were proposed, one by China and three by Israel. The Technical Committee therefore agreed to incorporate the new situations into those set out in the Annex to Doc. VT1303Ea and continue the discussions on the basis of that new document. In the meantime, Uruguay suggested removing factual situation No. 3 presented in that Annex since it did not reflect commercial reality.
94. During the intersession preceding the 55th Session, in collaboration with Uruguay, the Secretariat drew up a new document setting out Uruguay's five factual situations, to which it added the proposal from China and the three proposals from Israel. The delegates were invited to submit their comments to the Secretariat.
95. In response to working document VT1326Ea, the Administrations of China and Uruguay submitted their written comments to the Secretariat; these comments are set out in the Annex to Doc. VT1334Ea. In its comments submitted to the Secretariat, Uruguay stated that it agreed with the scenario proposed by China and suggested changes to the scenarios

proposed by Israel, in particular under “final position to be adopted by consensus”. In its written comments, China revised the factual situation it had proposed because of its similarity to one of the situations proposed by Uruguay. It also suggested adding two columns to the table set out in the Annex to Doc. VT1326Ea, allowing further information to be presented and thus widening the discussion.

Summary of discussions

96. During the online discussion phase of the 55th Session of the Technical Committee, the Administrations of China, Indonesia, Israel, Mexico and Uruguay, and the European Union exchanged views on the question raised on the CLiKC! Platform. Uruguay announced that it was removing factual situation No. 5 in order to promote consensus in the Technical Committee. The Delegation of Israel provided clarification on factual situations No. 8 and 9 in the light of the written comments from China and Uruguay included in the Annex to Doc. VT1334Ea. In its comments, the European Union expressed the view that, in order to decide on the treatment of accumulated discounts on transactions on an electronic platform, the situation needed to be analysed in depth, looking at the nature of the discounts and the role and functions of the various actors on the platform. The European Union reminded the Technical Committee of the need for a cautious approach to the treatment of free shipping discounts for the purposes of Customs evaluation, as described in factual situations No. 8 and 9 in the Annex to Doc. VT1326Ea. China pointed out that, according to previous discussions, many Technical Committee instruments were very relevant to the discussion of this issue. It also considered that an understanding of those relevant instruments could improve some of the justifications for the “final position to be reached by consensus”. In its comments, Indonesia stated its views on factual situations No. 7, 8 and 9 in the light of Advisory Opinions 15.1 and 16.1.
97. During the hybrid meeting, Uruguay agreed that the scenario proposed by China was very relevant and provided an accurate reflection of a situation in e-commerce. As regards the addition of two columns to the table listing the eight scenarios, Uruguay was of the opinion that it was for the Technical Committee to assess the relevance of the information that these would contain and to decide accordingly. It also took the view that it was not important to indicate whether the discount was provided by the seller or the platform, since the result was the same. China, on the other hand, considered it important to be aware of the factors determining the discount and the party providing it. Having agreed that factual situation No. 7 proposed by the Administration of Israel was relevant, Uruguay explained that the reason for

removing factual situation No. 5 was that it referred to a general situation whereas the question related to specific situations.

98. As methodology for further work on this issue and in the light of the previous discussions on CLiKC!, Uruguay proposed that the order of the various scenarios be considered in detail before returning to the questions of form proposed by China. The Members of the Technical Committee approved that proposal through the Delegates of Brazil and Guatemala.
99. As regards factual situation No. 1, the Technical Committee had not managed to reach agreement on the retrospective effect of the discount. Whereas Uruguay maintained that the scenario was covered by Advisory Opinion 8.1 under the heading of retrospective discounts, the United States, supported by Canada and the European Union, took the view that it was difficult to link that scenario to Advisory Opinion 8.1. Given the differences of opinion on the scenario, Uruguay proposed that it be removed from the list. The International Chamber of Commerce (ICC) was of the opinion that factual situation No. 1 could be resolved on the basis of Advisory Opinion 15.1 as a discount for a product promotion policy. It therefore proposed that the Committee should continue its discussion at the next meeting before taking a decision. The ICC proposal was endorsed by the United States.
100. The Administration of Israel drew the attention of the Technical Committee to the relevance of factual situation No. 1, which related to the amount of the next purchase and the value of the voucher. This could lead to an absurd situation in which the second purchase had little or even no or negative value when the voucher was used. Israel therefore proposed to the Technical Committee that the scenario should be considered in more detail before a decision was taken. In view of the proposals for further consideration of factual situation No. 1 at the next session, the Chairperson agreed to that suggestion and invited delegates to move on to factual situation No. 2.
101. The Technical Committee agreed with Uruguay that the issue in factual situation No. 2 was similar to that in factual situation No. 1, the only difference being that the amount in the first case was fixed, whereas in the second case it was a percentage. That scenario could be combined with factual situation No 1 for further discussion at the next session.
102. Uruguay maintained that factual situation No. 3 was different from the previous two scenarios and that the facts indicated that this was a quantity discount as a percentage of the amount of future purchases, obtained on the basis of cumulative purchases in previous transactions.

Uruguay was of the opinion that this was a situation to which Article 1.1 (b) could have applied if it had not already been covered by Advisory Opinion 15.1. The Administration of Israel pointed out to the Technical Committee that, in e-commerce, it was important to distinguish between commercial and non-commercial operations, since the conditions for application of the Technical Committee instruments might or might not be satisfied depending on which of those situations applied. Consequently, the Delegate of Israel would maintain that that scenario was similar to factual situations No. 1 and 2. The Chairperson would point out to Israel that the Agreement covered both commercial and personal transactions. The Technical Committee agreed to the Uruguayan proposal for examination of that scenario also to be postponed to the next session.

