



TECHNICAL COMMITTEE  
ON CUSTOMS VALUATION

VT1054E1a

-  
43<sup>rd</sup> Session  
-

O. Eng.

Brussels, 20 September 2016.

REPORTS ON INTERSESSIONAL DEVELOPMENTS

DIRECTOR'S REPORT

(Item III (a) on the Agenda)

**Policy Commission and Council Sessions**

1. In July 2016, the Policy Commission held its 75<sup>th</sup> Session, and the Council its 127<sup>th</sup> and 128<sup>th</sup> Sessions. The report of the Policy Commission is set out in Doc. SP0772E1a and the Minutes of the Council are set out in Doc. SC0156E1a.

*Strategic Plan*

2. The Secretary General's progress report (Doc. SP0552E1a) contains an update of the activities undertaken by the Secretariat to implement the Strategic Plan since the last Sessions of the Council in June 2015. Annex I to the progress report (Item 2.1.4) sets out the developments on the work relating to the WCO Strategic Plan with regard to managing and promoting the harmonized interpretation and application of the WTO Valuation Agreement.

*Performance measurement*

3. Regarding the progress of the "Achieving Excellence in Customs" (AEC) performance measurement tool, the Policy Commission took note that thus far, 52 out of the 180 WCO Members had submitted the AEC form to the WCO Secretariat with a view to subsequent analysis. At this stage, the number of submissions was insufficient to calculate average indicator scores across the six WCO regions. Accordingly, once a sufficient number of Members had submitted the AEC form, the Secretariat would produce an analysis for the Policy Commission to consider, most probably at the 76<sup>th</sup> Session in December 2016.

*Publications policy*

4. The Chairperson of the Finance Committee informed the Policy Commission that the WCO had been looking into the issue of free provision of its Publications since 2008, and that a number of studies had already been carried out on this subject. He recalled that fully free provision of Publications was not realistic given its financial impact, and that discussions had revolved around free provision for Members and small and medium sized enterprises (SMEs). He then pointed out that free provision would entail costs and that it was not currently feasible without a substantial increase in Members' contributions. He also stressed

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that the use of the Organization's Reserves to finance free provision was not a viable solution. He concluded by stating that a solution was yet to be found and raised the question of whether the matter should be pursued at this time. The Policy Commission therefore recommended maintaining the current Publications Policy. The Council agreed.

*Customs – Tax cooperation*

5. The Policy Commission endorsed the Guidelines for strengthening cooperation and the exchange of information between Customs and Tax authorities at the national level, noting that this was a living document which would be further enriched by the inclusion of more examples of experiences and best practices. The Guidelines will be further updated following suggestions made by the Policy Commission and will be made available to Members in due course.
6. Additionally, the Policy Commission took note of potential opportunities for cooperation between Customs and Tax authorities at both national and regional level, and encouraged Members to share their related working experiences and best practices; and encouraged the Secretariat to continue working with the OECD and IMF with regard to Customs-Tax cooperation, emphasizing Customs' wider role in the global supply chain facilitation and security (non-fiscal) areas, as well as revenue collection, including transfer pricing and Customs valuation.
7. The Council endorsed the Guidelines and supported the views of the Policy Commission, noting that this was a living document which would be further enriched by the inclusion of more examples of experiences and best practices. The Guidelines are reproduced in the Annex to Doc. SP0564E1a.

*Revenue Package Action Plan*

8. The Policy Commission endorsed the proposed Action Plan for Phase III of the Revenue Package and took note of Members' comments and offers of assistance. Delegates commented on the need to tailor the Revenue Package according to the needs of particular countries and regions.
9. The Delegate of Bahrain offered his Administration's assistance to contribute to the Arabic translation of existing Revenue Package materials.
10. The Director, Tariff and Trade Affairs, confirmed that the Plan would be further refined to reflect Members' comments and an update would be provided at the next Policy Commission session.
11. The Council approved the proposed Action Plan for Phase III of the Revenue Package.
12. A more detailed update on the Revenue Package will be given under Agenda Item IV (c).

*E-commerce*

13. The Policy Commission and Council discussed the new Working Group on e-Commerce which will meet for the first time on 21 September. The Valuation Sub-Directorate will monitor these discussions and inform the Technical Committee accordingly of any e-commerce issues which arise of relevance to Customs valuation.

## **G20 Leaders' Communique - Hangzhou Summit**

14. The Communique issued as an outcome of the recent G20 summit in China, contained the following text :
- 36. We will continue our work on addressing cross-border financial flows derived from illicit activities, including deliberate trade misinvoicing, which hampers the mobilization of domestic resources for development, and welcome the communication and coordination with the World Customs Organization for a study report in this regard following the Hangzhou Summit.*
15. The WCO welcomes the communique and is ready to work with the G20 on the study report. The WCO Secretariat is currently preparing its response to this mandate and the matter will be discussed at the forthcoming Policy Commission Session in December 2016. The Director will provide further details during the Technical Committee.
16. This topic is relevant to Customs valuation as it concerns both undervaluation and overvaluation of imported goods and therefore is of interest to the Technical Committee.

## **Tariff and Trade Affairs**

### *Limiting duration of Technical Committee discussions*

17. The Chairperson of the Council raised the possibility of the various technical committees introducing a rule to limit the duration of discussions on technical questions, for example three years. The Secretariat would like to seek the Technical Committee's views on this proposal. It is acknowledged that the topic has recently been under discussion in the context of the initiative to improve the efficiency of the Technical Committee.

