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ORGANIZACIÓN MUNDIAL DE ADUANAS

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION
-
57th Session
-

VT1391Ec

O. Eng.

Brussels, 13 October 2023.

REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE 57th SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. The 57th Session of the Technical Committee on Customs Valuation was held at the WCO Headquarters from 9 to 13 October 2023. The presiding Chairperson, Santa Marianela MARTE (Dominican Republic), warmly welcomed all delegates, in particular those in attendance for the first time, to the TCCV Session. She also announced that Gael GROOBY had taken up the position as Acting Director of Tariff and Trade Affairs in July 2023.

2. The Acting Director joined the Chairperson in welcoming all the delegates as well as the observers to the 57th Session of the Technical Committee. She noted that for in-person participants, the meeting also provided opportunities to build and strengthen the network of Customs Valuation practitioners across administrations and encouraged first-time delegates to take these opportunities. She urged delegates to approach her if they thought that there was anything else the WCO Secretariat could do in making their time at the WCO Headquarters more beneficial, explaining that for the time being she was covering both the Director and Deputy Director functions. In concluding, the Acting Director wished the Chairperson and the Technical Committee an enjoyable and productive Session.

3. Uruguay proposed attempting to address the Secretary General, Dr. Kunio Mikuriya, during this Session, to thank him for his service to the WCO, and to note that he had always supported and encouraged the TCCV and Customs valuation work. The Acting Director thanked Uruguay, on behalf of the Secretary General, and apologised that it would not be possible for him to attend as he was on mission overseas for the duration of the week.

4. The Delegate of Ukraine made a statement regarding the situation prevailing in his country. The Delegates from Canada, the European Union, Japan, Kosovo, Norway, Sweden, the United Kingdom and the United States took the floor to express their concern with regard to the situation in Ukraine. In response, Belarus submitted a written response afterwards. The written statements and comments submitted were set out in Annex D to the draft Report.

Agenda Item I: ADOPTION OF AGENDA

(a) Provisional Agenda

Doc. VT1367Eb

5. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1367Eb, published on the TCCV Meeting page, and on the 57th TCCV Session Forum Group on the CLiKC! Platform and invited delegates to raise any point that they wished to discuss under item VIII of the Agenda - Other Business.

Conclusion

6. The Technical Committee adopted the Agenda.

(b) Suggested programme

Doc. VT1368Ea

7. The Chairperson referred to Doc. VT1368Ea, which set out the suggested programme of work for the 57th Session prepared by the Secretariat.

Conclusion

8. The Technical Committee adopted the suggested programme as set out in Doc. VT1368Ea

Agenda Item II: THEME MEETING

Doc. VT1369Ea

Background

9. The Technical Committee agreed at its 56th Session to hold a Theme Meeting at the 57th Session. The topic agreed was “Customs valuation control processes used by Customs Administrations”, which was proposed by Uruguay during the intersession prior to the 56th Session.

10. Brazil, Canada, Dominican Republic, and Uruguay delivered presentations on this topic at the Theme Meeting. The Delegation of Argentina had offered to make a presentation at the 56th Session but was unable to do so given that the Delegate of the Customs Administration of Argentina participated online only in the 57th Session.

Presentations

11. The Delegate of Brazil presented Brazil’s Customs valuation legislation and Customs control programme, highlighting that the instruments adopted by the Technical Committee had been incorporated into the legal framework. She also provided insights into Brazil's efforts to encourage voluntary compliance of importers, including the release of a Customs Valuation Guideline on the Customs’ website.

12. The Delegate of Canada focused his presentation on Post Clearance Audit (PCA), which is Canada’s primary means for Customs valuation control. He elaborated on the PCA

operational procedures developed to support auditors, and shared a number of challenges posed by the evolution of international trade that needed to be addressed by Customs.

13. In her presentation, the Delegate of Dominican Republic recalled the legislative process for implementing the Agreement in her country since 2001. She also provided a detailed explanation of how Customs control can be effectively applied at the post clearance stage with the assistance of risk management tools.

14. The Delegate of Uruguay presented the outcome of the Americas-Caribbean Regional Seminar on Customs valuation held in January 2023 which was attended by 15 Members of the region. He outlined seven major strategic objectives of Customs and thoroughly analysed how different Customs valuation control procedures may affect these objectives.

15. There was active discussion on the presentations. It was noted that all the presentations of the Theme Meeting would be made available on the WCO Members' website.

Conclusion

16. The Technical Committee took note of the presentations.

Agenda Item III: **ADOPTION OF THE TECHNICAL COMMITTEE'S 56TH SESSION REPORT**

Doc. VT1365Eb Revised

17. 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.

18. During the intersession preceding the 57th Session, Canada, China, Japan, Morocco, the United States and Uruguay had submitted comments on the "a" version of the draft Report of the 56th Session of the Technical Committee. These comments had been incorporated into the draft Report, and a "b" version had been published as Doc. VT1365Eb in which Members' comments had been highlighted in red.

19. Comments on the "b" version of the draft Report had been received from China, Thailand and Uruguay. As a result, a revised "b" version of the draft Report incorporating these comments had been produced and published as Doc. VT1365Eb Revised.

20. At the 57th Session, no comments had been received on the revised "b" version of the draft Report of the 56th Session. A "c" version of the Report would be published in Doc.VT1365Ec as a final draft and would be submitted to the Council for approval.

Conclusion

21. The Technical Committee adopted the Report of its 56th Session.

Agenda Item IV: REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director's Report

Doc. VT1370Ea

22. The Chairperson invited the Acting Director to present the Director's Report, contained in Doc. VT1370Ea. The Acting Director summarized the key intersessional activities included in the document.

23. The Acting Director briefed the Technical Committee on a few items of the 88th Policy Commission Session as follows:

    (i) The final draft of the Implementation Plan 2023-2024 was endorsed by the Policy Commission;

    (ii) The Policy Commission took note of the context of current data initiatives of the WCO and encouraged Members to share any relevant national or regional practices which could be of help in managing data and statistics-related projects;

    (iii) The Policy Commission endorsed the "WCO Position Paper on Green Customs" as well as the Green Customs Action Plan.

24. The Acting Director also reported that the Advisory Opinion 25.1 and the Reports of the 54th and 55th Sessions of the Technical Committee on Customs Valuation had been approved by the Council at its 141st/142nd Sessions.

25. Under "Other activities and issues", the Acting Director informed the delegates of the second Symposium on E-Commerce and Customs Valuation, scheduled to take place in a hybrid format on 23 October 2023.

26. The Delegate of Uruguay thanks the Acting Director for the report, and enquired about the possibility of extending the duration of the online discussion phase prior to the in-person meeting. He noted that a large number of comments had been posted on the CLiKC! Platform during the final day of the online discussion phase, leaving insufficient time for responses and proper exchanges. The Secretariat took note of Uruguay's proposal.

Conclusion

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

(b) WTO Committee on Customs Valuation Report

28. The Observer from the World Trade Organization reported on the work of the Committee on Customs Valuation (CCV), which had held a formal meeting on 24 May 2023.

29. With regard to notifications pertaining to the Customs valuation legislation of Members, the Observer reported that updated legislation have been received from Colombia and the Philippines, and the CCV remains active in its consideration of questions and responses pertaining to the valuation legislation of 35 Members, representing more than a third of the WTO Membership.

30. The delegates were also informed of a number of other matters at the CCV meeting, including a joint session held by the WCO and WTO Secretariats on the work of CCV and TCCV, improvements being considered by WTO Members to improve the CCV work, and an experience-sharing session at which three WTO Members, namely China, Ecuador and India, shared information on recent Customs opportunities and challenges.

31. The next formal meeting of the CCV is scheduled for 15 November 2023, and will be chaired by the incoming Chairperson for the Committee, Omar CISSE from Senegal.

32. The written report from the WTO Secretariat was appended in Annex C to the draft Report.

Conclusion

33. The Technical Committee took note of the report.

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

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

Docs. VT1371Ea and VT1380Ea

Background

34. In accordance with the Technical Committee's decision, the Secretariat had monitored and communicated the technical assistance/capacity building activities planned and/or carried out by Members in order to inform all Members for planning purposes and to prevent duplication of effort.

35. In Doc. VT1371Ea, the Secretariat had invited Members to submit information to it, no later than 4 August 2023, concerning their technical assistance activities. In response to this request, the United States Administration had submitted information to the Secretariat concerning its technical assistance activities.

36. Information provided by the United States on its technical assistance/capacity building activities and information on the technical assistance/capacity building activities undertaken by the Secretariat was set out in Annexes I and II to Doc. VT1380Ea respectively.

Summary of discussion

37. The Chairperson pointed out that information on the technical assistance/capacity building activities referred to by the Acting Director in her report was set out in Annexes I and II to working document VT1380Ea.

38. No comments were made on this Agenda item by the delegates attending the 57th Session of the Technical Committee.

Conclusion

39. The Technical Committee took note of the report by the Secretariat on the technical assistance/capacity building activities undertaken by the Secretariat and Members, as presented in Doc. VT1380Ea.

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

Docs. VT1372Ea and VT1381Ea

Background

40. During the intersession, the Secretariat had published Doc. VT1372Ea in which it had invited Members to submit a report on the progress made in the application of the WTO Customs Valuation Agreement in their respective countries. Such a report might cover any aspect of implementation, in particular legal, structural, organizational and procedural aspects.

41. During the intersession preceding the 57th Session, South Africa, Chile and Morocco had informed the Secretariat that they were able to give presentations on specific aspects of the application of the Agreement by their Administrations. Given that the Delegation of Chile was unable to travel to Brussels and was participating passively in the meeting, it was unable to make its presentation. For reasons of *force majeure*, South Africa was also unable to deliver its presentation and informed the Secretariat that the presentation would be made at the next session of the Technical Committee.

Presentation by Morocco

42. In the introduction to her presentation, the Delegate of Morocco stated that she would focus on Morocco's approach to the consideration of royalties and licence fees as elements resulting in an adjustment to the price actually paid or payable under Article 8 of the WTO Customs Valuation Agreement; it was only recently that such adjustments for royalties and licence fees had started to be taken into account by the Moroccan Customs Administration. Attempts to incorporate these royalties and licence fees into the Customs value had run up against problems relating to the fact that these elements were not supported by the IT system and the fact that there was a lack of information from importers about them. She emphasized that the Customs Administration had started work on this topic back in 2019, utilizing various sources of data. This had made it possible for Morocco to document the various types of contract that might potentially be concluded between sellers and buyers in relation to royalties and licence fees. In addition, she highlighted the fact that using the Technical Committee's instruments had been a crucially important factor in achieving a better understanding of the issue, in particular the criteria for incorporating royalties and licence fees into the Customs value.