103. Uruguay proposed that its analysis of factual situation No. 4 be postponed to the next session as well as that of factual situation No. 3. Uruguay took the view that the decision for that scenario was exactly the same as for factual situation No. 3 in that the commercial effect was the same. It was only the factual considerations that differed. One scenario concerned a percentage discount, whereas the other related to access to a more favourable price list. The Chairperson would conclude that factual situations No. 3 and 4 were to be combined in the same way as factual situations No. 1 and 2 and considered further at the next session.
104. Since Uruguay had proposed removing factual situation No. 5, the Technical Committee went on to discuss factual situation No. 6 proposed by China. After outlining the facts on which the scenario was based, the Chairperson invited China to speak and provide any clarification that might be needed. China explained that, compared with the other factual situations, this discount took the form of a fixed sum or a number of points to be used for future purchases. Given the position in the discussions of the other factual situations under consideration, China wished to amend the factors in factual situation No. 6 and add further information, particularly as regards the conditions for granting the discount. China also considered that all the factual situations should be revised in order to make them clearer and more precise. The ICC suggested that the revised wording of factual situations No. 6 and 7 should state clearly that a point was awarded for each currency unit spent. That would make it easier to decide on the treatment of the various discounts for purposes of Customs valuation. Uruguay endorsed the view of China in regard to factual situation No. 6 and the ICC proposal. The Technical Committee then went on to consider the next factual situation.
105. Having outlined the considerations on which factual situation No. 7 was based, the Chairperson invited Israel, which had proposed it, to provide further explanations. The

Delegate of Israel stated that this was a marketing policy designed to attract new buyers. Any buyer introducing a new buyer was given a code or voucher that could be used once for a future purchase. An unlimited number of vouchers could be collected, depending on the number of buyers proposed. Uruguay and Guatemala supported that scenario, which was appropriate in current circumstances, and were in favour of its being considered at the next session. Brazil was of the opinion that that scenario was much more complex than it appeared and it should be amended as China had suggested in order to clarify it.

106. On the subject of factual situation No. 8, the Delegate of Israel stated that he had already commented on factual situations No. 8 and 9 in the online discussions on CLiKC! Platform in response to a concern expressed by China and Uruguay. He pointed out that the main issue was whether the discount was reasonable and in line with the relevant commercial practice and whether the promotion did not significantly affect the value of the transaction. Responding to the comments by the Delegate of Israel, Uruguay expressed doubt as to whether it was appropriate to state that the discount needed to be “reasonable”, in that that was a subjective view. Uruguay was of the opinion that factual situations No. 8 and 9 covered the same ground and they should be considered together when deciding on Customs value. The Observer from the ICC fully agreed with Uruguay and stressed that, even if the application of the Agreement was still based on commercial practice, a price should not be rejected on the grounds that it was not consistent with what might be considered reasonable (see Advisory Opinions 2.1 and 23.1). Côte d’Ivoire and Norway endorsed the position of Uruguay and the ICC.
107. In regard to factual situation No. 9, the Chairperson of the Technical Committee summarized the underlying factors and pointed out to Members that the Delegates of Israel and Uruguay had already referred to that situation during the discussion of factual situation No. 8. Uruguay indicated that it was prepared to discuss this factual situation further at the next session. Israel gave an assurance that factual situations No. 8 and 9 would be revised to take account of the Technical Committee comments.

Conclusion

108. The Chairperson then closed the discussion on this item on the Agenda for the 55th Session of the Technical Committee. The question would be further discussed at the next session on the basis of a document incorporating the amended wording of the various scenarios.

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

Docs. VT1327Ea and VT1335Ea

Background

109. The Technical Committee agreed at its 54th Session to include this question on the Agenda of its 55th Session as a Specific Technical Question.
110. 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. The facts pertaining to this question are set out in the Annex to working document VT1314Ea.
111. During the intersession prior to the 55th Session, the Secretariat published Doc.VT1327Ea inviting comments from Members. Written comments were received from China and Uruguay, which are set out in Annexes I and II to Doc. VT1335Ea.
112. Responses received from Fiji to Members' comments and questions raised during the 54th Session are reproduced in Annex III to Doc. VT1335Ea.

Summary of discussion

113. During the online discussion phase, comments were received from China, Indonesia and Mexico. China compared the facts of this case and the one submitted by Singapore at the 32nd Session, pointing out the differences between these two cases. Indonesia and Mexico opined that the exclusive distribution fees could be categorized as royalties and examined under Article 8 of the Agreement.
114. Fiji had not attended the virtual session to provide further information and clarifications that delegates deemed necessary to proceed with the examination of this case. Therefore the Technical Committee agreed to keep this question on the Agenda for further discussion at its 56th Session.

Conclusion

115. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 56th Session.

(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

Docs. VT 1328Ea and VT1336Ea

Background

116. The Technical Committee agreed to examine this question submitted by Uruguay at the 54th Session as a Specific Technical Question.

117. The question refers to the expression “for the imported goods” which is not precisely defined in the Agreement and 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.

118. Uruguay had submitted a draft text in the form of a Commentary for consideration by the Technical Committee at the 54th Session. The draft text was reproduced in the Annex to Doc. VT1315Ea.

119. Since the draft Commentary proposed by Uruguay focusses only on paragraph 4 of the Interpretative Note to Article 1, China proposed another draft Commentary taking into account the provisions of paragraphs 1 and 4 of the Interpretative Note to Article 1 and paragraph 7 of Annex III. Delegates agreed to consider the proposed text of China, annexed to Doc. VT1328Ea, when examining the question at the 55th Session.

120. During the intersession prior to the 55th Session, Uruguay suggested adding a new paragraph to the draft Commentary submitted by China to include a table with a number of situations as examples to illustrate and provide greater clarity. The table of examples is set out in the Annex to Doc. VT1336Ea.

