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WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES
ORGANIZACIÓN MUNDIAL DE ADUANAS

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION
-
60th Session
-

VT1481Eb

O. Eng.

Brussels, 23 April 2025.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE 60th SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. The 60th Session of the Technical Committee on Customs Valuation (TCCV) was conducted at the Headquarters of the World Customs Organization (WCO) from 7 to 11 April 2025. The Chairperson, Qianyu LIN (China), conveyed a cordial welcome to all delegates, both those who were present in person and those who were participating online. She also extended a particularly warm greeting to those who were participating in a TCCV session for the first time. She expressed her gratitude to all delegates for their diligent efforts during the online discussion phase on the CLiKC! Platform.

2. The Acting Director of Tariff and Trade Affairs Directorate joined the Chairperson in welcoming all the delegates. She said that the 60th Session of the TCCV marks a significant milestone and commemorates 30 years of the Committee. She further stated that the panel discussion planned to recognize this occasion will have senior TCCV delegates discussing the Committee's achievements and future direction. She noted that the session has a demanding agenda with over 10 questions reflecting global trade dynamics and encouraged the delegates to participate actively and engage in constructive exchanges and expressed her commitment that the Secretariat is available to support delegates to ensure a productive experience.

3. Following the expression of gratitude to the Acting Director, the Chairperson briefed all delegates on the necessary administrative arrangements to ensure the session proceeded

smoothly. She reminded the delegates that to preserve the technical nature of the meeting, the Policy Commission reaffirmed in December 2023 that statements of a political nature should not be delivered or read during the meeting. Written statements may be submitted to the Secretariat for inclusion into an Annex of the session's Report.

4. In this respect, statements forwarded to the Secretariat by Ukraine and the European Union are set out in Annex D to this draft Report.

Agenda Item I: Recognising 30 years of the Technical Committee on Customs Valuation (TCCV)

5. At the proposal of the Delegation of Uruguay, the Technical Committee, at the 59th Session, agreed to organize a celebration at its 60th Session in 2025. Accordingly, a panel discussion was held during the 60th Session on 8 April 2025 to commemorate the 30th anniversary of the TCCV.

6. The panel discussion aimed to reflect on the implementation of the WTO Customs Valuation Agreement (Agreement) and the TCCV's contributions over the past three decades. It celebrated the Committee's achievements while looking ahead to future expectations. Panel members included representatives from the World Trade Organization (WTO) and the International Chamber of Commerce (ICC), as well as current and former TCCV Chairpersons. The discussion was moderated by the Acting Director.

7. The representatives from the WTO emphasized the crucial role of the Agreement in shaping international trade practices by promoting fair and consistent Customs valuation, enhancing transparency, facilitating trade, and encouraging compliance. She also highlighted the strong cooperation between the WTO and the WCO through the organization of seminars, workshops, and technical assistance activities for Member countries.

8. The representative from the ICC highlighted the challenges faced by the private sector in the area of Customs valuation. He acknowledged the work of the TCCV, particularly the adoption of various instruments, which have significantly contributed to providing greater predictability and transparency for businesses engaged in international trade.

9. The former Chairpersons from Uruguay and Dominican Republic, respectively, and the current Chairperson from China shared insights into their countries' experiences with the implementation of the Agreement, along with personal reflections on their time as TCCV delegates and Chairpersons, while referring to the effects of the instruments adopted by this Technical Committee on international case law, academic positions and national regulations of Member administrations. Photos from various Committee sessions, including some taken over 20 years ago, were shared, offering a visual reflection of the Committee's journey. (Uruguay)

10. The Acting Director closed the panel discussion by expressing heartfelt gratitude to panel members for their diverse perspectives and deep expertise. She encouraged the continued active engagement of all delegations in the Technical Committee's work. She expressed confidence that, just as the Committee has significantly contributed to global trade over the past 30 years, it will continue to play a vital role in shaping the future of international trade in the decades to come.

Agenda Item II: ADOPTION OF AGENDA

(a) Provisional Agenda
Doc. VT1450Eb

11. The Chairperson invited comments on the provisional Agenda in Doc. VT1450Eb, published on the TCCV Meeting page, and on the 60th TCCV Session Discussion Forum on the CLiKC! Platform. She also invited delegates to raise any point that they wished to discuss under item VIII of the Agenda - Other Business.

12. The Delegate of the United Sates informed the Committee that his Administration would withdraw the question under Agenda item VI (k) on the "Treatment of a Core Value Charge in a Circular Business Model", which was submitted by the United Sates at the last session for the Committee's examination.

13. Given the significance of emerging principles of circular economy business models, Uruguay proposed to take over this question. Therefore, the Technical Committee agreed to add a new item to the Agenda under "Questions raised during the intersession", that is, item VII (b) "Treatment of a Core Value Charge in a Circular Business Model: Request by Uruguay".

Conclusion

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

(b) Suggested programme

Doc. VT1451Ea

15. The Chairperson referred to Doc. VT1451Ea, which set out the suggested programme of work for the 60th Session prepared by the Secretariat.

16. As proposed by delegates, the Technical Committee agreed to make a minor amendment to the suggested programme, reversing the order of items VI (h) and VI (i).

17. The new added Agenda item VII (b) would be examined after item VII (a).

Conclusion

18. The Technical Committee adopted the suggested programme as set out in Doc. VT1451Ea, subject to the above mentioned changes.

Agenda Item III: ADOPTION OF THE TECHNICAL COMMITTEE'S 59TH SESSION REPORT

Doc. VT1449Eb Revised

Background

19. The Chairperson introduced this Agenda item, reminding the Committee of the procedure for the adoption of its Session Report, approved by Members during the 42nd Session.

20. During the intersession preceding the 60th Session, comments received from Canada, China, Japan, Uruguay, the IMF and the Chairperson on the “a” version of the draft Report were incorporated in the “b” version of the draft Report and published in working document VT1449Eb, with comments from Members highlighted in red.

21. Comments received from China, the European Union and Uruguay on the “b” version were published on the ‘b revised’ version of the draft report.

Summary of discussion

22. During the 60th Session, no comments were received on the “b revised” version of the draft Report of the 59th Session. A “c” version of the Report would be published in Doc. VT1449Ec as a final draft to be submitted to the WCO Council for approval.

23. The United States and the ICC expressed gratitude to the Secretariat for preparing the summary report of the TCCV’s discussion on the question submitted by Mauritius regarding “Valuation treatment of freight and freight charges under Article 8 of the Agreement”. This question was moved to Part III of the Conspectus during the 59th Session, and a summary report was annexed to the session Report.

24. It was stated that such summary reports would be beneficial for Members seeking to examine the Technical Committee's discussions on specific topics, despite the absence of a consensus. The ICC recommended that the summary report be made identifiable in the Conspectus as well.

Conclusion

25. The Technical Committee adopted the Report of its 59th Session.

Agenda Item IV: REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director’s Report

Doc. VT1452Ea

26. The Chairperson invited the Acting Director to present the Director’s Report, contained in Doc. VT1452Ea. The Acting Director summarized the key intersessional activities included in the document.

27. The Acting Director briefed the Technical Committee on a few items of the 91st Policy Commission Session as follows:

i. The Policy Commission discussed the outcomes of consultations with the Harmonized System Committee (HSC) and endorsed a 30-month project to implement recommendations from the Exploratory Study on the HS.

ii. The Policy Commission endorsed the Concept Note for the Green HS Programme, recognizing its potential to address environmental challenges by integrating green trade into the HS.

iii. The Policy Commission took note of the progress report on the Modernization Plan, approved by the Council in June 2024, aiming to improve efficiency and sustainability.

iv. The Policy Commission took note of the draft WCO Strategic Plan for 2025-2028, emphasizing its alignment with lessons from past cycles and the outcomes of the Environmental Scan.

28. The Technical Committee was informed that the Customs Cooperation Fund of China (CCF China) has provided funding for a pre-accreditation workshop on Expert Trainers in Customs Valuation for the AMS region, tentatively scheduled for July. The Acting Director also said that the Secretariat is organizing a number of regional workshops for Master Trainers on Customs Valuation.

29. The Acting Director informed the Technical Committee of the WCO Annual Survey, which includes questions on TCCV instruments to evaluate Members' daily application, encouraging timely feedback to promote effective use of these instruments.

Summary of discussion

30. The Delegate of Uruguay expressed appreciation to the Acting Director for the report and acknowledged the significant efforts of the Secretariat. He expressed gratitude to CCF China for its financial support of the pre-accreditation workshop for the AMS region. He also stated that the summary of the findings of the WCO Annual Survey regarding the application of the

TCCV instruments would be of great use, and therefore requested that, once this summary had been completed, it could be shared with this ~~for the~~ Technical Committee. (Uruguay)

Conclusion

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

(b) WTO Committee on Customs Valuation Report

32. The WTO Committee on Customs Valuation (CCV) held its formal meeting on 11 December 2024. During the session, the Committee reviewed 34 Customs valuation notifications, including the first notifications of Congo, Maldives, Papua New Guinea, as well as revisions to Customs valuation legislation notified by Cabo Verde, Gabon, Republic of Moldova, Mongolia, Nigeria, Saint Kitts and Nevis, Senegal, and Ukraine. The Committee concluded reviews of the Customs valuation legislation of two Members (Plurinational State of Bolivia and Iceland). The review of questions and responses pertaining to the valuation legislation of 25 Members remain pending before the Committee.

33. The CCV also oversees the implementation of the Preshipment Inspection Agreement (PSI), and at the December meeting it continued its Sixth Triennial Review of it. The review did not result in any changes to the provisions, implementation or operation of that Agreement.

34. The next WTO CCV formal meeting was scheduled to take place on Friday, 9 May 2025, and the Committee will take the opportunity to mark the 30th anniversary of the Agreement.

35. The written report from the WTO Secretariat is appended in Annex C to this draft Report.

Conclusion

36. The Technical Committee took note of the report.

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

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

Docs. VT1453Ea and VT1467Ea

Background

37. 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.

38. In Doc. VT1453Ea, the Secretariat had invited the Members to submit information to it, no later than 24 January 2025, concerning their technical assistance/capacity building activities. In response to this request, the United States had submitted information to the Secretariat concerning its technical assistance activities.

39. Information provided by the United States on its technical assistance/capacity building activities and information on the technical assistance/capacity building activities undertaken by the Secretariat was set out in Annexes I and II to Doc. VT1467Ea, respectively.

Summary of discussion

40. The Secretariat's report on technical assistance/capacity building activities had not given rise to any comments from the delegates attending the 60th Session.

41. Uruguay informed the Technical Committee that, in its capacity as Regional Office for Capacity Building (ROCB) for the Americas and the Caribbean Region, it will hold online basic and advanced courses on Customs valuation this year and stated that the invitations for these courses will be sent to Members shortly.

Conclusion

42. The Technical Committee took note of the report by the Secretariat on the technical assistance/capacity building activities undertaken by the Secretariat and Members, as presented in Doc. VT1467Ea.

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

Docs. VT1454Ea and VT1468Ea

Background

43. 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 it 56th Session requires that the report from at least one member be presented to the Committee every two years.

44. During the intersession the Secretariat published the working document VT1454Ea inviting Members to report on the progress made in the implementation of the WTO Customs Valuation Agreement.

45. During the intersession, no member expressed their intention to deliver presentations on their respective experiences at the 61st Session.

Summary of Discussion

46. At the invitation of the Chairperson, the Delegation of Gabon volunteered to make a presentation at the 61st Session on Gabon's progress of implementing the Agreement.

Conclusion

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

Agenda Item VI: SPECIFIC TECHNICAL QUESTIONS

(a) Meaning of the expression "price actually paid or payable" for the goods: Request by Uruguay

Docs. VT1455Ea and VT1469Ea

Background

48. This question submitted by Uruguay has been examined by the Technical Committee since its 54th Session. It was initially titled "The meaning of the expression "price for the imported goods" in accordance with paragraph 4 of the Interpretative Note to Article 1".

49. During the 59th Session, citing the contentious nature of the question, the Technical Committee agreed to change the title to "Meaning of the expression 'price actually paid or payable' for the goods", in order to align with the broader perspectives that the question aimed to address.

50. The Technical Committee reviewed paragraphs 1 to 5 of the draft instrument submitted by Uruguay and revised by Canada during the 59th Session. It was also agreed to change the instrument type to an Explanatory Note.

51. During the intersession, Uruguay submitted an updated draft Explanatory Note and the Conceptual Structure, which were set out in the Annex to Doc. VT1455Ea.

52. In response to the working document VT1455Ea, China and the United States submitted to the Secretariat their written comments which were set out in Annexes I and II to Doc. VT1469Ea, respectively.

Summary of discussion

53. During the online discussion phase of the 60th Session, the Delegations of Brazil, Chile, China, Mexico, Uruguay and Uzbekistan discussed the question.

54. During the in-person meeting, in response to the Chairperson’s invitation to give a background on the updated draft instrument, Uruguay stated that the draft already is an outcome of input from several Members and suggested that the Technical Committee begin paragraph-by-paragraph review of the draft.

55. The Technical Committee proceeded with the review, incorporating various comments received from Members during the intersession.