43. The Delegate of Morocco's presentation was structured under five headings: the legal and regulatory basis, the context, the measures taken by the Customs Administration, the submission of the declaration of royalties and licence fees, and specific cases.

44. As regards the legal and regulatory basis, the Delegate of Morocco stated that the Moroccan Customs Administration had incorporated the provisions of Articles 1 and 8 of the WTO Customs Valuation Agreement into Articles 20 and 20b of the Moroccan Customs Code. A general instruction regarding value had been drafted. She noted that Morocco had also drawn inspiration from the Technical Committee's instruments and from Customs laws adopted by other countries that had made much more progress in this area.

45. Ever since application of the WTO Customs Valuation Agreement had commenced in 1998, the market environment in general and the Customs context in particular had been characterized by a greater opening up of the country to international trade, leading to an increase in imports, valuation controls aimed at combatting under-invoicing as a result of the discontinuation of minimum values in 2002, and the influx into Morocco of companies operating on the basis of licensing, franchising or exclusive rights agreements. This situation had given rise to challenges in connection with the application of Article 8.1(c), since neither

the provision nor its Interpretative Note contained a definition of the terms “royalty” or “licence fee”. The Delegate of Morocco noted that, even though the Interpretative Note to this paragraph stated that “The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights”, the arrangements for their incorporation into the Customs value were not explicitly defined. The deferred payment of sums owed for royalties and licence fees and the lack of adequate information about goods were some of the reasons rendering it impossible to ascertain all the constitutive elements of value, resulting in a shortfall in government revenues.

46. The Delegate of Morocco stated that her Customs Administration had identified a need for more sophisticated and comprehensive data in order to overcome the challenges related to the consideration of adjustments for royalties and licence fees. Measures undertaken to this end included the establishment of cooperation with the tax authorities, which maintained a more extensive database of the relevant transaction types. Information relating to royalties and licence fees could be gained in this way for around 200 of the over 5,200 companies listed in the tax department’s file.

47. The Delegate of Morocco informed the Technical Committee that the measures that had been implemented had included an information and awareness-raising campaign aimed at the Customs brokers and companies affected. From a technical point of view, a computerized declaration entitled “Royalties” had been introduced with a view to gathering the information required for the taxation of royalties and licence fees. She noted that meetings had been organized with importers in order to explain the entire royalty declaration procedure to them, with a view to operationalizing the aforesaid measures. The Customs Administration had then examined all of the provisions of these importers’ licensing agreements in order to verify whether the criteria for the incorporation of royalties and licence fees into the Customs value were duly met. The outcomes of the Customs Administration’s investigation were discussed with each importer during a work meeting that the latter was invited to attend, culminating in a decision as to whether or not the royalties and licence fees would trigger the relevant payments on the basis of a “declaration of royalties”.

48. According to the Delegate of Morocco, the declaration of royalties was a computerized and streamlined procedure during which the importer declared any royalties and licence fees paid to the seller or, where applicable, a third party. The declaration had to be submitted no later than 10 days after the date on which the royalty had been invoiced to the importer, based on the frequency specified in the agreement concluded between the licensor and the importer.

49. The Delegate of Morocco outlined three specific cases for illustrative purposes. The Customs Administration had reached different conclusions in each case, depending on the outcome of its analysis of the royalty and licence fee agreements supplied by the importer.

50. The Delegate of Morocco concluded her presentation by acknowledging the ongoing complexity of the taking into account of royalties and licence fees. She felt that a potential solution for countries like hers, which were not very well equipped to deal with such issues, would be to incorporate into their legislation the relevant instruments developed by the Technical Committee. She added that they should also step up their cooperation with the tax authorities with a view to achieving a greater understanding of the relationship between intangible goods and Customs values, especially in relation to transfer prices.

Conclusion

51. The Technical Committee took note of the progress report on Members' application of the WTO Customs Valuation Agreement and Morocco's presentation.

Agenda Item VI: SPECIFIC TECHNICAL QUESTIONS

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

Docs. VT1373Ea and VT1382Ea

Background

52. The Chair presented the case which the Technical Committee agreed at its 53rd Session to examine as a Specific Technical Question.

53. The question deals with Customs valuation treatment of royalties paid by the importer to the licensor for the right to use particular distinctive signs and know-how, as well as licensor's technical assistance, in order to establish and operate chain stores where the imported goods are sold in the importing country. The facts of the case, redrafted during the intersession prior to the 54th Session, were set out in the Annex to Doc.VT1301Ea.

54. During the 56th Session, given that Delegations had not reached consensus after several sessions' discussion, Uruguay suggested moving this question to Part III of the Conspectus of Technical Valuation Questions.

55. The Technical Committee agreed to keep this question on the Agenda of its 57th Session allowing time for Members to reflect on how to proceed with the examination.

56. During the intersession, China and Uruguay submitted written comments which were set out in the Annexes to working document VT1382Ea.

Summary of discussion

57. At the 57th Session, Uruguay reiterated the three thoughts shared in its written comments during the intersession, including the concept of "distinctive sign", apportionment of royalties and the application of Article 8.1 (d), as well as its proposal to put this case to Part III of the Conspectus of Technical Valuation Questions.

58. Regarding the application of Article 8.1 (d), China opined that the payment in this case was made for the use of distinctive signs, knowhow and technical assistance and therefore could not be treated as subsequent proceeds under Article 8.1 (d). Canada and the EU shared China's comments.

59. In its intervention, Canada provided some information which was quoted from the Supreme Court of Canada Decision in Mattel 2001 CSC 36. It is stated that there was distinction between "royalties and licence fees" under Article 8.1(c) and "proceeds of resale" under Article 8.1(d), which the Supreme Court of Canada supported by quoting the authors of the textbook *Customs Valuation: Commentary on the GATT Customs Valuation Code (2nd ed. 1988)*. In the excerpted quote, the authors pointed out that it surely cannot have been intended to mean that any royalty which is expressed as a percentage of resale proceeds is automatically added to customs value under Article 8.1 (d), even if it has successfully withstood the test of Article 8.1 (c). Article 8.1 (d) is intended to deal with situations where the payment is for the goods and not for a related intangible right. If there are fictitious royalties

or licence fees, i.e. payments for no other economic reason than the purchase of the imported goods, then the provisions on proceeds of resale can be applied.

60. Regarding the implementation of Article 8.1 (d), Uruguay reiterates to the Committee that, in addition to the above-mentioned opinions, the Agreement states very clearly and forcefully that there shall be added to the price actually paid or payable: … 8.1 (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller. As this Committee already established in its Case Studies 2.1 and 2.2, the only requirements for making this adjustment are that it reflects the value of "any part of the proceeds of any subsequent resale" that "accrues directly or indirectly to the seller", without even requiring that this should be a condition of sale. In the present case, both conditions are fulfilled, and what ultimately gives rise to and requires payment by the buyer to the rights holder (who, in turn, is a related party to the seller) is the subsequent resale of the imported goods in the importing country, regardless of the characteristics or actual quantities received of the rights specified in the licensing agreement concluded between the two parties.

61. A number of Delegations took the floor to thank Uruguay for submitting this case to the Committee for consideration, and expressed appreciation for deliberations and discussions on this case in previous sessions. At the same time, it was recognized that the Committee could not reach a consensus at the moment. Therefore, this case had to be moved to part III of the Conspectus as proposed by Uruguay.

62. In view of this, the Technical Committee agreed to move this question to Part III of the Conspectus of Technical Valuation Questions.

Conclusion

63. The Technical Committee agreed to move this question to Part III of the Conspectus of Technical Valuation Questions.

(b) Accumulated discounts in E-Commerce sales – Request by Uruguay

Docs. VT1374Ea and VT1383Ea

Background

64. The question was submitted by Uruguay at the 53rd Session, and the Technical Committee agreed to examine it as a Specific Technical Question. It concerns accumulated discounts for E-Commerce transactions on an electronic platform. The discussions were ongoing on the basis of a revised text set out in Annex II to Doc. VT1348Ea and containing eight scenarios. The Technical Committee had agreed first of all to focus on the substance of the eight scenarios before going on to address the aspects relating to form.

65. During the 56th Session, the discussions continued, examining the roles of the seller and platform in relation to the various kinds of discount proposed to the buyers in the scenarios under consideration. Some delegates took the view that the treatment of the discount might vary depending on whether it was granted by the seller or by the platform. Others maintained that it was irrelevant whether the seller or the platform granted the discount because the outcome was the same. The delegates could not iron out their differences of opinion concerning this aspect of the question.

66. The delegates likewise could not reach agreement on the link between the retroactive discounts of Advisory Opinions 8.1 and 15.1 and the various types of discounts at issue in the scenarios set out in Annex II to Doc. VT1348Ea.

67. In order to provide the Technical Committee with a new perspective for conducting the discussions more effectively, the International Chamber of Commerce agreed, on a proposal from the Chairperson of the Technical Committee, to make a presentation in relation to E-Commerce at the 57th Session.

Summary of discussion

68. The 57th Session of the Technical Committee began its work during the online discussion phase, thus enabling the Delegates of Japan, Indonesia, Israel, the European Union, Uruguay and Uzbekistan to share their views on this question.

69. Following a concise summary of the question, the Chairperson invited Japan Customs, which had submitted written comments in this regard, to take the floor. Japan submitted that there were various types of E-Commerce transactions conducted on an electronic platform, and the current role of platforms needed to be clarified in the draft text. The Delegate of Japan considered that the nature of the valuation treatment depended on the role played by the platform in the transaction. Furthermore, Japan pointed out the importance of who gives discount and owes its cost, and the price discounted seems to be influenced by the third party except sellers and buyers in the case that platforms grant discount to buyer on their accounts, which would be a distinctive practice in the transaction through platforms.

70. Uruguay recalled that discussions at the previous sessions regarding the eight scenarios set out in Annex II to Doc. VT1348Ea did not result in a consensus. There was no expectation at present that analysis of the Members' comments, during the online discussion phase and the discussions which could now take place in person in the current session, on particular aspects of the question would provide a better outlook with regard to the differences of opinion. To that end, the Delegate of Uruguay felt that this question should be put into Part III of the Conspectus of Technical Valuation Questions, unless new factors arose allowing the different opinions to be ironed out.

71. In Korea's view, in scenarios 1 and 2 of Annex II to Doc. VT1348Ea, the reduction had to be included in the Customs value as a payment in accordance with paragraph 1 of the Interpretative Note to Article 1 of the Agreement. The Delegate of Korea explained that, in the context of E-Commerce, when a discount voucher was obtained by a buyer for a previous transaction and used to reduce the price of a subsequent transaction that reduction had to be added to the Customs value of the latter transaction.

