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TECHNICAL COMMITTEE  
ON CUSTOMS VALUATION

VT1449Eb

-  
59<sup>th</sup> Session  
-

O. Eng.

Brussels, 23 October 2024.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON  
THE 59<sup>th</sup> SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

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*Opening remarks*

1. The 59<sup>th</sup> Session of the Technical Committee on Customs Valuation (TCCV) was held at the Headquarters of the World Customs Organization (WCO) from 14 to 18 October 2024. The Chairperson, Qianyu LIN (China), extended a warm greeting to all delegates, attending in person and participating online. She also extended a special welcome to those who were participating in a TCCV session for the first time. She thanked all delegates for their diligent work during the online discussion phase on the CLiKC! Platform, citing it as a solid foundation for the work throughout the week.
2. The Acting Director of Tariff and Trade Affairs joined the Chairperson in welcoming all the delegates. She shed light on the increasing volume of cases submitted to the Technical Committee, emphasising the urgency of finding consistent, practical solutions to the complexities that arise in the valuation work on the ground. For this reason, she urged all delegates to concentrate their efforts on achieving agreement on as many questions as possible. She encouraged the delegates to actively engage, share knowledge, and foster constructive dialogue that will deepen the discussions and ultimately enhance the technical guidance provided to Members. She also recognized and congratulated the delegates for the

high level of participation seen during the online discussion phase. She concluded her remarks by wishing all participants a productive session.

3. After thanking the Acting Director, the Chairperson informed all delegates of the administrative arrangements required for the smooth running of the session. She reminded the delegates that in order to maintain the technical nature of the meeting, it has been reaffirmed by the Policy Commission in December 2023 that statements of a political nature are not to be delivered/read during the meeting. Such statements could be provided in writing to the Secretariat for inclusion in an Annex to the Report of the session.
4. In this respect, statements forwarded to the Secretariat by the European Union and Ukraine are set out in Annex D to this draft Report.

#### **Agenda Item I: ADOPTION OF AGENDA**

(a) Provisional Agenda  
Doc. VT1418Eb

5. The Chairperson invited comments on the provisional Agenda in Doc. VT1418Eb, published on the TCCV Meeting page, and on the 59<sup>th</sup> TCCV Session Forum Group on the CLiKC! Platform. She also invited delegates to raise any point that they wished to discuss under item VII of the Agenda - Other Business.
6. The Committee was informed that Guatemala, prior to the in-person meeting, had withdrawn the case it submitted during the intersession, which was listed as item VI (a) on the provisional Agenda. The Chairperson also drew the Committee's attention to a non-paper circulated during the online discussion phase on the CLiKC! Platform, concerning a new technical question submitted by the United States to the Committee for consideration.
7. The Committee decided to remove item VI (a) from the provisional Agenda and add a new item, VI (e), for the question submitted by the United States in the non-paper.

Conclusion

8. The Technical Committee adopted the Agenda, with the above adjustments made.

(b) Suggested programme

Doc. VT1419Ea

9. The Chairperson referred to Doc. VT1419Ea, which set out the suggested programme of work for the 59<sup>th</sup> Session prepared by the Secretariat.
10. Following the amendments made to the provisional Agenda, item VI (a) was removed from the suggested programme, and the newly added item VI (e) was added to be examined after the other three questions under item VI, "Questions raised during the intersession".

Conclusion

11. The Technical Committee adopted the suggested programme as set out in Doc. VT1419Ea, subject to the above-mentioned changes.

Agenda Item II:

**ADOPTION OF THE TECHNICAL COMMITTEE'S 58<sup>TH</sup>  
SESSION REPORT**

Doc. VT1417Eb Revised

Background

12. The Chairperson introduced this Agenda item, reminding the Committee of the procedure for the adoption of its Session Report, approved by Members during the 42<sup>nd</sup> Session.
13. During the intersession preceding the 59<sup>th</sup> Session, Canada, Chile, China, Colombia, the European Union, Guatemala, Japan, Norway, Uruguay and the Chairperson had submitted comments on the "a" version of the draft Report of the 58<sup>th</sup> TCCV Session. These comments had been incorporated into the draft Report, and a "b" version had been published as Doc. VT1417Eb in which Members' comments had been highlighted in red.

14. Comments on the “b” version of the draft Report had been received from Canada, China and Uruguay. This had resulted in a “b revised” version incorporating the comments submitted by the aforementioned delegations.

Summary of discussion

15. During the 59<sup>th</sup> Session, no comments were received on the “b revised” version of the draft Report of the 58<sup>th</sup> Session. A “c” version of the Report would be published in Doc. VT1417Ec as a final draft to be submitted to the Council for approval.

Conclusion

16. The Technical Committee adopted the Report of its 58<sup>th</sup> Session.

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

(a) Director’s Report

Doc. VT1420Ea

17. The Chairperson invited the Acting Director to present the Director’s Report, contained in Doc. VT1420Ea. The Acting Director summarized the key intersessional activities included in the document.
18. The Acting Director briefed the Technical Committee on a few items of the 90<sup>th</sup> Policy Commission Session as follows:
  - (i) The Policy Commission endorsed the Customs Environmental Scan 2024, which is drawn up in the context of the Strategic Plan 2022-2025, to provide input for the Strategic Plan 2025-2028;
  - (ii) The Policy Commission endorsed the Implementation Plan 2024-2025 and the activities planned for the next financial year;

(iii) The Policy Commission took note of the information provided with regard to the ongoing work on Green Customs.

19. The Technical Committee was informed that Mr. Joseph OUEDRAOGO from Burkina Faso left the WCO Secretariat after completing his five-year term as Technical Attaché on Customs Valuation.

Summary of discussion

20. Uruguay took the floor to thank the Acting Director for the report and inquired about whether the updated report on Part III of the Conspectus of Technical Valuation Questions was available on the WCO website, and if not, requested the Secretariat to share an updated report on that. He also took note of the three weeks allocated for the online **discussion** phase prior to the 59<sup>th</sup> Session. Given the increase in the number of questions submitted to the Technical Committee, he requested an extension of this phase to four weeks to facilitate more detailed discussions **among Customs administrations, with assistance from all the support teams, and in particular to amend the wording of the proposed texts** before the in-person meeting. **This would enable our Committee to be more efficient. (Uruguay)**
21. The Delegate of Brazil thanked the Acting Director for the comprehensive report and inquired about the WCO's modernization plan, specifically how it relates to the valuation work.
22. Regarding the update on Part III of the Conspectus, the Acting Director proposed the inclusion of a new agenda item for the next meeting which would allow the Secretariat to share a report on the update and statistics. The Secretariat also clarified that the Conspectus of Technical Valuation Questions was published on the WCO website and would be updated after each TCCV session. The Acting Director stated that the extension of the online discussion phase must be carefully considered in relation to the timelines for specific intersessional deliverables, as it might create a disadvantage in terms of the time allowed for Members to give their inputs to other intersessional tasks.
23. In response to the question from Brazil, the Acting Director informed that under the WCO modernisation plan, the origin and revenue compliance would merge with the valuation to form a

unit under a new Sub-Directorate. Regarding the valuation work itself, the Acting Director stated that it is anticipated to improve coordination among related areas, with a particular emphasis on revenue. However, she said that a significant change in the technical aspects of the work is not expected.

### Conclusion

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

#### (b) WTO Committee on Customs Valuation Report

25. The observer from the World Trade Organization (WTO) was unable to attend the meeting in person. At her request, the WCO Secretariat read her written report on the work of the Committee on Customs Valuation (CCV).
26. The WTO CCV held its formal meeting on 23 May 2024. During the session, the Committee reviewed the Customs valuation legislation of Mauritania, which had been notified for the first time. It also reviewed revisions to Customs valuation legislation notified by Nigeria and Norway. The Committee concluded reviews of the Customs valuation legislation of four Members (Brazil, Mongolia, Norway, and Philippines). The review of questions and responses pertaining to the valuation legislation of 23 Members remained pending before the Committee.
27. Delegates were also informed of the workshop organized by the WTO from 22 to 24 May 2024 on WTO Customs valuation notifications. The workshop, held on the margins of the formal meeting, consisted of training and hands-on exercises to assist capital-based Customs officials from 26 Members with these notifications. Special thanks were extended to the WCO Secretariat for the participation of Jiabin LUO, Technical Officer on Customs Valuation, as a trainer in the workshop. Following the workshop, 16 out of the 26 participants had drafted a total of 31 notifications, of which 12 had been circulated.
28. The next WTO CCV formal meeting was scheduled to take place on Wednesday, 11 December 2024.
29. The written report from the WTO Secretariat is appended in Annex C to this draft Report.

Conclusion

30. The Technical Committee took note of the report.

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

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

Docs. VT1421Ea and VT1434Ea

Background

31. In accordance with the Technical Committee's decision, the Secretariat had monitored and communicated details of the technical assistance/capacity building activities planned and/or carried out by Members in order to provide all Members with useful information for planning purposes and to prevent any duplication of effort in this respect.
32. In Doc. VT1421Ea, the Secretariat had invited the Members to submit information to it, no later than 2 August 2024, concerning their technical assistance/capacity building activities. By the date of publication of the second set of working documents for the 58<sup>th</sup> Session, the Secretariat had not received any information from Members concerning their technical assistance activities.
33. Information on the technical assistance/capacity building activities undertaken or to be carried out by the Secretariat was set out in the Annex to Doc. VT1434Ea.

Summary of discussion

34. The Secretariat's report on technical assistance/capacity building activities had not given rise to any comments from the delegates attending the 59<sup>th</sup> Session.
35. Uruguay informed the Technical Committee that, in its capacity as Regional Office for Capacity Building (ROCB) for the Americas and the Caribbean Region, it held an online basic course on Customs valuation in Spanish, lasting 9 weeks for 24 officials from 12 Customs administrations,

VT1449Ea  
(VT/59/Oct. 2024)

between June and August 2024. In addition, Uruguay notified that it developed a 3-week online Advanced Course in Spanish, for 16 officials from 9 Customs administrations in the region, between August and September 2024.

36. Indonesia informed the Technical Committee regarding the workshop held on the exchange of valuation information. The one-day workshop was conducted online and was hosted by the ASEAN Secretariat.

#### Conclusion

37. The Technical Committee took note of the report by the Secretariat in the Annex to Doc. VT1434Ea, as well as the activities carried out by Indonesia and Uruguay, respectively.

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

Docs. VT1422Ea and VT1435Ea

#### Background

38. This is a standing agenda item where the Secretariat invites Members to make reports on the progress made in the implementation of the WTO Customs Valuation Agreement during the intersession. The work programme adopted by the TCCV at its 56<sup>th</sup> Session requires that the report from at least one member be presented to the Committee every two years.
39. During the intersession the Secretariat published the working document VT1422Ea inviting Members to report on the progress made in the implementation of the WTO Customs Valuation Agreement.
40. During the intersession, no member expressed their intention to deliver presentations on their respective experiences at the 59<sup>th</sup> Session.



Conclusion

41. The Technical Committee took note of the progress report on Members' application of the Agreement

**Agenda Item V: SPECIFIC TECHNICAL QUESTIONS**

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

Docs. VT1423Ea and VT1436Ea

Background

42. This question was submitted by Uruguay at the 53<sup>rd</sup> Session, at which the Technical Committee agreed to examine it as a specific technical question. It concerns discounts in E-Commerce transactions on an electronic platform.
43. During the 58<sup>th</sup> Session, the Technical Committee decided to allow more time to examine a non-paper submitted by the European Union during the intersession preceding the 58<sup>th</sup> Session.
44. During the intersession, Uruguay submitted written comments, inviting the European Union to inform the Technical Committee at the 59<sup>th</sup> Session the basis of determining Customs value for the two scenarios mentioned in Uruguay's comments, which were annexed to working document VT1436Ea.

