

3. REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE 52nd SESSION OF THE
TECHNICAL COMMITTEE ON CUSTOMS VALUATION



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES
ORGANIZACIÓN MUNDIAL DE ADUANAS

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

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-
52nd Session
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O. Eng.

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REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON
THE 52nd SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. Due to the COVID-19 pandemic, the 52nd Session of the TCCV was again held in a blended format, where the document-based discussion and consultation were held on the CLiK! platform, followed by a three-day virtual meeting on the KUDO platform.
2. The Chairperson, Ms. Marianela Marte (Dominican Republic), extended a warm welcome to all delegates to this virtual meeting, in particular those attending the Technical Committee for the first time. She added that it is a fantastic opportunity to meet together and thanked all those who have worked hard to enable the organisation of this TCCV session in the current crisis.
3. The Director of the Tariff and Trade Affairs, Mr. Konstantinos KAIPOULOS welcomed the delegates who are participating in the 52nd session of the Technical Committee on Customs Valuation, despite the difficulties related to time differences, and gave a brief introduction of himself to the Technical Committee
4. The Director highlighted that more than two hundred and thirty delegates from member countries and observers including international organisations had registered for this session. He observed that the documentary phase had been very successful with a lot of exchanges between delegates and congratulated the Chairperson and all the delegates for the success of the documentary and consultation phases.
5. The Director thanked the delegates who have volunteered to present on the topics of the Theme Meeting and the two Vice-Chairpersons who had accepted the role of moderators. He wished the Technical Committee successful discussions while examining the six specific technical questions on the agenda and in obtaining consensus to adopt instruments that would provide advice for Members.

Homage to late Mr. Ian CREMER

6. In order to pay tribute to late Mr. Ian Cremer, who passed away in December 2020 shortly after leaving the WCO Secretariat, the Chairperson invited the delegates to observe one minute silence. The Secretariat and the Delegates of the European Union and China made allocutions in remembrance of him as a delegate and Chairperson of the TCCV as well as a professional mentor in Customs valuation after joining the WCO Secretariat. Multiple delegates joined in sharing their tribute to late Ian Cremer.

Agenda Item I: ADOPTION OF AGENDA

(a) Provisional Agenda

Doc. VT1251Eb

7. The provisional Agenda contained in Doc. VT1251Eb, published on the TCCV Meeting page, had been placed on the 52nd TCCV Session Forum Group on the CLiKC! Platform and opened for comment by the Chairperson. No written comments were made during the discussion phase.
8. The Chairperson invited delegates to raise any point that they wished to discuss under item VIII of the Agenda - Other Business. No further comments or objections were made during the virtual phase.

Conclusion

9. The Technical Committee adopted the Agenda as proposed in Doc. VT1251Eb without amendment.

(b) Suggested programme

Doc. VT1253Ea

10. The Chairperson referred to Doc. VT1253Ea, which set out the suggested programme of work for the 52nd Session prepared by the Secretariat. She noted that no questions were received during the intersession.
11. The Chairperson had opened the suggested programme for comment on the Discussion Forum of CLiKC!. No comment was made on the suggested programme as published in Doc. VT1253Ea.
12. No further comments were made during the virtual phase.

Conclusion

13. The Technical Committee approved the suggested programme as set out in Doc. VT1253Ea without amendment.

Agenda Item II: **ADOPTION OF THE TECHNICAL COMMITTEE'S 50th/51st SESSIONS REPORT**

Doc. VT1249Ec

14. The Chairperson reminded the delegates of the reporting procedure approved by the TCCV at its 42nd Session.
15. During the intersession preceding the 52nd Session, comments received from Canada, China, Japan, Uruguay, and the United States, on the "a" version of the draft Report were incorporated in the "b" version of the draft Report and published. No further comments on the "b" version of the draft Report were received. The comments from Members on the draft Report are highlighted in red in working document VT1249Eb.
16. The "b" version of the draft report was edited into a 'c' version which was published on the WCO Members Website.

Conclusion

17. The Technical Committee approved the Report of the 50th/51st Sessions of the Technical Committee as published in Doc. VT1249Ec without any amendment.

