



TECHNICAL COMMITTEE ON
CUSTOMS VALUATION

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+Annex

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43rd Session
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O. Eng.

Brussels, 22 September 2016.

QUESTION RAISED DURING THE INTERSESSION

INTERPRETATION OF THE TERM "TO" IN ARTICLE 8.2(a) and (b) OF THE AGREEMENT

Request by Uruguay

(Item VI (c) on the Agenda)

I. BACKGROUND

1. During the intersession Uruguay submitted a question for consideration by the Technical Committee.
2. The question refers to the interpretation of the term 'to' in the adjustments provided in Article 8.2(a) and (b) of the Agreement which read as follows :
"2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following :
 - (a) the cost of transport of the imported goods **to** the port or place of importation;*
 - (b) loading, unloading and handling charges associated with the transport of the imported goods **to** the port or place of importation; and"*
3. To facilitate its interpretation, Uruguay has proposed to start with the analysis of the following two questions :
 - (a) Does the Customs value include unloading, handling or other logistics charges not included in the international freight price and incurred by the importer at the port of importation prior to the official, definitive importation of the goods ?
 - (b) Does the Customs value include the transport, loading, unloading and/or handling costs not included in the international freight price and incurred by the importer between the first point of control in the Customs territory and the place at which the goods are definitively imported ?
4. The question is reproduced in the Annex to this document.

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II. SECRETARIAT COMMENTS

5. The Secretariat notes that Advisory Opinion 13.1 and Commentary 22.1 are the two instruments of the Technical Committee which deal with Article 8.2 adjustments. This question, however, is not addressed in these two instruments.
6. The Secretariat considers therefore that it would be beneficial to consider this issue as a Specific Technical Question in order to provide guidance. This will give an opportunity to delegates to discuss and examine the issue.
7. It would be interesting to learn how the different Administrations apply Article 8.2(a) and (b) in respect of the points raised in paragraphs 3(a) and (b) above.

III. CONCLUSION

8. The Technical Committee is invited to consider the question at the 43rd Session and determine whether it wishes to examine this question as a Specific Technical Question at a future Session.

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THE INTERPRETATION OF THE TERM "TO" IN ARTICLE 8.2(a) AND 8.2(b) OF THE AGREEMENT

Introduction

1. In their national legislation, many WTO Members have chosen to include all the subparagraphs of Article 8.2 of the Agreement in the Customs value.
2. Subparagraph a) which includes "...the cost of transport of the imported goods to the port or place of importation;..." and subparagraph b) which includes "...loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation;..." give rise to particular doubts in certain administrations as to the interpretation of the word "to" in each of these phrases.
3. Of course, each Member is free to define its treatment of optional adjustments in its national legislation. Yet many Members do not have a clear definition of this and have simply included the adjustments using the original text of Article 8.2 of the Agreement, without clarifying the scope of the term "to".
4. Our delegation therefore feels that it would be useful to have a Technical Committee interpretative document on this, as it would be of significant benefit to international trade in general, and particularly to those Customs Administrations that have opted to include these adjustments in the Customs value.

Analysis

5. An initial proposal would be to analyse the answers to the following questions from those Members that have decided to include the Article 8.2 adjustments in the Customs value :
 - a) Does the Customs value include unloading, handling or other logistics charges not included in the international freight price and incurred by the importer at the port of importation prior to the official, definitive importation of the goods ?
 - b) Does the Customs value include the transport, loading, unloading and/or handling costs not included in the international freight price and incurred by the importer between the first point of control in the Customs territory and the place at which the goods are definitively imported ?
6. To answer the first question the term "to the port or place of importation" used in Article 8.2 (b) must be defined in order to determine whether or not it includes the charges incurred at the port or place of importation. In other words, whether or not the 'to' includes or excludes the charges incurred within said port or place of importation.
7. In order to answer the second question in a structured manner, we must first define the term "importation" used in Articles 8.2 (a) and 8.2 (b) and whether it means 'the act of introducing any goods into a Customs territory', or rather whether it refers instead to a 'definitive importation', i.e. entry of goods including payment of the corresponding Customs duties.
8. Based on these answers and the analysis of the Technical Committee a document could be produced which would ensure a uniform application of these adjustments to the Customs value.

Member's View

9. We will present our position at a later date if the Technical Committee decides to accept this as a new technical question.

Proposed Outcome

10. After having studied the issue, the Technical Committee would issue a document to ensure the uniform interpretation and application of the Agreement, both for its members and all private sector operators.