Summary of discussion

45. During the online discussion phase on the CLiKC! Platform preceding the 59<sup>th</sup> Session, the Delegates of Azerbaijan, Uruguay and Uzbekistan discussed this question.
46. During the in-person meeting, in response to the Chairperson's invitation to expand on the written comments forwarded during the intersession, Uruguay acknowledged the interesting background information on E-Commerce provided by the European Union in the form of a non-paper. However, Uruguay emphasized the importance of examining practical cases, dividing the discussion into two types: discounts offered by the seller and by the E-Commerce platform.

47. The Delegate of the European Union responded to the Uruguay's questions raised during the intersession and mentioned the need to look at the difference between a "discount" and a "voucher," because although the Uruguay's written comments related to accumulated discounts, in the scenarios presented there was reference to the seller offering a voucher. The European Union further stated that this distinction makes all the difference because, as per the EU legislation, if it is a discount, then it ~~could~~ **can** be included in the calculations of the Customs value, i.e. the discount amount could be deducted from the full amount. However, if the amount is in the form of a voucher, the European Union considers it a means of payment, i.e. the voucher amount will not be deducted from the Customs value. The European Union's view was that, in so far as the offer by the seller is considered to be a discount, then it would be allowed ~~as part of~~ **for Customs value valuation purposes. (China)** / ~~as part of an amount to be deducted from the~~ **Customs value. (Uruguay)**
48. Referring to the scenarios given in Uruguay's comments, the European Union explained their respective positions for different cases, stating that, in principle, if it is a discount, ~~its amount~~ **will not (Uruguay)** be allowed in the Customs value. However, to accept a discount offered by a platform, there needs to be a link between the discount and the seller. When a third party who is not the seller offers a discount, then the offer will not be accepted as a discount for the purpose of valuation. The European Union said caution must be exercised in such cases, as there may be instances where the platform is either associated with the seller or is the seller itself. Hence the European Union's position was that before allowing any discount offered by a platform, it has to be established that the discount is actually given by the seller.
49. Brazil agreed with the European Union with regard to the treatment for vouchers. Brazil further stated that vouchers, coupons, and/or shopping points are offers that serve as marketing tools and should be added to the Customs value. The question was also raised whether the platform compensates the seller for the reduced price when it makes the offer. **Uruguay stated that, in practice, the buyer cannot know or confirm whether a discount or coupon is ultimately borne by the seller or by the platform, and, if Customs were to request this information from the buyer, it would not be possible for the buyer to provide it. (Uruguay)**

50. The Delegate of Canada expressed appreciation to the European Union for the non-paper and found the EU approach to be very informative. However, ~~as it stood~~ Canada ~~had different views with regards to how a~~ viewed vouchers as a type of discount and currently ~~is treated, where it is possible for a voucher to be considered as a discount depending on how a voucher is defined~~ them as such. Nevertheless, if vouchers were defined and interpreted in such a way as to ~~Although sometimes it may~~ be treated as a consideration or a form of payment, Canada ~~and hence will have~~ would need to refer back to ~~its the~~ capital-based administration for further reflection and ~~confirmation~~ possible redetermination of its position. Furthermore, in its current approach of viewing the “voucher” from the lens of a discount, Canada also shared that there could be situations where the “voucher” (i.e. discount) received by the customer is offered only by the 3<sup>rd</sup> party platform and where the platform ~~still remits-settles~~ the voucher/discount amount ~~with~~ to the seller (e.g. by means of a payment to the seller or a reduction of the platform’s fees/commission charged to the seller), such that the seller ultimately receives the full (i.e. non-discounted) price for the goods sold to the customer. In other words, the vendor receives the lower price paid by the customer as well as the voucher amount supplied by the third party platform. In such situations, ~~#~~ the voucher may be viewed as an indirect payment rather than a discount, that is paid by the third-party service provider (the platform) to the seller. Additionally, Canada ~~reasserted its position~~ that offers like “shopping points” are different. ~~and~~ In its estimation, shopping points do not qualify as discounts but rather are a consideration (i.e. form of payment) for which a value can be determined, the amount of which needs to be included in the customs value. Finally, continuing from its current perspective of viewing vouchers as discounts, Canada did not agree with the opinions raised by Azerbaijan and Uzbekistan during the online phase. (Canada)
51. Considering the competing views on what qualifies as discounts in relation to E-Commerce transactions, the United States highlighted the challenge in moving forward with the case by the Technical Committee. The United States considered voucher as a type of a discount for a subsequent purchase that was agreed upon prior to importation. Whether the discount is offered by the seller or the platform, the United States would consider the amount ultimately paid by the buyer.

52. The Delegate of Cameroon emphasized the complexities Customs faces when handling discounts related to past imports. According to Cameroon, a discount for valuation purposes must directly relate to the goods under consideration, not to a previous import.
53. The Chairperson observed that the Technical Committee had departed from the original cases submitted by Uruguay and was looking at new scenarios ~~submitted raised by Uruguay during the intersession (Chair)~~ in light of the non-paper by the European Union.
54. The Acting Director suggested that the Technical Committee could further elaborate on this specific technical point, whether through this question or through a new question focused on the treatment of the accumulated values from previous purchases.
55. The Delegate of the Dominican Republic pointed out that these situations are faced by Customs administrations every day; hence, it was worthwhile to continue working on the topic in a more flexible manner.
56. China shared its views on how to proceed with this question, stating that ~~further discussions could be specified on aspects like it could be further refined to focus on the~~ difference between a voucher and a discount ~~with discussion based on different cases~~, or the question could be put into Part III of the Conspectus and ~~the Committee may~~ continue the discussion by introducing a new question to the Agenda ~~as a standing item as proposed by the Secretariat.~~ (China)
57. Canada and Uruguay agreed that it was not possible to proceed with the case in its current form ~~favouring moving the current case to Part III of the Conspectus (China)~~. Canada supported the idea proposed by the Acting Director that a new question could be taken up by the Technical Committee and be more focused on the point of differing opinion ~~(e.g. are vouchers, accumulated points, etc. a form of consideration (i.e. means of payment) to be included in the customs value or are they a form of discount to be excluded therefrom) (Canada)~~. However, it was noted that currently there's no member willing to redraft the question. ~~Canada also supported moving the current case to Part III of the Conspectus.~~ The Acting Director further proposed that the Secretariat would help with the submission of the new question. (China)

57 (comments by Uruguay) Canada and Uruguay agreed that it was not possible to proceed with the case in its current form. Canada supported the idea proposed by the Acting Director that a new question could be taken up by the Technical Committee and be more focused on the point of differing opinion. Canada and Uruguay also supported moving the current case to Part III of the Conspectus. (Uruguay).

58 The Chairperson informed, with the support of the Technical Committee, that this case will be moved to Part III of the Conspectus, and based on the previous discussions and information obtained, the Secretariate (Canada, China) would submit a new specific technical question on “valuation treatment of credits accumulated from past purchases”. The Chairperson invited Members to contribute in the work to prepare the working document. Brazil, Canada, China, the Dominican Republic and Uruguay volunteered to work with the Secretariat during the intersession to develop the working document.

#### Conclusion

59 The Technical Committee agreed to move this question to Part III of the Conspectus of Technical Valuation Questions and continue discussion on the topic at its next session under a new question submitted by the Secretariat.

- (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

Docs. VT1424Ea and VT1437Ea

#### Background

60 This question submitted by Uruguay had been examined by the Technical Committee since its 54<sup>th</sup> Session at which it agreed to examine it as a specific technical question. It concerns the meaning of the expression “price for the imported goods” in accordance with paragraph 4 of the Interpretative Note to Article 1.

- 61 During the 58<sup>th</sup> Session, the Technical Committee reviewed the “Conceptual structure of the price actually paid or payable in the transaction value method” provided by Uruguay before moving on to the examination of the draft Commentary annexed to Doc.VT1398Ea.
- 62 During the intersession preceding the 59<sup>th</sup> Session, Uruguay worked with the Secretariat to update the draft Commentary which was set out in the Annex to Doc. VT1424Ea.
- 63 In response to the working document VT1424Ea, Canada, China and the United States submitted to the Secretariat their written comments which were set out in in Annexes I, II and III to working document VT1437Ea, respectively.

#### Summary of discussion

- 64 During the online discussion phase of the 59<sup>th</sup> Session, the Delegations of Indonesia and Uruguay discussed the question.
- 65 In response to the Chairperson’s invitation to further clarify the intersession comments, Canada noted that during the previous session the Technical Committee agreed to begin work on the new draft proposed by Uruguay. The new draft shifted its focus from the original question of the meaning of “price for the imported goods” to a broader perspective, serving as a quick reference and summary tool for the application of the transaction value method while addressing “price actually paid or payable” as **the central** part of this tool. (Uruguay) With this objective in mind, Canada proposed several changes to the document during **the (Canada)** intersession, aiming to improve the clarity, legibility, flow, and understanding of the text, as well as to achieve harmony and consistency in the interpretation of the Agreement.
- 66 Among these changes, Canada wished to highlight two important changes. First, Canada believes that all paragraphs, bullets, etc. within a technical instrument should be numbered for ease of reference. Second, Canada recommends consistently writing "customs value" with a lowercase "c". The term "Customs", when written with a capital "C", typically refers to the customs administration of a country. Therefore, if we were referring to the value determined by Customs (i.e., the Customs administration of the country of importation), Canada would concur with the use of "Customs value". However, Canada holds the view that the instruments issued

by the Technical Committee employ a more general term, signifying the value for Customs purposes as outlined in the Agreement, and “customs value” in this sense is spelled using a lower case “c” in the Agreement itself, including the direct quote from the Agreement in subparagraph 3(b) of the current draft of the technical question (Canada). Therefore, Canada suggested that using lowercase “c” would be more appropriate. Ultimately, Canada suggested that the Technical Committee consider the changes proposed in Annex I to VT1437Ea during its paragraph-by-paragraph review of the draft instrument.

- 67 China recognized the explanation related to “price actually paid or payable” ~~are~~ **is** essential and necessary for the uniform interpretation and application of the Agreement. While China supported ~~s~~ the advancement of the discussion, it had ~~s~~ concerns about the current draft of the text. China felt it still remained unclear with regard to the meaning of “for the imported goods” and the interrelationship between paragraphs 1 and 4 of the Interpretative Notes to Article 1 and paragraph 7 of Annex III of the Agreement. China believed even in the new text these ambiguities cannot be overlooked, since these involve the key elements of the concept “price actually paid or payable” and could possibly affect the uniform interpretation and application of PAPP under the Agreement. (China)
- 68 Regarding the instrument's format, China referred to the guidelines issued by the Technical Committee and ~~asserted~~ **considered** that **since** the current draft text ~~serves as an~~ **introduced no** additional explanation and clarification of the Agreement's provisions. ~~However, China was~~ **unable, it was hard** to determine which format would best suit the current text. China would like to hear the opinion of other Members regarding the format and would abide by the decision of the Technical Committee. (China)
- 69 The United States further explained the comments submitted during the intersession. The first point was to do with the scope of the question, as it had been raised by Canada, the new text **is was** much broader than the original question as to what constitutes a payment for the imported goods, while now the focus **is was** on a more general level about the transaction value. This shift occurred because a consensus could not be reached during the previous deliberations, about what constitutes payment for the imported goods versus payment for something else. The United States expressed concern that the Technical Committee ~~did~~ **does** not ~~seems~~ to move any closer to a shared understanding on the “condition of sale” language of paragraph 7 of

Annex III of the Agreement. Therefore, the United States questioned whether it ~~is~~ ~~was~~ possible to develop a new interpretation in either the conceptual framework document or the general commentary on the meaning of "price actually paid or payable for the imported goods" without reaching a consensus on the "condition of sale" element. (China)

70 Brazil thanked Uruguay for having proposed the new text and believed that it would be a useful tool. Brazil explained that the elements relating to the concept of "price actually paid or payable" are scattered in different places of the Agreement, and therefore this new draft with a systemic compilation of all elements will be very relevant and useful. Brazil supported continuing the work on the basis of the new document.