72. China concurred with Japan on the need to define the role of the platform in the transaction between the seller and the buyer. The Delegate of China supported Uruguay's position that it would be difficult to reach a consensus in view of the different opinions on the treatment of the various discounts described in the scenarios listed in Annex II to Doc. VT1348Ea. To her mind, in order to move forward in these circumstances and hopefully avoid putting this question into Part III of the Conspectus of Technical Valuation Questions, the Technical Committee would have to adopt an innovative approach. The Delegate of China recalled that the WTO Valuation Agreement had, in fact, been drawn up at a time when these new international trade mechanisms did not exist; hence the legitimate questions raised regarding its suitability for tackling new situations that were unknown at the time of its adoption. It was, consequently, difficult to apply the Agreement uniformly in E-Commerce matters.

73. Canada noted several positive points arising from the examination of this question, including the definition of the term “voucher” raised by Indonesia in its 29 September 2023 comments on the CLiKC! . This and other definitions may need to be clarified in order to move forward in the discussions. Canada and the European Union felt it was too soon to relegate this question to Part III of the Conspectus of Technical Valuation Questions and suggested that the Technical Committee should be granted time to reframe the question by means of an updated document that would accommodate the different points of view. According to Canada, by re-examining the scenarios one at a time rather than discussing the document as a whole, the Technical Committee could address the areas of agreement and disagreement and examine the likelihood of finding a compromise. For instance, although there appeared to be disagreements on some of the earlier scenarios, Canada’s views on some of the later scenarios may, in fact, align with the views expressed by many Members in the Committee thus far.

74. Uruguay commented that it did not object to the continuing examination of this question at the next session provided that Canada and the European Union could commit to presenting an updated document with their positions for examination by the Technical Committee at its 58th Session. The European Union agreed that it would submit a proposal for a revised document for examination at the next session.

75. The Chairperson submitted the proposal by the European Union for a decision by the Technical Committee and confirmed that no objections were raised regarding that proposal to continue the examination of the question on the basis of an updated document at the next session.

Conclusion

76. The Technical Committee agreed to continue the examination of this question on the basis of a revised document at its next session.

(c) 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. VT1375Ea and VT1384Ea

Background

77. The Chairperson of the Technical Committee introduced the question and recalled that it had been on the Agenda as a Specific Technical Question since the 54th Session, during which the Technical Committee had agreed to examine it. Submitted by Uruguay, the question concerns the meaning of the expression “the price for the imported goods” in accordance with paragraph 4 of the Interpretative Note to Article 1. The basic text for the Technical Committee discussions was the draft Commentary proposed by China Customs and set out in the Annex to Doc. VT1328Ea.

78. During the two phases of the work conducted within the Technical Committee at its 56th Session, namely the online discussion phase and the face-to-face meeting, delegates had indicated that they would like to continue examining the question by initially defining a general principle that would be supported by illustrative examples. The concepts relating to “the price for the imported goods” had been the subject of fruitful discussions resulting in different opinions among the Members. These were essentially the concepts of “condition of

sale", "for the imported goods", "transaction value/Customs value", "indirect payments", "payment for the price of the imported goods" and "costs referred to in Article 8.2". As a result of the wide range and relevance of the comments made during the discussions, the Chairperson had proposed to continue the analysis of the question at the next session.

79. As regards the draft Commentary set out in the Annex to Doc. VT1328Ea, Canada had proposed some amendments to paragraphs 3 to 6, and Japan had made some comments on those amendments. Some delegates had proposed a reference in the future instrument to Article 14 and exclusion of scenarios 2, 3, 8, 9, 10, 11, 12, 13, 14 and 16 which were already included in a Technical Committee instrument.

80. During the intersession, Uruguay had worked with the Secretariat, proposing an updated version of the draft Commentary together with 29 illustrative examples set out in Annex II to Doc. VT1375Ea. It had also proposed a "Conceptual framework for the price actually paid or payable under the transaction value method" set out in Annex II to Doc. VT1384Ea.

Summary of discussion

81. During the online discussion phase for the 57th Session of the Technical Committee conducted via the CLiKC! Platform, the Administrations of China, Indonesia, Japan, Uruguay and Uzbekistan and the European Union (EU) shared their views on the question.

82. To facilitate the discussions, China suggested that the updated version of the draft Commentary presented by Uruguay be combined with China's draft Commentary together with the amendments proposed by Canada and Japan. Accordingly, China suggested inserting some parts of the Uruguay version into the China/Canada/Japan version. Japan agreed that this question could be discussed on the basis of a single draft document for the sake of avoiding confusion. As far as China was concerned, the conceptual framework proposed by Uruguay set out the rationale underlying the various provisions of Articles 1 and 8, providing guidance on applying the transaction value method, whereas the current question related to determining the "price for the imported goods" rather than the application of Articles 1 and 8 of the Agreement. It therefore took the view that the table set out in Annex II to Doc. VT1384Ea could not be taken into account in the discussions.

83. Furthermore, China recalled that this question had arisen from the examination of a case submitted Mauritius which had resulted in the adoption of Advisory Opinion 25.1, and proposed that, for the sake of consistency with Advisory Opinion 25.1, the future instrument should not include the expression "related to the imported goods", as suggested by Canada and Japan in their amendments. In its view, the analysis had to focus on two key points, namely whether the payment was made for the imported goods, as provided for in paragraphs 1 and 4 of the Interpretative Note to Article 1 (price actually paid or payable), and whether the payment was a condition of sale of the imported goods, as provided for in paragraph 7 of Annex III to the Agreement. The Delegate of China took the opportunity to provide the background to the drafting of paragraph 7 of Annex III, drawing on a document published by the International Chamber of Commerce (ICC) during the online discussions at the 53rd Session of the Technical Committee, titled "Historical perspective on Annex III, para. 7". The ICC confirmed that it had indeed published this document. It also supported China's assertion that the content of the future instrument would have to be consistent with Advisory Opinion 25.1. Japan agreed with the ambiguity of the expression "related to the imported goods" and accepted deleting this expression from the draft in consideration of "related to the imported goods" in the context of royalty.

84. China also highlighted that paragraph 1 and 4 of the Interpretative Note to Article refers to "for the imported goods" without mentioning "condition of sale", while paragraph 7 of Annex

III refers to “condition of sale” without mentioning “for the imported goods”. And it is stated in Case Study 6.1 and Commentary 20.1 that the definition of “price actually paid or payable” as prescribed in Interpretative Note to Article 1 is further amplified in Paragraph 7 of Annex III, which might cause different understanding and inconsistent application among member administrations. Thus, the purpose of the Draft Commentary was not only to clarify the meaning of the expression “for the imported goods”, but also to clarify the correlation between aforementioned provisions as well as relevant concepts and principles in relation to the determination of price actually paid or payable.

85. Since it was impossible to acquire an exhaustive list of illustrative examples of this question, China felt that three or four examples would be sufficient if the “General + Examples” format was to be adopted for drafting the future document as per TCCV Commentary 7.1. Japan was also in favour of having a limited number of examples.

86. Uruguay’s view was that the existing content of the draft Commentary by China, Canada and Japan provided no clarification for Customs officers or for operators in the private sector because it merely repeated what was already included in the Agreement, without adding anything new. According to the Delegate of Uruguay, the perspective would have to be broadened if the objective concerned was really to seek to interpret and define the term “price for the imported goods” in the Agreement and, based on that definition, to determine the factors to be included in the Customs value; hence Uruguay’s decision to draw up a table in Annex II to Doc. VT1384Ea to highlight more broadly what was covered by the concept “price for imported goods”. The Delegate of Uruguay invited the Members to analyse, in this regard, the “conceptual framework for the price actually paid or payable under the transaction value method” from which, in his opinion, it would be easier to align the various views and ultimately draw up an instrument.

87. To assist with the continuation of the discussions, Uruguay put forward two possibilities, the first involving the use of the China-Canada-Japan version, although that option might not pin down the problem in its entirety, and with the second option taking Annex II to Doc. VT1384Ea into consideration with the advantage that it could pin down all aspects of the question. The objective was to produce a document that would be as comprehensive as possible and would cover as many commercial practice scenarios as possible. According to Uruguay, it was a matter of drawing up a useful document that was as comprehensive and exhaustive as possible, which would initially involve a review of the question’s title. In its view, the existing title did not reflect the full significance of the subject matter and could become one of the most important instruments in the work undertaken by the Technical Committee inasmuch as it related to the interpretation and uniform application of a fundamental concept for the Agreement: “the price actually paid or payable”.

88. Norway supported one of China’s comments in response to a comment made by Japan during the online discussions on the CLiKC! Platform. China highlighted that the interpretation of “for the imported goods” it provided was to broaden its connotation rather than narrow it, otherwise, where a payment was made for something else (something other than the imported goods), it could not be included in the “price for the imported goods”, even if it met the “condition of sale” criterion as laid down in paragraph 7 of Annex III.

89. The Chairperson requested the Committee’s advice on the approach to be adopted: to continue examining the question either on the basis of the draft Commentary set out in the Annex to Doc. VT1328Ea with the amendment proposals put forward by Canada and Japan, or on the basis of Uruguay’s updated document set out in Annex II to Doc. VT1375Ea and Annex II to Doc. VT1384Ea respectively.

90. As to the document version to be used for continuing the discussions, the Delegate of Uruguay would defer to the Technical Committee for a decision. Canada and the European Union sought to continue the discussions on the basis of the original document, that is to say, the document setting out the amendment proposals put forward by Canada and Japan. China stated that, in the light of the latest comments made by some Members, it would appear that the Technical Committee had decided to continue the examination of the question on the basis of the draft Commentary by China with Canada's and Japan's proposed amendments, possibly including some parts of Uruguay's revised version.

91. The European Union reiterated that it was not in favour of using examples already included in a previous Technical Committee instrument. In contrast, Uruguay advocated mentioning as many examples as possible to enable readers to gain a clear idea of the concept concerned.

92. In view of the discussions held, the Chairperson of the Technical Committee proposed that the draft Commentary should be read, paragraph by paragraph, on the basis of the document prepared by China, with the Technical Committee at the same time making the necessary amendments.

93. In paragraph 1, the proposal was to supplement the first sentence with "to a third party" or "to a third person", depending on linguistic considerations.