56. Following a proposal by the United States, the Technical Committee agreed to include a statement in the introduction of the draft instrument indicating that the purpose of the Explanatory Note is not to interpret any provisions of the Agreement, but rather to summarize and illustrate the key existing provisions and instruments relevant to their interpretation and application in the context of this instrument.

57. In reference to paragraph 5 of the draft instrument, Canada and the United States expressed concerns regarding the inclusion of both upward and downward post-importation adjustments as price adjustments. It was stated that while downward adjustments should be agreed upon by the parties at the time of or prior to importation, upward adjustments did not require such prior agreement. This was particularly true for related party transactions, where upward and downward price adjustments can and do occur for reasons and in accordance with business practices that go beyond the existence of a "price review clause" as outlined in Commentary 4.1. (Canada)

58. Uruguay stated that the existing text of the draft instrument refers to Commentary 4.1 and that the aim of the draft instrument is to capture what has already been accepted by the Technical Committee. He argued that it cannot be expressed differently solely because of variations in national practices. Canada and the United States agreed, and in keeping with the aim of this draft instrument and avoid the inclusion of text that would go beyond the scope of existing instruments adopted by the Technical Committee, they suggested some minor amendments to the text to retain the reference to upward and downward adjustments but limit the scope of application to that of Commentary 4.1. The Technical Committee agreed with these changes. ~~The text was maintained to recognize both upward and downward adjustments outlined in Commentary 4.1.~~ (Canada)

59. With reference to paragraph 14, the Delegate of the Democratic Republic of the Congo (DRC) raised the question of interpretation in relation to the term "loading and unloading" as per Article 8.2(b) of the Agreement, where there is confusion in interpretation of the term "unloading" among many Members. The text was improved to include "loading, unloading, and handling charges," as prescribed in Article 8.2.

60. In connection to this discussion, several members, including Cameroon, Dominican Republic, the DRC, Nigeria, Haiti, and Sri Lanka, took the floor to explain their respective challenges in the interpretation and implementation of Article 8.2. Uruguay reminded the Technical Committee that the topic of Article 8.2 has been raised in the past as a specific technical question~~s~~, but ~~in many cases,~~ the Committee had failed to reach consensus and had therefore transferred it to Part III of the Conspectus. However, the Technical Committee agreed on the relevance of a new question on this topic in the upcoming sessions. (Uruguay)

61. With reference to paragraph 16 of the draft instrument, the United States indicated that WTO Decision~~s 3.1 and~~ 4.1 permit~~s~~ the inclusion or exclusion of the relevant costs subject to

specified conditions.~~, and therefore, this~~ The United States also pointed out that not all Members have adopted Decision 3.1. Therefore, it suggested that these two points should be acknowledged in the text of the draft instrument. The Technical Committee agreed to amend the text accordingly. ~~to recognize the deduction of the prescribed costs for Members that have applied the WTO Decisions 3.1 and 4.1.~~ (United States)

61. With reference to paragraph 16 of the draft instrument, the United States indicated that WTO Decisions 3.1 and 4.1 of the WTO Committee on Customs Valuation (CCV) permit the inclusion or exclusion of the relevant costs subject to specified conditions, and therefore, this should be acknowledged in the text of the draft instrument. The Technical Committee agreed to amend the text to recognize the deduction of the prescribed costs for Members that have ~~applied~~ adopted ~~the WTO~~ Decision~~s~~ 3.1 and the second paragraph of Decision 4.1 of the WTO CCV. (Uruguay)

62. The Technical Committee agreed on the revised text of all the paragraphs in the draft instrument and conducted a cursory review of the graphic representation of conceptual structure annexed to the draft instrument.

63. Several delegations took the floor to comment on the structure of the conceptual framework. It was suggested that this diagram be reviewed in light of the changes brought to the text of the body as well as comments made to the design and content of the table during the intersession.

64. The Chairperson advised all Members to work further during the intersession to achieve consensus on the conceptual framework, with the hope that the Technical Committee could adopt a new instrument during the next session.

Conclusion

65. The Technical Committee agreed to continue examination of this question, with the aim of adopting a new instrument at its next session.

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

12.

Docs. VT1456Ea and VT1470E

Introduction

66. The Chairperson introduced this question which was submitted by Brazil and agreed by the Technical Committee at its 56th Session to examine as a specific technical question.

67. A draft Case Study initially submitted by Brazil was set out in the Annex to Doc. VT1346Ea for the Technical Committee's consideration, which was updated during the 58th and 59th sessions in light of comments and proposals received from Members.

68. During the intersession prior to the 60th Session, Brazil worked with China to update the draft Case Study on the basis of the version examined by the Committee during the 59th Session. The updated text of the draft instrument was set out in the Annex to Doc.VT1456Eb.

69. In response to Doc.VT1456Ea, written comments were received from Canada, which were annexed to Doc. VT1470Ea.

Summary of discussion

70. Comments were received from Brazil, Chile, China, Mexico, Uruguay, Uzbekistan and the ICC on the CLiKC! Platform during the online discussion phase. Based on all these comments, Brazil shared an updated version on the CLiKC! Discussion Forum. (Uruguay)

71. The Technical Committee, during the in-person meeting, carried out a paragraph-by-paragraph examination of the updated draft Case Study shared by Brazil. Following the completion of the examination, the Technical Committee adopted a new instrument, Case Study 14.3, the text of which is appended in Annex E to this draft Report.

Conclusion

72. The Technical Committee concluded its examination of the question submitted by Brazil on the "Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement" and adopted a new instrument, Case Study 14.3, which would be submitted to the WCO Council for approval.

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

Docs. VT1457Ea and VT1471Ea

Introduction

73. The Technical Committee agreed at its 57th Session to examine this question submitted by Uruguay as a specific technical question. 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 58th Session to incorporate inputs received from delegates on the CLiKC! Platform.

74. At the 59th Session, the Technical Committee concluded its examination of paragraphs 1 to 12 of the draft Case Study, as well as relevant footnotes.

75. During the intersession prior to the 60th Session, Uruguay worked with China and the ICC to make further amendments to the text of the draft Case Study. The revised version was set out in the Annex to Doc.VT1457Ea.

Summary of discussion

76. During the online discussion phase, comments were received from Brazil, Chile, China, Mexico, Uruguay and Uzbekistan.

77. The Secretariat updated the draft Case Study to incorporate comments received during the online discussion phase. The Technical Committee conducted a paragraph-by-paragraph examination on the basis of this version during the in-person meeting.

78. The Technical Committee concluded its examination of the draft Case Study and adopted a new instrument, Case Study 14.4, the text of which is appended in Annex F to this draft Report.

Conclusion

79. The Technical Committee concluded its examination of the question submitted by Uruguay on the "Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement" and adopted a new instrument, Case Study 14.4, which would be submitted to the WCO Council for approval.

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

Docs. VT1458Ea and VT1472Ea

Introduction

80. The Chairperson introduced this case submitted by Korea, which was agreed by the Technical Committee, at its 57th Session, to examine as a specific technical question. The text of the question was updated prior to the 58th Session and was set out in the Annex to Doc. VT1404Ea. As proposed by Korea, the title of this question was changed to "Valuation treatment of imported goods when goods are additionally provided according to the quantity purchased".

81. At the 59th Session, the Technical Committee discussed whether there is only "one transaction" in Question 2 of this case under which the additional goods are imported along with the purchased goods, or the import of these additional goods should be treated as a separate transaction for valuation purposes.

Summary of discussion

82. During the online discussion phase, comments were received from China, Korea, Norway, Uruguay, the United States and Uzbekistan. Uruguay and China were of the view that consensus could not be reached in this case and suggested moving it to Part III of the Conspectus of Technical Valuation Questions. In response, Korea proposed to proceed with the examination of this question, focusing merely on Questions 3.

83. During the in-person meeting, Korea proposed submitting an updated version during the intersession prior to the 61st session, narrowing the discussion exclusively to Question 3 of the current case. Korea's proposal was supported by Canada, Japan and the United States.

84. China and Uruguay expressed concerns regarding the feasibility of reaching an agreement on Question 3, given the fact that no consensus had been achieved on Questions 1 and 2. China noted that Questions 2 and 3 are interrelated to some extent, while Uruguay observed that Question 3 involves payments made for services rather than for goods. Nevertheless, both delegations indicated flexibility should the Committee decide to continue its discussion on Question 3.

85. The Technical Committee agreed to continue the examination of this question at its next session on the basis of the updated question provided by Korea, focusing on Questions 3.

Conclusion

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

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

Docs. VT1459Ea and VT1473Ea

Introduction

87. The Chairperson introduced this case submitted by Vietnam on “Application of Article 1”, which was agreed by the Technical Committee at its 58th Session to examine as a specific technical question. The facts pertaining to this question were set out in the Annex to Doc. VT1415Ea.

88. 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.

89. During the intersession prior to the 59th Session, written replies were received from Vietnam to questions raised by Brazil, China and Japan at the 58th Session, which were set out in the Annex to Doc.VT1430Ea. Written comments were received from Canada, China and Uruguay, which were set out in the Annexes to Doc. VT1443Ea.

90. During the 59th Session, Vietnam agreed to provide the framework contract, the purchasing service contract, and the purchase orders to the Technical Committee to facilitate the examination.

Summary of discussion

91. During the online discussion phase, comments were received from Brazil, China, Mexico, the United States and Uzbekistan. At the request of Vietnam, the Secretariat shared on the CLiKC! Discussion Forum four non-papers received from Vietnam regarding the facts of the case, including:

- Agreement between ICO and the Representative Company,
- Framework Agreement between TRC and MCO for the sale and purchase of raw material,
- Amendment to Framework Agreement between TRC and MCO for the sale and purchase of raw material, and
- Purchase Order.

92. During the in-person meeting, as invited by the Chairperson, Vietnam introduced the four non-papers which provide further information on the facts of the transaction to facilitate the discussion. Canada, China, Japan, Uruguay, the United States and the ICC then took the floor to discuss the case, focusing on whether, in the price negotiation carried out by the Representative Company with the importer, it could be considered whether or not "a condition or consideration for which a value cannot be determined" existed with respect to the goods being valued under Article 1.1(b) of the Agreement. (Uruguay)

93. China thanked Vietnam for sharing the non-papers during the online discussion phase and believed these materials further clarify the facts of the transaction. The Delegate of China drew the Committee's attention to a number of terms in the non-papers which she deemed especially useful for the examination of this case, including Articles 3.1, 3.2,4.1, 6.1 and 8.3 of the Agreement between ICO and the Representative Company, and Article 4.3 of the Amendment to Framework Agreement between TRC and MCO for the sale and purchase of raw material.

94. The Delegate of the United States was of the view that the parties in this case are engaged in a common commercial practice that should not preclude the application of Article 1. He

stated that the involvement of the "Representative Company" in the transaction should not be considered as "a condition or consideration for which a value cannot be determined" under Article 1.1(b). Referring to the U.S. commercial law, he opined that a "condition" is generally a requirement that must be met to fulfil a specified legal obligation, while in this case ICO is not required to do anything. The "Representative Company" merely negotiates a favourable price with an unrelated seller and makes that price available to ICO and other subsidiaries of the multinational corporation.

95. Moreover, the United States noted that in all the examples in the Interpretative Note to Article 1.1(b), the sale of one good is tied to the ~~another~~ sale of another good. In the current case, ICO may simply take advantage of the negotiated price if it so chooses. Neither ICO nor any of the other affiliates are required to purchase from MCO. (Canada)

96. The Delegate of the United States also reiterated a key point originally raised by Japan in its comments concerning Commentary 11.1, which advises that *"caution must be exercised to ensure that the application of Article 1.1(b) is not extended beyond the intended purposes."*

97. Canada and Japan expressed their support to the United States' view that the transaction value method could apply in this case based on the price between ICO and MCO. Canada added that the Representative Company is a bona fide buying agent of ICO and therefore no further adjustments are required to the price actually paid or payable pursuant to Article 8.1(a)(i) of the Agreement.

98. Uruguay highlighted the fact that the Representative Company in this case represents all the purchasing companies from the same multinational group. The favourable price it obtained from MCO is based on the cumulated quantity of goods expected to be ~~brought~~ purchased (Uruguay) by all these purchasing companies located in different countries, not merely (Canada, Uruguay) on the imported goods purchased by ICO from MCO. Therefore, it could be considered that the price between ICO and MCO is subject to some conditions or considerations for which a value cannot be determined with respect to the goods being valued: the total quantity with the remaining goods for purchase for other countries. Thus, Article 1 could not apply in this case as the requirements under Article 1.1 (b) are not fulfilled. (Uruguay)

99. The Delegate of Uruguay also referred to the comments by Brazil on the CLiKC! Platform that the centrally negotiated and pre-defined prices and fixed contractual conditions that resulted from the work carried out by the Representative Company constitute an indirect

condition between the buyer and the seller, which influences prices and prevents the determination of the value of the goods using the transaction value method. (Uruguay)

100. In view of the opposing opinions expressed by the ~~d~~Delegates of Vietnam, Brazil and Uruguay and the other delegations, Uruguay suggested moving this question to Part III of the Conspectus of Technical Valuation Questions. (Uruguay)

101. Referring to the ICC's presentation at the 59th Session on buying agency services, the representative of the ICC highlighted the expansion of the role of the buying agent over the past 40 years since the adoption of Explanatory Note 2.1, and the additional functions it played in current commercial practice.