71 ~~Uruguay stated that response to the comments made by China and the United States during the intersession was provided during the online phase.~~ Uruguay reminded the Technical Committee that, in the previous sessions, ~~a focus on~~ the ~~analysis of the concept~~ "price for the imported goods" ~~had~~ led to ~~many differing suggestions opposing positions~~ from Members, making it impossible to proceed. (Uruguay) Uruguay therefore suggested examining this question from a broader viewpoint, focusing on the "price actually paid or payable." The current text aimed to examine the various elements involved in determining the price actually paid or payable and ~~presented~~ them in a diagrammatic format for ease of use by both the private sector and Customs administrations. Uruguay clarified that the text ~~did~~ ~~does~~ not introduce any new elements, but rather ~~examined~~ existing elements ~~related to in the~~ transaction value ~~method~~ and ~~aligned~~ ~~linked~~ them with ~~approved~~ instruments ~~already approved~~ by the Technical Committee. Uruguay supported Canada's contribution and recommended that the Technical Committee proceeds with the document's analysis based on Canada's version of text. (China, Uruguay)

72 The ICC used the elephant in the room analogy to highlight the unanswered question of how to collectively distinguish a payment for the imported goods versus payments ~~that are~~ for something else. According to the ICC, it is crucial for traders and Customs administrations to comprehend the definition of "the payment for the imported goods." The ICC expressed concern about the unanswered question ~~of how to differentiate the payment for imported goods from other payments~~, citing the Technical Committee's inability to progress on this issue for several



years. The ICC opined that, however, continuing discussions on the current text will be beneficial. (China)

- 73 The Delegate from Japan agreed with China and the United States on the importance of clarifying the meaning of “for the imported goods” (China) and the relation of paragraphs 1 and 4 of the Interpretative Notes to Article 1 and paragraph 7 of Annex III, while taking into account the ICC's views on the historical perspective on paragraph 7 of Annex III. Japan stated that the “price for the imported goods” is the fundamental concept of the Agreement and believed that ~~making a definition without analysis of factual cases and any rationale should be avoided because~~ (Japan) the impact of the definition of this concept would be huge and would like to hear Members opinions on that.
- 74 The Chairperson reminded the Technical Committee that although delegates ~~are~~ were concerned about the meaning of the “price for the imported goods” and the interrelationship between paragraphs 1 and 4 of the Interpretative Notes to Article 1 and paragraph 7 of Annex III of the Agreement, the Technical Committee failed during the previous sessions to reach a consensus on the interpretations of these provisions. As such, the Chairperson asked whether the Technical Committee could now continue with ~~the examination based on~~ the draft Commentary ~~that was~~ submitted by Uruguay with a broader perspective on summarising concepts that were already prescribed in the existing instruments ~~that could provide useful guidance to Members and the trade~~. (Chair)
- 75 The Chairperson referred to working document VT1437Ea, which outlined~~s~~ the definitions of types of instruments issued by the Technical Committee. In response to China’s question about the suitability of “Commentary” as the type of instrument, drawing on the Secretariat’s suggestion, the Chairperson asked the Technical Committee whether an “Explanatory Note” could be a more appropriate one. (China)
- 76 The European Union concurred with the views of the Secretariat that the most appropriate format would be an Explanatory Note. Canada supported continuing the paragraph-by-paragraph review of the draft instrument and believed that an Explanatory Note would be an appropriate type.

- 77 Citing the contentious issues related to the question, Uruguay proposed changing the title of this instrument from “Meaning of the expression ‘price for the imported goods’” to “Meaning of the expression ‘price actually paid or payable’ for the goods” and agreed to proceed with whichever format decided by the Technical Committee.
- 78 The Technical Committee agreed to change the instrument type to an Explanatory Note and proceed with the changed title “Meaning of the expression ‘price actually paid or payable’ for the goods”.
- 79 The Technical Committee reviewed paragraphs 1 to 5 of the draft text submitted by Uruguay and revised by Canada. Citing lack of time available, the Chairperson requested Canada, Uruguay and the ICC to rewrite the sentence “These payments may be made by the following means: ...” in paragraph 5, taking into account comments made by delegates.
- 80 The Chairperson advised all Members to work further during the intersession and online phase of the 60<sup>th</sup> session to achieve consensus on the text, with the hope that the Technical Committee could adopt a new instrument during the next session.

### Conclusion

- 81 The Technical Committee agreed to change the title to “Meaning of the expression ‘price actually paid or payable’ for the goods” and to continue examination of this question at its next session.

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

Docs. VT1425Ea and VT1438E

### Introduction

- 82 The Technical Committee agreed at its 55<sup>th</sup> Session to examine this question submitted by Uruguay on “Treatment applicable to transactions agreed in cryptocurrency units” as a Specific

Technical Question. A draft Advisory Opinion was submitted by Uruguay in the Annex to Doc. VT1338Ea. Following the 57<sup>th</sup> Session, it was redrafted and set out in the Annex to Doc.VT1400Ea.

- 83 During the 58<sup>th</sup> Session, the Technical Committee continued the discussion of the question on the basis of a further updated version provided by Canada on the CLiKC! Platform. The ICC provided several additional paragraphs as a preamble to the text to address the concerns of delegates regarding the definitions of certain terms in the draft Advisory Opinion.
- 84 During the intersession, the Secretariat published an updated draft Advisory Opinion in Doc.VT1425Ea, which incorporated the proposals made by delegates during the 58<sup>th</sup> Session.
- 85 In response to the Doc. VT1425Ea, written comments were received from Canada, China, Uruguay and the United States, which were set out in the annexes to Doc. VT1438Ea. Canada, China and Uruguay proposed further amendments to the text of the draft Advisory Opinion, while the United States suggested the discussion focus solely on paragraph 2(b) which applies to Members that do not officially recognize cryptocurrencies as legal tender in their national legislation, in order to ensure the uniform application of the Agreement.

#### Summary of discussion

- 86 During the online discussion phase, comments were received from Brazil, Canada, China, the Dominican Republic, Indonesia, Japan, Norway and Uruguay. China suggested simplifying the preamble to keep it concise and precise, and proposed a replacement paragraph on the CLiKC! Platform.
- 87 The Technical Committee continued its discussion of this question during the in-person meeting on the basis of the draft Advisory Opinion set out in Annex I to Doc. VT1438Ea, taking into account proposals from delegations regarding paragraph 2(b) and the preamble.
- 88 After discussion, the Technical Committee agreed to accept the simplified preamble proposed by China, subject to certain editorial amendments. Regarding paragraph 2(a), the Committee decided to delete it and add another paragraph at the end of the draft Advisory Opinion to address the interests of those Members that recognize cryptocurrency as legal tender. **This**

decision was made because no delegation that recognises cryptocurrency as legal tender attended the Committee meeting or joined the discussion of the case; hence their experience is not known to the Committee. (Japan)

- 89 In order to make further analysis of the valuation treatment of cryptocurrencies with reference to the provisions of the Agreement, China, the United States, Uruguay and the ICC worked together with the Secretariat to redraft paragraph 2(b). The new draft emphasised that the application of the transaction value method requires a price, which must either be expressed in the currency of the country of importation or capable of conversion. For Members that do not recognize cryptocurrencies as legal tender, the price in transactions agreed in cryptocurrencies is not convertible under Article 9. Therefore, no price exists for the purpose of applying the transaction value method.
- 90 ~~At~~ To respond to Indonesia's ~~proposal~~ concern, one sentence was added to the draft Advisory Opinion to underscore the right of Customs administrations to verify the truth and accuracy of the declared customs value under Article 17 of the Agreement. (China)
- 91 Following a paragraph-by-paragraph examination of the whole text, the Technical Committee adopted a new instrument, Advisory Opinion 26.1, the text of which is appended in Annex E to this draft Report.

### Conclusion

- 92 The Technical Committee concluded its examination of the question submitted by Uruguay on "Treatment applicable to transactions agreed in cryptocurrency units", and adopted a new instrument, Advisory Opinion 26.1, which would be submitted to the WCO Council for approval.

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

Docs. VT1426Ea and VT1439E

### Introduction

- 93 The Technical Committee agreed at its 56<sup>th</sup> Session 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. A draft Case Study submitted by Brazil was set out in the Annex to Doc. VT1411Ea.
- 94 During the 58<sup>th</sup> Session, Brazil submitted to the Technical Committee an updated draft Case Study primarily based on the revised version provided by Canada on the CLiKC! Platform during the online discussion phase. The Technical Committee began a paragraph-by-paragraph examination of this draft Case Study, made certain amendments to the text, and agreed to continue examining the remaining paragraphs at its 59<sup>th</sup> Session.
- 95 During the intersession preceding the 59<sup>th</sup> Session, Brazil and Canada submitted to the Secretariat their written comments, proposing further amendments to the draft Case Study, which were set out in in Annexes I and II to Doc.VT1439Ea, respectively.

### Summary of discussion

- 96 Comments were received from Brazil, Canada, Chile, China, Japan and Uruguay on the CLiKC! Platform during the online discussion phase. Brazil submitted an updated version that merged the two drafts of the Case Study set out in Annexes I and II to Doc.VT1439Ea.
- 97 The Technical Committee, during the in-person meeting, continued its paragraph-by-paragraph examination on the basis of the merged draft Case Study submitted by Brazil, taking into account the amendments proposed by Chile and Canada during the online discussion phase.
- 98 The Delegate of Indonesia pointed out that the” gross margin” in paragraph 26 of the draft Case Study should be changed to “cost plus gross margin”. In response, **after confirming with the experts from the ICC**, Brazil suggested changing it to "cost plus margin" and applying this change throughout the draft Case Study. **(China)**
- 99 Many delegations contributed to the paragraph-by-paragraph examination, proposing improvements to the text of the draft Case Study. Due to time constraints, the Technical

Committee concluded the examination at paragraph 34 and agreed to continue examining the text at the next session.

### Conclusion

100 The Technical Committee agreed to continue the examination of this question at its next session.

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

Docs. VT1427Ea and VT1440Ea

### Background

- 101 This question was submitted by Mauritius at the 56<sup>th</sup> Session, and the Technical Committee agreed to examine it as a specific technical question. It concerns the valuation treatment of freight and freight charges under Article 8 of the Agreement. The facts pertaining to this question were set out in the Annex to Doc. VT1364Ea.
- 102 At the 58<sup>th</sup> Session, it was noted that the two opposing views expressed during previous sessions remained. On the one hand, there were those who felt that there was no need to add additional freight to the Customs value because it was included in the invoice price and it is not a cost incurred by the buyer. On the other hand, there were those who believed that the Customs value should include additional freight (actual freight), regardless of who incurs the cost. In light of these two seemingly irreconcilable positions, some delegates believed that a consensus would not be reached and proposed moving this question to Part III of the Conspectus of Technical Valuation Questions. At the Chairperson's suggestion, the Technical Committee agreed to continue examining this question at its 59<sup>th</sup> Session.
- 103 During the intersession preceding the 59<sup>th</sup> Session, written comments were received from China, Japan and Uruguay, which were set out in the annexes to working document VT1440Ea.