Agenda Item III: **THEME MEETING**

Docs. VT1254Ea and VT1265Ea

18. The Technical Committee at its 49th Session agreed to hold a Theme Meeting at its 50th Session, with two topics: "Post Clearance Audit (PCA)"; and "The issues in the application of Article 7 of the WTO Customs Valuation Agreement".
19. Due to the COVID-19 pandemic, the Theme Meeting programmed for the 50th Session was postponed to the 52nd Session.
20. At the 52nd Session Côte d'Ivoire, Japan and the ICC delivered presentations on Post Clearance Audit. Presentations on issues in the application of Article 7 of the WTO Customs Valuation Agreement were made by Japan, China and the ICC. The two set of presentations and ensuing question and answer sections were moderated respectively by Ms. Qianyu LIN and Mr. Laurent Blaise KABORE, Vice-Chairs of the Technical Committee.
21. The Delegate of Côte d'Ivoire introduced her administration's legal and operational frameworks for PCA, as well as the different means adopted by the Customs Administration to effectively implement PCA. She affirmed the positive impact of PCA in increasing tax revenue. She also pointed out the challenges in its implementation and put forward a number of measures to address these challenges.
22. In his presentation, the Delegate of Japan recognized that PCA is essential to address potential risks regarding not only incorrect invoices but also correct invoices when identifying costs that should be included in the price actually paid or payable or adjusted under Article 8. He also highlighted the importance of cooperation between valuation, clearance and PCA sections in order to achieve effective valuation control.
23. From the private sector's perspective, the ICC viewed PCA as a means to measure and improve compliance of the private sector operators, and, like advance rulings, as an

opportunity to seek review of a valuation issue. The Delegate shared in his presentation a number of best practices preferred by private sectors in PCA systems, including tie-in with AEO or "trusted trader" programs, public availability of audit process and procedures, and reconciliation with income tax authorities amongst others.

24. With regard to Article 7, the Delegate of Japan focused his presentation on its application in the context of cross-border e-commerce, which was expanding rapidly in Japan, posing challenges for the Customs valuation and clearance sections of Japan Customs, as well as the stakeholders. The Delegate introduced a model case of e-commerce where the Customs value is based on "planned sale price". Japan Customs, in determining the Customs value of the imported goods under Article 7, adopted the "planned sale price" as the basis, and calculated the Customs value of the imported goods by deducting the selling commissions or profits and expenses, the transportation costs, and the Customs duties and other national taxes at the importation.
25. The Delegate of China introduced the legal provisions in China regarding application of Article 7, as well as the general principles and practical experience in its implementation, in her presentation. A hypothetical transfer pricing case was provided to illustrate the practical application of Article 7, in which the Customs value is determined under Article 7, using deductive value method with reasonable flexibility, taking into account the quantifiable data obtained from transfer pricing documentation.
26. The ICC analysed the three provisions of Article 7 from the private sector's point of view, and shared its concerns regarding the practical application of these provisions, such as lack of data at the time of importation, misuse of databases, and no or poor written explanations, which may undermine the objectives of the Agreement.
27. The delegates interacted with the speakers through a question and answer session following each set of presentations. Members concluded that the exchange of practices and discussions on these two topics had been very enriching and useful.
28. It was noted that all of the PowerPoint presentations made during the Theme Meeting would be made available on the WCO Members' website.

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

(a) Director's Report

Doc. VT1255Ea

29. The Director's Report, contained in Doc. VT1255Ea, was published on the website and CLiKC!. The report covers the following topics: "Policy Commission and Council Sessions", "the WTO Committee on Customs Valuation", "Revenue Package", "Technical assistance and capacity building activities", "Fellowship programme", "Staff changes" and "Other activities and issues".
30. In his written report, the Director provided an update on the Policy Commission and the Council Sessions held in December 2020. Due to COVID-19 pandemic, both Sessions were held in a virtual online format.