Summary of discussion

121. The Delegates of Brazil, China, Mexico, the European Union and the United States shared their written observations on the CLiKC! Platform during the discussion phase. The Delegate of the United States proposed a change in the title of the question which was supported by China. The United States proposed the following title: “The Meaning of Expression ‘For the Goods’ in the Context of Payments under Article 1”, while China suggested “The meaning of expression 'for the imported goods' **and the considerations for determining PAPP in relation to Article 1**” (China) as a substitute title.
122. Clarification on the meaning of the term “vice versa”, as used in its proposed Commentary and in the sentence “generally speaking, a payment for the acquisition of the imported goods from the seller must be a condition of sale of imported goods imposed by the seller, and vice versa”, was provided by the Delegate of China.
123. The delegates proposed that the term “the price for the imported goods” should be interpreted together with the other provisions of the Agreement and the instruments adopted by the Technical Committee. The European Union suggested to examine each example on a case by case basis.
124. The Delegate of Brazil suggested changing the format of the table to include two additional columns : (i) ‘Is it included in the price actually paid or payable Yes or No’ and (ii) ‘Provisions of the Agreement’ , to facilitate the understanding of the information.
125. Regarding the examples enumerated in the table, the view was expressed that it would be more helpful to include those that are not addressed in the Agreement and TCCV instruments. Thus, China proposed to delete the examples numbered 2,3,5,6, 9 and 10 in the table which pertain to Article 8 and scenarios as have been examined in previously adopted instruments.
126. China and the United States agreed with the suggestion made at the 54th Session to begin the analysis by first articulating the factors or considerations to be applied in determining whether a payment is 'for the goods' before proceeding to an examination of specific fact patterns.

127. During the virtual phase, the Technical Committee agreed with the proposal from the United States to modify the title of the question and remained divided between the proposals of China and the United States for the title. The European Union opined that both titles may work depending on the content of the final document and suggested to put both proposals into brackets and work on the text, after which the title could be decided. The United States agreed with the proposal of the European Union and added that after concluding its work on the text, the Technical Committee may then decide on an appropriate title from these two or, if the scope has changed, to decide on another title. The Technical Committee agreed.
128. As to the method to be applied in proceeding with the examination of the question, whether to start with examining the examples in the table or the factors and principles to be considered in determining whether the payment is for the goods, the Technical Committee agreed to start with the examination of the factors and principles.
129. In her intervention, the Delegate of China explained the background of this question submitted by Uruguay, which started with the question submitted by Mauritius, and the draft Commentary it proposed. She added that the purpose of this question is to analyse the meaning of the terms “for the goods” and “related to the goods” as well as the principles for determining the price actually paid or payable, which are essential when determining the Customs value. A possible interpretation of these terms suggested by China could be found in the draft Commentary.
130. She thanked the ICC for the document it previously shared during the discussion phase of the 54th Session providing a historical perspective of the WTO Customs Valuation Agreement and its Annex III related to **the analysis of (China)** the question on ancillary charges.
131. She noted that at paragraphs 1 and 4 of the Interpretative Note to Article 1, reference is made to the term “for the imported goods” whereas in paragraph 7 of Annex III the term ‘condition of sale’ was included to further amplify, as emphasised in Commentary 20.1 and Case Study 6.1, the meaning of the price actually paid or payable. She opined that this inclusion was made purposely by the designers of the Agreement to provide a broader concept of the price actually paid or payable and added that the different scopes of interpretation provided in paragraphs 1 and 4 of the interpretative note to Article 1 and paragraph 7 of Annex III could be a dilemma in the uniform interpretation of the Agreement.

132. The Observer from the ICC, referring to its document shared at the 54th Session and forwarded to the Secretariat during the virtual phase of the 55th Session, underscored the importance of the proper interpretation of the Agreement to determine the Customs value. The document included a couple of examples to illustrate when a payment is for the goods and when a payment made by the buyer is not related to the goods and not dutiable. The observer proposed to contribute further in the examination of this question by providing additional examples to the existing list during the intersession. The document provided by the ICC during the virtual phase is appended in Annex G to this draft Report.
133. Considering the dilemma mentioned by China and the division of work provided in the Agreement, the Delegate of the European Union invited the delegates to think over whether it is the task of the Technical Committee or the Committee on Customs Valuation to provide guidance when examining fundamental concepts and intention when the Agreement was negotiated. The Delegate also reiterated the written comment that the expression “the price for the imported goods” as referred in paragraph 4 of the Interpretative Note to Article 1 of the Agreement should be interpreted in the context of other relevant provisions of the Agreement, i.e., the provisions of paragraph 1 of the Interpretative Note to Article 1 and paragraph 7 of Annex III to ensure a coherent approach and avoid a narrow interpretation.
134. The Delegate of Uruguay opined that the TCCV has the mandate to ensure the uniform interpretation of the provisions of the Agreement as provided in its Annex II and agreed with the suggestion of the Chairperson to continue the examination of the question together with the inputs from the ICC at the next session.

Conclusion

135. The Technical Committee agreed to continue the examination of the question at the 56th Session.

Agenda Item VI : QUESTIONS RAISED DURING THE INTERSESSION

- (a) Meaning of the expression "in substantially the same quantities" according to Articles 2 and 3 and the respective Interpretative Notes to those Articles : Request by Guatemala

Introduction

136. During the intersession prior to the 55th Session of the Technical Committee, the Customs Administration of Guatemala forwarded to the Secretariat a question for consideration by the Technical Committee on Customs Valuation at its 55th Session.
137. The question is about the meaning of the expression “In substantially the same quantity” as referred to in Articles 2 and 3 and in the corresponding Interpretative Notes of Annex I to the WTO Customs Valuation Agreement.
138. At the 55th Session, the Technical Committee was invited to decide whether it would raise the status of the question as a Specific Technical Question to be examined at a future session.
139. The text of the case and proposed Commentary submitted by Guatemala were set out in Doc. VT1337Ea.