102. As proposed by the Chairperson, the Committee agreed to keep this question on the Agenda of the next session to have further discussion.

Conclusion

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

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

Docs. VT1460Ea and VT1474Ea

Background

104. At its 58th Session, the Technical Committee agreed to examine this question submitted by Uruguay as a specific technical question. A draft Advisory Opinion submitted by Uruguay was set out in the Annex to Doc. VT1416Ea for the Technical Committee's consideration.

105. 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.

106. During the 59th 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 5 of the draft text.

107. During the intersession, Uruguay proposed an amendment to the draft Advisory Opinion, which was set out in the Annex to Doc. VT1460Ea.

108. In response to the working document VT1460Ea, China submitted to the Secretariat its written comments which was set out in the Annex to Doc. VT1474Ea.

Summary of discussion

109. During the online discussion phase of the 60th Session, the Delegations of Brazil, China, Mexico, the United States, Uruguay and Uzbekistan discussed the question.

110. During the in-person meeting, in response to the Chairperson's invitation, Uruguay briefed the Committee on the rationale of submitting the question and thanked the delegates who contributed to the draft text during the online discussion phase. Uruguay suggested proceeding with the paragraph-by-paragraph review, taking into account comments received during the intersession and the online discussion phase.

111. The Technical Committee continued the paragraph-by-paragraph review from the beginning of the draft text. Several Members took the floor, leading to an in-depth discussion on improving the language and flow of the draft instrument.

112. The Committee specifically deliberated on the new paragraph 8 of the draft text, proposed by China during the intersession, and further proposals made by Brazil and the United States during the online discussion phase.

113. The Delegate from China referenced paragraphs 2 and 3 of the draft instrument to explain the rationale for the proposal of paragraph 8, indicating that it aims to clarify that the principles outlined in the draft instrument are also applicable to Article 8.1. The analysis examines a specific instance of a dutiable licence fee, aligning with the third example in paragraph 2. It concludes that non-payment of the adjustments under Article 8.1 should be regarded as unilateral breaches of commercial contracts and thus remain payable.

114. The United States indicated its willingness to consider the Committee's perspectives, proposing for paragraph 8 the inclusion of additional elements in Article 8.1 to ensure completeness and avoid misinterpretation, rather than limiting the discussion to a single example under Article 8.1(c).

115. Following thorough discussions on the phrasing of paragraph 8, the Committee consented to accept the proposal put forth by China, which incorporates comments from Brazil and the United States, with the understanding that the paragraph pertains to Article 8.1 in its entirety, rather than solely to Article 8.1(c).

116. The Technical Committee agreed to include a new paragraph 9 proposed by Canada to summarize the analysis and conclude that non-payments for price paid or payable under Article 1 or corresponding adjustments under Article 8.1 will form part of the Customs value.

117. Following the thorough paragraph-by-paragraph examination of the entire text, the Technical Committee approved a new instrument, Advisory Opinion 27.1, the text of which is included in Annex G to this draft Report.

Conclusion

118. The Technical Committee concluded its examination of the question submitted by Uruguay on “Treatment applicable to non-payments by the buyer”, and adopted a new instrument, Advisory Opinion 27.1, which would be submitted to the WCO Council for approval.

(g) Valuation treatment of credits accumulated from past purchases: Request by the Secretariat
Docs. VT1461Ea and VT1475Ea

Background

119. The Technical Committee examined a question submitted by Uruguay on “Accumulated discounts in E-Commerce sales” during its 54th to 59th Sessions. As consensus could not be reached, the Committee agreed at its 59th Session to move this question to Part III of the Conspectus of Technical Valuation Questions.

120. Given the relevance of the topic to the challenges encountered by the Customs administrations, during the 59th Session, it was decided to continue discussion on the topic at the 60th Session under a new question submitted by the Secretariat.

121. During the intersession, the Secretariat worked with several delegations to draft a new question, which was set out in the Annex to Doc. VT1461Ea.

122. In response to the working document VT1461Ea, China, the United States and Uruguay submitted to the Secretariat their written comments which were set out in Annexes I, II and III to Doc. VT1475Ea.

Summary of discussion

123. During the online discussion phase of the 60th Session, the Delegations of Brazil, Japan, Mexico, Norway, the United States, Uruguay, Azerbaijan and Uzbekistan discussed the question.

124. During the in-person meeting, following a brief introduction of the question by the Secretariat, several delegations took the floor to share their technical opinions on the question.

125. In reference to the nature of shopping points presented in this case, China suggested that these points could be considered as a means of payment in future transactions, representing value that can be accepted by the same seller to offset payments in subsequent transactions. China clarified that, as per the Interpretative Note to Article 1, the price for imported goods is the total payment from the buyer to the seller, which can be made through letters of credit or negotiable instruments and does not necessarily require it to take the form of a transfer of money. Therefore, the value of the credits should constitute the price paid or payable for the imported goods and cannot be deducted.

126. The United States stated that these shopping points do not constitute a means of payment; rather, they resemble promotional discounts on future purchases, similar to quantity discounts addressed in Advisory Opinion 15.1. Consequently, the Customs value should be established based on the actual price paid or payable for the imported goods, excluding the value represented by the shopping points.

127. The Delegate of Canada shared his position that these shopping points would be viewed as a means of payment, a consideration for which a value can be determined in accordance with Advisory Opinion 16.1. Canada further stated that due to the nature of shopping points, it is possible for an importer to pay nothing for the goods by utilizing these points, resulting in the goods arriving free of charge. This raises the question of how Customs would value such transactions. Consequently, Canada took the view that such shopping points could be treated as a consideration for which a value can be determined, and therefore could be treated as a means of payment.

128. The European Union made a distinction between vouchers and discounts, and was of the view that in the case under discussion, the shopping points would be viewed as a voucher and will not be deducted from the Customs value, as it would be considered as a form of payment.

129. Japan considered the settlement using the points as a payment based on credit arising from the past purchases; therefore, by applying Advisory Opinion 8.1, the amount of such points should be included in the price actually paid or payable. In addition, since the amount deducted is not a result of price negotiations or quantity discount agreements, it cannot be considered as a discount for Customs valuation purposes.

130. The United Kingdom agreed with many other Members that the shopping points would be considered as a means of payment and will not be deducted from the Customs value.

131. While stating that the shopping points would be considered as a means of payment, referring to the discussion on the CLiKC! Platform, Brazil inquired about Members' positions in a different scenario, in which the shopping points represented the total value of the goods.

132. Norway, in agreement with the United States, stated that they do not view the shopping points as a means of payment or credit, but rather as promotional discounts for future purchases, which will be deducted from the Customs value. The same logic will apply to any other scenarios.

133. The ICC clarified that, from an accounting perspective, such transactions will be recorded at the value of the actual payment made, and thus may be regarded as discounts. The ICC further clarified that these are not negotiable instruments and cannot be utilized outside of this specific context, which pertains to purchases typically made within a limited timeframe,

after which the points expire and hold no utility in any other context. In that regard, this is essentially the nature of a discount, which applies to the purchase of a specific item eligible for that discount.

134. The Delegate of Mali stated that these points function as discounts introduced as incentives, thus categorizing them as promotional discounts.

135. The Chairperson thanked all delegates for their productive discussions and urged Members to continue examining this issue during the intersession, particularly focusing on ways to persuade those with differing opinions in order to reach a consensus.

Conclusion

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

(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

Background

137. The Technical Committee agreed at its 59th Session to examine the question submitted by China on “Distinction between royalties and licence fees under Article 8.1(c) and resale proceeds under Article 8.1(d) of the Agreement” as a specific technical question. A draft Explanatory Note submitted by China was set out in the Annex to Doc.VT1446Ea for consideration by the Technical Committee.

138. During the intersession, the Secretariat published the working document VT1462Ea to invite comments from Members on this question.

139. In response to Doc.VT1462Ea, written comments were received from China, Japan, the United States and Uruguay, which were annexed to Doc. VT1476Ea. China provided a revised version of the draft Explanatory Note in its comments.

Summary of discussion

140. During the online discussion phase, comments were received from China, Dominican Republic, Japan, Mexico, Uruguay, Uzbekistan and the ICC. The ICC shared a beige paper 24.

on “Interaction between Articles 8.1(c) and 8.1(d)”, which analysed in detail the difference between these two provisions in order to support the view that Article 8.1(d) should not apply to any royalty or license fee which is not dutiable under Article 8.1(c) of the Agreement.

141. During the in-person meeting, China introduced the revised draft Explanatory Note in Annex A of Doc. VT1476Ea, which was submitted during the intersession with a view to addressing the concerns expressed at the last session. In the revised version, the statement that *“Royalties and licence fees that do not satisfy the provisions of Article 8.1(c) cannot be deemed dutiable as resale proceeds under Article 8.1(d) directly”* in paragraph 2 of the previous version was deleted. China also proposed to change the title of the draft Explanatory Note to “The fundamental distinction between royalties and licence fees under Article 8.1(c) and proceeds under Article 8.1(d) of the Agreement”.

142. Moreover, China summarized the discussion on the CLiKC! Platform during the online discussion phase, which focused on two technical aspects: a) Is there any overlap between Articles 8.1(c) and 8.1(d); and b) whether the requirement of “as a condition of sale” should be taken into consideration during the application of Article 8.1(d). To avoid the discussion becoming dispersed, China suggested the Committee examine these two aspects one after the other.

143. The Delegate of the United States reiterated his Administration’s opinion shared during the intersession in the written comments that the additions to price actually paid or payable contained in Article 8.1 shall be read separately. In addition, he introduced in detail the relevant domestic legislation of the United States, the historical background, and relevant cases and judicial practices.

144. Japan drew the Committee’s attention to the nature of the payment which is essential for the examination of this question. Japan opined that royalties and licence fees under Article 8.1(c) are paid for the use of intangible assets, rather than attributing to the seller the proceeds of the imported goods. Therefore, they do not fall under Article 8.1(d) of the Agreement. The amount of royalties and licence fees could be calculated based on the resale price of the imported goods; however, the calculation method should not affect the nature of the payment. Dominican Republic supported Japan’s opinion.

145. The Delegate of Uruguay pointed out that a similar question on the “Relationship between paragraphs (c) and (d) of Article 8.1” had been discussed by the Committee and was consequently removed to Part III of the Conspectus at its 5th Session. In view of the

discrepancy between Members' opinions on the current question~~,~~. ~~h~~He encouraged delegates to contribute further during the analysis and discussion, with a view to reaching some form of agreement and being able to address~~ing~~ a matter that had remained unresolved by the Committee for more than 28 years. (Uruguay)

146. The Delegate of Canada shared the practice of Canada which resulted from a decision rendered by the Supreme Court of Canada. Among other issues, this decision related to the interplay between ~~where~~ royalties and licence fees ~~are seldom included under Article 8.1(c) by virtue of "condition of sale".~~ and subsequent proceeds. It negated a previous practice in Canada whereby if a payment was by its nature an Article 8.1 a) to c) adjustment, but did not meet the criteria for inclusion in the customs value under these provisions, Customs would then seek to include it under Article 8.1 (d), e.g. if the payment was calculated as a percentage of the proceeds from the resale of the imported goods. Nevertheless, Canada's Supreme Court decided that by their nature royalty payments could only be treated under the royalty provision set out in the Canadian *Customs Act* (i.e. a provision equivalent to Article 8.1 c) the Agreement), and that they could not be captured under the subsequent proceeds provision. Since that decision Canada has focused on the nature of a payment for purposes of applying Articles 1 and 8 of the Agreement. ~~He also pointed out that the method used to calculate the payment amount could also be considered as an indicator of the nature of the payment.~~ (Canada)

147 (New). Having said this, Canada also pointed out that, although not definitive, the method used to calculate the payment amount can serve as an indicator of the nature of the payment (e.g. a payment that is disguised as an adjustment that may be excluded from the customs value when in fact its true nature is that of a bona fide adjustment under Article 8.1 (d) to be included in the customs value). (Canada)

147. China proposed continuing the discussion at the next session to allow delegates time to reflect on the exchange at this session. China also agreed to prepare a summary of the key points of the discussion to support future deliberations.

148. Regarding China's proposal on the topic of the draft Explanatory Note, the Committee agreed to change it to "The fundamental distinction between royalties and licence fees under Article 8.1(c) and proceeds under Article 8.1(d) of the Agreement".

Conclusion
26.

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

(i) Treatment of a situation where the settlement price after importation differs from the invoice price: Request by China
Docs. VT1463Ea and VT1477Ea

Background

150. At its 59th Session, the Technical Committee agreed to examine this question submitted by China as a specific technical question. The facts pertaining to the question were set out in the Annex to Doc. VT1447Ea.

151. The question concerns the Customs value determination of imported goods where the settlement price after importation is different from the invoice price declared to Customs at the clearance stage.

152. During the 59th Session, Members discussed the possible scenarios that may be faced in similar cases involving combinations of domestic currency and a foreign currency, as well as two foreign currencies.