31. The Director reported to the Council that work in TTA during the passing year had been marked by a focus on reorganising the work and priorities in order to ensure that the main WCO strategic goals in the area of TTA were achieved despite the restrictions imposed due to the COVID-19 pandemic. This included running meetings of working bodies online, incorporating document-based consultations where needed, and the reworking of capacity building courses and activities to suit online delivery.
32. In relation to Valuation-related work, the Director reported the adoption by the Technical Committee on Customs Valuation at its 50th/51st Sessions in October 2020 of its Report of the 49th Session (Doc. VT1219) and invited the Council to approve it.
33. The draft Report of the Policy Commission and the draft Minutes of the Council can be found in Doc. SP0731Eb and Doc. SC0198Ea respectively published on the WCO Members' website.
34. With regard to the Revenue Package, its Phase IV is due to be completed by June 2021. The TTA Directorate has worked to fulfil all the related tasks for which it had the responsibility and has prepared a document on "Debt management in Customs Administrations" compiling the practices of 15 Customs Administrations. The Director invited Members to enrich this document by sharing their practices for the benefit of the Customs community.
35. The Director referred to the work of the WTO Committee on Customs Valuation and Technical Assistance/Capacity Building Activities which are covered in detail under other specific items of the Agenda. The report of the WTO Committee on Customs Valuation submitted by the WTO Secretariat has been posted on CLiKC!. He reminded the delegates of the efforts undertaken by the Secretariat to adapt its capacity building activities to provide technical assistance through virtual platforms such as GoToWebinar, GoToMeeting and CLiKC!. Details of the technical assistance/capacity building activities undertaken by the Secretariat has been reported in Doc. VT1266E and covered under item V (a) of the Agenda
36. The WCO hosted the 83rd WCO Fellowship Programme for French speakers between 25 January and 12 February 2021. One Fellow, Mr. Gamal Nasser OMAR MAHAMOUD from Comoros, chose Customs valuation as his field of study.
37. The Director concluded his written report by encouraging delegates to advise the Secretariat of any changes in the Valuation Contact Point list and the Index of Reference Materials as these lists provide a valuable resource for Members.
38. There were no comments received from Delegates on the agenda item, but various delegations expressed their appreciation to the Director for his comprehensive report, gave him a warm welcome and wished him every success in his management. The Technical Committee was then invited to take note of the Report.

Conclusion

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

(b) WTO Committee on Customs Valuation Report

40. The written report of the WTO Secretariat, posted on CLiKC! focussed on the following areas: "Notifications", "25th Anniversary of the Agreement on Customs Valuation" and "Technical assistance and training".

41. The Committee held a formal meeting in virtual mode on 19 October 2020 and reviewed the four types of notifications by reference to: (i) Members' laws and regulations; (ii) Members' responses to a check list of issues related to their legislation; (iii) Members' date of implementation of the Decision on Interest Charges; and, (iv) whether Members adopt the practice referred to in paragraph 2 of the Decision on the "Valuation of Carrier Media Bearing Software for Data Processing Equipment".
42. Four additional notifications and three responses to the checklist of issues had been received by the Committee since the last report. The WTO Secretariat acknowledged the positive contribution of Members of the TCCV in encouraging the submission of legislation and responses to the Checklist of Issues.
43. To commemorate the 25th Anniversary of the Customs Valuation Agreement, a seminar was held on 17 November 2020. The webinar featured WTO members and other customs experts presenting their experiences and perspectives on various historical experiences with aspects of the Agreement and on certain perspectives regarding the Agreement going forward.
44. With regard to its technical assistance and training on customs valuation activities, the WTO Secretariat updated the Technical Committee on activities in which modules on customs valuation were delivered at regional level.
45. No comments were received by the Secretariat on this Report and the Chairperson invited the Technical Committee to take note of the Report.
46. The written report from the WTO Secretariat is appended in Annex C to the Report.

Conclusion

47. The Technical Committee took note of the WTO written 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. VT1256Ea and VT1266Ea

Background

48. In accordance with the Technical Committee's decision, the Secretariat had monitored and communicated the technical assistance/capacity building activities scheduled or delivered by Members in order to provide useful information to all Members for planning purposes and to prevent duplication of effort.
49. Since the last session, the Japanese Administration had provided information about its technical assistance activities. That information, together with information on the technical assistance/capacity building activities undertaken by the Secretariat, was set out in Annexes I and II to Doc. VT1266Ea.