Summary of discussion

140. The Delegate of Guatemala provided the reasons why this question was raised to the Technical Committee, which included the development of a definition with objective criteria to interpret the expression “in substantially the same quantity” in applying Articles 2 and 3 of the Agreement to ensure a uniform interpretation, as well as certainty and transparency.
141. During the discussion phase, China, Chinese Taipei, Philippines and Uruguay submitted their written comments.
142. As the term ‘substantially in the same quantity’ is not defined in the Agreement, those who commented during the discussion phase were of the opinion that it would be laudable to try to define the concept and provide a uniform interpretation. However, fixing a specific percentage might not be realistic given the dynamic commercial conditions and practices observed.
143. During the virtual phase the United States supported the comments of the Delegate of Brazil who observed that trade practices and market conditions are so diversified that it would not be practical to finalise on a fixed percentage. The Delegate of Brazil also reminded that the

Agreement uses this expression to allow flexibility in its application and looking for a rigid definition would not be proper. She added that the term “substantially” is also used in Article 1 (a) (iii) and considered that when examining this term, reference should be made to this provision also. The Delegate of the United States opined that a case by case analysis similar to the format of Explanatory Note 1.1 could be considered and agreed to continue the examination of the question at the next session as suggested by Brazil and Uruguay, not on the basis of a percentage range applicable for all goods and in all circumstances, but on factors that could be considered in determining what constitute substantially the same quantity, taking into account the nature of the goods and pricing practices.

144. The Observer from the ICC pointed out that in the French version of the Agreement , unlike the English version, there are two different words used for this term, that is, “*substantiellement*” and “*sensiblement*” in Article 1 (a) (iii) and Articles 2 and 3 respectively.
145. There was no objection to put the question as a Specific Technical Question in the agenda of the next session.

Conclusion

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

(b) Treatment applicable to transactions agreed in cryptocurrency units:
Request by Uruguay

Doc. VT1338Ea

Introduction

147. The Chairperson presented this new question submitted by Uruguay during the intersession prior to the 55th Session.
148. The question deals with Customs valuation treatment of imported goods when the price is based on cryptocurrency units. A draft Advisory Opinion was submitted by Uruguay for consideration by the Technical Committee, which is set out in the Annex to Doc. VT1338Ea.

Summary of discussion

149. During the online discussion phase, comments were received from a number of Delegations in favour of examining this case as a Specific Technical Question at the next session in view of the rise of digital payments.
150. Guatemala, at the virtual session, supported examining this case at the 56th session as it addresses a new tendency at the global level and is a relatively new issue for Customs. Côte d'Ivoire also expressed this view.
151. Dominican Republic stated that it had also encountered cases where payments were made in cryptocurrency, and expected a thorough discussion of this issue with the contribution of Members, especially those who have accepted cryptocurrency as a legal currency.

Conclusion

152. The Technical Committee agreed to include this question on the Agenda of its 56th Session as a Specific Technical Question.

Agenda Item VII: OTHER BUSINESS

(a) Theme Meeting

Background

153. The Technical Committee has arranged a number of Theme Meetings in the past. Typically, one or more themes are selected which are of interest and relevance to a range of Members and consist of presentations by Members and Observers, followed by panel discussions.
154. The most recent Theme meeting which was originally scheduled for the 50th Session was postponed because of the COVID-19 pandemic and was held at the 52nd TCCV Session. The two topics of the Theme Meeting were: a) Post Clearance Audit and b) The issues in the application of Article 7 of the WTO Customs Valuation Agreement. Côte d'Ivoire, Japan and

the ICC delivered presentations on the first topic, while presentations on the second were made by Japan, China and the ICC.

Discussion

155. The Chairperson invited the Technical Committee to consider whether it would like to hold a Theme Meeting at its 57th Session. If yes, the item “Theme Meeting” would be included in the agenda of the next session to determine the specific topics and the duration of the Theme Meeting.
156. Uruguay drew the Committee’s attention to the time constraints of the TCCV session when considering whether to hold a Theme meeting, noting that it would be difficult to find a time slot for the Theme Meeting during a three-hour per day meeting assuming a hybrid format session at the 56th Session.
157. Guatemala supported to hold a Theme Meeting at the 57th TCCV Session, which was echoed by Brazil. Brazil further proposed e-commerce as a topic of the meeting in view of the challenges it poses to Customs.
158. Noting the importance of the Theme Meeting, as well as Uruguay’s concerns on the time constraints, China suggested that “Theme Meeting” be included in the agenda of the 56th Session inviting Members’ proposal on the topics, and the Theme Meeting be held at the 57th Session provided that, by then, sufficient time could be allocated.

Conclusion

159. The Technical Committee agreed to include an item on “Theme Meeting” in the Agenda of the next session with a view to holding the Theme Meeting at its 57th Session.

(b) Presentation by the ICC on Exclusive Distribution Agreement

Background

160. At the 54th Session, during the discussion of item VI (a) “Valuation treatment of exclusive distribution fees”, the ICC proposed to make a presentation at the 55th Session to introduce

the usual practices of the private sector in exclusive distribution agreements, which was agreed by the Technical Committee.