94. In paragraph 3, the amendment proposed by Canada, namely to mention the provisions of Article 14 of the Agreement, was considered to be redundant by one delegate. Another delegate went as far as to propose its deletion, as it was considered to be reiterating the same point as paragraph 2 of the draft document. However, some delegates were in favour of maintaining that reference to Article 14 which introduced further clarification to the document. One delegate proposed a reference in the paragraph to the idea that there should be no hierarchy between the three provisions of the Agreement set out in paragraph 2 of the draft Commentary. A proposal by the Chairperson to reformulate and reorganize that paragraph was accepted by the Technical Committee.

95. Concerning paragraph 4 of the draft text, one delegate considered it to be the most important part of the document which, at the same time, needed to be consistent with Advisory Opinion 25.1. As to the expression of "for the acquisition of the imported goods from the seller", while Japan expressed its understanding to China's interpretation, Japan shared its view that the price for the imported goods is the invoice price in a normal case, and when additional payments happen, the expression of "for the acquisition of the imported goods from the seller" is needed and proposed the draft include such an idea. That paragraph aims to explain the concept of the "price for the imported goods". One delegate proposed splitting this paragraph in two, with one paragraph devoted to the expression "related to the imported goods" and the second devoted to "condition of sale". In this way, an overlapping of the two concepts could be avoided. The Delegate of Japan stated it would not insist on incorporating "related to the imported goods" in the text of the Draft Commentary and supported China's comments.

96. In Canada's view, as discussions had shifted towards placing an inordinate focus on the "condition of sale", it intervened to explain its main concerns about this approach. These concerns stem from the ruling by its Supreme Court in the case Mattel 2001 CSC 36 and the subsequent decision by its Federal Court of Appeal in Reebok 2002 FCA 133, which provided a very strict and narrow definition of "condition of sale" in the context of royalties. These rulings defined the "condition of sale" so narrowly that, in practical terms, payments of royalties in Canada never meet the "condition of sale" requirement and are therefore now

almost never included in the customs valuation. Canada explained that, if the condition of sale were to become a "cornerstone" for determining the "price actually paid or payable", which is itself a cornerstone of customs valuation, several businesses in Canada would likely find creative ways of excluding certain payments that currently form part of customs valuation simply by removing the "condition of sale" from all contractual documents, just as they removed all "condition of sale" provisions regarding royalties after the decisions by Canada's courts. Canada cannot allow a similar outcome to occur concerning the price actually paid or payable, and cannot therefore accept any wording that unduly focuses on "condition of sale". Furthermore, if the courts of other Members were to one day impose overly narrow definitions of "condition of sale", as the Canadian courts have done, the Members of the Committee would be warned and well advised to learn from Canada's experience.

97. Uruguay does not share these concerns expressed by Canada since: 1) they are part of Canadian jurisprudence and are not applicable to other members, 2) they refer to another issue, that of the adjustments of article 8.1.c), and 3) The draft documents presented in this case do not contain any definition of the expression "condition of sale".

98. Following a lengthy and fruitful discussion, along with its relevant analyses on the necessary correlation between paragraphs 1 and 4 of the Interpretative Note to Article 1 (price actually paid or payable) and paragraph 7 of Annex III to the Agreement, a wording was finally put forward with divided and conflicting positions in two sentences of this paragraph 4. China submitted a proposal to reword that paragraph for examination by the Technical Committee.

99. After various discussions on the rewording of paragraph 4 proposed by China, the Chairperson of the Technical Committee proposed that the discussions be suspended and the topic revisited at the next session.

Conclusion

100. The Technical Committee decided to keep this question on the Agenda for the next session.

(d) 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

Docs. VT1376Ea and VT1385Ea

Background

101. This question was submitted by Guatemala at the Technical Committee's 55th Session and concerns the meaning of the expression "in substantially the same quantity" according to Articles 2 and 3 of the Agreement and the respective Interpretative Notes to those articles. The facts of the case were set out in the Annex to Doc. VT1376Ea.

102. It was apparent from the discussions held during the 56th Session that the views expressed by delegates on the question had not evolved. They acknowledged that it was difficult to set standards in respect of the expression "in substantially the same quantity", given that market conditions and commercial practices varied widely between different sectors/branches of economic activity. The expression "in substantially the same quantity" should also be defined or interpreted from a qualitative perspective rather than merely a quantitative one because it

is not possible to assign acceptable thresholds or approve levels of prices in advance, based on the quantities of the goods purchased. That was explained by the fact that the market conditions could not be anticipated, programmed or fixed in advance, because the international trade environment was characterized by its considerable variability and unpredictability. The delegates maintained that the scope of the expression "in substantially the same quantity" could vary according to numerous different factors, so that it would not be appropriate to set a fixed percentage range that would be applicable in all circumstances. Referring to the online Cambridge Dictionary, the term "substantially" ("sensiblement") was defined as "to a large degree" ("dans une large mesure"), meaning that the expression "in substantially the same quantity" ("sensiblement en même quantité") could be interpreted as covering a quantity for which the relevant commercial practices remained the same. Some delegates suggested analysing the question from the perspective of Explanatory Note 1.1 and Commentary 10.1.

103. Guatemala had pointed out that the purpose of this question was to develop a definition with simple, objective criteria for interpreting the expression "in substantially the same quantity" contained in Articles 2 and 3 of the Agreement, to ensure uniformity, certainty and transparency in applying these articles. To contribute to the further consideration of this question, Members were invited to share their experiences with reference to examples of any specific situations they had encountered in relation to this issue. With a view to enabling the Technical Committee to hold effective discussions, the International Chamber of Commerce (ICC) proposed making a presentation at the 57th Session relating to the documents that may have repercussions on what is understood by "in substantially the same quantity" from one industrial sector to another.

104. During the intersession preceding the 57th Session, Guatemala, with the assistance of Uruguay, worked with the Secretariat to submit an updated version of the draft Commentary set out in the Annex to working document VT1376Ea.

Summary of discussion

105. During the online discussions on the CLiKC! Platform, China, Guatemala, Indonesia, Malaysia, Uzbekistan and the European Union discussed the question submitted by Guatemala.

106. In written comments submitted to the Secretariat during the latest intersession and set out in Annex I to Doc. VT1385Ea, China recalled the key elements mentioned at previous sessions. As regards the updated draft Commentary set out in the Annex to Doc. VT1376Ea, China stated that it did not support the idea that the first four paragraphs should be given over to the application of Article 1 of the Agreement, since the focus of the question under consideration was Articles 2 and 3. Uzbekistan shared China's point of view in that regard.

107. During the online discussions, China stated that it supported the United States' position which bore out its opinion that the expression "in substantially the same quantity" should be interpreted from a qualitative perspective rather than a quantitative perspective. It considered that the amendments proposed by the United States to paragraphs 6, 7 and 8 of the updated draft Commentary reflected the key issues of the previous discussion and could serve as a basis for future discussion. China hoped that the Technical Committee could start to examine the draft Commentary, paragraph by paragraph, during the 57th Session.

108. In its written comments submitted during the intersession and set out in Annex II to Doc. VT1385Ea, the Customs Administration of the United States reiterated the previous comments it had made on the question at the 56th Session. It submitted to the Technical Committee an amendment proposal comprising three paragraphs in relation to paragraphs 6, 16.

7 and 8 of the updated draft Commentary. The United States suggested including illustrative examples with the draft text. That proposal was supported by the Uzbekistan Customs Administration.

109. Malaysia supported an argument, developed over the previous sessions, that the expression "in substantially the same quantity" introduced a degree of flexibility with regard to the quantity, all the while acknowledging its impact on the price. That meant that, to the largest possible degree, the quantity had to align with the quantity of the previously accepted transaction values in order to maintain the consistency of commercial practices and market conditions, without any need to secure precise correspondence in terms of quantity. Malaysia stated that it shared the views expressed by the Customs Administrations of China and the United States that the expression "in substantially the same quantity" should not be interpreted as a fixed percentage range. It stated that it supported the amendments, proposed by the United States, to paragraphs 6, 7 and 8 of the draft text.

110. Expressing its view on CLiKC! Platform and subsequently reaffirming it, the European Union had sought to reiterate the comments it had made on the subject during the 56th Session of the Technical Committee. It shared the view expressed by the United States and supported by China and Uruguay. The European Union supported the United States' amendment proposals which could provide a starting point for discussions. As regards the updated draft Commentary, the European Union claimed to have established that it was focused on a quantitative criterion and made no reference to the qualitative criteria which played an essential part in the understanding and application of the concept of "in substantially the same quantity" laid down in the Agreement and at issue here. The circumstances in which the Customs value of the imported goods was determined in accordance with Articles 2 and 3 could lead, in commercial practice, to a change in quantity involving different prices, for example in a quantity discounts system. To this end, it would seem appropriate to refer to Technical Committee Commentary 10.1. Indonesia expressed the same view but felt that the adjustments could be made only if there were data/documents relating to the proposed price offer.

111. In this regard, the European Union pointed out that there were examples of commercial practices where changes to the quantity delivered did not involve any change to the price agreed between the parties to the transaction. Such practices involved, in particular, the trade in bulk goods and freely flowing goods, which had special features relating to prices and quantities. It explained that, in some circumstances, a quantity of goods that slightly exceeded the quantity ordered was shipped with the identical paid goods in order to mitigate the risks of loss or damage. The price paid referred, as a rule, to the total quantity imported.

112. To Guatemala's mind, the common feature in the Members' comments was the need to apply the concept of "in substantially the same quantity" flexibly so as to achieve a uniform application of the Agreement. The crucial question was how that could be achieved. Guatemala was not in favour of interpreting the expression "in substantially the same quantity" from the perspective of quality because, as far as it was concerned, seeking a qualitative interpretation for something quantitative seemed contradictory. As to the reference to Article 1 of the Agreement, Guatemala advised that this was for introductory purposes, but approved of the reference's removal. Guatemala sought to determine the appropriate degree of flexibility at issue in Explanatory Note 1.1.

113. The International Chamber of Commerce (ICC) took the view that the approach proposed by the United States was very much in line with what needed to be done. That would ultimately entail the adoption of an Explanatory Note 1.2 to accompany Explanatory Note 1.1, following

the same structure and the same principle of analysis. The United Kingdom agreed with the advice issued by the ICC.

114. The Chairperson of the Technical Committee proposed that the delegates should examine the updated draft Commentary, paragraph by paragraph, as proposed by one Member.

115. One Member recalled the agreement, with Guatemala's consent, to delete paragraphs 1 to 4 and to start examining the document at paragraph 5. After all, as pointed out above, the first four paragraphs of the revised document referred to Article 1 of the Agreement, while the document concerned the application of the provisions of Articles 2 and 3. A number of delegates felt it was important to mention briefly, as an introduction to paragraph 5, that a reference to quantity had no bearing in the context of applying Article 1 of the Agreement. The Technical Committee advocated that idea. On a proposal from a delegate, the United States and the ICC agreed to work together to draw up a short proposal introducing paragraph 5 which would be submitted for assessment by the Technical Committee at the next session.