153. The Secretariat published Doc.VT1463Ea during the intersession to invite comments from Members on this question.

154. In response to the working document VT1463Ea, Uruguay submitted to the Secretariat its written comments which are was out in the Annex to Doc. VT1477Ea.

Summary of discussion

155. During the online discussion phase of the 60th Session, the Delegations of China, the United States, Mexico, Uruguay, Uzbekistan, and the ICC discussed the question.

156. During the in-person meeting, China summarized two opinions that emerged from the discussions on the CLiKC! Platform. Opinion 1: Commentary 4.1 is applicable to the current

case. The invoice price declared at importation, if provisional, the final price will be established after importation in accordance with the contract between the buyer and seller. (5,000X). Opinion 2: Commentary 4.1 is not relevant in this case. The invoice price stated at importation (10,000M) is fixed, with the buyer and seller negotiating only the settlement currency and exchange rate after importation. There are no variable elements as outlined in Commentary 4.1, nor any other factors influencing the transaction value. The price of imported goods is fixed according to the contract and invoice at the time of importation, irrespective of the settlement currency and the exchange rate agreed upon by the parties.

157. China explained that these arrangements primarily take place between buyers and sellers who are long-term cooperative trading partners, to prevent either party from experiencing significant exchange rate losses due to the high volatility of exchange rates.

158. Referring to the facts of the case, the ICC stated that the price was already set at the time of importation, and the matter to be determined is the currency that will be used for the payment. The ICC believed it is essential to determine whether the price declared at the time of importation (M) is in domestic or foreign currency, as well as the status of the currency (X) used for the final payment. The ICC added that it was not possible to continue the discussion until there was more clarity regarding the status of the currencies in question.

159. Similarly, Japan expressed concern that failing to specify the type of currency involved could lead to confusion and complicate the case. Consequently, Japan proposed drafting various scenarios akin to those in Advisory Opinion 20.1. The objective is to enhance the understanding of traders who may have similar questions as the delegates of the Technical Committee.

160. In response to the concerns raised by the delegates regarding the type of currencies used in the case, China clarified that there are no restrictions on the type of currency. The two optional currencies may include a domestic currency or a mix of foreign currencies. China proposed presenting three theoretical scenarios of potential currency combinations for the Technical Committee's consideration.

161. Uruguay indicated that, based on the facts of the case, the information regarding the invoiced currency (M) and the settlement currency (X) are already specified in the contract and are known ~~accessible~~ to Customs in advance of importation. ~~Therefore,~~ This aligns with the provisions of Commentary 4.1, and, as such, the Customs value will be determined by

applying the provisions of Commentary 4.1 along with Advisory Opinion 20.1 and Article 9 of the Agreement. (Uruguay)

162. Canada agreed with the comments made by Uruguay, stating that the transaction value method is applicable based on the final price that is settled or paid after importation, which is consistent with the provisions of Advisory Opinion 20.1 and Commentary 4.1.

163. Vietnam held the view that the negotiation of the settlement price after importation inherently renders the transaction value method inapplicable. The primary concern is to identify the cause of the price adjustment. If the price adjustment pertains to the condition of goods at the time of importation, the Customs value will be based on the settlement price, provided that adequate documentation is submitted. Vietnam also indicated that the reference to Advisory Opinion 20.1 is relevant on the matter of exchange rate.

164. Based on the opinions expressed by various delegates, China stated that the initial step should be to ascertain the price that should serve as the basis for determining the Customs value. Once the Customs value has been established, Article 9 of the Agreement will be applicable, if required. China believed that the primary concern was to ascertain the existence of a price review clause, as outlined in Commentary 4.1.

165. In response to the Chairperson's request, China agreed to prepare a new draft during the intersession that will incorporate the comments and suggestions of delegates. This draft will provide the Technical Committee with detailed scenarios to facilitate a more in-depth discussion of the case.

Conclusion

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

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

Background

167. The Technical Committee agreed at its 59th Session to examine the question submitted by Uruguay on “Proceeds that accrue under Article 8.1(d) of the Agreement” as a specific technical question.

168. A draft Commentary submitted by Uruguay was set out in the Annex to the working document VT1448Ea for consideration by the Technical Committee.

169. During the intersession, Uruguay worked with the Secretariat to update the draft Commentary in light of comments made by delegates during the 59th Session. The updated text was set out in the Annex to the working document VT1464Ea.

170. In response to Doc.VT1464Ea, written comments were received from China, were set out in Annex to Doc. VT1478Ea.

Summary of discussion

171. During the online discussion phase, comments were received from China, Mexico, Uruguay, Uzbekistan and the ICC.

172. During the in-person meeting, Brazil, Canada, China, Japan, Vietnam and Uruguay took the floor to discuss the three scenarios in the draft instrument. The discussion focused on whether payments such as dividends, royalties and licence fees and distribution fees could be considered under Article 8.1(d) when they could not be included in the Customs value in accordance with other provisions of the Agreement.

173. Some delegates were of the view that, for the inclusion of a value under Article 8.1 (d), the Agreement merely requires that the value be part of the proceeds of any subsequent resale, disposal or use of the imported goods, and that it accrue directly or indirectly to the seller. The Agreement does not provide any requirements or limitations regarding the purpose of the payment. For this issue, Uruguay recommends taking into account the contents of the recent resolution by United States Customs identified as “HQ H301145” of 10 January 2025, for which an access link was provided during the previous online discussion phase. (Uruguay)

174. Some other delegates, on the contrary, opined that the nature of the payment is essential to the application of Article 8.1(d) of the Agreement, and those payment made for purposes other than “for the imported goods” should not be included under Article 8.1(d). Japan further

stated dividends, which are distributed as a result of having stocks in general, are not part of the customs value because they are unrelated to imported goods. (Japan)

175. The Technical Committee could not reach a consensus on this question and agreed to continue the examination at its next session.

Conclusion

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

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

Docs. VT1465Ea and VT1479Ea

Background

177. This question submitted by the United States was circulated as a non-paper during the online discussion phase of the 59th Session on the CLiKC! Platform. The issue was brought to the Technical Committee's notice during the adoption of the Agenda of the 59th Session, where the Committee agreed to include it as a “Question raised during the intersession”, and subsequently agreed to examine it as a specific technical question at the 60th Session.

178. The question relates to valuation treatment of a Core Value Charge (CVC) implemented to reduce waste and support a circular business model. The facts pertaining to the question is set out in the Annex to Doc. VT1465Ea.

179. During the intersession preceding the 60th Session, written comments were received from China and Uruguay which were set out in the Annexes to Doc. VT1479Ea.

Summary of discussion

180. The Delegate of the United States informed the Technical Committee during the in-person meeting that his Administration would withdraw the topic from the Committee's Agenda, as it was communicated to the Secretariat during the online discussion phase.

Conclusion

181. The Technical Committee agreed to drop this question from its Agenda of the next session.

Agenda Item VII: QUESTIONS RAISED DURING THE INTERSESSION

a) The deduction on “the cost of transport after importation” under Paragraph 3(b) of the Interpretative Note to Article 1 of the Agreement: Request by China
Doc. VT1480Ea

Introduction

182. The Customs Administration of China submitted a new question to the Secretariat during the intersession for the Technical Committee on Customs Valuation to consider at its 60th Session. The Annex to Doc. VT1480Ea contained the facts pertaining to this question.

183. The question aims to discuss the deduction on “the cost of transport after importation” under the Interpretative Note to Article 1 on “Price Actually Paid or Payable”, focusing on several scenarios arising from commercial practice and seeking uniform valuation solutions.

184. At the 60th 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

185. During the online discussion phase, the question was discussed by Mexico and Uzbekistan, and further clarifications regarding the question were provided by China.

186. At the request of the Chairperson, China gave a background of the case during the in-person meeting. The question focuses on the deduction on "cost of transport after importation" under subparagraph (b) of the third paragraph, the Interpretative Note to Article 1 on “Price Actually Paid or Payable” of the Agreement. The Committee has not examined this question

before, and the discussion aims to provide uniform interpretation, practical experience and guidance to Customs administrations and businesses around the world.

187. China further stated that the question is derived from real cases encountered, among which four scenarios are selected for the consideration of the Committee.

188. The Delegates of Brazil, Canada, Dominican Republic, the European Union, Japan, Uruguay, and Vietnam expressed support for the inclusion of this question on the Agenda of the next session. All delegates emphasized the importance of this issue for Customs and the private sector, regarding the uniform interpretation and application of transportation costs incurred after importation.

Conclusion

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

b) Treatment of a Core Value Charge in a Circular Business Model: Request by Uruguay

Introduction

190. During the 59th Session, the Technical Committee agreed to examine a question submitted by the United States under the title “Treatment of a Core Value Charge in a Circular Business Model” as a specific technical question at its 60th Session.

191. However, during the 60th Session, the United States informed the Committee of its intention to withdraw the question, and hence the Technical Committee agreed to drop the question from its Agenda.

Summary of discussion

192. Given the significance of emerging principles of circular economy business models, Uruguay proposed to take over this question. Therefore, the Technical Committee agreed to add a

new item to the Agenda under “Questions raised during the intersession”, that is, item VII (b), “Treatment of a Core Value Charge in a Circular Business Model: Request by Uruguay”.

193. As such, the Technical Committee decided to add this question to the Agenda of its next session as a specific technical question.

Conclusion

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

Agenda Item VIII: OTHER BUSINESS

(a) Discussion on the draft Guidelines on E-Commerce Fulfilment and its Implications for Customs

Background

195. At the 59th Session, the Secretariat presented to the Committee this draft *Guidelines on E-commerce fulfilment and its implications for Customs*, which was developed by the WCO Procedures and Facilitation Sub Directorate as requested by the Permanent Technical Committee (PTC).

196. A drafting group was established under the framework of the PTC, comprising representatives from Japan, the United States, the United Kingdom, the Eurasian Economic Commission (EEC), the Global Express Association (GEA) and DHL Group.

197. The Technical Committee, at the 59th Session, recognized the importance and relevance of the draft Guidelines and agreed to add a standing item to the Agenda of the TCCV session under “Other business”, which would serve as a discussion forum for the TCCV delegates to exchange views on the draft Guidelines from a technical perspective. The outcome of the discussions would then be shared with the PTC drafting group as the TCCV’s input.

Summary of discussion

198. The Delegate of Canada expressed concerns regarding certain technical aspects of the draft Guideline, noting that some elements might be inconsistent with existing TCCV instruments, such as Commentary 22.1 concerning a series of sales.

199. The Delegate of the United Kingdom shared similar concerns and indicated that he would follow up by contacting his counterparts attending the PTC to address the matter.

Conclusion

200. The Technical Committee agreed to remain this topic on the Agenda and continue the discussion at its next session.

(b) Update on Part III of the Conspectus of Technical Valuation Questions
Doc. VT1466Ea

Background

201. The Technical Committee, at its 59th Session, agreed to include a new agenda item for the 60th Session pertaining to the update of Part III of the Conspectus of Technical Valuation Questions .

202. The Conspectus is used to record items of a technical nature raised within the Technical Committee. It consists of three parts: Part I contains the instruments or other questions and studies already adopted or concluded by the Committee; Part II includes questions currently being considered by the Committee; and Part III contains questions previously raised that have not yet been concluded by the Committee but that could form part of the Committee's future work.

203. A summary table on these pending questions, along with the latest version of Part III of the Conspectus, were set out in Annexes I and II to Doc. VT1466Ea, respectively.

Summary of discussion

204. The Delegates of the Dominican Republic and Uruguay concurred that the document could be extremely beneficial for the Committee in the future, as it would enable Members to review and comprehend the progress that has been made and the contentious points that have arisen in the past before beginning to address the same topics. It was also identified as a valuable source of inspiration and a point of reference for the development of new questions for the Technical Committee's consideration.

Conclusion

205. The Technical Committee took note of the update on Part III of the Conspectus in Doc. VT1466Ea.

Agenda Item IX: PROGRAMME OF FUTURE WORK

206. The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 61st Session:

I. Adoption of Agenda/Suggested programme

II. Adoption of the Technical Committee's 60th Session Report

III. Reports on intersessional developments

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

IV. Technical assistance, capacity building and current issues

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

V. Specific technical questions

a) Meaning of the expression "price actually paid or payable" for the goods: Request by Uruguay

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

c) Application of Article 1 of the Agreement: Request by Vietnam

d) Valuation treatment of credits accumulated from past purchases: Request by the Secretariat

e) The fundamental distinction between royalties and licence fees under Article 8.1(c) and proceeds under Article 8.1(d) of the Agreement: Request by China

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

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

h) The deduction on "the cost of transport after importation" under Paragraph 3(b) of the Interpretative Note to Article 1: Request by China

i) Treatment of a Core Value Charge in a Circular Business Model: Request by Uruguay

VI. Questions raised during the intersession

VII. Other business

- Discussion on the draft Guidelines on E-Commerce Fulfilment and its Implications for Customs

- Updates on WCO Working Bodies' Work Programmes

VIII. Elections

IX. Programme of future work

X. Dates of next meeting

Agenda Item X: Dates of next meeting

207. The Secretariat informed the Technical Committee that the 61st Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 13 to 17 October 2025.