Presentation by the ICC

161. The Observer from the ICC began his presentation by introducing the concepts of “distribution right”, “distribution agreement” and “exclusive distribution agreement”, as well as common provisions that might be included in such agreements.
162. The right to be an exclusive distributor is, in principle, more valuable than the right to be one of several distributors as expenditures for brand building would accrue 100% to the benefit of the exclusive distributor. As to the value of the Exclusive Distribution Right (EDR), it would depend on the “upside potential” of the brand in a specific market.
163. The Observer also addressed within his presentation several questions that may be related to Customs valuation, such as determination and calculation of the exclusivity fee, as well as its connection with the sale of goods.
164. The exclusivity fees would be determined through negotiation in transactions between unrelated parties, and would be settled within transfer pricing framework in the event of related party transactions.
165. With regard to the amount of the exclusivity fee, the Observer stated that there is no standard type of consideration for it, and it is not always related to imports. He highlighted that when an exclusivity fee is fixed, the fee is due regardless of the volume of products purchased for distribution.
166. As for the sale of goods, the distributor can continue to purchase and resell the goods in the territory in the event that the right to be the exclusive distributor is terminated, as long as the right to be a non-exclusive distributor remains in place.
167. In addition, the Observer acknowledged that EDR fees could be bundled with other rights granted by the brand owner to the distributor, such as marketing IP or advertising content that may be utilized in market to build brand.

Discussion

168. The Observer added that in general, companies would try to identify and separate the value drivers in transactions to seek corresponding compensations, which applied to EDR as well as other value drivers.
169. When asked whether it is a common practice to require the exclusive distributor to spend a minimum expenditure on brand building in the domestic market, the Observer responded that it is possible and the exclusive distributor will benefit more from this expenditure than non-exclusive distributors.
170. In response to a question regarding how to identify the price paid for the EDR when it is bundled with other rights granted by the brand owner, such as the right to use the trademark, the Observer stated that it is not an easy task to determine the price paid for each right in such cases. He also added that if the payment for exclusivity is separately invoiced, failure to pay it would not result in the loss of the right to sell the goods, and should not have an impact on the price of the imported goods.

Conclusion

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

(c) Templates for work programmes of WCO Working bodies Doc. VT1339Ea

Background

172. At its 85th Session, held in December 2021, the Policy Commission examined the WCO packages and their respective Action Plans and other work programmes of WCO Working bodies in relation to the WCO Strategic Plan.
173. 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 increasing the

accountability of working bodies and making sure that their activities were consistent with the WCO Strategic Plan.

174. 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 model template developed by the Secretariat for the work programmes of WCO Working bodies.
175. Following these developments, the Secretariat had prepared an initial draft of the TCCV work programme template to assist the Technical Committee for its consideration at the 54th Session. The activities were completed based on Annex II of the WTO Customs Valuation Agreement and the current work of the TCCV. The draft document was annexed to Doc VT1304Ea.
176. Uruguay proposed three additional activities to be added to the annex at the 54th Session and delegates suggested to closely examine these proposals at the 55th Session.
177. At its June 2022 Session, the Council endorsed the conclusions and recommendations of the Policy Commission regarding two adjustments, namely a requirement for 100 % alignment of working bodies' activities with the content of the Strategic Plan, instead of the 90 % initially proposed, and the reinstatement of a "priority ranking" column for the activities of the working bodies in the template.
178. In response to recommendations from the Policy Commission as endorsed by the Council, the template was revised. The changes are shown in red colour for ease of reference and include a column for priority ranking. The updated revised template with the proposals from Uruguay is set out in the Annex to Doc.1339Ea for consideration by the Technical Committee.

Discussion

179. At the virtual phase of the Session, the delegates examined the following three proposals submitted by Uruguay:
 - (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.

180. The Delegate of China thanked Uruguay for the proposals and reiterated her concerns about the addition of the additional activities in the template which includes a KPI column. She invited the Technical Committee to be cautious when deciding whether to include these activities in the template as her concern would be how to practically ensure that this commitment is converted into action.
181. The Delegate of the European Union agreed to the addition of the Theme Meeting, which provides members with an opportunity to explore a given subject, in the template and opined that there should be some flexibility regarding the proposed frequency. He added that the current system is working well and theme meetings can be organized taking into consideration the demand, the busy agenda of the meetings as well as the complexity and questions in the agenda. He believed that the report to the TCCV by a member on the progress in the application of the Agreement could be maintained on a voluntary basis. He, however, found it unjustified to include a report on a court decision in the template and referred to existing instruments of the TCCV that serve this purpose, such as the Index of Reference materials, but which has to be updated by Members regularly. He added that the European Union has developed its own Compendium on Customs Valuation which includes instruments it has adopted and also a chapter listing the rulings taken by the European Court of Justice relevant to Customs valuation.
182. The Delegate of Uruguay agreed to be flexible and invited the European Union to give a presentation on its rulings which were found to be very useful. The suggestion to prolong and double the timeline was accepted. However, in order to ensure that there is commitment by members to present their implementation of the Agreement, the Delegate of China suggested to develop a mechanism/rules to ensure commitment.
183. Taking into consideration the time it takes to organise a Theme Meeting, Canada supported a proposal of the Secretariat to organise a Theme Meeting every three years, to include the report by Members on their implementation of the Agreement every two years after a schedule is agreed and to drop the report on court decisions. Uruguay, China, Mexico, Peru, the United Kingdom and the European Union supported Canada's suggestion and China

asked to include in the agenda of the next session an item regarding the setting up of a mechanism/rule to present a report on the implementation of the Agreement.

Conclusion

184. The Technical Committee adopted the template under continuous activities the following three activities and KPIs:
- Examine specific technical issues, problems and give advice,
KPI : Adoption of new instruments out of number of proposals considered in the period of the work plan to date;
 - Develop a "Thematic Meeting" at the TCCV on technical analysis of Customs valuation,
KPI : Once every three year;
 - Present a report to the TCCV of (at least) one member on the progress in the application of the WTO Valuation Agreement,
KPI : Once every two years.