116. The Technical Committee agreed that, starting from paragraph 5, the document would be examined on the basis of the United States' amendment proposals. However, before coming to paragraph 5, one delegate suggested finding introductory paragraphs in the initial text set out in the Annex to Doc. VT1337Ea. That proposal was supported by other delegates. Accordingly, these introductory paragraphs would be followed by the paragraph to be drafted by the United States and the ICC and then by the United States' amendment proposals. The number of introductory paragraphs would be determined when examining the document at the next session.

117. As regards paragraph 6, the delegates proposed deleting the expression "According to the Cambridge Dictionary" for defining the word "substantially" and substituting "According to accepted lexicographical sources". It had been pointed out that the same wording – "to a large degree" – should be used in paragraph 8 as that used in paragraph 6 of the English version of the document.

118. The Technical Committee saw no reason to object to the Chairperson's proposal to continue the discussions at the next session on the basis of a document prepared by the Secretariat in the light of the discussions held during this session.

Conclusion

119. The Chairperson concluded that the discussions on this question would continue at the 58th Session on the basis of a draft Commentary updated by the Secretariat.

(e) Treatment applicable to transactions agreed in cryptocurrency units Submitted by Uruguay

Docs. VT1377Ea and VT1386Ea

Background

120. The Chairperson presented this case which the Technical Committee agreed to examine as a Specific Technical Question at its 55th Session. It concerned Customs valuation treatment of imported goods when the price is based on cryptocurrency units. A draft Advisory Opinion was set out in the Annex to Doc. VT1338Ea for consideration by the Technical Committee.

121. During the 56th Session, a number of Delegations shared their national practices in this regard and the Committee decided to continue the discussion at the 57th Session.

122. During the intersession, the Secretariat prepared Doc.VT1377Ea to encourage Members to share their experiences on this issue with a view to facilitating a comprehensive discussion at the 57th Session.

Summary of discussion

123. The Delegate of Uruguay stated that the draft Advisory Opinion attached to Doc. VT1338Ea concerns the valuation treatment of imported goods when the price is agreed in cryptocurrency and finally paid in the same cryptocurrency. Uruguay opined that this issue could be appropriately addressed by Advisory Opinion 6.1.

124. The European Union raised another scenario where the invoice indicates the price expressed in a cryptocurrency and at the same time provides for a conversion into a national currency. In this scenario, the EU was of the view that transaction value method is still applicable, in line with Advisory Opinion 20.1, and the Customs value could be determined based on the currency of settlement.

125. Norway and Japan opined that when the price is expressed and settled in cryptocurrency, alternative valuation methods should be used to determine the Customs value of the imported goods. In addition, Norway preferred to treat cryptocurrencies as a peculiar phenomenon without a general reference to Advisory Opinion 6.1.

126. In light of the opinions expressed by Delegations, Uruguay proposed to draft a new Advisory Opinion which would encompass both scenarios: one where the price is expressed and settled in cryptocurrency, and another where the price is expressed in cryptocurrency but ultimately settled in specific legal currencies.

127. Uruguay's proposal was supported by the European Union, Dominican Republic, Norway, the United Kingdom, Guatemala, Morocco and China. Canada and Argentina, also in favour of a new draft, reminded that it needed to take into account the sake of those countries who had adopted cryptocurrency as legal tender.

128. The Committee decided to continue the discussion of this case at the next session on the basis of a new draft Advisory Opinion.

Conclusion

129. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 58th Session.

(f) Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement: Request by Brazil

Docs. VT1378Ea and VT1387Ea

Background

130. During its 56th Session, the Technical Committee agreed to examine this question submitted by Brazil on "Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement" as a Specific Technical Question at its 57th Session.

131. This case concerns a transfer pricing study using the Cost Plus Method, and a draft Case Study was set out in the Annex to Doc. VT1346Ea.

Summary of discussion

132. During the online discussion phase, some delegations gave a brief insight into how they dealt with various transfer pricing scenarios. The discussions revolved around a large range of aspects, including information required on comparability analysis, inclusive contractual terms, functional analysis, characteristics of the product or service, economic circumstances and business strategies.

133. Brazil provided answers by offering to furnish details of the aforementioned elements in the draft Case Study and also provided further clarification in response to other questions.

134. During the 57th Session, Brazil suggested that the first part of the draft Case Study should be examined; namely, whether the price has been influenced by the relationship between the transaction parties.

135. The Delegate of China questioned whether there was sufficient clarity in the draft Case Study to demonstrate that the price had been influenced. Further, she opined that the issue of negative profit by XCO should be moved to the facts of the case from the analysis part. Secondly, China would like the reference to comparable products in paragraph 8 to read "goods of the same class or kind". Thirdly, in respect to paragraph 9, she thought that the text needed to be adjusted as it mentioned "*XCO's gross margin falls within the arm's length inter-quartile range*" which might suggest the price between ICO and XCO was settled in a manner consistent with the normal pricing practices of the industry and the relationship between the parties did not influence the price.

136. Malaysia contended that in assessing the gross margin the subjects of the analysis should be between ICO and XCO, and not the unrelated party, and a comparison in paragraph 26 should be drawn between the cost and margin, and not the price. Malaysia's view was echoed by China.

137. In responding, Brazil encouraged delegations to peruse the revised draft Case Study, which was provided by Brazil a couple of days before this current session.

138. On the point of incorporating the unrelated party in the analysis, Brazil noted that this was of interest as XCO had recouped the negative profit margin; the related party transaction, however, led to prices that were below production costs. Also, Brazil, addressing an earlier intervention of the ICC, agreed that there should be a clearer reference made to the fact that no adjustment was carried out.

139. The ICC elaborated on its request, specifying the choice of words they wished to be included, such as "It is not necessary to explore the reasons why the adjustments were not taken". It advocated that this approach would be in line with the tax perspective according to the OECD Guidelines. The ICC also suggested that a mention could be made on the fact that the Case Study shouldn't be misconstrued as analysing any dumping considerations.

140. After further consideration, the Technical Committee agreed to keep this question on the Agenda of its 58th Session. China suggested that the intersessional period could be used to refine the text.

Conclusion

141. The Technical Committee agreed to keep this question on the Agenda of its 58th Session for further discussion.

(g) Valuation treatment of freight and freight charges under Article 8 of the Agreement: Request by Mauritius

Docs. VT1379Ea and VT1388Ea

Background

142. The Chair presented the case which the Technical Committee agreed to examine as a Specific Technical Question at its 56th session.

143. This question centres on whether the lower CIF invoice value or a higher value, inclusive of additional freight charges (so called Bunker Adjustment Factor), is to be considered for the purposes of assessing the Customs value. The facts pertaining to this question are set out in the Annex to working document VT1364Ea.

Summary of discussion

144. The Delegations of China, Chinese Taipei, the European Union, Indonesia, Japan, Mauritius and Uzbekistan, shared their views during the online discussion phase on the question through the CLiKC! Platform.

145. Two approaches emerged from the online discussion. The United States was of the view that the Bunker Adjustment Factor could be included in the Customs value regardless of who pays as long as national legislation provides for the inclusion of the cost of transport in the Customs value. In contrast, Uruguay's position was that additional adjustments for transport costs should not be included if they are not incurred by the buyer.

146. During the 57th Session, the United States reaffirmed its position, supported by Cameroon, the European Union, Guatemala, Korea and the United Kingdom. Pointing out that though Article 8.1 of the Agreement makes reference to aspects incurred by the buyer, the United States highlighted that Article 8.2 pinpoints the issue of transport costs and stipulates no such criterion of elements that are incurred by the buyer. Further, there is flexibility provided in the Agreement on these aspects, which can be enshrined in domestic legislation.

147. Uruguay made the case that consideration needed to be made with regards to the spirit of the Agreement, namely, to give certainty to the buyer and transparency. Accordingly, a position of including the Bunker Adjustment Factor would be unfair, with the buyer not necessarily being privy to details which are the responsibility of and are borne by the seller.

148. Japan took a similar view, stating that in CIF transactions, the freight cost is supposed to be borne by the seller and the freight cost should be deemed to be included in the CIF price unless the buyer makes additional payments to the seller. The seller and buyer determine the trade terms taking into account the risk of fluctuations in transportation costs. In addition,

Japan read out the General Introductory Commentary of the Agreement with the emphasis that the Customs value should be determined on the basis of simple and equitable criteria consistent with commercial practice. Furthermore, Japan pointed out that the cost to be added to the customs value should be calculated based on objective and quantifiable data as stated in Article 8 Paragraph 3 of the Agreement. However, the price difference between the freight cost on the invoice, which is not an objective and quantifiable figure, and the cost stipulated on the manifest invoice cannot be considered objective and quantifiable data.

149. Canada drew on Commentary 21.1, which pertains only to FOB, highlighting that consistency should be sought by following a similar logic in that Commentary to reflect the commercial reality in this Mauritius case. Canada gave a practical/numerical example based on figures and on the example in Commentary 21.1 to illustrate the error and fictitious customs value that would be created if, in the case of a CIF transaction, the actual transportation costs (i.e. costs higher than those estimated by the seller at time of import and recovered in the CIF price) were added to the customs value. This would result in a customs value that was higher than the price actually paid or payable for the goods by the buyer, and would therefore be higher than the total amount received by the seller, which is used to cover the cost of the goods and all actual transportation costs. Consequently, a position to include the Bunker Adjustment Factor in a CIF price/transaction would result in a fictitious customs value, in breach of the statements of principle found in the General Introductory Commentary of the Agreement, and likewise create a disparity between CIF and FOB countries.

150. Taking inspiration from Canada's intervention, the ICC suggested a new version of the document to sit alongside Commentary 21.1, without going into the details of the case. In addition, the ICC proposed giving a presentation on Incoterms at the next session, which was supported by the Committee.

151. After further consideration, the Technical Committee agreed to keep this question on the Agenda of its 58th Session.

Conclusion

152. The Technical Committee agreed to keep this question on the Agenda of its 58th Session for further discussion.

Agenda Item VII: QUESTIONS RAISED DURING THE INTERSESSION

(a) Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement : Request by Uruguay

Doc. VT1389Ea

Introduction

153. During the intersession prior to the 57th Session of the Technical Committee, the Customs Administration of Uruguay forwarded to the Secretariat a question for consideration by the Technical Committee on Customs Valuation. The question is related to the use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement.