Summary of discussion

50. During the virtual meeting, the Chairperson of the Technical Committee recalled that information on technical assistance/capacity building activities undertaken by the Secretariat and Members was contained in Annexes I and II to Doc. VT1266Ea. She informed delegates that no comments had been received on this subject. Having noted that no delegation wished to take the floor, she brought the discussion on this Agenda item to a close.

Conclusion

51. The Technical Committee took note of the Secretariat's report on technical assistance/capacity building activities.

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

Docs. VT1257Ea and VT1267Ea

Background

52. Following the decision taken by the Technical Committee on Customs Valuation, the Secretariat had been monitoring progress with the application of the WTO Customs Valuation Agreement by Members and issuing reports on the subject.
53. Before the session, the Secretariat had published Doc. VT1257Ea, inviting Customs administrations to provide information on the progress made with regard to the application of the WTO Customs Valuation Agreement in their respective countries.
54. No Customs administration had submitted information in response to the above-mentioned working document.

Conclusion

55. The Technical Committee took note of the progress report on Members' application of the WTO Customs Valuation Agreement.

(c) Revenue Package

Doc.VT1258Ea

56. The Secretariat reported that a comprehensive updated report, including details regarding the various activities being conducted under the Revenue Package Phase IV Action Plan, was provided at the 50th/51st Sessions in Doc. VT1225Ea.
57. It noted that as this year will mark the completion of the Revenue Package Phase IV, a complete report would be presented to the Policy Commission and Council at its June 2021 Session. A complete report on Phase IV of the Revenue Package would be available at the 53rd Session of the TCCV.
58. In response to the challenges posed by the COVID-19 pandemic, work in the Tariff and Trade Affairs Directorate had been reorganized, including the reworking of capacity building courses and activities to suit online delivery. Seventeen missions, including training workshops related to Customs Valuation, have been carried out under Phase IV of the Revenue Package. Details were published in the Annex to Doc. VT1258Ea.

59. No comments were received on the report and the Chairperson invited the Committee to take note of the report.

Conclusion

60. The Technical Committee took note of the updated report.

Agenda Item VI: SPECIFIC TECHNICAL QUESTIONS

- (a) Sale for Export to the Country of Importation under Article 1 :
Request by Canada

Docs. VT1259Ea and VT1268Ea

Background

61. This question was first introduced to the Technical Committee at the 45th Session and, since the 46th Session, had been examined by the Technical Committee with continuous improvement of the text to take into consideration Members' comments and observations.
62. During the 50th/51st Sessions, all but one delegates who commented on the updated text of the draft Advisory Opinion supported Canada's proposal that the sale for export to the country of importation is the one between the seller and the retailers.
63. The Delegate of Uruguay maintained that he could not agree with the conclusion of the proposed text, i.e. that the relevant sale for export to the country of import is the sale from XCO directly to the retailers.
64. In the absence of consensus, the Chairperson proposed to maintain the question on the agenda of the 52nd Session to give time to Members to examine the latest version prepared and posted by Canada on the Discussion Forum, exchange their views via CLiKC! and decide at the next Session.
65. The updated text prepared by Canada and posted on the Discussion Forum at the 50th/51st Sessions was set out in the Annex to the working document VT1259Ea and Members were invited to submit their written suggestions and comments thereon.
66. In response to working document VT1259Ea, Japan and Uruguay submitted their written comments on the updated text, which were reproduced in Annexes I and II to Doc VT1268Ea respectively.

Summary of Discussion

67. During the Discussion Phase of the 52nd Session, the Delegate of Japan responded to the written comments made by Uruguay, as set out in the Annex to Doc.1268Ea. Japan supported the conclusion as set out in Annex VT1259Ea.
68. In response, the Delegate of Uruguay shared his point of view on the transaction. In his interpretation, when an electronic purchase order was confirmed through XCO's computer

system, an internal sale would be configured in the country of import from ICO (which is a subsidiary of XCO) to retailers, of a merchandise previously imported by ICO and maintained his position that he cannot accept the conclusion proposed and suggested moving to a vote on the document presented by Canada, as provided for in Article 21 of Annex II to the Agreement.