In these written comments, all three delegations maintained their positions expressed during the in-person meeting at the 58<sup>th</sup> Session.

Summary of discussion

- 104 During the online discussion phase, this question was the most discussed case, with comments received from Azerbaijan, Canada, China, the Dominican Republic, Mauritius, Uruguay, and the IMF, where Members and the IMF strongly advocated their respective views.
- 105 Responding to the Chairperson's invitation to further clarify their positions, China took the floor to explain **its** comments submitted during the intersession and the online discussion phase. China held the belief that there were commonalities between the seemingly irreconcilable two opposing views on this particular case. Based on the in-depth discussions by various delegations during previous sessions, China believed that the two opinions could effectively lead to the same conclusion. According to the incoterm rules for import agreed on CIF price, the actual freight cost borne by the seller, including the additional freight, is part of the CIF price if there is no additional payment required by the seller from the buyer. China believed that if the seller incurs additional transport costs without altering the previously agreed-upon CIF price, it implies that the seller has recognized an increase in transport costs and a corresponding decrease in the price of the goods. Likewise, from the buyer's perspective, the buyer has already paid the seller the increased freight charges by way of a decreased price of the goods, resulting in a total price that matches the original CIF price. **The same rationale is also followed in Commentary 21.1.** Therefore, China argued that the additional freight should not be double counted, ~~making reference to Commentary 21.1, where given that~~ the actual freight is included in the Customs value by way of a reduction in the price **of the goods. (China)**
- 106 The Delegate of Japan reiterated its position which has been maintained since the 57th Session. Japan noted that while Article 8.2 does not specify the bearer of the freight cost, it is reasonable to assume that the entire transport cost borne by the seller is included within the CIF price. This assumption aligns with the rules of Incoterms. Giving reference to the written comments, Japan emphasised that Article 8.2 does not permit each Member to individually establish valuation treatments through their national legislation. In this regard, Japan fully concurred with comments from the IMF shared during the online discussion phase, which

highlighted the significant impact that diverging treatment methods could have on international trade. Japan thus emphasized the importance of the Technical Committee to harmonise views in a manner aligned with the provisions and spirit of the Agreement, ensuring consistency and fairness across Member practices. Japan expressed appreciation to China for the proposed analysis of the case.

- 107 Brazil agreed with the opinions shared by Canada, China, Japan, the IMF, and the ICC. Referring to the CIF incoterm Brazil explained that all costs are included in the amount paid or payable, where even if the actual freight is different, the amount paid or payable by the buyer remains the same. Brazil noted that what is going to change is the seller's final profit margin. Therefore, any difference will reflect on the profit margin of the seller, not the amount paid or payable by the buyer. In the event the Technical Committee was able to reach a consensus to draft an instrument, Brazil proposed to include situations where the parties have renegotiated the CIF price and the buyer has accepted to pay the difference, noting that the information related to the renegotiations should be informed and declared to Customs. In such a case, Brazil believed that the incoterm clause would be different and it would be necessary **for the buyer** to pay for the differences. **(China)**
- 108 Uruguay expressed concern about the Technical Committee's inability to reach a consensus on this case, citing the divergent views expressed over the sessions. Uruguay agreed with positions where, when a price agreed in CIF terms, the additional cost borne by the seller should not have an impact on the customs value; allowing otherwise would create uncertainty to the trade as highlighted by the IMF during the online phase. Uruguay pointed out that the case can only advance if the members holding opposing views agree, for instance, with the analysis proposed by China. If not, Uruguay reminded, as it was the case ten years ago, this case has to be moved to Part III of the Conspectus.
- 109 The Delegate from the IMF made reference to its intervention during the online discussion phase and thanked Brazil, China, Japan, Uruguay, and other Members who supported the viewpoint. The IMF reaffirmed that it is **one of (the IMF)** the biggest development partner of capacity building activities, particularly on Customs valuation in developing countries, and expressed concern with the potential consequences of the outcome of these discussions on a possible adjustment of Customs value regarding additional freight not borne by the importer.



The IMF noted that the potential consequences for developing countries could be significant. The IMF strongly recommended that the Technical Committee thoroughly consider this matter before forming an official position. The IMF believed that China's proposed analysis could be a good way to proceed.

- 110 The Dominican Republic observed that the Customs administrations frequently encounter this type of situation and stressed the importance of reaching a consensus. To be coherent with the Agreement to determine the transaction value as mentioned in paragraph 1 of Article 1, the Dominican Republic held the view that the additional freight cost paid should be included in the Customs value, whether or not an adjustment was made to the CIF value.
- 111 Korea expressed its support for Japan's position. Korea did not see any reason to confirm real freight charges paid by the seller in the CIF condition, as the entire transportation cost, including the additional shipping charges borne by the seller, is considered to be already included in the CIF price. Therefore, Korea believed that Members who have adopted the CIF price as the basis of Customs value in their national legislation should implement this practice consistently.
- 112 Indonesia was of the view that if the additional freight charge is paid by the buyer, then, upon verification, it has to be added to the Customs value; if it is borne by the seller, no adjustment is required.
- 113 The Delegate of the United Kingdom stated that his previous position in the case was to include the additional freight in the Customs value. However, taking into account the ongoing discussions in the Technical Committee, particularly the proposal made by China, the United Kingdom expressed willingness to compromise and change its position. Based on the information provided and the incoterms rules, the United Kingdom modified its stance to acknowledge that the additional freight charges are already included in the CIF value, thereby aligning with the growing consensus in the meeting.
- 114 The European Union stated that as a general rule, if the parties have not agreed prior to the presentation of the goods to Customs that the amount invoiced in CIF term will remain the same, then any subsequent additions, as in this case for bunker adjustment factor, should be included in the Customs value regardless of who pays, as long as the national legislation

provides for the inclusion of costs of transport in the Customs value. The European Union stressed the importance of adhering to the concept of real cost of transport as expressed by the Dominican Republic. The European Union asserted that the Customs value should include the additional cost, unless a prior agreement was made that the CIF price stays unchanged regardless of subsequent events. The European Union further emphasized that, whichever conclusion is made by the Technical Committee in this case, it must uphold the flexibility already outlined in Article 8 of the Agreement.

- 115 Uruguay reminded the Technical Committee about a similar case that was reviewed ten years ago, in which there was consensus with the exception of two delegations that held a different view. Uruguay drew attention to the example in Commentary 21.1, which shows a decrease in freight cost and a resulting increase in FOB price. Applying this principle to the question under discussion, Uruguay said that an increase in actual freight cost would result in a decrease in FOB price, while the Customs value stays unchanged.
- 116 The ICC made reference to the non-paper they submitted during the previous session and added on to the explanations given by several delegates. Distinguishing FOB and CIF negotiations, the ICC said that when the parties have the ability to freely negotiate and agree on the price of the goods plus the transportation cost, the buyer bears a certain level of risk, as the transportation cost may fluctuate. However, when dealing with CIF contracts, there is one price that includes the cost of goods and transportation, which is the final price. In the context of CIF contracts, similar to the question under discussion, unforeseen costs at the end of the day do not change the agreed-upon price, which remains the actual amount paid or payable. In such cases, the seller makes a gamble and agrees to a fixed CIF price, hoping that the profit remains at the maximum level possible.
- 117 The United States noted that there is a meaningful difference between paragraphs 1 and 2 of Article 8. While Article 8.1 explicitly requires the adjustments to be incurred by the buyer to include in the Customs value, Article 8.2 does not impose this requirement. The United States held the opinion that there must be a rationale behind why paragraph 2 does not impose the requirement for having to be incurred by the buyer. Furthermore, the language in Article 8.2, "In framing its legislation... in whole or in part," suggests that the transport costs and insurance costs were a subject the drafters of the Agreement could not agree upon. Therefore, the United

States asserted that Article 8.2 of the Agreement provides the widest possible discretion to Members, and the direct reference to legislation in the text suggests that it is best treated within the national legislation of each Member. As such, the uniformity in interpretation and application could be achieved within the system of each Member and, based on the broad latitude that is inherent in Article 8.2, it would be difficult to achieve that across all Members.

- 118 Given the current deadlock in the Technical Committee, the Secretariat proposed two options to proceed. One was to prepare a report by the Secretariat that would be annexed to the report of the 59<sup>th</sup> Session. The benefit of such a report was that even if there was no consensus reached, the rich discussions that had been made could be helpful and enlightening for Members who might be interested in learning about similar situations in the future, and instead of having to refer back to the reports of different sessions where the discussions on the case were held, it would be easy to have a summary report in one place. The Technical Committee also had the option to adopt a Study, a type of instrument that can represent the diverse opinions expressed during the discussions.
- 119 Canada, China, the Dominican Republic, the European Union, Indonesia, and Uruguay supported the proposal by the Secretariat that a report attached to the report of the 59<sup>th</sup> Session, noting that it could be a useful approach that would present different considerations made on this question and show the progress made.
- 120 The Chairperson concluded the discussion of the question submitted by Mauritius. The Technical Committee was unable to achieve consensus, so the case would be put into Part III of the Conspectus, and a report would be drafted by the Secretariat, recording all valuable comments made by delegates during the previous sessions.

### Conclusion

- 121 The Technical Committee agreed to move this question to Part III of the Conspectus of Technical Valuation Questions, and the Secretariat would draft a report based on the discussions made on the case throughout the sessions. The summary report is set out in Annex F to this draft Report). (China)

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

Docs. VT1428Ea and VT1441Ea

### Introduction

- 122 The Technical Committee agreed at its 57<sup>th</sup> Session to examine this question submitted by Uruguay as a specific technical question. The question is related to the use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement.
- 123 A draft Case Study submitted by Uruguay was set out in the Annex to Doc.VT1389Ea, which was updated during the online discussion phase of the 58<sup>th</sup> Session to incorporate inputs received from delegates on the CLiKC! Platform.
- 124 During the intersession preceding the 59<sup>th</sup> Session, Uruguay worked with the ICC to further update the draft Case Study, incorporating the comments and inputs received from delegates during the 58<sup>th</sup> Session. The revised version was set out in the Annex to Doc.VT1428Ea. In response to Doc.VT1428Ea, China submitted written comments which were annexed to Doc. VT1441Ea.

### Summary of discussion

- 125 During the online discussion phase, China submitted a revised version aiming to improve the logic of the text and enhance its consistency with the other instruments.
- 126 The Delegate of Uruguay, during the in-person meeting, observed that the Technical Committee had reached a consensus on the main content of this case at previous sessions. He proposed that the Technical Committee first checked if there was any delegation holding an opposing opinion, before moving forward with a paragraph by paragraph examination of the text. With no such opposing opinion raised from the delegates, the Committee decided to examine the text of the draft Case Study on the basis of the revised version submitted by China **which was further**

improved during the meeting through collaboration of delegations of Uruguay, China and the ICC (China).

127 A number of delegations took the floor during the discussion and proposed amendments, mostly editorial, to the text of the draft Case Study. Due to time constraints, the Technical Committee concluded its examination at paragraph 12 and agreed to continue examining the text at the next session.

### Conclusion

128 The Technical Committee agreed to continue the examination of this question at its next session.

(g) Valuation treatment of imported goods when goods are additionally provided according to the quantity purchased:  
Request by Korea

Docs. VT1429Ea and VT1442Ea

### Introduction

129 The Chairperson introduced this case submitted by Korea, which was agreed by the Technical Committee, at its 57<sup>th</sup> Session, to examine as a specific technical question.

130 The facts pertaining to this question were set out in the Annex to Doc. VT1390Ea, which were updated preceding the 58<sup>th</sup> Session. The updated text was set out in the Annex to Doc. VT1404Ea.