CLOSING REMARKS

208. The Chairperson expressed gratitude to all delegates for their active participation and support, and conveyed her appreciation to the Secretariat, interpreters, and supporting staff for their valuable contributions to this session.

209. In her closing remarks, the Acting Director congratulated the Committee for successful adoption of three instruments, reflecting their commitment to timely and practical guidance

for Members in their implementation of the Agreement. She noted that the Chairperson's leadership and guidance were crucial in steering the work. She noted the fact that the Committee also celebrated 30 years of the TCCV with a panel discussion, highlighting its history and achievements. The Acting Director encouraged Members to submit new questions to enrich the shared understanding of the Agreement and to strengthen the TCCV's support to Members. She thanked the Valuation Sub-directorate team, meeting staff, and expressed special appreciation for the team of interpreters.

210. The Chairperson formally declared the 60th Session closed.

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TABLE OF CONTENTS

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LIST OF DELEGATES
LISTE DES DELEGUES
LISTA DE DELEGADOS

CHAIRPERSON/
PRESIDENT/
PRESIDENTE

Qianyu LIN
Senior Supervisor II
Division of Duty Collection
Shenzhen Customs
China
qianyu.lin@163.com

WTO MEMBERS MEMBRES DE L'OMC MIEMBROS DE LA OMC

AUSTRIA / AUTRICHE

Delegate/Délégué/Delegado

Josef EBMER
Customs Expert
Austrian Ministry of Finance
josef.ebmer@bmf.gv.at

ARMENIA

Delegate/Délégué/Delegado

Arpi AVETYAN
Deputy Head of Customs Transactions Control and Risk Analysis Division
State Revenue Committee
arpi_avetyan@customs.am

Alternate/Suppléant/Suplente

Tigran BAKLACHYAN
Deputy Head of Customs Operations Management Division No. 1
of Foreign Economic Activities Customs Service and Control Department
State Revenue Committee of the Republic of Armenia
tigran_baklachyan@customs.am

BANGLASEDH

Delegate/Délégué/Delegado

Muhammad Mubinul KABIR
Minister (customs) and Permanent Representative to the Wco
National Board of Revenue/Embassy of Bangladesh, Brussels
mubinul_kabir@yahoo.com

BELGIUM/BELGIQUE/BÉLGICA

Delegate/Délégué/Delegado

Embe BOMBO
Financial Expert
General Administration of Customs and Excise
Embe.bombo@minfin.fed.be

Alternate/Suppléant/Suplente

Klaas PARIDAENS
Attaché
General Administration of Customs and Excise
Klaas.paridaens@minfin.fed.be

BRAZIL / BRESIL

Delegate/Déléguée/Delegada

Kelly MORGERO
Customs Officer
Special Secretariat of the Federal Revenue (rfb)
Kelly.morgero@rfb.gov.br

Alternates/Suppléants/Suplentes

Aline KOBAYASHI
Auditora Fiscal
Secretaria Da Receita Federal Do Brasil
aline.kobayashi@rfb.gov.br

BURKINA FASO

Delegate/Délégué/Delegado

Grégoire KARAGA
Conseiller Chargé des Questions Douanières
Ambassade du Burkina Faso Auprès du Royaume de Belgique
gkaraga@yahoo.fr

CAMEROON / CAMEROUN

Delegate/Délégué/Delegado

Josue Eenezer BATA'A
Chargé d'Etudes
Direction Générale des Douanes
bataajosue@gmail.com

Alternate/Suppléant/Suplente

Gustave MBIDA EDZOA
Chargé d'Etudes
Direction Générale des Douanes
ancianombida@yahoo.fr

CANADA

Delegate/Délégué/Delegado

Dominique RIVERIN
Senior Program Advisor
Customs Valuation Program
Canada Border Service Agency
Dominique.riverin@cbsa-asfc.gc.ca

CHINA / CHINE

Delegate/Délégué/Delegado

Tianbo XIE
Senior Supervisor III
Division of Duty Collection
Huangpu Customs
Gacc
13501505606@163.com

Alternate/Suppléante/Suplente

Zhiying XU
Supervisor I,
National Supervision Bureau for Duty Collection (shanghai) ,Gacc, Gacc
xun_hg@126.com

COLOMBIA / COLOMBIE

Delegate/Délégué/Delegado

Oscar Ivan CEPEDA BUSTOS
Funcionario
Dirección de Impuestos Y Aduanas Nacionales (dian)
ocepedab@dian.gov.co

CONGO (REPUBLIC OF/REPUBLIQUE DU)

Delegate/Délégué/Delegado

Jude M. LOUBOVE
Attaché douanier
Douanes congolaises
loubovejude@gmail.com

CONGO (DEMOCRATIC REPUBLIC OF THE)
CONGO (REPUBLIQUE DEMOCRATIQUE DU)

Delegate/Délégué/Delegado

Richard SOKI KEKE
Sous-Directeur de la Valeur
DGDA
rj.soki_2012@yahoo.fr

COTE D'IVOIRE

Delegate/Délégué/Delegado

Fatayu OYENIYE
Conseiller Economique / Attaché Douanier
Direction Générale des Douanes
Ambassade de Côte d'Ivoire en Belgique
fatayu.oyeniye@ambacibnl.be

CROATIA / CROATIE

Delegate/Déléguée/Delegada

Irena SCULAC
Head of Department for Customs Value
Ministry of Finance, Customs Organisation
irena.sculac@carina.hr

DOMINICAN REPUBLIC / REPUBLIQUE DOMINICAINE / REPUBLICA DOMINICANA

Delegate/Déléguée/Delegada

Santa Marianela MARTE DE LOS SANTOS
Gerentetécnica
Dirección General de Aduanas
s.marte@aduanas.gob.do

EUROPEAN UNION / UNION EUROPEENNE / UNION EUROPEA

Delegate/Délégué/Delegado

John TAYLOR
Administrator
DG TAXUD
John.taylor@ec.europa.eu

Alternates/Suppléants/Suplentes

Vanni PESTELLI
Administrator
DG TAXUD
vanni.pestelli@ec.europa.eu

Amal JDID MAHMOUD
Administrator
DG TAXUD
amal.jdid-mahmoud@ec.europa.eu

Filip DUDYCZ
Filip.dudycz@ec.europa.eu

FINLAND / FINLANDE

Delegate/Délégué/Delegado

Ville SUOMINEN
Senior Expert
Customs
ville.suominen@tulli.fi

FRANCE

Delegate/Déléguée/Delegada

Marion GILLET
Customs Officer
DGDDI
marion.gillet@douane.finances.gouv.fr

GABON

Delegate/Déléguée/Delegada

Nadia NIOMBA NZONDO NGOMA
Inspecteur Central des Douanes
Douanes Gabonaises
nadianiomba@yahoo.fr

Alternate/Suppléante/Suplente

Paule Dalhia ONOUVIET
Attaché douanier
Douanes
attachedouanier.bruxelles@gmail.com

GUATEMALA

Delegate/Déléguée/Delegada

Angelica Nissely RODRIGUEZ UMAñA
Agregado Aduanero
SAT
anrodrig@sat.gob.gt

HAITI

Delegate/Délégué/Delegado

Hugh Philemon FINEUS
Sous Directeur I Affecte A la Douane du Port de Port Au Prince
Administration Generale des Douanes de la Republique d'Haiti
hpfineus@gmail.com

Alternates/Suppléants/Suplentes

Sabine PIERRE LOUIS
Chef de Division Affectée à la Douane du Port de Port Au Prince
Administration Générale des Douanes de la République d'Haiti
sabinepierrelouis28@gmail.com

Mondel BORGELLA
Assistant Chef de Service Affecté à la Direction du Contrôle
Administration Générale des Douanes de la République d'Haiti
mborgella@live.com

Jean Vilme ST VICTOR
Sous Directeur affecté à la Douane du Port de Port Au Prince
Administration Générale des Douanes de la République d'Haiti
jeanvilme08@gmail.com

INDIA/INDE

Delegate/Déléguée/Delegada

Farah ZACHARIAH
Deputy Commissioner
Cbic
indiawco-cbec@nic.in

INDONESIA / INDONESIE

Delegate/Déléguée/Delegada

Saut MULIA
Finance/Customs Attaché
Embassy of the Republic of Indonesia, Brussels
saut.mulia@kemenkeu.go.id

JAPAN/JAPON/JAPÓN (EL)

Delegate/Délégué/Delegado

Takahiro HASHIKOMI
Section Chief
Ministry of Finance
Customs Tariff Bureau
Takahiro.hashikomi@mof.go.jp

Alternates/Suppléants/Suplentes

Izumi KURAHACHI
Valuation Specialist, Customs
Customs
tyo-gyomu-hyoka-center@customs.go.jp

Kenji UMEZAWA
Valuation Specialist
Customs
Tyo-gyomu-hyoka-center@customs.go.jp

Shinji ODA
First Secretary and Customs Attaché
Embassy of Japan in Belgium
Customs
Shinji.oda@mofa.go.jp

KOREA / COREE

Delegate/Délégué/Delegado

Hyunyoung KIM
Assistant Director
Korea Customs
hy0103@korea.kr

Alternates/Suppléants/Suplentes

Ho YANG
Assistant Director
Korea Customs
chwwkaos@naver.com

Minji CHOO
Assistant Director
Korea Customs Service
cmj12@korea.kr

KUWAIT / KOWEIT

Delegate/Délégué/Delegado

Fayez ALOTAIBI
Observer
Kuwait General Administration of Customs
lekoweit@yahoo.com

Alternate/Suppléant/Suplente

Khaled ALREFAI
Customs Auditor
Kuwait General Administration of Customs
khaledalrefai76@gmail.com

MADAGASCAR

Delegate/Délégué/Delegado

Tojisoa NOMENJANAHARY ANDRE
Inspecteur des Douanes
Chef du Service de la Valeur
Direction générale des douanes de Madagascar
ttojisoa@yahoo.fr

MALAYSIA / MALAYSIE

Delegate/Délégué/Delegado

Abdul Jabbar AHMAD SHAH
Senior Assistant Director of Customs I
Royal Malaysian Customs Department
jabbar.shah@customs.gov.my

Alternates/Suppléants/Suplentes

Zureen Sofia BINTI ZAKARIA
Customs Attache
Royal Malaysian Customs Department
zureen.zakaria@customs.gov.my

Hazwan BIN ISMAIL
Customs Attache
Royal Malaysian Customs Department
hazwan.ismail@customs.gov.my

Nor Hafizah BINTI MOHAMAD SEPIDI
Counsellor (customs Attache)
Royal Malaysian Customs Department
hafizah.sepidi@customs.gov.my

MALAWI

Delegate/Délégué/Delegado

Charles MSATIYENDA
Manager Valuation
Malawi Revenue Authority
cmsatiyenda@mra.mw

MALI

Delegate/Délégué/Delegado

Mamadou TRAORE
Directeur des contrôles après dédouanement
Direction Générale des Douanes
madouatraore@yahoo.fr

Alternate/Suppléante/Suplente

Fadimatou EL ANSARI
Chef de Visite Adjointe du Bureau des Exonérations
et des Maliens de l'Extérieur (bemex)
Direction générale des douanes
elmansarifadimatou@yahoo.com

MOROCCO / MAROC

Delegate/Déléguée/Delegada

Mouna LAMZOURI
Chef de Bureau des Procédures d'évaluation En Douane
Administration des Douanes et Impôts Indirects
m.lamzouri@douane.gov.ma

NETHERLANDS / PAYS-BAS

Delegate/Délégueé/Delegada

Mieke VAN SCHIJNDEL
Senior Policy Advisor
Ministry of Finance
m.j.w.schijndel@minfin.nl

Alternates/Suppléants/Suplentes

Sabine BROUWER
Legal Expert
Douane
sj.brouwer@douane.nl

Theo VAN BIERT
National Customs Valuation Team
ta.van.biert@douane.nl

NIGER

Delegate/Délégué/Delegado

Saley AMADOU DJINGAREY
Chef du Service des Relations Publiques et de la Communication,
Point Contact National du Programme A-Cpi/Omd,
Formateur OMD en Evaluation en Douane
Direction Générale des Douanes du Niger
saley.djingareyamadou@douanes.gouv.ne

NIGERIA

Delegate/Délégué/Delegado

Mohammed ISAH
Assistant Comproller
Nigeria Customs Service
isa.mohammed@customs.gov.ng

Alternates/Suppléants/Suplentes

Tosin ADENIYI
Superintendent of Customs
Nigeria Customs Service
adeniyi.david@customs.gov.ng

Haladu UBALE
Customs Attaché
Embassy of Nigeria, Brussels

Nigeria Customs Service
Ubalehaladu123@gmail.com

NORWAY / NORVEGE / NORUEGA

Delegate/Délégué/Delegado

Jarle LILLELAND
Senior Advisor
Norwegian Customs
jsli@toll.no

Alternate/Suppléante/Suplente

Stine CLEMENTZ-ANTONSEN
Senior Advisor
Norwegian Customs
stine.clementz-antonsen@toll.no