154. At the 57th Session, the Technical Committee was invited to decide whether it would accept the question as a Specific Technical Question to be examined at a future session.

Summary of discussion

155. The Delegate of Uruguay introduced this case, which was collaboratively drafted by Uruguay and the ICC on the basis of Case Study 14.2 in order to address the compensate adjustments issues from a valuation perspective.

156. The Delegate of China illustrated the difference between the current case and Case Study 14.2, and opined that the conclusion of this case, i.e. the treatment of the compensatory TP adjustment, could be easily made by reference to Commentary 4.1. Hence China wondered whether it would be necessary to prepare a new instrument, but it also ascertained its support if it was deemed necessary by the Committee.

157. A number of Delegations, including Canada, the United States, Brazil, Dominican Republic, the United Kingdom, Japan and Korea took the floor to support the inclusion of this case as a Specific Technical Question on the agenda of the next session.

Conclusion

158. The Technical Committee agreed to examine this question as a Specific Technical Question at its next session.

(b) Valuation treatment of imported goods when goods are provided free of charge according to the quantity purchased: Request by Korea

Doc. VT1390Ea

Introduction

159. The Chairperson presented this new question submitted by Korea (Republic of) during the intersession prior to the 57th Session.

160. The question concerns valuation treatment of imported goods where the buyer and the seller agree that certain goods or tours would be provided free of charge according to the quantity of goods purchased. The facts pertaining to this question are set out in the Annex of working document VT1390Ea.

Summary of discussion

161. The Delegate of Korea introduced the facts of the case and provided further clarifications in response to questions raised by China during the online discussion phase.

162. A number of Delegations took the floor in support of examining this case as a specific technical question at the next session, noting that free imports represent a common commercial practice and deserve further discussion.

Conclusion

163. The Technical Committee agreed to include this question on the Agenda of its 58th Session as a Specific Technical Question.

Agenda Item VIII: **OTHER BUSINESS**

(a) Presentation by the International Chamber of Commerce (ICC): E-Commerce and Customs valuation – private-sector views on main technical issues and ways forward

Presentation by the ICC

164. In his introduction, the speaker explained that the aim of the presentation was to share with Members some thoughts from the perspective of the International Chamber of Commerce (ICC) on the issues raised or posed by E-Commerce in connection with Customs valuation. He added that E-Commerce was a rapidly expanding trade practice at present, accelerated by certain factors such as the COVID-19 health crisis. There were three basic models that could be used to describe this phenomenon, which involved an ever-growing volume of transactions (forecast to be around 4.5 trillion in 2025): B2B, B2C and C2C. The presentation would focus on the first of these by examining the types of issues raised by the B2B model and the potential regulatory solutions.

165. The ICC Representative referred to three main issues – undervaluation, transfers without sales and, finally, returned goods, which might be more relevant to the B2C sector – and noted that any solutions must fit into the framework of the WCO Customs Valuation Agreement.

166. The ICC Representative pointed out that undervaluation in connection with E-Commerce should not be confused with dumping and discount practices, and could perhaps be resolved by accelerating the process of digitalization, *inter alia* by digitalizing Customs procedures and documents accompanying transactions, and by generalizing post-clearance audits.

167. He explained that he was in favour of E-Commerce being formalized to a relatively high extent, resulting in quite far-reaching changes to trade practices; he referred in particular to the need for digitalization and virtualization of all the operations accompanying the transaction.

168. He further stated that it was important for electronic invoicing to be harmonized and standardized with a view to combatting under-invoicing, by redefining the data that should be included on electronic invoices. Customs administrations should also pay greater attention to online payments. Electronic payments generally met the valuation requirement because they were satisfactory in terms of the key attributes, and they therefore merited special consideration by Customs administrations.

169. A further characteristic of E-Commerce was the predominance of low-value shipments that were undeniably a focus of fraudulent practices in the area of illicit trade. Potential solutions to this problem included the development of risk profiles on the basis of an effective system for collecting and managing data, and the generalization of post-clearance audits.

170. A further problem posed by E-Commerce related to transfers without a sale, and therefore without a transaction value, between entities located in two different countries. In view of the fact that the values involved were low whereas the volumes involved were large, and also in view of the reasons for carrying out these transfers, the task of finding an appropriate substitution method to determine the Customs values of these goods appeared extremely challenging.

171. The last topic related to the treatment of goods that had been returned for one reason or another; the issues raised in this connection were fairly obvious. The ICC Representative

noted that answers had been provided to the question of VAT treatment, but that further questions remained in relation to returned goods, particularly with regard to Customs-related issues.

172. In conclusion, the ICC Representative stated that his organization wished to encourage collaboration between the private sector and the public sector on the rapidly evolving issue of E-Commerce. He suggested that use should be made of the digital solutions offered by service providers operating in this area but recognized that the private sector needed guidance with a view to improving compliance, in order to ensure that the objective of a steadily growing number of audits did not result in the over-hasty adoption of valuation databases as a solution to the problems inherent to E-Commerce.

Summary of discussion

173. At the end of the presentation by the International Chamber of Commerce, the Chairperson of the Technical Committee expressed thanks on behalf of Members for outlining the concerns held by the private sector, which were also shared by Customs administrations. She invited any delegates wishing to respond to the ICC's presentation to take the floor.

174. The Delegate of Uruguay, after thanking the ICC for the presentation and stating that he had found it extremely interesting, asked whether any difference existed between discounts granted by the seller or the platform in an E-Commerce context, and discounts granted in the context of conventional or traditional trade.

175. The ICC Representative said that, apart from the fact that the discount might be initiated by the seller or by the platform in an E-Commerce context, no fundamental differences existed with regard to their characteristics and the reasons behind them. A further point to be considered was that it was much easier to qualify for a discount in an E-Commerce context.

Conclusion

176. The Technical Committee took note of the presentation by the International Chamber of Commerce on E-Commerce and Customs valuation.

(b) Presentation by the International Chamber of Commerce (ICC): Meaning of the expression "in substantially the same quantity" according to Articles 2 and 3 and their respective Interpretative Notes

Presentation by the ICC

177. The Representative of the International Chamber of Commerce started his presentation by referring to the strategic role played by Customs in terms of providing support for operators with a view to boosting international trade. He then stated that his presentation should be viewed in the context of the question submitted by Guatemala, which related to the meaning of the term "in substantially the same quantity" according to Articles 2 and 3 and their respective Notes.

178. After having thanked Guatemala for having submitted this question, the Representative of the International Chamber of Commerce pointed out that the aim of the question was to

refine the definition of “substantially” as a concept in order to allow all stakeholders involved in trade to reach a uniform understanding of Articles 2 and 3. He pointed out that, during the Technical Committee’s 56th Session, Guatemala had reminded delegations that the purpose of this question was to develop a definition with simple and objective criteria to interpret the expression “in substantially the same quantity”, which appeared in Articles 2 and 3 of the Agreement, to ensure a uniform interpretation as well as certainty and transparency when applying these Articles.

179. The ICC Representative stated that some delegates had considered that it might be possible to define a certain percentage range exemplifying the concept of “substantially” in order to address this problem; unfortunately, however, this solution fell short of meeting all the criteria referred to above. During the discussions held in previous sessions, delegates had referred to several instruments that might pertain to this concept, in particular Explanatory Note 1.1, Advisory Opinion 15.1 and Commentary 10.1. This underscored the complexity involved in finding an appropriate definition.

180. The ICC Representative proposed that attention should be focused on three industries affected by the definition of the term “in substantially the same quantity”: the chemical and petrochemical sector, the textiles sector and the food and beverages sector.

181. With regard to chemical products, it was physically impossible to supply exactly the same quantities every time owing to factors such as residues in tanks or product volatility. Some loss of products was therefore tolerable and should be within a given range. The textiles sector and food and beverages sector likewise faced the same issues.

182. The Representative of the International Chamber of Commerce emphasized that the issue had more to do with valuation than with quantity. In his opinion, the importer was in the best position to provide an accurate estimate of the price to be declared to the Customs service.

183. The ICC Representative, speaking on behalf of his organization, expressed the concerns raised by the private sector regarding the valuation of goods imported in line with the provisions of Articles 2 and 3 of the Agreement. He emphasized that Customs administrations must be able to rely on the concept of “importer’s knowledge” as a basis for assuming that the importer is willing to cooperate with Customs by supplying all the evidence needed for the national Customs authorities to be able to assess the suggested taxable basis of the goods to be imported “in substantially the same quantities”. The information to be supplied might include the following: a clear description of the products, the sectors in which they will be sold, a clear overview of the country of manufacture, a detailed outline of the quantities involved, and a reference to the presence or absence of discounts.

184. The ICC Representative reassured delegates that Customs authorities could also request an overview of the average price of identical/similar products over a well-defined period of time, taking into account developments in respect of various factors (large increases, rapid declines, etc.). He suggested that the basic value should be determined on the basis of demonstrated evidence clearly establishing the reasonableness and accuracy of the adjustment, regardless of whether this resulted in an increase or decrease in value. The ICC Representative added that this might considerably reduce the use of valuation databases during audits, as had been the case – often with disastrous consequences for the private sector – in certain sectors during the COVID-19 health crisis.

Summary of discussion

185. The Chairperson of the Technical Committee thanked the ICC Representative for his presentation and invited delegates to ask questions.

186. The United Kingdom congratulated the Representative of the International Chamber of Commerce on his presentation and said that it had been greatly appreciated. China thanked the ICC Representative for his very informative presentation, pointing out that the example of the petrochemical sector had been mentioned by the European Union, and making other comments, in particular regarding the need to view this issue from a qualitative rather than quantitative angle. Guatemala said that it had not fully understood what had been said regarding the textiles sector, noting that, in Guatemala, there was a very pronounced pattern of fraud in this industry, and that cooperation with importers was a crucial factor in curbing it. Ukraine thanked the ICC Representative for his very useful presentation and confirmed that the information that had been presented would be taken into account. Cameroon acknowledged that it was impossible to define the concept of "in substantially the same quantity" on the basis of percentage ranges, and that these situations required a case-by-case approach. Bangladesh queried whether the valuation process could be objective if percentage ranges had not been defined.

187. The Representative of the International Chamber of Commerce took note of the delegates' comments and responded to Bangladesh's question.

Conclusion

188. The Technical Committee took note of the presentation by the International Chamber of Commerce.

(c) Presentation by the ICC on cryptocurrency

Background

189. At the 56th Session, during the discussion of item V (f) "Treatment applicable to transactions agreed in cryptocurrency units", the ICC, at the invitation of delegates, agreed to deliver a presentation on the legal framework and practical use of cryptocurrencies.