131 As agreed by the Technical Committee at the 58<sup>th</sup> Session, the title of this question was changed from “Valuation treatment of imported goods when goods are provided free of charge according to the quantity purchased” to “Valuation treatment of imported goods when goods are additionally provided according to the quantity purchased”.

132 During the intersession, the Secretariat published Doc.VT1429Ea, summarizing the different opinions expressed by delegates at the 58<sup>th</sup> Session and inviting comments from Members.

133 In response to Doc.VT1429Ea, Uruguay submitted written comments during the intersession, which are annexed to Doc. VT1442Ea. In view of the divergent opinions expressed during the discussion at the 58<sup>th</sup> Session, Uruguay considered that it is not possible for the Committee to reach a consensus on Questions 1 and 2 in this case.

#### Summary of discussion

134 During the online discussion phase, comments were received from Brazil, China, the Dominican Republic, Korea, and Uruguay.

135 The Delegate of Korea suggested focusing the discussion on Question 2 which had prompted two differing opinions within Korea. The Korea court held the view that the scenario in Question 2 could be regarded as a quantity discount; therefore, Article 1 of the Agreement could apply, with reference to Advisory Opinion 15.1 and Commentary 4.1. However, the Korea Customs Service opined that the additional goods provided in Question 2 should be valued using alternative valuation methods.

136 China drew the Committee's attention to Exercise 15.5 in WCO Basic Valuation Training Module, which includes a similar scenario, **as mentioned by Dominican Republic during the online phase**. China took the view that Article 1 of the Agreement could not apply to either Question 1 or Question 2, as the goods additionally provided could not establish a sale under the Agreement. **There are also scenarios where the additional goods are not the same as the paid goods, under which circumstances the customs value cannot be directly apportioned based on the total quantity. (China)**

137 The Delegate of Norway reiterated his position expressed at the last session that in Question 2 the additional goods and the goods provided according to the contract should be regarded as one transaction to which the transaction value method should apply. Cameroon, the European Union, the US and the ICC shared this view.

138 In response to questions from other delegates, the European Union further classified that since the additional goods were imported in the following year, it might be hard to establish a link to the previously imported purchased goods. However, as long as such a link could be

established, the additional goods and the purchased goods should be regarded as one transaction.

- 139 The Chairperson summarized that there were three opinions expressed by delegates during discussions in this and previous sessions regarding the treatment of the additionally provided goods:
- i. Article 1 should apply to both Questions 1 and 2, as the additional goods and the purchased goods should be considered as one transaction;
  - ii. Article 1 should not apply to either Question 1 or Question 2, as the additional goods provided free of charge by the seller could not be deemed **to have been (China)** the subject of a sale under the Agreement;
  - iii. Article 1 should apply to Question 1, but not to Question 2.
- 140 **On Question 1**, Uruguay suggested referring to the opinion expressed by the Technical Committee in paragraph 12 (B) of Explanatory Note 3.1, which concerns a quantity of articles “free of charge” as replacements for articles which are likely to be defective or damaged in transit. **Having a different solution for this scenario would create an inconsistency in logic that would generate a justified change in commercial behaviour by operators.** He also raised concerns on the opinion expressed by delegates on Question 2, that the additional goods and the purchased goods should be considered as one transaction, noting its impact on Customs **value-determination valuation (China)** in Question 3 where services are provided **free of charge** under the same contract. **He wondered whether or not the cost of transport provided as a gift would have to be deducted from the Customs valuation of the imported articles, since although this cost is included in this “one transaction”, it would not be imported to the buyer’s country. (Uruguay)**
- 141 Korea pointed out that the key issue in the discussion on Question 2 is how to define “one transaction” or “single transaction”. However, such a definition could not be found in the Agreement or in instruments adopted by the Technical Committee. In this respect, Brazil proposed that certain objective criteria for establishing a single transaction might be considered by the Committee, which could be beneficial to both Customs and the private sector.

- 142 ~~The Technical Committee agreed to continue the examination of this question at its next session.~~ (Uruguay)

Conclusion

- 143 The Technical Committee agreed to continue the examination of this question at its next session.

(h) Application of Article 1 of the Agreement: Request by Vietnam

Docs. VT1430Ea and VT1443Ea

Introduction

- 144 The Chairperson introduced this case submitted by Vietnam on “Application of Article 1”, which was agreed by the Technical Committee at its 58<sup>th</sup> Session to be examined as a specific technical question. The facts pertaining to this question were set out in the Annex to Doc. VT1415Ea. (China)
- 145 The question concerns the Customs valuation determination of the imported goods when a “Representative Company” negotiates with the manufacturer to determine the prices of the imported goods, and subsequently receives a “commission” from the importer. Both the “Representative Company” and the importer are subsidiaries of the same multinational corporation.
- 146 During the intersession, written replies were received from Vietnam to questions raised by Brazil, China and Japan at the 58<sup>th</sup> Session, which were set out in the Annex to Doc.VT1430Ea.
- 147 In response to Doc.VT1430Ea, written comments were received from Canada, China and Uruguay, which were set out in the Annexes to Doc. VT1443Ea. Canada took the view that the transaction value method could apply based on the price actually paid or payable between ICO and MCO. Regarding the “Representative Company”, Canada considered that it is a bona fide buying agent of ICO; therefore, no adjustments need to be made to the price actually paid or payable pursuant to Article 8.1(a) (i) of the Agreement. Uruguay, on the contrary, opined that Article 1 could not apply in this case as the condition set in Article 1.1(b) of the Agreement is not



fulfilled. Therefore, the Customs value of the imported goods should be determined using alternative valuation methods.

Summary of discussion

- 148 During the online discussion phase, comments were received from Brazil, Japan, China, Indonesia, Norway, Uruguay and the ICC.
- 149 The Technical Committee continued the discussion of this case during the in-person meeting following the presentation by the ICC on “Buying agency services: past and present” under item VII (a).
- 150 Vietnam provided further clarifications in response to questions raised by delegates during the intersession and the online discussion phase. With regard to ICO’s right to purchase raw materials from other manufacturers, Vietnam Customs observed that ICO exclusively imported raw materials from MCO over the past five years despite ICO’s claim that it had full authority to choose other manufacturers. Concerning the role played by the “Representative Company”, Vietnam opined that more evidence was needed before concluding that it acted as a bona fide buying agent for ICO.
- 151 Uruguay observed that, in this case, the price of the imported goods **clearly and decisively** depended on the quantity of the total units estimated **in advance (Uruguay)** to be purchased by all the subsidiaries **including those (China)** in the other countries, **rather than the quantity to be purchased in advance only for the country of importation**, which means that the price was subject to a condition unrelated to the goods imported (**in this case, the remaining quantity of goods estimated to be imported into other countries**). Therefore, it ~~could~~ **must** be considered that the provision of Article 1.1 (b) of the Agreement was not met. **(Uruguay)**
- 152 China noted that Commentary 2.1 states that “a condition or consideration in this context must be interpreted as an obligation between the buyer and the seller”. However, given that the purchase price and other purchasing conditions of the transaction between the buyer and the seller in this case were subject to the framework contract concluded between the buyer's related party and the seller, China considered that this might be interpreted as an indirect condition or

consideration between the buyer and the seller. Besides, China had concerns about whether the “Representative Company” could be deemed as a bona fide buying agent of ICO. (China)

- 153 The Delegate of Canada reiterated Canada’s view expressed in written comments during the intersession, that the transaction value method can apply on the basis of the price actually paid or payable by ICO to MCO. This view was supported by Japan, the European Union, the United Kingdom and the United States.
- 154 Japan stated that a condition or consideration should be interpreted as an obligation between the buyer and the seller and should not be extended beyond the intended purposes. Moreover, Japan expressed concern about the potential impact on traders if the scenario in this case is interpreted as an indirect condition or consideration which could consequently lead to the rejection of the use of transaction value method.
- 155 The United States referred to (Canada, China) Japan’s comments on the CLiKC! Platform regarding Commentary 11.1 which states “In this respect, however, caution must be exercised to ensure that the application of Article 1.1 (b) is not extended beyond the intended purposes”. The United States pointed out that many business models and sales contracts impose obligations on the buyer and seller that go beyond simply paying the price and providing the goods. Interpreting these obligations broadly as a violation of Article 1.1(b) would rarely allow for the application of Article 1. Regarding the purpose of Article 1.1 (b), the United States was of the view that it would apply when some elements of the price cannot be determined.
- 156 At the invitation of the Chairperson, Vietnam agreed to provide the framework contract, the purchasing service contract, and the purchase orders to the Technical Committee for examination during the intersession preceding the next session, with a view to addressing delegates’ concerns regarding the facts of the case.

### Conclusion

- 157 The Technical Committee agreed to continue the examination of this question at its next session.

(i) Treatment applicable to non-payments by the buyer:  
Request by Uruguay

Docs. VT1431Ea and VT1444Ea

Background

- 158 At its 58<sup>th</sup> Session, the Technical Committee agreed to examine this question submitted by Uruguay as a specific technical question. The facts pertaining to the question were set out in the Annex to Doc. VT1416Ea.
- 159 The question relates to a situation where the buyer fails to pay the seller the sums owed in respect of the goods to be imported. These payments could represent all or part of the agreed price, or an indirect payment to a third party imposed as a condition of sale of the goods, or an adjustment prescribed by Article 8.1 of the Agreement.
- 160 During discussions at the 58<sup>th</sup> Session, Members suggested that examination of this question could present an opportunity for clarifying the term “payable” included in the definition of “transaction value” in Article 1 of the Agreement.
- 161 During the intersession preceding the 59<sup>th</sup> Session, no written comments were received from Members.

Summary of discussion

- 162 During the online discussion phase, China and Japan discussed this question. China provided a detailed explanation of how national legislation could address such cases, and opined that the price agreed between the buyer and the seller constitutes the "price actually paid or payable", which cannot be changed due to the unilateral breach of contract by the buyer. while (China) Japan suggested incorporating two additional prerequisites into the draft Advisory Opinion.
- 163 At the Chairperson's invitation, the Delegate of Uruguay outlined the background of the case during the in-person meeting. He explained that, in practice, the buyer and seller typically agree on a price with several conditions of sale related to direct and/or indirect payments, and Article 1 may be used to determine the Customs value provided all conditions are satisfied. However, at a certain point in time buyer ends up not honouring one of the buyer's obligations, and

questions may arise before Customs as to whether such non-payments should be considered for the determination of Customs value.

- 164 The Delegate of Japan referred to his comments on the CLiKC! Platform during the online session phase, emphasising the need to establish a common understanding among readers of the text, particularly those in the private sector. To this end, Japan proposed incorporating two prerequisites to the draft instrument, confirming that there are no conditions that would make it impossible to determine the Customs value under the transaction value method, and that Customs has no doubts about the truth or accuracy of the declared value based on the agreed price.
- 165 China shared the view that, from a legal perspective, as long as the parties have not amended the contract, the buyer's obligation to pay remains; **in other words, the payment remains to be paid or payable**, it therefore constitutes part of the **payment price actually** paid or payable for the Customs valuation purpose. The Delegations of Cameroon, the Dominican Republic, the European Union and the United States echoed the sentiments from China that the obligation to pay or not is a legal question that has no implication for the determination of Customs value.  
**(China)**
- 166 The United States further stated that the exclusion of cases such as damaged goods identified post-importation should be addressed in the draft instrument.
- 167 Highlighting the practical implications of the case, Brazil said such cases are already faced by their administration and agreed with Uruguay that a straight-forward and simple instrument such as proposed under this question would be very beneficial.
- 168 During the session, the Delegations of China, Japan, the United States, and Uruguay worked to develop a new version of the draft text, which the Technical Committee then reviewed, paragraph by paragraph. The review was conducted up to paragraph 7 of the draft instrument. The Chairperson requested Uruguay to collaborate with other delegations during the intersession to revise and enhance paragraph 7, to enable the Technical Committee to continue reviewing the **draft (China)** instrument during the next session.