Agenda Item VIII: Elections

185. The Chairperson reminded the Committee of the procedure to be followed for the election before handing over this exercise to the Secretariat. According to the provisions of Annex II of the Agreement, the Technical Committee will elect from among the delegates of its members a Chairperson and two Vice-Chairpersons. The elected Chairperson and Vice-Chairpersons will hold office for one year and are eligible for re-election.
186. The Director, before starting with the election, thanked the outgoing Chairperson for her experience, knowledge and ability to get a consensus to allow the adoption of a new instrument at the 55th Session. He also thanked the two outgoing Vice Chairpersons who have being very active in helping the work of the Committee by making constructive proposals and facilitating the debates.
187. The Director declared open the procedure for the election of the Chairperson and the two Vice-Chairpersons of the TCCV. He called for nominations for the above positions.
188. Ms. Santa Marianela MARTE of the Dominican Republic was nominated by the Delegate of the United States for Chairperson. The Delegate of Mauritius seconded this proposal and Ms. Marte was elected Chairperson by acclamation.

189. Ms. Qianyu LIN of China was nominated by the Delegate of the European Union as Vice-Chairperson. The Delegate of Uruguay seconded this nomination. Ms. Lin was elected as Vice-Chairperson by acclamation.
190. Mr. Yacouba Meite of Cote d'Ivoire was nominated by the Delegate of China as Vice-Chairperson. The Delegate of Guatemala seconded this nomination. Mr. Meite was elected as Vice-Chairperson by acclamation.
191. The elected Chairperson and Vice Chairpersons accepted their elections.

Agenda Item IX: PROGRAMME OF FUTURE WORK

192. The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 56th Session:

I. Adoption of Agenda/Suggested programme

II. Adoption of the Technical Committee's 55th 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

- Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay
- Accumulated discounts in e-commerce sales : Request by Uruguay
- Valuation treatment of exclusive distribution fees: Request by Fiji
- 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
- Meaning of the expression "in substantially the same quantities" according to Articles 2 and 3 and the respective Interpretative Notes to those Articles : Request by Guatemala
- Treatment applicable to transactions agreed in cryptocurrency units: Request by Uruguay

VI. Questions raised during the intersession

VII. Other business

- Theme meeting
- Mechanism to ensure Members’ report on the progress in the application of the WTO Customs Valuation Agreement

VIII. Programme of future work

IX. Dates of next meeting

Agenda Item X: DATES OF NEXT MEETING

193. The Secretariat informed the Technical Committee that the 56th Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 2 to 5 May 2023.

CLOSING REMARKS

194. The Chairperson thanked all the delegates for their participation in this very productive session as well as the Secretariat for their work and huge efforts in making the working documents available, including the interpreters and the supporting staff. She ended by congratulating the two elected vice Chairpersons and thanked the delegates for giving her

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the opportunity to be the Chairperson of the Technical Committee for another one year before officially closing the session.

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**REPORT BY THE WTO
TO THE 55TH SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION**

17-21 OCTOBER 2022

The WTO last reported to the TCCV at its 54th Session in May 2022. Following the TCCV meeting, the Committee on Customs Valuation (WTO CV Committee) held its spring meeting on 17 May 2022. The next formal meeting of the WTO Committee is provisionally scheduled for 24 October 2022.

The WTO CV Committee reviews four types of notifications pertaining to Member customs legislation, 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.15.

Spring Meeting of the WTO Committee

At the May 2022 meeting of the WTO Committee, the Chairperson (Mr Buddhi Prasad UPADHYAYA of Nepal) remarked on the continued uptick in notification activity over the course of recent meetings of the WTO CV Committee. He noted that, since the previous formal meeting in October 2021, notifications on customs legislation had been received from Bolivia and Georgia, and that more than a dozen notifications containing questions or responses regarding customs legislation had been submitted by Members. He further remarked that, with 36 items on the agenda, the customs legislation of more than a third of the Membership was presently under the WTO CV Committee's review.

In addition, the Chairperson explored with Members the possibility of organizing an experience-sharing session on the margins of upcoming meetings of the WTO CV Committee. He remarked on the usefulness of these sessions in the work of other WTO committees, which allowed Members to exchange experiences in a matter that promoted transparency and the sharing of best practices.

As always, the WTO Secretariat wishes to acknowledge the positive contribution of Members of the TCCV to the work of the WTO CV Committee and appreciates their work in encouraging the submission of customs legislation notifications as well as responses to questions raised by Members in relation to that 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 and a further such module was delivered to Asia and Pacific Members in June 2022.

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Written statements regarding situation in Ukraine

Statement of Ukrainian delegation

Dear Chair, Colleagues

I recall the Statement of Ukraine on military actions of the Russian Federation and the Republic of Belarus, which damage Customs operations and disrupt global Customs cooperation submitted to the Council. The Council considered the Statement and condemned any acts of aggression on Customs borders and called on enhancement of Customs cooperation. Everybody supported the conclusions by acclamation.

Regardless of this, we continue observing an unprecedented and unjustified military attack on Ukraine by the Russian Federation. Today we have 236 days of war. This seriously affects the ability of Ukrainian Customs to operate as usual.

We relied on the unity of Customs family and we hoped that the Council conclusions would contribute to stopping the war unleashed by Russia. We regret to say that Russia and Belarus continue the war. The matter is not closed. This means that these two countries do not care about other Members, they do not care about Customs checkpoints, and they do not care about the whole world.

We would like to stress that the war conducted by Russia is not consistent with the values promoted by the World Customs Organisation: Customs cooperation, efficiency of Customs procedures and facilitation of trade.

The war unleashed by Russia results in: destruction of Ukraine's customs borders; ruining Ukraine's customs infrastructure; undermining security at borders; promoting illicit trafficking of goods, cultural property and weapons; disruption of global trade supply chains.