Presentation by the ICC

190. The Observer from the ICC began his presentation by introducing a number of key concepts including "crypto assets", "cryptocurrency" and "tokens". A cryptocurrency is a type of crypto asset which is often referred to as a "coin" and can be used at any merchant who accepts the currency. In contrast, tokens are valid only with a specific merchant.

191. To illustrate the process of settling a cryptocurrency transaction, the Observer used a diagram to show how a requested transaction is broadcast to a peer-to-peer (P2P) network, validated by network of nodes, and combined with other transactions to create a new block of data. This newly created block is subsequently added to the existing block chain.

192. By comparing cryptocurrency to cash, it was highlighted that while cryptocurrencies can be used to assess the value of some goods and services, their high volatility could call into question the predictability of their values.

193. The Observer concluded that most of the prices expressed in cryptocurrency would refer to cryptocurrencies traded on marketplaces where the fair market value could be determined based on the information publicly available.

194. Nevertheless, it was also recognized that the high price volatility of the traded cryptocurrencies could make traditional statistics methodologies and statistical databases unreliable for price predictions.

Conclusion

195. The Technical Committee took note of the presentation by the ICC.

(d) Presentation by the ICC on the Study on compensatory adjustment

Background

196. During the 56th Session, the ICC offered to make a presentation regarding its survey on compensatory adjustments practices at the 57th Session.

Presentation by the ICC

197. The Observer from the ICC gave an introduction to the survey. The genesis of this lay in the ICC's contribution to *WCO Guide to Customs Valuation and Transfer Pricing*, when the ICC submitted six recommendations in 2015. With the survey, the ICC sought to gain an insight into the regulations and practices in Customs administrations pertaining to these. At the time of presentation, the ICC had received 48 responses from Customs administrations as to their respective positions on the recommendations.

198. For ICC's purposes, compensatory adjustments are corrections to a price or profit/loss which are carried out at the end of the tax year/quarterly etc., either upwards or downwards. The ICC reported that compensatory adjustments are done on the basis of credits and debits, where no new invoice is provided.

199. According to the ICC, compensatory adjustments had become increasingly important in light of supply chain disruption during the pandemic, inflationary pressure and tax compliance.

200. Some of the highlights of the survey included that the vast majority of Customs administrations accepted informally transfer pricing in accordance with the arm's length principle. A large majority of Custom administrations entertained the prospect of retrospective pricing compensatory adjustments (upwards or downwards).

201. However, there appeared to be great variation as to the application of these measures worldwide, with Customs administrations giving either official provision (legal certainty), informal provision or none at all. In the ICC's opinion, there are also different degrees to the quality of these provisions, with fewer than 10% of the survey respondents having a mechanism in place that was clear, comprehensive and documented.

Discussion

202. In response to delegates' requests for the sharing of best practices, the ICC highlighted the approaches of the EU and the United States.

203. He noted that whilst the EU did not provide for issuing advance valuation rulings, there were two options for obtaining certainty. One was to have an individual value agreement with a Customs administration, stipulating that as long as certain criteria are fulfilled within a time period, adjustments can be made in the following period. A second concerns an adjustment 28.

authorisation allowing traders to declare a definitive customs value at the time of customs clearance by applying an adjustment rate, corresponding to the element of the transaction value whose amount is not known at the time of customs clearance.

204. He clarified that in the US, advance rulings were processed centrally and published for everyone's benefit, without them expiring. Also, he outlined the system of compensatory adjustments in the USA, for which there is a 2012 ruling stipulating their criteria.

205. Further, he noted that the option used in some countries to allow a single adjustment to be made for multiple items, often called a global adjustment, rather than adjusting every single declaration affected, was upheld as best practice.

206. Moreover, the ICC felt it good practice that a mechanism exists for proper interaction between Customs and tax authorities, which would facilitate making adjustments.

207. Following requests from some delegates, the ICC said that they would be happy to share detailed responses to the survey, subject to Customs administrations' agreement to this.

Conclusion

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

(e) Presentation by the OECD on Cost Plus Method

Background

209. During the intersession, the OECD was invited to make a presentation regarding the Cost Plus Method (CPM).

210. The context to this was the Case Study submitted by Brazil on the topic of "transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement", in which the CPM is used.

Presentation by the OECD

211. The Observer gave an introduction to the concept of the arm's length principle, which is enshrined in the OECD's Model Tax Convention. This principle requires that transactions between related parties are priced as if they were carried out between unrelated parties.

212. The Observer explained the steps to transfer pricing analysis, starting with an assessment of the commercial or financial relations between the associated enterprises (so called functional analysis), including the scrutiny of contracts, to determine what are economically relevant circumstances. The next step was the determination of what the unrelated party price of the transaction would be. There were five main methods which could be chosen from for this step, one of which centres on the CPM. The CPM attempts to estimate the renumeration of the supplier, taking into account the costs it incurs (direct and apportioned to the entity indirect costs), plus any appropriate mark up, with comparability being central to this. It uses a comparable transaction between unrelated parties. In respect to comparability, there needs to be no differences, or only differences that don't have a material effect on the price,

between the two transactions or only differences where adjustments are possible to bring the transactions to a comparable state.

213. The CPM tends to be used in the manufacturing of semi-finished goods and long-term buy and supply arrangements.

214. The CPM generally requires a lower level of comparability than other methods, so it is easier to apply. As such, it is acceptable to choose a maker of toasters to be used as a comparable, when the company produces blenders, unlike with the method Comparable Uncontrolled Price. Other comparability factors may have more weight than the similarity of the products, such as the functions performed and economic circumstances.

Summary of discussion

215. In responding to a delegate, who commented that the price of the company in the Case Study submitted by Brazil doesn't include the full cost of manufacturing, the Observer thought that this is an unusual scenario, especially for a limited risk entity. However, losses may arise due to start up costs, a market penetration strategy adopted or as a result of the pandemic, so the OECD would expect this to be qualified.

216. A delegate enquired as to the use of averages, for example, when assessing comparables. The Observer conveyed that the detail to a range of the value can be included, utilising an inter-quartile approach, but it depends on the facts and circumstances at which point in the range a value is selected, with an average being unusual.

Conclusion

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

(f) Presentation by the OECD on Updates on Transfer Pricing / Base Erosion and Profit Shifting

Background

218. During the intersession, the OECD was invited to make a presentation regarding updates on the Transfer Pricing / Base Erosion and Profit Shifting.

Presentation by the OECD

219. The Observer from the OECD introduced the latest developments in the international tax area, in particular, the tax challenges arising from the digitisation of the economy. The phenomenon of digitisation, characterised by a lack of physical presence, coupled with the growth of profits driven by intangibles, had exposed the difficulties of collecting taxes. She highlighted the incorporation of digitisation in the BEPS Action Plan, which was launched in 2013, and the launch of the Two-Pillar Solution in 2021.

220. The Two Pillar Solution brought fundamental changes to international tax: Pillar One allows market jurisdictions to tax global companies even if they don't have a physical presence there, while Pillar Two sets a global minimum corporate tax rate of 15% on the profits of the largest MNEs and 9% rate for all others applied on a transactional basis.

221. Pillar 1 is subdivided into two components Amount A and Amount B. Expected to come into force in 2025, Amount A looks at the challenge of MNEs not paying taxes in markets where their users and customers are located and has no relationship with transfer pricing (arm's length principle). Its goal is to tax the largest and most profitable MNEs based on the revenue they generate from that country, re-allocated with respect to 25% of residual profits.

222. Amount B looks to adopt a simplified approach to transfer pricing rules for baseline marketing and distribution activities. This will affect work done by Customs administrations under transfer pricing and the arm's length principle. 138 members of the Inclusive Framework had agreed on the Amount B variant at the time of the presentation, with the goal of it being incorporated in the OECD Transfer Pricing Guidelines by January 2024.

223. The OECD foresaw little interaction with Customs on Amount A as there are only estimated to be 100 companies in scope. For Amount B variant, however, there could be some interactions with the Customs domain, as it is concerned with marketing and distribution activities between related parties in relation to physical goods.

Summary of discussion

224. In response to questions as to the status and legal basis to this Two-Pillar initiative, an explanation was provided. The Observer commented that a Multilateral Convention (MLC) on Amount A would be signed at the end of the year and would be binding if it is enshrined in tax treaties, while Amount B would be included in the OECD Transfer Pricing Guidelines, so would not be legally binding.

225. Regarding whether there would be compensatory adjustments as a result of implementing the Pillars, the OECD responded by saying that this may happen in the case of Amount B as it applies the arm's length principle and may lead to the transfer of money between companies.

226. As for the Amount B's impact on the transfer pricing study, the Observer conveyed that the companies applying Amount B still had to submit transfer pricing documentation which included typical elements such as functional analysis, but may not include comparables as in normal transfer pricing studies.

Conclusion

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

Agenda Item IX: ELECTIONS

228. 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.

229. The Acting Director declared open the procedure for the election of the Chairperson and the two Vice-Chairpersons of the TCCV. She called for nominations for the above positions.

230. Qianyu LIN of China was nominated by the Delegate of Uruguay for Chairperson. The Delegate of the European Union seconded this proposal. Qianyu LIN was elected Chairperson by acclamation.

231. Kelly MORGERO of Brazil was nominated by the Delegate of the United States as Vice-Chairperson. The Delegate of Canada seconded this nomination. Kelly MORGERO was elected as Vice-Chairperson by acclamation.

232. Josué Ebenezer BATA'A of Cameroon was nominated by the Delegate of China as Vice-Chairperson. The Delegate of Dominican Republic seconded this nomination. Josué Ebenezer BATA'A was elected as Vice-Chairperson by acclamation.

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

Agenda Item X: PROGRAMME OF FUTURE WORK

234. The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 58th Session:

I. Adoption of Agenda/Suggested programme

II. Adoption of the Technical Committee's 57th 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 technical assistance/capacity building activities undertaken by the Secretariat and Members
- Progress reports from Members' on practical application of the WTO Valuation Agreement
  1. Presentation by South Africa

V. Specific technical questions

a) Accumulated discounts in E-Commerce sales : Request by Uruguay

b) 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

c) 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

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

e) Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement : Request by Brazil

32.

f) Valuation treatment of freight and freight charges under Article 8 of the Agreement : Request by Mauritius

g) Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement : Request by Uruguay

h) Valuation treatment of imported goods when goods are provided free of charge according to the quantity purchased: Request by Korea

VI. Questions raised during the intersession

VII. Other business

- Presentation by the ICC on Incoterms

VIII. Programme of future work

IX. Dates of next meeting

Agenda Item XI: DATES OF NEXT MEETING

235. The Secretariat informed the Technical Committee that the 58th Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 15 to 19 April 2024.