Conclusion

- 169 The Technical Committee agreed to continue the examination of this question at its next session.

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

- (a) Reasonable flexibility in the application of transaction value method under Article 7 of the Agreement: Request by Guatemala

Doc. VT1445Ea

- 170 This item was removed from the Agenda as decided by the Technical Committee under Agenda item I (a).

- b) Distinction between Royalties and licence fees under Article 8.1(c) and Resale Proceeds under Article 8.1(d) of the Agreement: Request by China

Doc. VT1446Ea

Introduction

- 171 During the intersession, China forwarded to the Secretariat a new question on “Distinction between Royalties and licence fees under Article 8.1(c) and Resale Proceeds under Article 8.1(d) of the Agreement” for examination by the Technical Committee on Customs Valuation at its 59th Session.

- 172 A draft Explanatory Note submitted by China was set out in the Annex to Doc. VT1446Ea for consideration by the Technical Committee.

Summary of discussion

- 173 During the online discussion and the in-person phases, comments were received from Brazil, Canada, China, the Dominican Republic, Japan and Uruguay.

- 174 Japan proposed examining this question together with the question submitted by Uruguay under item VI (d), in view of opposite opinions expressed in these two questions regarding the application of Article 8.1(d) of the Agreement.
- 175 The Delegate of Uruguay supported including this question as a specific technical question, although he did not agree with the conclusion in the current draft Explanatory Note, as his Administration takes a different approach in practice.
- 176 The Delegate of Canada opined that the questions under items VI (b) and (d) should be examined separately. As regards the different opinions in the draft instruments for these two questions, he was of the view that it was premature to consider them ~~controversial~~ irreconcilable (Canada).
- 177 The Technical Committee agreed to examine this question as a specific technical question at its next session, separately from the question under item VI (d).

#### Conclusion

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

c) Treatment of a situation where the settlement price after importation differs from the invoice price: Request by China

Doc. VT1447Ea

#### Introduction

- 179 During the intersession, the Customs Administration of China forwarded to the Secretariat a new question for consideration by the Technical Committee at its 59<sup>th</sup> Session. The facts pertaining to this question were set out in the Annex to Doc. VT1447Ea.

- 180 The question concerns the Customs ~~value-determination~~ valuation (China) of imported goods where the settlement price after importation is different from the invoice price declared to Customs at the clearance stage.
- 181 At the 59<sup>th</sup> 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

- 182 During the online discussion phase, clarifications and comments regarding the question were raised by Brazil, Japan, and Uruguay; and China responded to clarify some of these queries.
- 183 Upon the invitation by the Chairperson, the Delegate of China further explained the facts of the case. According to the sales contract of imported goods, the settlement currency of the price was optional (X or M). The determination of the settlement currency as well as the exchange rate were subject to subsequent negotiations between the buyer and the seller after importation.
- 184 Japan noted, referring to the reply from China on the online Discussion Forum, that such cases could also involve two foreign currencies. Japan further stated that ~~it also~~ many Members may encounters (Japan) similar cases and supported it to be an important question for the Technical Committee to consider.
- 185 Brazil and Uruguay also expressed support for the inclusion of this question on the Agenda of the next session.

#### Conclusion

- 186 The Technical Committee agreed to include this question as a specific technical question on the Agenda of its next session.

d) Proceeds that accrue under Article 8.1(d) of the Agreement: Request by Uruguay

Doc. VT1448Ea

Introduction

- 187 During the intersession, Uruguay forwarded to the Secretariat a new question for examination by the Technical Committee on Customs Valuation during its 59<sup>th</sup> Session.
- 188 The question concerns the application of Article 8.1(d) of the Agreement. A draft Commentary was submitted by Uruguay for consideration by the Technical Committee, which was set out in the Annex to Doc. VT1448Ea.

Summary of discussion

- 189 During the online discussion phase, comments were received from Brazil, China and Japan. Japan proposed examining this question together with that submitted by China under item VI (b).
- 190 During the in-person meeting, Brazil, **China, (China)** the Dominican Republic, Indonesia and Japan took the floor, supporting examining this question as a specific technical question at the next session.
- 191 The Technical Committee agreed to examine this question as a specific technical question at its next session, separately from the question submitted by China regarding “Distinction between Royalties and licence fees under Article 8.1(c) and Resale Proceeds under Article 8.1(d) of the Agreement”, referring to the discussion under Agenda item VI (b).

Conclusion

- 192 The Technical Committee agreed to examine this question as a specific technical question at its next session.

e) Treatment of a Core Value Charge in a Circular Business Model: Request by the United States



### Introduction

- 193 This question was raised by the United States as a non-paper circulated by the Secretariat during the online discussion phase of the 59<sup>th</sup> Session. It relates to valuation treatment of a core value charge implemented to reduce waste and support a circular business model.
- 194 During the adoption of the Agenda of the 59<sup>th</sup> Session, this non-paper was brought to the attention of the Technical Committee. The Technical Committee decided to add a new item, VI (e), to the Agenda for this question.

### Summary of discussion

- 195 The Delegate of the United States shed light on the background of the question, indicating that it relates to green trade and Green Customs strategies. He said the text is based on the facts of a real case that the United States Customs had looked at in the past.
- 196 The question concerns whether a Core Value Charge (CVC) imposed on a primary customer for failing to return a defective part should be included in the transaction value of an imported replacement component. The manufacturer, implementing a circular business model to reduce waste, charges a standard price for the replacement part but adds a CVC if the defective part is not returned within 90 days.
- 197 Canada, China, the United Kingdom, and Uruguay supported the inclusion of this question as a specific technical one, as they considered it meaningful and necessary.
- 198 Responding to the question raised by Uruguay on whether the total price of the replacement LCD will depend on whether the ICO returns the core to XCO, the United States explained the price for the replacement LCD panel is 1,000 c.u., and a separate invoice for CVC is later issued if the core is not returned. In response to China's inquiries, the United States clarified that there is no connection between the imported goods and the core, and that XCO's pricing strategy did not change as a result of the core value program-, and that the discounts received by primary customers are quantity-based and have nothing to do with the program (China).

Conclusion

- 199 The Technical Committee agreed to include this question as a specific technical question on the Agenda of its next session.

**Agenda Item VII: OTHER BUSINESS**

- (a) Presentation by the ICC on” Buying agency services: past and present

Background

- 200 During the discussion on the question submitted by Vietnam on the “Application of Article 1 of the Agreement” at the 58<sup>th</sup> Session, the ICC had offered to give a presentation in relation to the buying and selling agents at the 59<sup>th</sup> Session.
- 201 The purpose of this presentation was to facilitate the discussion on this question by the Technical Committee. The title of the presentation was “Buying agency services: Past and present”.

Presentation by the ICC

- 202 The presentation provided a comprehensive overview of the evolving role of buying agents and their impact on procurement models in international trade. The representative from the ICC emphasised the importance of understanding buying agency commissions within the context of Customs valuation and the adjustment of the price actually paid or payable.
- 203 The traditional buying agent model was outlined, highlighting the business rationale for utilising buying agents. These agents often possess local market knowledge, vendor relationships, and language skills, making them invaluable for importers. Typically, sales contracts for imported goods are negotiated directly between the buyer and the seller, with the buying agent acting as an intermediary.

- 204 The presentation discussed the significant evolution of agency services, noting that the role of buying agents has expanded beyond simple vendor identification and inspection. Modern buying agents now engage in a broader range of functions, including compliance with social issues and financing, resulting in higher commission rates. The ICC noted that commission rates have increased to align with these expanded responsibilities, often exceeding 10% of the purchase price.
- 205 When examining buying agencies and their evolution, it is crucial to focus on the evolution of procurement, particularly in relation to the technical question under discussion. The ICC said that the buyer may expand its internal capabilities within the corporate headquarters, establish a local office or branch, or establish a separate entity.
- 206 The newer approaches include the use of local offices, and shared service procurement models. Buying agents facilitate transactions by leveraging their local market knowledge and relationships, while local offices provide closer oversight and coordination with suppliers in different regions. Shared service procurement models consolidate purchasing functions across multiple companies, enabling volume discounts and streamlined operations. Ultimately, the choice of procurement model depends on factors such as organisational structure, supplier location, and the specific services required to optimise supply chain efficiency.
- 207 In conclusion, the ICC emphasised that understanding the complexities of buying agency commissions is essential for compliance with customs regulations. Payments to agents should be analysed carefully to distinguish between dutiable and nondutiable activities. The evolving procurement landscape necessitates ongoing scrutiny of these relationships to ensure that Customs practices align with current commercial realities.

#### Summary of discussion

- 208 Several delegations took the floor to express their appreciation to the ICC for the excellent and informative presentation.
- 209 In response to a question from Canada, the ICC said the Vietnam case may fall under either the shared service model or the local office model. While the facts are not entirely clear, it is likely to

fall under the shared service model, where a multinational is negotiating a framework agreement on behalf of the group.

- 210 To the question raised ~~from~~ by China, the ICC clarified that when there are two contracts; a framework contract and an individual contract that apply to the sale for export from the seller to the buyer, these contracts do not require to be renegotiated on the general terms, which are already agreed under the framework agreement. For not fulfilling the terms of the contract under the second agreement, there typically will be penalties or legal consequences. The framework agreements generally will not have penalties but occasionally have requirements tied to a minimum amount of purchases for the whole group, and there could be consequences if the whole group fails to **pay meet the minimum amount requirement. (China)**
- 211 The ICC responded to the question from Finland by stating that there are instances where an intermediary handles the cash for a variety of purposes.

### Conclusion

- 212 The Technical Committee took note of the presentation by the ICC.

(b) Discussion on the preparation for a celebration at the 60th TCCV Session

- 213 At the 58<sup>th</sup> Session, upon the proposal of the Delegation of Uruguay, the Technical Committee agreed to consider holding a celebration at the 60<sup>th</sup> Session in 2025, for which a specific item was added to the Agenda of the 59<sup>th</sup> Session.
- 214 During the 59<sup>th</sup> Session, the Delegate of Uruguay recalled the celebration held by the TCCV at its 50<sup>th</sup> Session, emphasizing the importance of holding another celebration at the 60<sup>th</sup> Session to mark the new milestone. He referred to his comments on the CLiKC! Platform under this item, proposing the development of a brochure, in paper or digital format, which could include the TCCV's history, photos of previous sessions, a list of TCCV Chairpersons and TTA Directors, etc. He also proposed that TCCV delegates give presentations to share their insights on participating in the TCCV sessions.

- 215 The Delegate of the Dominican Republic expressed support for Uruguay's proposal. In addition, she suggested that the 60<sup>th</sup> TCCV Session include certain form of recognition for the longest-serving TCCV delegates in appreciation of their contributions. **China suggested that Members could also share their experiences in the implementation of CVA. (China)**
- 216 The Acting Director invited the Committee to consider the time allocated to the celebration at the 60<sup>th</sup> Session, noting that the upcoming session would have a heavy agenda with eleven specific technical questions to be discussed. Following a proposal from Uruguay, the Technical Committee agreed to schedule 1 to 1.5 hours for the celebration at its next session.
- 217 In addition, the Acting Director proposed utilizing WCO social media to highlight TCCV's history and achievements over the years. In this regard, she encouraged Member administrations to share their experiences in using TCCV instruments with the Secretariat to support the content of relevant promotional materials. Brazil, the Dominican Republic, and Uruguay volunteered to collaborate with the Secretariat on this initiative. **The Chairperson anticipated more volunteers during the intersession as well as the subsequent consolidation of the proposals by the Secretariat (Chair).**

### Conclusion

- 218 The Technical Committee agreed to hold a celebration at the 60<sup>th</sup> TCCV Session.