69. Two other delegates who posted their comments did not agree with the conclusion proposed by Canada. ICC suggested two edits on the text of the 49th Session.
70. The Delegate of Canada observed, in his written comments posted on the Discussion Forum and in his oral intervention during the virtual phase, that much progress has been achieved in the past 5 sessions and it appeared that document VT1259 reflected an outcome that the vast majority of WTO Members represented in this committee could agree with. Considering the comments made by Uruguay in document VT1268 and its further comments on CLiKC, he was of the view that the Technical Committee has reached an impasse, despite a number of previous attempts to reconcile these differences of interpretation.
71. The Delegate estimated that the resolution proposed by Uruguay in VT1268 was untenable in the given set of facts of the case as it failed to apply the provisions and the spirit of the Customs Valuation Agreement, did not take into consideration Advisory Opinion 14.1 and Case Study 9.1 adopted by the Technical Committee and ran counter to the provisions and spirit of the Agreement, namely that the basis to determine the customs value of imported goods should, as far as possible, be the transaction value of the goods to be valued and thus the customs value is based on the price actually paid or payable for the imported goods.
72. He noted that although the delegates of the Technical Committee had worked together to clarify the facts, analysis and conclusion, and respond to various concerns, Uruguay had not changed its position, regardless of whether the vast majority of Customs Administrations agree that there is only one true sale and the transaction value method is applicable. In this situation, and in the absence of an alternative solution, the Delegate of Canada proposed to place the question in Part III of the Conspectus.
73. The Delegates of the United States, European Union and the observer from ICC, who all took the floor at the virtual phase, supported the draft text and conclusion proposed by Canada and highlighted the importance of having an instrument on this issue to Customs and business. However, as the Technical Committee was unable to reach consensus, the Delegate of China proposed to accept the proposal of Canada to put the question in Part III of the Conspectus. There was no objection to the proposal from China.

Conclusion

74. The Technical Committee agreed to conclude the examination of this question, remove it from the Agenda of the next session and place it in Part III of the Conspectus of Technical Valuation Questions.

(b) Royalties and licence fees under Article 8.1 (c) of the Agreement: Request by Uruguay

Docs. VT1260Ea and VT1269Ea

Background

75. The Chairperson introduced the case submitted by Uruguay and accepted by the Technical Committee as a Specific Technical Question for examination at the 46th Session. The text of

the case had been amended after its introduction in light of the comments made at previous sessions. In the version provided in the Annex to Doc. VT1227Ea, a patented concentrate was simply diluted with ordinary water after importation, not using a patented process, and the mixture was consumer-packed and bore a trademark for its sale in the importing country as a soft drink. A single royalty was paid by the buyer for the use of the patented concentrate and the trademark on the finished product.

76. During the intersession prior to the 50th/51st Sessions, Uruguay proposed to make further amendments to the draft Advisory Opinion, focusing on the apportionment of the royalty paid for the trademark.
77. At the conclusion of the 50th/51st Sessions, the Technical Committee agreed to continue examining this case on the basis of the text set out in the Annex to working document VT1227Ea with the view of adopting a new instrument, and the issue of apportionment would be examined by the Technical Committee as a separate consideration if a relevant question was submitted by Members.
78. During the intersession prior to the 52nd Session, Uruguay worked with the Secretariat and prepared an updated text which incorporated the comments and observations made by Members and observers at the 50th/51st Sessions. The text was set out in the Annex to Doc. VT1260Ea. In response, Japan and Uruguay submitted written comments which were set out in Annexes I and II to Doc. VT1269Ea.
79. Japan, in its written comments, proposed further amendments to the draft Advisory Opinion. Uruguay suggested that the amount of the royalty to be added to the price paid or payable for the imported goods should be calculated in accordance with the generally accepted accounting principles of the country of importation.