Russia is escalating the war. On 21 September 2022 president Putin announced additional mobilization to army and continued nuclear blackmail of the world. Past Monday and today the Russian army conducted massive missile strikes targeting residential areas and critical infrastructure in many cities across Ukraine including Kyiv. There were numerous casualties among the civilian population. In many regions there were interruptions in power and water supplies and communication.

We call on to the WCO and all Members to demand that Russia and Belarus follow conclusions of the Council, withdraw troops from Ukraine, observe international law and the UN Charter, respect Ukrainian Customs borders and sovereignty.

We thank all our partners for strong support and assistance to Ukraine. We refer to Joint Statement to the World Customs Organization on the aggression against Ukraine issued by nearly 50 countries on 20 May 2022.

Annex D to Doc. VT1340Eb
(VT/55/Oct 2022)

On 12 October 2022 the UN General Assembly adopted a resolution condemning illegal annexation by Russia of a number of Ukrainian territories – 143 votes in favor with only 5 votes against.

We hope for the solidarity of all members.

Thank you for your attention.

The European Union

The EU and its Member States recall the June 2022 WCO Council Conclusions on the Statement by Ukraine on “Military Actions of the Russian Federation and the Republic of Belarus, which damage Customs operation and disrupt global Customs cooperation”. The Conclusions call all WCO Members to recognize the importance and untouchability of Customs checkpoints even in conflict situations, to condemn acts of aggression that endanger the safety and security of Customs and border officials, to facilitate the movement of essential humanitarian goods and to enhance cooperation between WCO Members to this end.

As EU and its Member States, we reiterate our severe condemnation of today’s still ongoing unjustified and unprovoked Russian military aggressions against the independent country and WCO Member Ukraine and we consider the resulting disruptions of Customs work and global supply chains as incompatible with the June 2022 WCO Council conclusions.

Japan

Japan would also like to express our full solidarity with Ukraine and the Ukrainian people, and echo and support the statements of our partners made by the European Union , the United States, the United Kingdom, Canada, and Norway.

Canada

As noted in the May 20th Joint Statement to the World Customs Organization on the aggression against Ukraine, Canada strongly condemns President Putin’s unjustifiable, unprovoked and illegal invasion of Ukraine, with the involvement of the Belarusian regime.

The unprovoked attack by the Russian Federation has unnecessarily disrupted the stability and integrity of the international standards we develop here in the World Customs Organization, has harmed the global economy, and has seriously threatened the harmony of global customs cooperation.

In addition, President Putin’s military mobilization and nuclear threats represent an irresponsible and dangerous escalation in his illegal war.

As such, we call on Russia to cease its aggression against Ukraine and its flagrant violations of international law.

The United States

The United States stands in solidarity with the people of Ukraine and condemns in the strongest possible terms Russia's unprovoked and unjust war of choice, which is supported by Belarus. This unprovoked attack by the Russian Federation has unnecessarily disrupted the stability and integrity of the international standards we develop here in the WCO, threatens the recovery of global trade, and seriously impacts the harmony of global customs cooperation. We call on Russia to immediately cease its war of choice against Ukraine, which is having wide-ranging and profound impacts to the customs community around the globe.

The United Kingdom

The United Kingdom thanks Ukraine for its intervention. The invasion of Ukraine is an outrageous violation of international law and strikes at the very heart of international cooperation, whether on Customs matters or anything else. Business as usual with countries that take part in such a gross violation of the principles of the United Nations is simply not possible. We stand in full solidarity with Ukraine.

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Non-Paper

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

1. In working document VT1320Ea, the Secretariat invited Members to provide information, no later than 5 August 2022, on their technical assistance and capacity building activities which have been carried out since the last session of the Technical Committee or are planned during the period up to 14 October 2022, so that this information could be conveyed to the membership.
2. On 30 August 2022, Uruguay provided information about a technical assistance activity organized in Spanish by the Regional Office for Capacity Building (ROCB), for the Customs administrations of the Americas/Caribbean region.
3. On 21 September 2022, the Secretariat received information about the technical assistance/capacity building activities conducted online by Japan to enhance knowledge of Customs valuation/post-clearance audit (PCA) and to support implementation of the WTO Valuation Agreement.
4. On 22 September 2022, the United States provided information about two online technical assistance activities for Honduras, Guatemala and El Salvador.
5. Details on the technical assistance/capacity building activities carried out by the ROCB (Uruguay), Japan and the United States since the last session and planned up to 14 October 2022 are set out, respectively, in the tables below. This information will be included in a future Technical Committee working document on this Agenda item.

Information provided by Uruguay (ROCB)

Period	Recipient Countries	Subject	Location	Number of Experts
18 August to 14 October 2022	16 Offices in the Americas/Caribbean region	Regional Workshop on Customs Valuation	Virtual Workshop ROCB platform (38 participants)	3

Information provided by Japan

Period	Course	Recipient Country	Number of Experts
16 May 2022 ※1	PCA	Myanmar (Republic of the Union of)	1
24 May 2022 ~ 25 May 2022 ※2	PCA	Philippines	3
27 May 2022 ※1	PCA	Myanmar (Republic of the Union of)	2
6 June 2022 ~ 9 June 2022 ※2	Valuation	Republic of the Congo	7
6 June 2022 ※1	PCA	Myanmar (Republic of the Union of)	1
10 June 2022 ※1	PCA	Myanmar (Republic of the Union of)	3
17 June 2022 ※3	Valuation	Pacific Islands (Papua New Guinea (PNG), Oceania Customs Organisation (OCO) (Fiji), Samoa)	3
10 August 2022 ※3	Valuation	Pacific Islands (Timor- Leste, Fiji)	3
26 September 2022 ※3	Valuation	Pacific Islands (Tonga, Vanuatu)	3

※1 Scheme: Japan International Cooperation Agency (JICA)

※2 Scheme: Japan Customs

※3 Scheme: JICA/WCO

Information provided by the United States

Period	Recipient Countries	Subject	Location	Number of Experts
23 to 26 May 2022	Honduras, Guatemala and El Salvador	Best Practices: Benefits of Implementing Inclusive Public Consultation Mechanisms – Supporting Honduras to Strengthen its	Hybrid from Tegucigalpa, Honduras	1

		Customs Valuation Practices	(20+ participants)	
8 to 11 June 2022	Honduras, Guatemala and El Salvador	Advance Rulings Best Practices Part III – Revocations, Modifications, Appeals and Effective Customs Coordination (including Customs Valuation)	Hybrid from Tegucigalpa, Honduras (20+ participants)	1

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VALUATION TREATMENT APPLICABLE TO ANCILLARY CHARGES

1. ICO, a company located in country I, buys and imports goods from an unrelated foreign seller XCO at a specified price.