PARAGUAY

Delegate/Déléguée/Delegada

Mirna Mercedes CABARELLO LEGUIZAMON
Jefa Del Departamento de Valor En Aduana
Direccion Nacional de Ingresos Tributarios
mcaballero@dnit.gov.py

Alternate/Suppléant/Suplente

Hugo Daniel CARDENAS ECHEVERRIA
Jefa Del Departamento de Análisis de Valor
Direccion Nacional de Ingresos Tributarios
hcardenas@dnit.gov.py

POLAND / POLOGNE

Delegate/Déléguée/Delegada

Magdalena GAWEL
Chief Expert
Ministry of Finance
magdalena.gawel@mf.gov.pl

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Delegate/Délégué/Delegado

Anton PICHUGOV
Customs Attache
Federal Customs Service
fcsinbepichugov@mail.ru

SAUDI ARABIA / ARABIE SAOUDITE

Delegate/Délégué/Delegado

Yousef ALOTAIBI
Valuation Section Manager
Zakat, Tax and Customs Authority
irt@zatca.gov.sa

Alternate/Suppléant/Suplente

Saleh ALRESHOUD
salreshoud@zatca.gov.sa

SINGAPORE

Delegate/Délégué/Delegado

Benson LIM
Assistant Head
Tariffs and Trade Services Branch
Singapore Customs
Benso-lim@customs.gov.sg

Alternate/Suppléant/Suplente

Vinod Prem KUMAR
Senior Trade Officer, Tariffs and Trade Services Branch
Singapore Customs
vinod_prem_kumar@customs.gov.sg

SLOVAKIA / SLOVAQUIE

Delegate/Déléguée/Delegada

Katerina KORENOVA
Customs Officer
Financial Directorate of the Slovak Republic
katarina.korenova@financnasprava.sk

SOUTH AFRICA / AFRIQUE DU SUD / SURAFRICA

Delegate/Délégué/Delegado

Humbulani Jonas VHULAHANI
Manager: Customs Valuation
South Africa Revenue Service
hvhulahani@sars.gov.za

SRI LANKA

Delegate/Délégué/Delegado

Alternates/Suppléants/Suplentes

Chandima Sujeewa Achala CHANDRASEKARE
Additional Director General of Customs
Sri Lanka Customs
achandrasekare@gmail.com

A.A. SENARATHNE
Superintendent of Customs
Sri Lanka Customs
asankavip@gmail.com

SWEDEN / SUEDE

Delegate/Déléguée/Delegada

Viktoria BERNTSSON
Technical Officer
Swedish Board of Customs
viktoria.berntsson@tullverket.se

THAILAND/THAILANDE/TAILANDIA

Delegate/Délégué/Delegado

Nitivadee WINIYAKUL
Customs Technical Officer, Senior Professional Level
the Customs Department
106681@customs.go.th

Alternates/Suppléants/Suplentes

Onwira SOONYO
Customs Technical Officer, Practitioner Level
the Customs Department
109806@customs.go.th

TOGO

Delegate/Délégué/Delegado

Minmindjou KPENIMA
Chef Division du Tarif, des Valeurs et des Règles d'Origine
Commisariat des Douanes et des Droits Indirects (c.d.d.I)
Office Togolais des Recettes (o.T.R.)
mkpenima@otr.tg

UKRAINE

Delegate/Délégué/Delegado

Igor DANKOV
Customs Counsellor
Mission of Ukraine to the European Union, Brussels
igor.dankov@mfa.gov.ua

UNITED KINGDOM / ROYAUME-UNI / REINO UNIDO

Delegate/Délégué/Delegado

Nigel MOONEY
Senior Policy Advisor
Hm Revenue & Customs
Nigel.mooney@hmrc.gov.uk

UNITED STATES / ETATS-UNIS / ESTADOS UNIDOS

Delegate/Délégué/Delegado

Ross CUNNINGHAM
Attorney Advisor
US Customs and Border Protection
ross.m.cunningham@cbp.dhs.gov

Alternate/Suppléant/Suplente

Austen WALSH
Attorney-Advisor
US Customs and Border Protection
austen.m.walsh@cbp.dhs.gov

URUGUAY

Delegate/Délégué/Delegado

Guzman MAÑES
Capacitación
Dirección Nacional de Aduanas
gmanes@aduanas.gub.uy

VIETNAM

Delegate/Déléguée/Delegada

Thi Vinh Hoai NGUYEN
Customs Attache
General Department of Vietnam Customs
vh0410vh@gmail.com

Alternates/Suppléants/Suplentes

Thuy Linh LE
Official
Vietnam Customs
linhlt@customs.gov.vn

Thanh Huyen Pham
Customs Official
Vietnam Customs
Huyenpt2@customs.gov.vn

ZAMBIA

Delegate/Délégué/Delegado

Rex Chavunda MBILISHI
Assistant Commissioner
Zambia Revenue Authority
mbilishr@zra.org.zm

Alternate/Suppléant/Suplente

Hendrix MUNGALU
Customs Collector
Zambia Revenue Authority
mungaluh@zra.org.zm

OBSERVER ADMINISTRATIONS
OBSERVATEURS DES ADMINISTRATIONS
OBSERVADORES DE LOS ADMINISTRACIONES

IRAN (ISLAMIC REPUBLIC OF – REPUBLIQUE ISLAMIQUE – REPUBLICA ISLAMICA)

Delegate/Délégué/Delegado

Abdolmajid DEHGHANIAN
Director General of Valuation Department
Islamic Republic of Iran Customs Administration
abdalmajiddehghanian@gmail.com

Alternate/Suppléant/Suplente

Gholamreza SAFFARI TAHERI
Customs Attache and Permanent Representative
Iran Customs Administration
Safari.gh@gmail.com

LIBYA / LIBYE

Delegate/Déléguée/Delegada

Esam SHERIF
Lybian Embassy
customs@embbe.foreign.gov.ly

OBSERVERS / OBSERVATEURS / OBSERVADORES

WTO (WORLD TRADE ORGANIZATION)
OMC (ORGANISATION MONDIALE DU COMMERCE)

Dolores HALLORAN
Economic Affairs Officer
dolores.halloran@wto.org.

ICC – INTERNATIONAL CHAMBER OF COMMERCE

Mark NEVILLE
Principal
International Trade Counsellors
mkneville@itctradelaw.com

Jean-Marie SALVA
Senior Partner
DS Avocats
salva@dsavocats.com

Paulette VANDER SCHUEREN
Partner, Mayer Brown Llp
pvanderschueren@mayerbrown.com

William METHENITIS
International Trade Counsel
Charter Brokerage
wmethenitis@charterbrokerage.net

Arnaud FENDLER
Associate Lawyer
DS Avocats
fendler@dsavocats.com

Wim VAN HOOEYMISSEN
Indirect Tax Manager, Procter & Gamble
vanhoeymissen.w@pg.com

John PITT
Vice President, Head of Global Customs, Adidas
john.pitt@adidas-group.com

SECRETARIAT/SECRETARIA

TARIFF AND TRADE AFFAIRS DIRECTORATE/
DIRECTION DES QUESTIONS TARIFAIRES ET COMMERCIALES/
DIRECCIÓN DE ARANCELES Y DE ASUNTOS COMERCIALES

Acting Director

Gael GROOBY

VALUATION SUB-DIRECTORATE/
SOUS-DIRECTION DE LA VALEUR/
SUBDIRECCIÓN DEL VALOR

Technical Officer

Jiabin LUO

Technical Officer

Ismail NASHID

INTERPRETERS/INTERPRÈTES/INTÉRPRETES

Louise DIXON
Brigitte MASINGUE
Anne THOEN
Elisa GALLEGO
Pablo NARBONA
Garbiñe SANZ LAS HERAS
Amira ABDEL ALIM
Ashraf IBRAHIM
Mourad RAMDANI

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REPORT BY THE WTO TO THE 60TH SESSION OF THE TCCV

7 – 11 APRIL 2005

The WTO last reported to the TCCV at its 59th Session from 14-18 October 2024. Following the TCCV meeting, the WTO's Committee on Customs Valuation (WTO CV Committee) held its formal meeting on 11 December 2024, which was chaired by 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 current most recent version set out in document G/VAL/W/232/Rev.20[1] will be updated in the coming weeks ahead of the CV Committee meeting on 9 May. Up to date information on notifications is also made available through the dedicated section on customs valuation of the WTO Notification Portal.

At the December 2024 meeting of the WTO CV Committee, the Committee reviewed 34 customs valuation notifications, including the first notifications of Congo, Maldives, Papua New Guinea, as well as revisions to customs valuation legislation notified by Cabo Verde, Gabon, Republic of Moldova, Mongolia, Nigeria, Saint Kitts and Nevis, Senegal, and Ukraine. The Committee concluded reviews of the customs valuation legislation of two Members (Plurinational State of Bolivia and Iceland). Since that Committee meeting, Cameroon has notified its legislation for the first time, as well as the Checklist of Issues and Egypt has notified a revised legislation and a revised Checklist of Issues. Congo notified for the first time its response to the Checklist of issues while Georgia and Nepal have each notified an updated Checklist.

The review of questions and responses pertaining to the valuation legislation of 25 Members remain pending before the Committee, this number of change ahead of the Committee's meeting in May as Members may provide either responses to questions already raised, or new questions may be raised. A review of a Member's legislation remains open until all questions are satisfactorily answered, at which point the review is concluded.

To date, 118 Members have notified their national legislation on customs valuation, and 90 Members have provided responses to the checklist of issues

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 issues

[1] This is a WTO document that may be obtained through the hyperlink to the WTO documents system.

At the CCV December meeting, the Committee took note of the reference to the business case for circular economy referenced in the report by the WCO delegation to the meeting on the activities of the TCCV and requested that the WCO delegation continue to include circular economy issues in its reporting to the CCV on the activities of the TCCV.

The Committee on Customs Valuation also oversees the implementation of the Preshipment Inspection Agreement (PSI), and at the December meeting it continued its Sixth Triennial Review of the Preshipment Inspection Agreement (PSI). The review did not result in any changes to the provisions, implementation or operation of the Agreement.

Next meeting

The next formal meeting is scheduled to take place on 9 May 2025 also under the Chairmanship of Mr Prieto Lopez. The Committee will also take the opportunity to mark the 30th anniversary of the CVA and more details will be provided closer to the date.

* * *

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
- Several Ukrainian Customs officers, civil servants, are kept as prisoners of war

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 in terms of Customs matters and calls for actions to preserve peaceful conditions for Customs to perform its duties

Statement of the EU and its Member states

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.

* * *

CASE STUDY 14.3

USE OF TRANSFER PRICING DOCUMENTATION WHEN EXAMINING RELATED PARTY TRANSACTIONS UNDER ARTICLE 1.2(a) OF THE AGREEMENT

Introduction

1. This paper describes a case in which Customs took into account information provided in a transfer pricing study (TPS) prepared for tax purposes, when examining the circumstances surrounding the sale, to ascertain whether or not the transaction value of certain goods imported over a period had been influenced by the relationship between the buyer and the seller under Article 1.2(a) of the Agreement. Additionally, it analyzes whether Customs can determine the customs value of imported goods using the information contained in the TPS.

2. This Case Study does not indicate, imply or establish any obligation on Customs authorities to utilize the OECD Transfer Pricing Guidelines and the documentation resulting from the application of the OECD Transfer Pricing Guidelines in interpreting and applying the WTO Customs Valuation Agreement (Agreement).

Facts of Transaction

3. Importer ICO in country I purchases and imports materials from its supplier XCO in country X which are used for the manufacture of car parts in country I. ICO is related to XCO pursuant to Article 15.4 of the Agreement, and ICO is a separate legal entity.

4. In 2021, ICO declared the prices of imported goods using the transaction values based on the invoices, inclusive of the cost of international transport and insurance in accordance with national legislation. For example, an item of goods imported at a FOB price of 10.00 c.u., plus 1.00 c.u. for international insurance and 2.00 c.u. for international transport, resulting in a customs value of 13.00 c.u. The commercial documents submitted to Customs of country I indicated that there were no special circumstances or additional payments which would prevent the use of the transaction value as set out in subparagraphs (a) to (c) of Article 1 of the Agreement or require an additional adjustment to the import price as prescribed by Article 8.1.

5. In 2022, Customs in country I conducted a Post-Clearance Audit to verify ICO's declared customs value, because it had doubts about the acceptability of the invoice price. In this audit, it was confirmed that ICO and XCO belong to the economic group ZCO which is located abroad. ZCO has a Board of Directors which undertakes the corporate management of the group and the definition of its strategic objectives, in order to ensure that the financial and human resources are adequate for the group to meet its objectives.

6. When asked about the possible influence of the relationship with XCO on the transaction values of the imported goods, ICO did not provide test values in accordance with Article 1.2 (b) of the Agreement as a means of demonstrating that the relationship had not influenced the price. ICO stated that the company did not purchase identical or similar goods from unrelated suppliers, nor did XCO export identical or similar goods to other unrelated importers in country I. Additionally,

although there were imports of goods of the same class or kind manufactured by competitors of XCO, they cannot be considered as identical or similar goods for customs valuation purposes. Furthermore, Customs did not have any information for applying Article 1.2 (b).