Discussion

80. Uruguay stated that it was necessary to adopt an instrument dealing with the amount of the royalties and licence fees to be added to the price to determine the Customs value, in view of the fact that no current instrument deals with this issue. He suggested that the Technical Committee continue the discussion on the basis of working document VT1227Ea.
81. Japan updated its comments made at previous sessions and proposed a number of amendments to the text of the draft Advisory Opinion regarding paragraphs 1, 6,7,8,9 and 10. Japan's proposal was supported by Guatemala.
82. The Delegate of China reiterated her comments made at previous sessions that paragraph 5 was part of the conclusion rather than a fact of the case, and so should be merged into paragraph 9. With regard to paragraph 10, China was of the view that the whole paragraph should be deleted to avoid confusion regarding the issue of apportionment. The EU and the ICC supported the proposal of China.
83. The Delegate of Canada reminded the Technical Committee that the draft Advisory Opinion was intended to address the issue of apportionment. He questioned whether it was necessary to introduce a new instrument if the conclusion of this case is to include the whole amount of the royalty payment, while the two royalties in this case have been dealt with in Advisory Opinions 4.4 and 4.6 respectively.

84. The Delegate of the ICC noted that even if apportionment of the royalties was not necessary, the case would still provide instruction to business and Customs to address issues with respect to the use of one single royalty paid to cover the grant of multiple rights.
85. The Delegate of Japan opined that his proposal at paragraph 10, which referred to apportionment of adjustment under Article 8, could add more value to the case. However, he indicated that Japan will accept the decision of the Technical Committee related to this paragraph.

Conclusion

86. The Technical Committee agreed to keep this case on the agenda for examination at the next session.

(c) Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty – Income tax) – Request by China
Docs. VT1261Ea and VT1270Ea

Background

87. The Chairperson introduced this Agenda item, reminding Members that the Technical Committee had originally agreed to examine the request by China concerning "Royalties and licence fees under Article 8.1 (c) of the Agreement (Royalty – Income tax)" as a specific technical question at its 46th Session.
88. The question asked by China is whether the income tax on a royalty, paid by importer B/licensee to the tax authority of the country of importation on behalf of the seller S/licensor under the licence agreement between them, is part of the Customs value of the imported goods. If so, which provision of the Agreement decides how that tax is treated in relation to the Customs value of the goods imported?
89. At its three previous sessions, the 47th, 48th and 49th Sessions, the Technical Committee had focused its discussions on the two opinions expressed by Members, which were as follows: either the income tax on a royalty, paid by importer B/licensee to the tax authority in the country of importation, should be considered as part of a royalty and included in the Customs value under the terms of Article 8.1 (c) of the Agreement (Opinion 1); or the tax should be considered as an indirect payment for the goods imported, which must be included in the price actually paid or payable for the goods imported, and form part of the Customs value under paragraph 1 of the Interpretative Note to Article 1 of the Agreement (Opinion 2).
90. Following the discussions held at the 49th Session, the Technical Committee had opted for Opinion 1, which China favoured. In the absence of any clear objection, the Technical Committee had decided to move on to the stage of preparing a draft instrument on the matter. During the intersession following the 49th Session, the Secretariat worked with China to produce the draft Advisory Opinion as set out in the Annex to working document VT1198E1a, which was then improved a number of times in response to Members' comments.
91. At the 50th/51st Sessions of the Technical Committee, the European Union had suggested that there was no need for further work on the draft instrument, reasoning that Advisory Opinion 4.16, adopted in 2015, and referred to in the draft instrument, could be used to deal with this question. The EU undertook to provide more information at a later time in support of its position.

92. However, China, Canada, Japan, the United States, Uruguay and a number of other countries thought it was extremely useful for Customs administrations and the private sector to have an instrument that provided guidance on the scenario set out in the case under consideration. The Technical Committee thus agreed to look first at the arguments promised by the European Union for later, before deciding whether or not to do further work on the draft Advisory Opinion submitted by China.
93. China said that its question related to a situation that was similar, but not identical, to the one covered in Advisory Opinion 4.16. The difference between the two scenarios lay in the fact that Advisory Opinion 4.16 dealt with a case where income tax of 25 currency units was deducted from the royalty of 100 currency units payable for use of the trademark: the royalty of 100 currency units payable under the licence agreement was a gross royalty, which included income tax of 25 currency units; whereas the question under consideration dealt with a case where the payment of income tax on the royalty (11.11 currency units) was a separate payment additional to the net royalty of 100 currency units paid by the buyer to the seller for commercial use of the patent. China thought that this difference warranted the drafting of a new instrument by the Technical Committee, to supplement Advisory Opinion 4.16. China's position was backed by a number of Members.