(i) XCO offers different programmes to ICO against payment, as follows:

a) Programme I

Under the “**savings program charges**” programme, if the buyer purchases a predetermined minimum quantity of imported goods over a given time period, the seller provides the buyer a certain number of the same goods for free.

If the importer opts to join Programme I, a fixed additional amount per unit of the imported goods becomes payable. This amount is not refundable whether or not the purchasing target is met.

b) Programme II

Under this programme termed as “**club charges**”, hotel packages and gifts are offered to importers, depending on purchasing targets fixed by the seller in a given period of time. If the importer opts to join this programme, the latter pays an additional amount per unit of the imported goods. This amount is not refundable whether or not the purchasing target is met.

(ii) An additional fee referred to as “**currency surcharge**” is charged by the seller per unit of the imported goods to all importers. This fee enables the seller to maintain the price of the product with regards to any change that might occur in the forex market. The currency surcharge remains payable even if ICO does not join Programmes I and II.

The savings program charges, club charges and currency surcharge referred to as “Ancillary Charges” by the seller are charged on a separate invoice to ICO.

(i) In the event ICO opts to join Programmes I and II, should “savings program charges” and “club charges” be included in the Customs value of the imported goods?

(ii) On the other hand, irrespective of whether or not ICO opts to join Programmes I and II, should the “currency surcharge” be included in the Customs value?

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

According to paragraph 1 of the Interpretative Note to Article 1 (Price actually paid or payable) , the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. Likewise, paragraph 4 of the Interpretative Note to Article 1(Price actually paid or payable) states that “The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value”. Paragraph 7 of Annex III of the Agreement further provides that “The price actually paid or payable includes all payments actually made or to be made, as a condition of sale of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy

an obligation of the seller.”

In this case as presented, the savings program charges and club charges are payable only if the buyer opts to join Programmes I and II. These payments are not made for the imported goods but for the possibility to obtain free units of same goods or gifts or hotel packages when specific purchasing targets are met. Furthermore, the buyer may still purchase the goods at the same specified price and on the exact same commercial terms regardless of whether the buyer opts into either program. As such, the savings program charges and club charges are not paid for the imported goods, as provided in paragraphs 1 and 4 of the Interpretative Note to Article 1 (Price actually paid or payable), nor is the payment of these charges a condition of sale of the imported goods as provided in paragraph 7 of Annex III. Accordingly, the savings program charges and club charges should not be included in the “price actually paid or payable” under Article 1.

Article 8.4 of the Agreement states that no additions shall be made to the price actually paid or payable in determining the customs value except as provided in that Article. Since savings program charges and club charges cannot be regarded as equivalent to any of the elements mentioned in Article 8, they cannot be added to the price actually paid or payable for the imported goods.

In contrast to the savings programme and the club charges, which are optional, the currency surcharge is mandatory and charged to all importers. Although the stated purpose of the currency surcharge is to maintain the price of the imported goods with regards to any change that might occur in the forex market, XCO does not give ICO the option, for example, of assuming the foreign exchange risk or paying in a different currency to avoid payment of the currency surcharge. Accordingly, ICO cannot purchase the goods without paying this charge. Furthermore, the currency surcharge has not been shown to be a payment for something other than for the imported goods. As such, it can be concluded that this charge is for the imported goods and is likewise paid as a condition of sale of the imported goods. Therefore, the currency surcharge should form part of the “price actually paid or payable” when applying Article 1 of the Agreement.

As for the free units of the same goods and gifts provided by XCO to ICO, if they are imported and presented to Customs, their valuation treatment would be a separate consideration.

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**Non-Paper submitted by International Chamber of Commerce on item (f) during the
55th TCCV Session**

Esteemed colleagues,

ICC would like to thank Uruguay for presenting this draft commentary and the other delegations who have filed comments on the case.

As we have previously shared, ICC cannot overstate the importance of determining the proper standard for determining the price actually paid or payable for the goods and the crucial roles played in a proper interpretation of the Valuation Agreement by the General Introductory Commentary, all of the Interpretative Notes to Art. 1, the proper role of Annex III, para. 7 and, finally, the juncture of Articles 1 and 8 taken together in fixing the customs value of imported goods.

ICC believe that the best way to promulgate the general principles governing a correct understanding of the price actually paid or payable is in the form of a Commentary. Once those guiding principles have been properly expressed in a Commentary, the use of Case Studies or Advisory Opinions may then further illustrate these principles in action. Any such Commentary should consider and incorporate some of the features of the Historical Perspective on Annex III, para. 7 which the ICC had previously lodged in preparation for the 53rd Session consideration of the Mauritius case, and which we have updated and include herewith.

As a final observation, the current draft and the numerous examples expressed in document VT1336Ea and its Annex appear to be a radical departure from the format of previous Commentaries and its language raises serious questions. The private sector, and Member delegations as well, would benefit from a re-writing of the current draft, and one not being limited to paragraph 4 of the Interpretative Note.