(c) Presentation by the Secretariat on draft Guidelines on E-Commerce Fulfilment and its Implications for Customs

### Introduction

- 219 Following the PTC meeting in October 2023, the WCO Secretariat developed an initial draft of a WCO tool on E-commerce fulfilment and its implications for Customs.
- 220 The Secretariat presented this draft Guidelines at the 59<sup>th</sup> TCCV Session for delegates' comments and inputs **(China)**. The outcomes of the TCCV discussions would be presented at the upcoming PTC meeting, scheduled for Wednesday 23 - Friday 25 October 2024.

221 The draft *Guidelines on E-Commerce Fulfilment and its Implications for Customs* was shared with delegates on the CLiKC! Platform during the online discussion phase.

Presentation by the Secretariat

222 The presenter from the WCO Procedures and Facilitation Sub Directorate began her presentation with an introduction to the background of the draft *Guidelines on E-Commerce Fulfilment and its Implications for Customs*. In 2023, the WCO organized two symposiums on E-Commerce and Customs Valuation: the first on 15 February and the second on 22 October. After the first symposium in February, the outcomes were reported to the Permanent Technical Committee (PTC) in April 2023.

223 During the April 2023 PTC, it was suggested that exploring the feasibility of developing model procedures for certain aspects, such as in relation to fulfilment centres used to hold goods imported without a sale transaction having taken place, could be beneficial for both facilitation and compliance. The October 2023 PTC considered a draft outline of a new WCO tool on e-commerce fulfilment and its implications for Customs. Japan, the United States, the United Kingdom, the Eurasian Economic Commission (EEC), the Global Express Association (GEA) and DHL Group volunteered to contribute to the intersessional work on the new tool.

224 The draft Guidelines included seven scenarios, including:

- Cross-border movement of stocks between manufacturing/warehousing facilities without a sale;
- Transactions under a drop-shipping fulfilment model;
- Transactions based on subscription;
- Customizing goods during the fulfilment process;
- Transactions involving return goods;
- Transactions involving goods under cancelled orders;
- Transactions under DDP terms of sale.

225 Moreover, two guidelines were added to this tool, that is, the *Guidance on how to ensure that e-commerce stakeholders comply with prohibitions and restrictions in the importing country*, and the *Guidance on how to define a consignment*.

226 Following the relevant PTC discussions in October 2023, the WCO Procedures and Facilitation Sub Directorate developed an initial draft, which provided description of the above-mentioned

seven scenarios. Some guidance was also included in this draft in italics, intended to serve as a foundation for future discussions.

- 227 On 12 August 2024, the initial draft was shared with the relevant units within the Secretariat and with the Members and stakeholders that had volunteered to contribute to the development of the tool through intersessional meetings. The first intersessional meeting to discuss the initial draft was held on 28 August 2024.
- 228 During this informal meeting, guidance was provided on expanding the scope of the guidelines to include aspects related to risk management and the protection of society under the new and emerging business models and scenarios addressed by the draft tool. The group of Members and stakeholders who participated in the meeting agreed to contribute with information on practical challenges and difficulties, as well as with relevant Members' practices and experiences. They also supported the Secretariat's proposal to seek input from the delegates of the TCCV and the PTC.
- 229 It was agreed that a dedicated group will be established on the CLiKC! Platform to provide a platform for the relevant Secretariat staff and the volunteering Members and stakeholders to further expand and develop the future *WCO Guidelines on e-commerce fulfilment and its implications for Customs*.
- 230 The presenter concluded her presentation by inviting the TCCV delegates to provide input to the new tool in the form of information on difficulties and Members' practices in the areas covered by the respective scenarios outlined in the tool.

#### Summary of discussion

- 231 Many delegations took the floor to recognize the importance and relevance of the draft Guidelines and expressed interest in contributing to the drafting process. The discussion primarily focused on how to involve valuation experts and the TCCV, which was deemed essential given the complexity of the technical valuation issues outlined in the draft Guidelines and the potential impact on Members' valuation practices.

- 232 One proposal was to establish a separate group within the TCCV to examine the valuation issues in the draft Guidelines. In this respect, Japan and the UK, who had participated in the drafting group at the PTC, preferred having a single group to avoid complicating the situation.
- 233 Member administrations were encouraged to involve their valuation experts in the drafting work of the WCO Procedures and Facilitation Sub Directorate, which would allow their voices to be heard and their views to be considered during the drafting process.
- 234 After further discussion, the Technical Committee agreed to add a standing item to the Agenda of the TCCV session under “Other business”. This would serve as a discussion forum for the TCCV delegates to exchange views on the draft Guidelines from a technical perspective, rather than directly participating in the drafting process. The outcome of the discussions would then be shared with the PTC drafting group as the TCCV’s input. Through this item, TCCV delegates could also stay informed of the drafting progress.

#### Conclusion

- 235 The Technical Committee took note of the presentation delivered by the Secretariat and the subsequent discussion.

#### **Agenda Item VIII: Elections**

- 236 The Acting Director declared open the procedure for the election of the Chairperson and the two Vice-Chairpersons of the TCCV and called for nominations for the above positions.
- 237 Qianyu LIN of China was nominated by the Delegate of Uruguay for Chairperson. The Delegates of the Canada and Nigeria seconded this proposal. Qianyu LIN was re-elected Chairperson by acclamation.
- 238 Kelly MORGERO of Brazil was nominated by the Delegate of the United States as Vice Chairperson. The Delegate of the Dominican Republic seconded this nomination. Kelly MORGERO was re-elected as Vice-Chairperson by acclamation.
- 239 Josué Ebenezer BATA’A of Cameroon was nominated by the Delegate of China as Vice Chairperson. The Delegates of the European Union and Nigeria seconded this nomination. Josué Ebenezer BATA’A was re-elected as Vice-Chairperson by acclamation.



240 The elected Chairperson and Vice Chairpersons accepted their elections.

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

241 The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 60<sup>th</sup> Session:

- I. Commemorative (China) opening to mark the 60<sup>th</sup> TCCV Session**
- II. Adoption of Agenda/Suggested programme**
- III. Adoption of the Technical Committee's 59<sup>th</sup> Session Report**
- IV. Reports on intersessional developments**
  - Director's Report
  - WTO Committee on Customs Valuation report
- V. Technical assistance, capacity building and current issues**
  - Report on technical assistance/capacity building activities undertaken by the Secretariat and Members
  - Progress reports from Members on practical application of the WTO Customs Valuation Agreement
- VI. Specific technical questions**
  - a) Meaning of the expression "price actually paid or payable" for the goods: Request by Uruguay
  - b) Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement: Request by Brazil
  - c) Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement: Request by Uruguay
  - d) Valuation treatment of imported goods when goods are additionally provided according to the quantity purchased: Request by Korea
  - e) Application of Article 1 of the Agreement: Request by Vietnam
  - f) Treatment applicable to non-payments by the buyer: Request by Uruguay
  - g) Valuation treatment of credits accumulated from past purchases: Request by Secretariat

- h) Distinction between Royalties and licence fees under Article 8.1(c) and Resale Proceeds under Article 8.1(d) of the Agreement: Request by China
- i) Treatment of a situation where the settlement price after importation differs from the invoice price: Request by China
- j) Proceeds that accrue under Article 8.1(d) of the Agreement: Request by Uruguay
- k) Treatment of a Core Value Charge in a Circular Business Model: Request by the United States

**VII. Questions raised during the intersession**

**VIII. Other business**

- Discussion on the draft Guidelines on E-Commerce Fulfilment and its Implications for Customs
- Update on Part III of the Conspectus of Technical Valuation Questions

**IX. Programme of future work**

**X. Dates of next meeting**

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

242 The Secretariat informed the Technical Committee that the 60<sup>th</sup> Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 7 to 11 April 2025.

**CLOSING REMARKS**

243 The Chairperson thanked all the delegates for their active participation and support, and extended her appreciation to the Secretariat, the interpreters, and the supporting staff for their contributions to this session.

244 In her closing remarks, the Acting Director also expressed gratitude to all delegations for their engagement and contributions during the session. She noted the adoption of the 101<sup>st</sup> instrument as a significant milestone and congratulated the Technical Committee for the collaborative spirit in achieving it. She extended special thanks to the teams behind the scenes

who made the session possible. Looking forward to the landmark 60<sup>th</sup> Session in April 2025, the Acting Director expressed her excitement for continued collaboration.

245 The Chairperson formally declared the 59<sup>th</sup> Session closed.



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Annex B to Doc. VT1449Ea  
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## REPORT BY THE WTO TO THE 59TH SESSION OF THE TCCV

14-18 OCTOBER 2024

The WTO last reported to the TCCV at its 58th Session in April 2024. Following the TCCV meeting, the WTO's Committee on Customs Valuation (WTO CV Committee) held its formal meeting on 23 May 2024, which was chaired by Mr Omar CISSE of Senegal. The next formal meeting is scheduled to take place on Wednesday, 11 December 2024 under the Chairmanship of Mr Sergio PRIETO LÓPEZ of Spain.

### 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 an annual report, the most recent version set out in document [G/VAL/W/232/Rev.18](#).<sup>1</sup> Up to date information on notifications is also made available through the [dedicated section on customs valuation of the WTO Notification Portal](#).

At the May 2024 meeting of the WTO CV Committee, the Chairperson acknowledged the work by Members in submitting notifications and related questions pertaining to customs valuation legislation. The Committee reviewed the customs valuation legislation of Mauritania, which had been notified for the first time. It also reviewed revisions to customs valuation legislation notified by Nigeria and Norway. The Committee was able to conclude reviews of the customs valuation legislation of four Members (Brazil, Mongolia, Norway, and Philippines). The review of questions and responses pertaining to the valuation legislation of 23 Members remain pending before the Committee.

The Committee continued the Sixth Triennial Review of the Preshipment Inspection Agreement (PSI). Committee delegates heard a presentation from the Secretariat on a recommendation from the External Auditors regarding a separate dispute function required by the PSI Agreement, and the Chair offered to engage in further consultations regarding the matter. Members otherwise made no statements regarding the review and the Chair considered it would be concluded this year.

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

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<sup>1</sup> This is a WTO document that may be obtained through the hyperlink to the WTO documents system.

As indicated in the WTO report to the 58th Session in May, the WTO organized a workshop from 22-24 May on WTO customs valuation notifications with the aim to assist Members with their notification requirements, in particular, their responses to a checklist of issues regarding their customs valuation legislation.<sup>2</sup> This workshop was held from 22-24 May 2024, on the margins of the formal meeting, and consisted of training and hands-on exercises to assist capital-based customs officials from a total of 26 Members with these notifications. Workshop participants also had the opportunity to attend the Committee meeting, and a couple of them intervened during the discussions on matters pertaining to them. The Chair and several Committee delegates welcomed the attendance of these officials and encouraged them to remain engaged, even if remotely from capital.

The workshop participants greatly benefitted from the participation of Mr Jiabin LUO, Technical Officer on Customs Valuation from the WCO Tariff and Trade Affairs Directorate as a trainer in the Workshop. Mr LUO supported the participants in their work to prepare their notification, bringing his expertise on the CVA to answer their questions on the practical and technical aspects of the Agreement. The Chairman of the CV Committee and the WTO Secretariat express their sincere gratitude to Mr LUO for his valuable assistance, which brought a real added value for the participants.