7. Customs sought clarification on how the prices of the imported goods were determined. ICO responded that the price determination was based on a globally defined transfer pricing catalogue. This catalogue contained a set of guidelines valid for companies participating in the transfer pricing scheme. Thus, the prices were determined based on a global corporate logic rather than negotiations between ICO and XCO.

8. Further communication between ICO and Customs showed that the inputs used in the production of goods to be imported were supplied by unrelated parties; the production of goods did not involve any leased assets or complex process; and the imported goods were used in the production of car parts in country I and were not intended for resale. Moreover, ICO's production method was not limited to simple processing of the imported goods but involved a more complex industrial process, and the final products manufactured did not have the same characteristics as the imported materials.

9. During the audit, a TPS came to Customs' attention. The TPS prepared by an independent firm was undertaken to comply with country I's tax law and applied the principles of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organisation for Economic Co-operation and Development ("OECD Transfer Pricing Guidelines").

10. In this study, the cost plus method (CPM)[1] was used with XCO as the tested party. According to the OECD Transfer Pricing Guidelines, this method begins with the costs incurred by the supplier of the imported goods that is the subject of the controlled transaction, to which an "appropriate cost plus mark-up" is added in order to be able to determine the "arm's length price". The "appropriate cost plus mark-up" is determined by reference to the cost plus margins obtained in comparable uncontrolled transactions, in a manner consistent with the normal pricing practices followed by the relevant industry.

11. For the purpose of determining the basis for income tax calculation, ICO used the cost plus method in the income declaration, with part of the calculation as below:
Arm's length import price = cost base x (1 + cost plus mark-up)
The cost plus mark-up = gross profit / relevant cost base.

12. According to the TPS:

    (a) the weighted average cost of producing a single unit of goods sold and exported by XCO was 15.00 c.u.;

    (b) eight comparable companies located in country X were selected;

    (c) the eight selected comparable companies:

        (i) produced comparable products which were also semi-finished

[1] According to OECD Transfer Pricing Guidelines, the CPM is "a transfer pricing method using the costs incurred by the supplier of property (or services) in a controlled transaction. An appropriate cost plus mark-up is added to this cost, to make an appropriate profit in the light of the functions performed (taking into account assets used and risks assumed) and the market conditions. What is arrived at after adding the cost plus mark up to the above costs may be regarded as an arm's length price of the original controlled transaction."

products and could be regarded as goods of the same class or kind;

(ii) exported these products to country I;

(iii) performed similar functions;

(iv) assumed similar risks, and,

(v) the production of goods was low value-added;

(d) the accounting practice adopted by the eight comparable companies was consistent with that of XCO;

(e) all the companies purchased raw materials from third-party suppliers and carried out their activities without involving leased assets;

(f) the arm's length (inter-quartile) range of cost plus margins earned by the comparable companies was between 15%-25%, with a median of 20% (the calculation was based on FOB prices).

13. At the time Customs conducted its audit, it was established that, in this particular case, ICO had not made any transfer pricing adjustments. It was confirmed that there were no significant variations in costs over the annual period in which the weighted average costs were incurred. In this respect, ICO clarified that, as the transactions were conducted with companies located in countries with a stable economy and strong currency, the market conditions have not fluctuated, and there would be no significant monthly distortions.

Issues for Determination

14. Does the TPS supplied in this case provide information that enables Customs to conclude that with regard to the imported goods, the transaction value declared has been influenced by the relationship between the parties under Article 1 of the Agreement?

15. If so, can Customs determine the customs value of imported goods under Article 7 of the Agreement, by means of a flexible application of Article 6 and using the information contained in the TPS prepared for tax purposes?

Analysis on the First Issue

16. It is concluded from the factual elements of the transaction that ICO and XCO are controlled by a third-party ZCO and that the relationship falls within Article 15.4(f) of the Agreement.

17. Under Article 1 of the Agreement, a transaction value is acceptable as the customs value when the buyer and the seller are not related, or if related, the relationship does not influence the price. Where the buyer and seller are related, Article 1.2 provides two ways of establishing the acceptability of the transaction value when Customs have doubts concerning the price:

(a) the circumstances surrounding the sale shall be examined to determine whether the relationship influenced the price (Article 1.2(a)); or

(b) the importer demonstrates that the value closely approximates one of three test values (Article 1.2(b)).

18. In this case, as indicated in paragraph 6, the importer did not provide test values; therefore, Customs examined the circumstances surrounding the sale.

19. The third paragraph of the Interpretative Note to paragraph 2 of Article 1 of the Agreement states that, in examining the circumstances surrounding the sale, "…*the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship.*"

20. Correspondingly, in Commentary 23.1, the Technical Committee on Customs Valuation recognized that a TPS may contain relevant information about the circumstances surrounding the sales between related parties.

21. When examining the circumstances surrounding the sale with regard to companies using the cost plus method according to the "OECD Transfer Pricing Guidelines", a comparison between the mark-up of the company in question and the mark-up of the comparable companies could reveal whether or not the declared price had been settled in a manner consistent with the normal pricing practices followed by the industry concerned.

22. In this case, the functional analysis of the TPS indicated that there was no significant difference between XCO and all eight comparable companies. These comparable companies were all located in country X, manufactured goods that could be regarded as goods of the same class or kind, exported these products to country I and performed similar functions, assumed similar risks, and employed similar assets, all of which were similar to those of XCO. Furthermore, the accounting practices adopted by the eight comparable companies were consistent with that of XCO.

23. Therefore, these comparable companies were deemed to be suitable for the examination of the circumstances surrounding the sale for customs valuation purposes.

24. According to the TPS, the arm's length inter-quartile range of the cost plus margin earned by the comparable companies in the year 2021 was between 15%-25% with a median of 20%.

25. Based on information provided in the "Facts of Transaction" section further above (see especially paragraphs 11 and 12), the FOB price for a single unit of the goods produced and exported by XCO was 10 c.u. and the weighted average cost of production for such an item was 15 c.u.; thus the cost plus margin earned by XCO was negative. The calculation could be demonstrated as below:

XCO's gross profit = the price of the goods – the cost of production = 10 – 15 = -5;

XCO's cost plus margin = the gross profit / the cost of production = (-5)/15 = -33.33%.

26. XCO's negative cost plus margin in the transactions with ICO was abnormal bearing in mind the functions performed, the assets used and the risks taken on by XCO, compared with the comparable companies.

27. Furthermore, as regards the declared price of the imported goods, it was found to be lower than the weighted average cost of production, since a single unit of the goods imported during the year 2021 was declared as having a customs value of 13.00 c.u (FOB price of 10.00 c.u., plus 1.00 c.u. for international insurance and 2.00 c.u. for international transport), and the weighted average cost of producing such an item for XCO was found to be 15.00 c.u.

28. Therefore, XCO showed a negative profit margin in transactions with ICO, which was below the inter-quartile range of the cost plus margin earned by the comparable companies and, in addition to this, the price for a single item of the imported goods was not sufficient to recover all costs plus a profit, with no compensating adjustment made.

29. The third paragraph of the Interpretative Note to paragraph 2 of Article 1 of the Agreement provides examples of how an examination of the circumstances surrounding the sale can demonstrate that the price has not been influenced by the relationship between the buyer and seller. One example is *"…if the price had been settled in a manner consistent with the normal pricing practices of the industry in question . . . this would demonstrate that the price had not been influenced by the relationship.*" In this case, the comparable companies identified in the TPS can establish a normal pricing practice of the industry in question. However, since the cost plus margin of XCO was not within the arm's length range and no compensating adjustment was made by ICO, it cannot be established that the sale from XCO to ICO was settled in accordance with normal pricing practices of the industry.

30. Another example provided in the third paragraph of the Interpretative Note to paragraph 2 of Article 1 of the Agreement states: *"… where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.*" In this case, a review of the information contained in the TPS, as supported by the books and records of XCO, established that XCO sold the product for less than the cost of production. Thus, the price paid by ICO was not sufficient for XCO to recover all of the costs plus a profit.

31. It bears mentioning that the Technical Committee did issue Case Study 12.1 addressing a scenario where the transaction value method was accepted on the basis of a price for the imported goods that was below the cost of production. However, the situation described in the aforementioned Case Study is entirely different from the current scenario under review, since in Case Study 12.1 there was no relationship between the seller and the buyer, the price was conditional on the availability of stock and the price was set below the exporter's cost of production in order to generate cash flow and penetrate the importing country's market.

32. Ultimately, when applying the circumstances surrounding the sale analysis, meeting the criteria established in one of the examples illustrated in the third paragraph of the Interpretative Note to paragraph 2 of Article 1of the Agreement is sufficient to conclude that the price has not been

influenced by the relationship[2]. In the present case, ICO failed to meet two separate examples in the examination of the circumstances surrounding the sale, which established on the one hand, that the price had not been settled in a manner consistent with normal pricing practice of the industry in question, and on the other hand, that XCO did not recover the costs of production of the goods. Considering that ICO did not provide an explanation, Customs reached a conclusion that the declared price for the imported goods in question during 2021 had been influenced by the relationship between the buyer and the seller. Therefore, in accordance with Article 1.2, Customs rejected the application of the transaction value method.

Analysis on the Second Issue

33. In relation to the second question, i.e., whether Customs could determine the customs value of the goods imported in 2021 under Article 7 of the Agreement using the information contained in this TPS, the following analysis was applied.

34. Based on information provided in the "Facts of Transaction" section (see especially paragraphs 6 and 12), the products produced by the eight comparable companies could not be regarded as identical or similar goods for customs valuation purposes. Therefore, it was not possible to apply the methods provided for in Articles 2 and 3 of the Agreement. Nor was it possible to allow for the application of Article 5, since the imported goods were to be used in the production of car parts, involving a complex industrial process, and not for resale in the condition as imported.

35. Article 6 of the Agreement was then taken into consideration. Nevertheless, it also could not be applied, owing to the lack of objective and quantifiable data to calculate each of the specific cost, value or profit and general expense elements contemplated by Article 6.1 and necessary for the calculation of the customs value using the computed value method.

36. Following the sequential application of the Agreement, Article 7 of the Agreement was then considered. According to the Agreement, the methods under Article 7 shall be *"...reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994..."*.

37. In this case, Customs concluded that it was not reasonably possible to adopt the flexible application of Articles 1 through 5 of the Agreement. However, the adoption of a flexible application of Article 6, under Article 7, was feasible, and was not precluded by Article 7.2.

38. Customs observed that all the elements available in the cost of production statements on the basis of which the TPS was carried out could be used for the determination of the customs value. The average cost of production of the imported goods is a value which accurately represents all costs involved in production, including direct and indirect costs, whose allocation to each item of goods produced is possible only at the end of a given period. It was also confirmed that there were no significant variations in costs over the annual period, which means

[2] It should be noted that where the normal pricing practices of the industry are being analysed on the basis of a TPS using an OECD methodology, the importer must first have satisfied the Customs Administration that the OECD methodology and TPS applied are acceptable for customs valuation purposes.

that the weighted average annual value can be regarded as a reasonable value of the costs for each transaction conducted in the year concerned.

39. Through the consultations between Customs and the importer, the values of the weighted average cost for producing the imported goods were taken, and an appropriate cost plus mark-up was added by reference to the cost plus margins earned by the eight comparable companies. Drawing on the information exchanged in the consultations, it was decided that the median of the inter-quartile range of the cost plus margins of the eight comparable companies (20%) was acceptable[3].

40. The following table shows how the customs value was determined under Article 7of the Agreement, with flexible application of Article 6 and inclusive of the cost of international transport and insurance in accordance with national legislation:

Weighted average cost of production	15.00 c.u.
Appropriate cost plus mark-up	20% 15.00 c.u. X 20% = 3.00 c.u.
International insurance	1.00 c.u.
International transport	2.00 c.u.
Customs value	21.0 c.u.

Conclusion

41. On examining the circumstances surrounding the sale between ICO and XCO under Article 1.2(a) of the Agreement, using information contained in the TPS as well as additional information obtained in the audit, Customs concluded that the declared import price for the item of goods under analysis had not been settled in a manner consistent with the normal pricing practices of the industry concerned, and that XCO did not recover the costs of production of those goods. Therefore, the relationship between the buyer and the seller had influenced that price and, consequently, the declared value. Accordingly, Customs proceeded in sequential order through the methods in Articles 2, 3, 5 and 6, each of which was inapplicable.

42. Finally, Customs rejected the declared value of the imported goods of 13.00 c.u., and determined the customs value as being 21.00 c.u., by applying the method laid down in Article 7 of the Agreement that allows for, inter alia, flexible application of Article 6. In its flexible application of Article 6, Customs took into account the information contained in the TPS previously prepared for tax purposes.

43. As indicated in Commentary 23.1, the use of a transfer pricing study for examining the circumstances surrounding the sale under Article 1of the Agreement, must be considered on a

[3] It should be noted that it is not mandatory for Customs to use the median within the inter-quartile range as an "appropriate cost plus mark-up" when dealing with similar situations. It could be any other percentages within this range, depending on the consultation between Customs and the importer, varying from case to case.

case-by-case basis. Similarly, the use of such a document for determining the customs value under alternative methods should also be considered on a case-by-case basis[4].