CLOSING REMARKS

236. The Chairperson and the Acting Director thanked all the delegates for their participation in this highly engaging and enlightening session, and thanked the Secretariat, the interpreters and the supporting staff for their work. The Acting Director also took the opportunity to thank Ms. MARTE for her invaluable collaboration as Chairperson over the past three years. She noted that Ms Marte had risen to the challenge of the pandemic to chair the Committee admirably, leading it through the completion four new instruments. She ended by congratulating the elected Chairperson as well as the two Vice Chairpersons and conveyed her anticipation of a further future successes working with the new team.

237. The Chairperson officially closed the session.

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TABLE OF CONTENTS

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Annex B to Doc. VT1391Ec
(VT/57/Oct. 2023)

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REPORT BY THE WTO TO THE 57TH SESSION OF THE TCCV

9-13 OCTOBER 2023

The WTO last reported to the TCCV at its 56th Session in the first week of May 2023. Following the TCCV meeting, the WTO's Committee on Customs Valuation (WTO CV Committee) held its formal meeting on 24 May 2023. As a matter of practice, the WTO seeks to schedule its formal meetings to follow those of the TCCV. The next formal meeting of the WTO CV Committee is scheduled for Wednesday, 15 November 2023, and will be chaired by the incoming Chairperson for the Committee, Mr Omar CISSE from Senegal.

Status of Notifications relating to Customs Valuation Legislation

The WTO CV Committee reviews four types of notifications pertaining to the customs valuation legislation of Members, which include: Members' laws, regulations, and administrative procedures; 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 valuation legislation, and any questions and responses pertaining to that legislation, is compiled in a report, the most recent version set out in document G/VAL/W/232/Rev.17.

At the May 2023 meeting of the WTO CV Committee, the Chairperson acknowledged the work by Members in submitting notifications and related questions pertaining to customs valuation legislation. Since the last report, updated legislation has been received from Colombia and the Philippines. The Committee remains active in its consideration of questions and responses pertaining to the valuation legislation of 35 Members, representing more than a third of the WTO Membership.

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.

Other Activities

The WTO CV Committee also had a number of other matters on its agenda at the last formal meeting. First, a joint session was held with the WCO Secretariat featuring presentations that highlighted key features related to our committees. WTO Members were very appreciative of the opportunity to hear about the functioning of the two committees and to present questions on aspects of our respective work and activities.

Second, prompted by a WTO-wide call to explore ways of improving the functioning of the various WTO committees, the WTO CV Committee has advanced discussions on ways to reform its practices. A number of improvements have been considered by WTO Members, ranging from work to enhance the information available to Members, ways to update the functioning of databases, websites and information portals, as well as efforts to improve the transparency function of the Committee through the management of notifications.

Finally, the WTO CV Committee held an experience-sharing session at which three WTO Members shared information on recent customs opportunities and challenges. China reported on recent developments in its customs valuation control programme; Ecuador

outlined the tools it has used to increase efficiency in its customs administration's revenue collection; and India stressed the importance of strengthening valuation infrastructure by leveraging technology. The presentations can be found on the WTO CV Committee website.

Written statements regarding situation in Ukraine

Belarus

The State Customs Committee of the Republic of Belarus is convinced that the WCO should retain the status of a purely professional platform for dialogue between customs administrations.

We call on the WCO Member States and Secretariat to eliminate politicization of the Organization.

Canada

As noted in the May 20th 2022 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 European Union

The European Union and its Member States reiterate our severe condemnation of the Russia's illegal, unjustified, and unprovoked war of aggression against Ukraine, supported by Belarus, which is also contrary to the nature and objectives of the WCO.

We therefore urge Russia to immediately and unconditionally cease its aggression, to withdraw all of its troops and military equipment from the entire territory of Ukraine within its internationally recognized borders and to act as should be expected from a Member of the WCO.

We stand in solidarity with the people of Ukraine and remain committed to providing and stepping up the necessary support to Ukraine, including for the re-construction of Russian-destroyed Customs Border posts and supply-chain related infrastructure. We call for similar enhanced support to Ukraine from all Members of the WCO's International Customs Community.

Japan

Japan would like to express our full solidarity with Ukraine and Ukrainian people, and echo and support statements made by our international partners such as European Union, United States, Norway, Canada and Sweden.

Kosovo

Kosovo thanks Ukraine for her intervention and would like to echo the interventions presented by; EU, USA, NORWAY, CANADA, SWEDEN, JAPAN, and other member states of the WCO in the support of Ukraine. The Russian Federation's aggression, supported by the Republic of Belarus, towards Ukraine as a member of the World Customs Organization, is considered the violence against civilian population and infrastructure, as well as the operations of a World Customs Organization Member. Kosovo stands in full support and solidarity with Ukraine.

Norway

Norway condemns Russia's unprovoked and illegal military aggression against Ukraine, supported by Belarus. We see Russia's actions as a violation of the vision and values that underpin WCO cooperation, and we stand with a number of other WCO members in supporting Ukraine and demand that its territorial integrity, sovereignty and independence are restored.

Sweden

Sweden supports the interventions by the EU and other members in the support for Ukraine. We wish to express our full solidarity with Ukraine, and condemn in the strongest possible terms the unprovoked and unjustified aggression by the Russian Federation supported by the Republic of Belarus.

Ukraine

Dear Chair, Colleagues

Russia and Belarus continue the war against Ukraine. Almost every day there are air raid alerts over Ukraine. **The Russian army prefers to launch missiles at night, between 2 and 5 am, and target them at residential areas and seaports**.

On **25 September 2023** Russian missile hit the hotel and the Customs office located in the Odessa Marine Station.

On **26 September 2023 Russian** missiles and drones attacked ferry crossing and **Customs checkpoint in Orlivka** at the border with Romania.

On **5 October 2023** Russian missile targeted a cafe and a shop in village Hroza, in the Kharkiv region, killing at least 52 people, including a 6-year-old boy.

On **6 October 2023** Russia's missile attacked residential buildings in Kharkiv. A 68-year-old lady and her 10-year-old grandson were killed. More than 30 people including an 11-month-old baby were injured.

We very much regret to observe recent terrorist attack against Israel. Terrorists are similar everywhere as they target civilian population.

Russia and Belarus are blatantly violating the UN Charter, rules and customs of war, the WCO Council conclusions which **condemned any acts of aggression on Customs borders**.

We recall that in response to crimes against Ukrainian children the International Criminal Court issued an arrest order to the Russian president (attached).

We call on all Customs community in the world to support Ukraine and demand that Russia and Belarus stop the war immediately, withdraw troops from Ukraine, respect Ukraine's internationally recognized Customs borders and sovereignty. Terrorist states such as Russia and Belarus should not be the members of the WCO.

Thank you for your attention.

Chair, Ukraine will submit this in writing together with annexed Statement by prosecutor Karim Khan of International Criminal Court.

ANNEX
Statement: 17 March 2023 |

1. Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova

https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin

On 22 February 2023, I submitted applications to Pre-Trial Chamber II of the International Criminal Court for warrants of arrest in the context of the Situation in Ukraine.

Today, the Pre-Trial Chamber has issued arrest warrants in relation to the following two individuals:

- Mr Vladimir Putin, President of the Russian Federation; and
- Ms Maria Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation.

On the basis of evidence collected and analysed by my Office pursuant to its independent investigations, the Pre-Trial Chamber has confirmed that there are reasonable grounds to believe that President Putin and Ms Lvova-Belova bear criminal responsibility for the unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to the Russian Federation, contrary to article 8(2)(a)(vii) and article 8(2)(b)(viii) of the Rome Statute.

Incidents identified by my Office include the deportation of at least hundreds of children taken from orphanages and children's care homes. Many of these children, we allege, have since been given for adoption in the Russian Federation. The law was changed in the Russian Federation, through Presidential decrees issued by President Putin, to expedite the conferral of Russian citizenship, making it easier for them to be adopted by Russian families.

My Office alleges that these acts, amongst others, demonstrate an intention to permanently remove these children from their own country. At the time of these deportations, the Ukrainian children were protected persons under the Fourth Geneva Convention.

We also underlined in our application that most acts in this pattern of deportations were carried out in the context of the acts of aggression committed by Russian military forces against the sovereignty and territorial integrity of Ukraine which began in 2014.

In September last year, I addressed the United Nations Security Council and emphasised that the investigation of alleged illegal deportation of children from Ukraine was a priority for my Office. The human impact of these crimes was also made clear during my most recent visit to Ukraine. While there, I visited one of the care homes from which children were allegedly taken, close to the current frontlines of the conflict. The accounts of those who had cared for these children, and their fears as to what had become of them, underlined the urgent need for action.

We must ensure that those responsible for alleged crimes are held accountable and that children are returned to their families and communities. As I stated at the time, we cannot allow children to be treated as if they are the spoils of war.

Since taking up my position as Prosecutor, I have emphasised that the law must provide shelter to the most vulnerable on the front lines, and that we also must put the experiences of children in conflict at the centre of our work. To do this, we have sought to bring our work closer to communities, draw on advanced technological tools and, crucially, build innovative partnerships in support of our investigative work.

I am grateful for the support of many partners of the Office that have allowed us to move forward rapidly in the collection of evidence. I wish to express my thanks in particular to the Office of the Prosecutor General of Ukraine whose engagement has been essential in supporting the work my Office has carried out, including on the ground in Ukraine. Our participation in the Joint Investigation Team with national authorities from seven States, under the auspices of Eurojust, has also facilitated swift access to relevant information and evidence.

I will also continue to seek cooperation from the Russian Federation in relation to the Situation in Ukraine, and ensure my Office fully meets its responsibility pursuant to article 54 of the Rome Statute to investigate incriminating and exonerating circumstances equally.

Whilst today is a first, concrete step with respect to the Situation in Ukraine, my Office continues to develop multiple, interconnected lines of investigation.

As I stated when in Bucha last May, Ukraine is a crime scene that encompasses a complex and broad range of alleged international crimes. We will not hesitate to submit further applications for warrants of arrest when the evidence requires us to do so.

The United Kingdom

Russia’s assault on Ukraine is an unprovoked, premeditated attack against a sovereign democratic state. The UK and our international partners stand united in condemning the Russian government’s reprehensible actions, which are an egregious violation of international law including the UN Charter.

Russia must urgently de-escalate and withdraw its troops. It must be held accountable and stop undermining democracy, global stability, and 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.

The 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 on the customs community around the globe.

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