The Secretariat is very happy to note that there continues to be a positive outcome to the workshop. Currently, **16 out of the 26 participants have drafted a total of 31 notifications**. From these drafts, **12 notifications have been circulated to date**, as follows:

- 4 notifications on Customs Valuation legislation: [Congo](#) and [Seychelles](#) as first notifications of their legislation, plus [Gabon](#) and [Mongolia](#) to reflect their current legislation.
- 5 notifications on the Checklist of Issues from: [Cabo Verde](#), [Gabon](#), [Mongolia](#), Senegal and [Seychelles](#)
- 1 notification of application of the decision on the treatment of interest payment: [Cabo Verde](#)
- 2 notifications on Carrier Media: [Cabo Verde](#) and [Seychelles](#)

The Secretariat will continue to work with the participants to finalize the remaining notifications.

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<sup>2</sup> The checklist of issues is contained in the Annex to document [G/VAL/5](#) (also hyperlinked).

## WRITTEN STATEMENTS REGARDING SITUATION IN UKRAINE

### **Statement of Ukrainian Delegation**

We refer to 2022 Council Conclusions which condemned any acts of aggression on the Customs borders and called for enhancement of Customs cooperation. October 2022 Permanent Technical Committee concluded on the incompatibility of conflict, including hostile military action, with Customs cooperation.

Contrary to this, Russia supported by Belarus continue military attacks on the Customs territory of Ukraine. The war seriously affects the ability of Ukrainian Customs to operate as usual creating serious threats to Customs security in Europe and in the world.

Devastating Customs implications of the Russian war are as follows:

- Russian army is destroying Ukrainian cross-border points and critical infrastructure.
- Russia is shelling Ukrainian energy infrastructure daily which prevents Customs from performing its functions as all Customs operations are digitalised
- Half of Ukrainian Customs border points are closed due to combat actions
- All airports are closed. Russian Navy makes marine trade routes unsafe
- Russian war dismantled traditional international trade supply chains
- The WCO Regional Training Centers in Ukraine are in danger
- Russia attempted to annex 20% of Ukrainian Customs territory
- In violation of all international norms and Kyoto Convention Russia sets up Customs offices in temporarily occupied territories

The WCO was established for bringing Customs together for a safer and more prosperous world. Instead, the Russian war destroys Ukraine's customs borders; ruins Ukraine's customs infrastructure; undermines security at borders and disrupts global trade supply chains. This is not compatible with the WCO principles and membership in the WCO.

We thank our partner countries for the support to Ukrainian Customs. We ask all Customs administrations to demand that Russia follows Council conclusions of 2022 and stops ruining international Customs cooperation.

\* This statement is not political; it aims at demonstrating disastrous implications of the Russian aggression against Ukraine for Customs matters and calls for actions to preserve peaceful conditions for Customs to perform its duties

### **EU intervention in support of Ukraine in the WCO**

On the occasion of the 59<sup>th</sup> Session of the Technical Committee on Customs Valuation, the EU and Member States express support for Ukraine in the WCO, with the following statement:

“The European Union and its Member States reiterate in the strongest possible terms our condemnation of the Russian Federation’s illegal, unjustified and unprovoked war of aggression against Ukraine, supported by the Republic of Belarus, as being a flagrant violation of international law and the UN Charter. It not only disrupts global security, supply chains and stability, but also undermines international trust-based cooperation on customs matters. It is therefore fundamentally contrary to the nature, values and objectives of the World Customs Organization (WCO). We urge the Russian Federation to immediately cease its war of aggression and respect Ukraine’s internationally recognized borders, only then will it be possible to rebuild today’s disrupted international customs cooperation with the participation of the Russian Customs. The EU and its Member States stand in solidarity with Ukraine and its people.”

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ADVISORY OPINION 26.1

**TREATMENT APPLICABLE TO TRANSACTIONS AGREED IN  
CRYPTOCURRENCIES NOT RECOGNISED AS LEGAL TENDER**

1. Digital assets are a representation of value or rights, whether or not cryptographically secured, which:
  - i) can be used for the settlement of payment obligations;
  - ii) can be transferred, stored or traded electronically; and
  - iii) use technology supporting the recording and storage of data (which normally includes distributed ledger technology known as “blockchain”).
2. Digital assets which can be transferred or stored electronically using distributed ledger technology or similar technology are also known as “crypto assets”. Crypto assets incorporate various applications and services.
3. Cryptocurrencies are a type of crypto asset designed as forms of money outside of the central banking systems to be used for the settlement of payment obligations, amongst other purposes. This may give rise to customs valuation issues, which are the key concerns in this instrument.
4. How should the customs value be determined when goods are presented for import following a purchase agreed in cryptocurrencies not recognised as legal tender in the country of importation?

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5. The Technical Committee on Customs Valuation expressed the following opinion.
6. Article 1.1 defines transaction value as “the price actually paid or payable for the goods when sold for export to the country of importation, adjusted in accordance with Article 8”, provided that the conditions in Article 1.1(a) through (d) are met. Application of the transaction value method therefore requires a price and, under Article 9, that price must either be expressed in the currency of the country of importation or capable of conversion.
7. For Members that do not recognize cryptocurrencies as legal tender, the price in transactions agreed in cryptocurrencies is not convertible under Article 9. Thus, no price exists for the purpose of applying the transaction value method. As a result, the customs value cannot be determined under Article 1 but instead must be established by applying one of the other methods set out in the Agreement, taken in the sequence prescribed.
8. However, it is possible that the contract of sale sets the price in cryptocurrency, but the transaction is ultimately settled (i.e., paid for) by the buyer in a currency recognised as legal tender, as agreed between the parties concerned. In such a case, the customs value could be determined on the basis of Article 1 and, if necessary, converted into the currency of the country of importation in accordance with Article 9. It is noted that Article 17 of the Agreement underlines the right of Customs administrations to satisfy themselves as to the truth and accuracy of any statement, document or declaration presented for customs valuation purposes.

9. The foregoing analysis is not relevant for those Members that do recognize cryptocurrency as legal tender.

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**SUMMARY REPORT REGARDING THE SPECIFIC TECHNICAL QUESTION ON  
“VALUATION TREATMENT OF FREIGHT AND FREIGHT CHARGES UNDER ARTICLE 8  
OF THE AGREEMENT”**

Background

1. The issue of whether additional freight charges, specifically the Bunker Adjustment Factor (BAF), should be included in the Customs value for CIF, was raised by Mauritius during the 56<sup>th</sup> Session of the Technical Committee on Customs Valuation (TCCV). Subsequently, the question was examined in its 57<sup>th</sup>, 58<sup>th</sup>, and 59<sup>th</sup> Sessions. This case raised essential questions regarding the inclusion **or not** of additional transport costs in the Customs value and **its respective rationale, in particular**, whether they are adequately reflected within the agreed CIF price. This discussion highlighted a divide among Members regarding the treatment of freight costs in Customs valuation. **(China)**
2. This report is prepared as a summary that compiles and consolidates the discussions and varying perspectives from all sessions, serving as a reference for members facing similar cases.

Arguments for including additional freight costs:

3. Members supporting the inclusion of additional freight charges in the Customs value, argued that additional freight costs, such as BAF, should be included in the Customs value, if national legislation allows it, regardless of whether it is borne by the seller or the buyer. They draw attention to the differences in wording between paragraphs 1 and 2 of Article 8 of the WTO Customs Valuation Agreement. While Article 8.1 explicitly requires the adjustments **to be** incurred by the buyer to **be** included in the Customs value, Article 8.2 does not impose this requirement. **(China)**
4. They also pointed out the apparent flexibility provided by Article 8.2, which allows Members the discretion to determine how transport costs should be incorporated into the Customs value. Proponents of this perspective argued that such inclusion aligns with the intent of the Agreement to accurately reflect actual costs incurred in the transaction.
5. Members who supported this viewpoint include Cameroon, the Dominican Republic, the European Union, Guatemala, Malaysia, Mauritius, and the United States, among others.

Arguments against including additional freight costs:

6. Conversely, a significant faction of delegates argued that, since the **CIF price is on a “CIF” basis, this Incoterm** inherently encompasses all transportation costs up to the point of importation, **and additional freight charges must be borne by the seller and, therefore, should must (Uruguay)** not be included in the Customs value, unless **they are it is (China) additionally required to be paid by the buyer is willing to pay them, which is not the case**. This perspective warns against the potential for double-counting **of part of the transportation cost in the Customs value**, which could compromise the principles of the Agreement. **(Uruguay)**

7. Advocates for this approach asserted that, in accordance with the commercial realities of CIF transactions, the CIF price represents a price for the goods inclusive of insurance and freight costs. Accordingly, for countries adopting the “CIF” model under Article 8.2 of the Agreement, no further analysis of actual vs estimated costs is in fact necessary, because the CIF price for the goods covers both the price actually paid or payable for the imported goods and the actual insurance and freight costs for the importation. In the CIF transaction, the seller bears the responsibility and risk related to insurance and freight costs and therefore any variations in freight between initial, notional or estimated insurance and freight costs indicated on an invoice or other document submitted to Customs at time of importation, and the actual insurance and freight costs ultimately incurred by the seller, only primarily impact the seller’s profit margin, rather than altering the CIF price (covering the goods, insurance and freight) actually paid or payable by the buyer. In other words, unless the seller and buyer renegotiate the CIF price due to higher than expected transportation costs (i.e. a scenario that was not uncommon during the COVID-19 pandemic in the face of skyrocketing transportation costs), the commercial realities of a transaction concluded on a CIF basis, are that CIF price remains unchanged. Consequently, when actual insurance and freight costs are higher than those the seller estimated in establishing the CIF price, the “actual” price for the goods decreases (lowering the seller’s profit margin). Conversely, if the actual insurance and freight costs are lower than those estimated, the “actual” price for the goods increases, thereby increasing the seller’s profit margin, while the CIF price again remains unchanged. By maintaining this distinction, they argued, the Customs value for countries adopting the “CIF” model would not change, reflecting the agreed terms of the sale without unnecessary adjustments that could introduce complications. (Canada)

*7. (comments by China and Uruguay)* Advocates for this approach asserted that variations in freight costs under CIF terms lead to an increase in the transport cost and a corresponding decrease in the price of the goods, which (China) primarily impact the seller’s profit margin, rather than altering the price actually paid or payable by the buyer. ~~By maintaining this distinction, t~~They argued, that the Customs value would not change, reflecting the agreed terms of the sale without unnecessary adjustments that could introduce complications and uncertainty for importers. (Uruguay)

8. Members who supported this viewpoint include Brazil, Canada, China, Indonesia, Japan, Korea, the United Kingdom and Uruguay, among others. (China)

Concerns about Transparency and Consistency:

9. Canada, Japan, the ICC, the IMF, and others expressed concerns about the potential inconsistencies in practice that could arise and emphasised the need to avoid such disparities.
10. They highlighted the need for consistency in applying the Agreement between CIF and FOB transactions, warning that adjusting for freight costs in CIF cases could contradict established principles and create inconsistencies. Namely, the approach that is “against including additional freight costs” is consistent with the principles and outcomes of Commentary 21.1 and would ensure consistency and harmony in how these costs are treated between ‘CIF’ and ‘FOB’ model countries. However, the approach in support of “including additional freight costs” would create inconsistency. (Canada)
11. Various delegations also expressed concern about the potential implications of varying approaches to additional freight costs in Customs valuation, particularly under CIF terms.

Allowing individual countries to decide whether to include these costs could lead to unpredictable Customs values, undermining fairness and equity as outlined in the Agreement.

Conclusion

12. Due to the persistent lack of consensus on a unified approach, during the 59th Session the Technical Committee decided to move this question to Part III of the Conspectus of Technical Valuation Questions.
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