* * *

[4] In this context, the customs value may be determined using Article 7 if the available information of a TPS is within the scope of the flexible application of Articles 1 to 6, otherwise using “another reasonable method” as a final resort, as indicated in Advisory Opinion 12.1.

CASE STUDY 14.4

USE OF TRANSFER PRICING DOCUMENTATION WHEN EXAMINING RELATED PARTY TRANSACTIONS UNDER ARTICLE 1.2(a) OF THE AGREEMENT

Introduction

1. This document describes a case where Customs took into account information provided in a company's transfer pricing study (TPS)[1] as well as additional information including its corresponding compensatory adjustment and its accounting records when determining whether the declared value is acceptable for customs purposes under the provisions of Article 1.2 of the Agreement.

2. This Case Study does not indicate, establish or imply any obligation on customs authorities to utilize OECD Transfer Pricing Guidelines and the documentation resulting from the application of the OECD Transfer Pricing Guidelines in interpreting and applying the WTO Customs Valuation Agreement (Agreement).

Facts of Transaction

3. XCO of Country X sells luxury bags to ICO, a distributor in Country I. Both XCO and ICO are wholly-owned subsidiaries of ACO, a multinational group and the brand-owner of the luxury bags. Neither XCO nor other companies related to ACO or other companies not related to ACO sell identical or similar luxury bags to unrelated buyers in country I. ICO is the only importer of the luxury bags sold by XCO to country I. Thus, all XCO-produced luxury bags imported into country I are purchased by ICO from XCO.

4. ICO is a limited-risk distributor. The marketing strategy for the sales of bags in country I is in fact established by XCO. XCO also advises on the levels of inventory to be maintained and establishes the recommended resale price of the bags sold by ICO, including the discounting policy to be used by ICO. XCO has also invested heavily in developing valuable intangible assets associated with the bags. As a result, XCO assumes the market risk in relation to the sales of the bags in country I.

5. According to ACO's transfer pricing policy (TPP), the price for the luxury bags imported in 2023 is determined using the Resale Price Method (in accordance with the OECD Transfer Pricing Guidelines), based on a targeted resale gross margin for ICO in 2023. A price review will be conducted at the end of the financial year for income tax purposes. The final margin will be evaluated compared to benchmarks and a compensatory adjustment might be made in due course.

6. In accordance with national requirements[2], ICO informed Customs that the customs value of its 2023 imports of luxury bags would be based on a transfer price that may be subject to a

[1] A TPS is a set of documents prepared by the company, or on its behalf, for tax compliance purposes examining the pricing of transactions between two or more related entities.

[2] For this particular case, the national legislation required an express notification to Customs of the fact that the transfer price may be subject to a retrospective compensatory adjustment. There are however countries where there are no such specific national requirements. Also, other type of requirements can be imposed, such as indicating, on each customs declaration that the value declared is provisional, or requesting from authorities a specific authorization for determining the value of the bags based on a transfer price and possibly subject to compensatory adjustments.

compensatory adjustment. The commercial documents submitted to Customs at the time of import did not suggest that there were special circumstances or additional payments, as set out in subparagraphs (a) to (c) of Article 1 of the Agreement, which would prevent the use of the transaction value or require an additional adjustment prescribed by Article 8 to the import price.

7. According to ACO's TPP, the targeted gross margin for ICO in 2023 was set at 40%[3], and ICO then determined the import price of luxury bags to be imported in 2023 by using the Resale Price Method according to the formula:

Import price = resale price x (1 – targeted gross margin) / (1 + duty rate).

8. The luxury bag market of country I where the imported goods were resold has been very competitive. However, in 2023, the actual sales income of ICO far exceeded the estimated income since more bags were sold at full price, and fewer at a discounted price, than anticipated. Consequently, ICO's gross margin in 2023 was 64%, which was higher than the 40% targeted gross margin stated in ACO's TPP.

9. In accordance with ACO's TPP and pursuant to national rules for income tax transfer pricing, ICO conducted a TPS for a year end[4] price review. The TPS indicates that ICO does not employ any valuable, unique intangible assets or assumes any significant risk. The functional analysis specifies that the eight comparable companies selected in the TPS imported comparable products from country X, performed similar functions, assumed similar risks and did not employ any valuable intangible assets, as was the case of ICO. The TPS finds that the arm's length (inter-quartile) range of gross margins earned by the selected comparable companies in 2023 was between 35%-46%, with a median of 43%. Therefore, as the 64% gross margin earned by ICO did not fall within the arm's length inter-quartile range. ICO determined that a compensatory adjustment had to be applied to the price of bags imported during 2023, in order to ensure that those prices were arm's length.

10. ICO carried out a compensatory transfer price adjustment of 220,000 currency units (c.u.) to reduce its gross margin to 46%, the upper end of the arm's length inter-quartile range. A debit note was issued, a payment from ICO to XCO was processed and an entry into ICO's accounting books and records was made.

11. The compensatory transfer price adjustment was subsequently reported to Customs and additional customs duties were paid in accordance with national requirements[5]. The duties were calculated based on a proportionate allocation of the adjustment across all products imported during the year.

12. Following receipt of the reported transfer price adjustment, Customs requested a copy of the TPS for review, and consulted with ICO as to the details of the adjustment.

Issue for Determination

13. What is the impact of a transfer price adjustment on the customs value of the imported goods, especially:

- on the assessment as to whether the transaction value of the imported goods has been influenced by the relationship between the parties; and
- on the determination of the customs value of the imported goods?

[3] In commercial practice, the targeted resale gross margin could be decided by reference to average gross margin in the previous year(s).

[4] Depending on national requirements, this can be done either towards the end of the year or following the end of the year.

[5] The customs formalities associated with the reporting and payment of duties can take several forms, including for example a global additional declaration, a blanket reconciliation, or an amendment on a declaration-by-declaration basis.

Analysis

14. Under Article 1 of the Agreement, a transaction value is acceptable as the customs value when the buyer and the seller are not related, or if related, the relationship does not influence the price. Where the buyer and seller are related, Article 1.2 provides two ways of establishing the acceptability of the transaction value when Customs have doubts concerning the price: (1) the circumstances surrounding the sale shall be examined to determine whether the relationship influenced the price (Article 1.2 (a)); or (2) the importer demonstrates that the value closely approximates one of three specified test values (Article 1.2 (b)).

15. In this case, as indicated in paragraph 3, no test values were available; therefore the circumstances surrounding the sale were examined under Article 1.2 (a) of the Agreement.

16. The Interpretative Note to Article 1.2 of the Agreement provides that in examining the circumstances surrounding the sale, "*the customs administrations should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and the seller organize their commercial relations and the way in which the price in question was arrived at*".

17. When examining the circumstances surrounding the sale concerning companies using the Resale Price Method, a comparison of the gross margin of the company in question with the gross margin of comparable companies could indicate whether or not the declared price had been settled in a manner consistent with the normal pricing practices of the industry.

18. Based on the functional analysis, there was no significant difference between ICO and the eight comparable companies, because these companies are all located in country I, and perform similar distribution functions, assume similar risks and do not employ any valuable intangible assets. These considerations taken together indicate their similarity with ICO. In addition, an adequate level of product comparability was observed, and these comparable companies were deemed to be suitable for customs valuation purposes.

19. According to the TPS, the arm's length inter-quartile range of the gross margin earned by the comparable companies was between 35%-46% with a median of 43%. However, in 2023, ICO earned a gross margin of 64% which was much higher than the normal gross margins of comparable companies in this industry. It should also be noted that the luxury bag market of importing country I was competitive, so that the operating profit and expenses of ICO should be similar to those of the comparable companies given that there was no substantial difference between ICO and the eight comparable companies. Therefore, ICO's high gross margin in 2023 was not commensurate with its functions, assets and risks.

20. Given that ICO's gross margin exceeded the arm's length inter-quartile range of gross margins of the comparable companies, ICO carried out a transfer price adjustment of 220,000c.u., increasing the account payable to XCO for purchases in 2023, which in turn increased the costs of the goods sold by ICO and reduced ICO's profits for 2023. The 220,000c.u. reduction in profits produced a gross margin of 46%, which is within the arm's length range of 35-46% of gross margin[6].

21. Given that the actual payment for the compensatory adjustment was made by ICO and supported by ICO's accounting books and records, Customs decided that the transfer price

[6] It should be noted that any percentages within the inter-quartile range (arm's length range) could be regarded as an appropriate gross margin, depending on the information obtained through the consultation between Customs and the importer. Each case should be considered individually and holistically under the provisions of WTO Valuation Agreement, in consideration of the principles of the OECD Transfer Pricing Guidelines.

adjustment supplemented the total price paid or payable by ICO to XCO in respect of imports for 2023. Through the consultation between Customs and the importer, Customs concluded that the final prices, including the transfer price adjustment, were settled in a manner consistent with the normal pricing practices of the industry concerned. Therefore, in accordance with Article 1.2(a) of the Agreement, the transaction value method can be applied.

22. As stated in the Interpretative Note to Article 1 of the Agreement, the price actually paid or payable is the total payment made or to be made by the buyer to the seller for the imported goods. Like the price review clauses described in Commentary 4.1, ACO's TPP sets out an agreed formula identifying the factors to form the basis for setting the final price. By applying the formula and making the adjustment to the transfer price, the price paid or payable to the seller, XCO, is increased.

23. In other words, the final amount paid or payable by ICO to XCO, including the compensatory adjustment made on the basis of a TPP, is the basis for transaction value in accordance with Article 1 of the Agreement.

Conclusion

24. In the light of the analysis above, in examining the circumstances surrounding the sale between ICO and XCO under Article 1.2 (a) of the Agreement, using the price review information in the TPS and ICO's books and records, Customs concluded that the amount paid or payable for the imported products, including the amount of the transfer price adjustment, was settled in a manner consistent with the normal pricing practices of the industry. As a result, Customs thereby also concluded that the price had not been influenced by the relationship between the buyer and the seller.

25. The process by which ICO informs Customs of the transfer price adjustment of 220,000c.u., allocates that adjustment to imports and pays the corresponding duties should be made in accordance with national regulations. Likewise, local regulations may impose further requirements on the importer[7].

26. It should be noted that the use of a transfer pricing study as a possible basis for examining the circumstances surrounding the sale should be considered on a case-by-case basis, as specified in Commentary 23.1.

* * *

[7] These requirements may, for example, consist of paying a deposit upon the lodging of a provisional value declaration, as provided by Article 13 of the Agreement.

Advisory Opinion 27.1

TREATMENT APPLICABLE TO NON-PAYMENTS BY THE BUYER

1. In commercial practice, cases may arise where buyers ultimately fail to make contractually agreed-upon payments in relation to the purchase of the imported goods.

2. For example, a buyer may purchase the imported goods from a seller but not pay all or part of the agreed-upon financing. As a second example, a buyer may agree with a seller to make an indirect payment to a third party as a condition of sale of the goods for import but ultimately not honour that payment obligation. As a third example, a buyer may pay the purchase price of the goods but fail to pay a licence fee dutiable under Article 8.1(c) of the WTO Customs Valuation Agreement (Agreement).

3. How are non-payments by buyers with regard to the purchase of imported goods to be treated under the Agreement when valuing goods for import? In other words, should such missing payments be included in the "price actually paid or payable" under Article 1 or in the corresponding adjustments under Article 8.1 and thereby form part of the customs value for the imported goods?

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

5. The Agreement aims to establish a fair, uniform and neutral system for customs valuation, highlighting that customs value should be based on simple and equitable criteria consistent with commercial practices. By articulating these principles in the General Introductory Commentary, the Agreement clearly seeks to protect the observance of contracts agreed between private operators in order to promote the development of the international trade in goods.

6. Article 1.1 of the Agreement 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. The price actually paid or payable is defined in the Interpretative Note to Article 1 as the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. Therefore, the phrase "actually paid **or payable**" in the Agreement expresses the intention that the customs value includes the total price agreed upon between the buyer and the seller, whether paid or not, in whole or in part (*emphasis added*).

7. When a buyer does not make the payments agreed with the seller in a sale of goods for import, it is considered a unilateral breach of a commercial contract. These non-payments remain payable and should be included in the "price actually paid or payable" for the imported goods in the application of the transaction value method under Article 1 of the Agreement.

8. The same rationale applies to non-payments of dutiable additions under Article 8.1 of the Agreement. For example, when a buyer is contractually obligated to make a royalty or licence fee payment but fails to pay, it is considered a unilateral breach of a commercial contract, and the obligation to pay is not excused by the buyer's non-payment. Such a non-payment remains dutiable if it satisfies the provisions of Article 8.1(c) and should be included in the transaction value.

9. Accordingly, such non-payments will be included in the agreed upon price actually paid or payable under Article 1 of the Agreement or the corresponding adjustments under Article 8.1, and should thereby form part of the customs value for the imported goods.

10. Customs should also confirm that there are no conditions or considerations that would prevent the application of Articles 1 and 8 of the Agreement. Moreover, the transaction value method can be used provided that Customs has no doubts about the truth or accuracy of the declared value based on the agreed price.

11. It should be noted that scenarios involving goods not in accordance with contract, as described in Explanatory Note 3.1, are separate considerations.