### *WTO Committee on Customs Valuation*

18. The WTO Committee on Customs Valuation (CCV) held its latest meeting on 25 April 2016. Discussions continued on the proposal originally submitted by Uruguay to the Technical Committee concerning a proposal to modify Decision 4.1 of the CCV.
19. The Observer from the World Trade Organization (WTO) will provide further details under Agenda Item III (b). The next meeting of the CCV is scheduled for 31 October 2016.

### *Technical Assistance/Capacity Building Activities*

20. The technical assistance programme of the Secretariat since the 42<sup>nd</sup> Session is reproduced in Annex II to Doc. VT1066E1a (Agenda Item IV (a)). The Secretariat will provide updates of future planned activities under that item.

### *Enquiry regarding voting in the Technical Committee*

21. At the last Session of the Technical Committee, comments were made by delegates regarding paragraphs 20 and 21 of Annex II to the WTO Valuation Agreement, which sets out the provisions for Quorum and Voting. It was acknowledged that the voting procedure has never been used by the Technical Committee and some Members suggested that this could be considered as an option in cases where it is proving difficult to reach consensus when discussing specific technical questions.
22. Following the Session, the Secretariat wrote to the WTO seeking advice and clarification on this matter. A response was received, dated 31 August, providing some

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background and comments on the issue (copy attached in the Annex to this Document). The Secretariat invites Members to comment on the response from the WTO at the upcoming Session.

*Staff changes*

23. On 1 November, Mr. Benson LIM (Singapore), will start as Technical Attaché in the Tariff and Trade Affairs Directorate (Valuation).
24. On 15 September 2016, the Secretariat welcomed a Professional Associate, Mr. DIALLO of Guinea, who will be working in the Valuation Sub-Directorate for a ten-month period.

*Fellowship programme*

25. The WCO hosted the 70<sup>th</sup> WCO Fellowship Programme for English speakers from 19 September to 14 October 2016. One Fellow, Mr. KACHINGWE from Malawi, chose Customs valuation as his field of study.

*Other activities and issues*

26. The Secretariat was invited to the **OECD Forum on Tax Administration (FTA)** in Beijing from 11 – 13 May. The FTA was attended by 150 participants from 44 Tax Administrations (commissioners and senior officials of OECD and non-OECD Members), business and international organizations. The Plenary meeting covered the following issues: BEPS (Base Erosion and Profit shifting) implementation, international tax cooperation and exchange of information, building tax administrations and the FTA of the future, and capacity building. The Forum agreed on a future work programme and a communique.
27. The Secretariat was invited as guest speaker at the **Bloomberg-Baker & McKenzie** conference on 8 and 9 June in Washington, United States. This private sector event included a presentation by the Secretariat on Customs valuation and transfer pricing.
28. The Secretariat was invited as an observer to the **OECD Committee on Fiscal Affairs'** first meeting of the **BEPS Inclusive Framework** in Kyoto from 29 June to 1 July. 82 countries attended, consisting of OECD members and many developing countries.
29. The Secretariat was invited as guest speaker at the **TP Minds** conference on 21 and 22 September in Singapore. This private sector event included a presentation by a WCO representative on Customs valuation and transfer pricing.
30. Members are kindly reminded to advise the Secretariat of any changes to :
  - the **Contact Point list**. Contact points are maintained for : 1) general valuation matters and 2) matters relating to Exchange of Customs Valuation information. The Secretariat kindly requests Members to check their national details have been provided and, if so, confirm they are correct in the current list and advise of any changes accordingly.
  - the **Index of Reference materials**. Members are requested to advise the Secretariat of new materials and notify any change or cancellation of materials previously provided.

These lists provide a valuable resource for Members. Both lists are maintained on the Members' website, (Valuation Resources page).

## **Conclusion**

31. The Technical Committee is invited to :
- Take note of the various developments reported above;
  - Consider a response to the Chairperson of the Council's suggestion to limit the duration of Technical Committee discussion of technical questions (paragraph 16);
  - Consider the response from the WTO in relation to the question of voting in the Technical Committee (paragraph 22);
  - Advise the Secretariat accordingly of any changes and new contributions to the Contact Point list and Index of Reference Materials (paragraph 29).

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**31 AUG 2016**

Dear Mr Liu,

Thank you for your letter of 14 July on the subject of the Technical Committee on Customs Valuation's decision-making provision.

Let me, in response, outline the WTO's decision-making provisions and practice, in the hope that this may be of assistance to the Technical Committee.

Decision-making in the WTO is covered by Article IX of the Marrakesh Agreement. Article IX:1 states in general that "the WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting." Paragraphs 2, 3 and 5 of Article IX, specifically provide for decision-making by voting in relation to authoritative interpretations of the WTO Agreement, waivers from WTO obligations, and accessions to the WTO. In spite of these explicit provisions, the established practice at the WTO is for all decisions to be made by consensus.

As the Technical Committee was established under the auspices of the Customs Co-operation Council (CCC), we have understood that the Technical Committee's working procedures reflected those of the CCC at that time. And since those procedures included voting rules similar to those outlined for the Technical Committee in Annex II, paragraph 21 of the Customs Valuation Agreement, we believe it is for that reason that the Technical Committee's rules of procedure provide for decision-making by voting, with the exception of matters referred to it by a panel. We observe from your letter, however, that the Technical Committee has never invoked the voting provision and, much like the WTO, it seems to have an established practice of striving to adopt decisions by consensus.

I hope that this information regarding the WTO's voting provisions and its voting practice is of help to the Technical Committee with regard to its query.

I would like to take this opportunity to thank the Technical Committee for its excellent work, as evidenced by this query, which reflects the Committee's commitment to its mandate, and to providing valuable advisory opinions on solutions to specific technical problems.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Suja Rishikesh Mavroidis".

Suja Rishikesh Mavroidis  
Director  
Market Access Division