Summary of discussion

94. During the online discussion phase of the 52nd Session Members continued their discussions on this question via the WCO CLiKC! platform. Some Members provided more of the detail needed, along with other editorial improvements to the text of the draft instrument submitted by China. China restated its case that the Technical Committee should draft a new instrument to supplement Advisory Opinion 4.16.
95. In the consultation phase prior to the virtual meeting, the European Union expressed its support for the continuation of the work on the Draft Advisory Opinion, renewing its position on this Agenda item.
96. At the virtual meeting of the 52nd Session, Members continued their work on improving the text of that instrument, encouraged by the European Union's support, through oral contributions as well as online discussions via the CLiKC! platform. Canada provided some amendment proposals to the text, highlighting that the Committee should avoid giving a new or more restrictive definition, application or interpretation to the broad scope of the wording provided by paragraph 3 (c) of the Interpretative Note to Article 1. The continuous efforts culminated in a definitive version of the draft Advisory Opinion on this question submitted by China, and its adoption by the Technical Committee.

Conclusion

97. The Technical Committee adopted a new instrument, Advisory Opinion 4.18 as set out in Annex D to the Report, which will be submitted to the WCO Council for approval.

(d) Treatment applicable to a situation in which the price depends on the own trademark of the buyer: Submitted by Uruguay.

(Docs. VT1262Ea and VT1271Ea)

Background

98. This question refers to the determination of the Customs value of an imported product bearing the importer's own trademark when, at the same time, the same product with another trademark was presented for importation at a different price. The question was introduced at the 47th Session.
99. At the 48th Session, the Technical Committee agreed that Article 1 of the Agreement would be applicable and invited the Delegate of Uruguay to draft an Advisory Opinion for examination by the Technical Committee at its 49th Session.
100. During the 49th Session, the delegates started the examination of the draft Advisory Opinion, including the title. The written proposal of Japan, as set out in Doc. VT1213E1a, which was set as a basis on which to draft the first paragraph of the draft instrument, was modified following drafting proposals made by the delegates during the examination. Particular attention was given in the proposed text to the way the trademark was provided to the seller.
101. In the intersession prior to the 50th Session, Uruguay updated the draft advisory opinion, as set out in the annex to Doc. VT1230Ea, taking into consideration the comments made at the 49th Session. China submitted its written observations thereon which were reproduced in the annex to Doc. VT1243Ea.
102. At the 50th/51st Sessions the Technical Committee agreed with the title and continued the examination of the draft text of the advisory opinion taking into account the written comments made thereon by Members. There was no consensus on the last sentence of paragraph 5 and paragraph 7 of the improved clean text set out in the Annex to the Doc. VT1262Ea, so these were put between square brackets for consideration by the Technical Committee at its 52nd Session.
103. During the ensuing intersession, in its written comments reproduced in Annex I to Doc. VT1271Ea, Uruguay supported the draft Advisory Opinion set out in Annex I to Doc. VT1262. but proposed to remove paragraph 7 as it could create confusion in the mind of users of this proposed instrument in the future.

Summary of discussion

104. During the discussion phase delegates examined the part of paragraphs 5 and 7 placed in between square brackets in doc. VT1262Ea. Several delegates submitted their comments on these two parts to help in finalising the draft instrument while others made editorial suggestions on its form.
105. During the virtual phase, the Technical Committee continued with a line by line examination of the clean new version of the draft instrument. After making a few amendments to the text, the Technical Committee agreed by consensus to the amended text, reproduced in Annex E to this document.
106. The Technical Committee adopted a new instrument, Advisory Opinion 24.1, as set out in Annex E, which will be submitted to the WCO Council for approval.

Conclusion

107. The Technical Committee adopted a new instrument, Advisory Opinion 24.1, as set out in Annex E, which will be submitted to the WCO Council for approval.

(e) Valuation treatment of charges paid related to an Inventory Protection Programme - Request by Mauritius

Docs. VT1263Ea and VT1272Ea

Background

108. Mauritius submitted this question to the Technical Committee, which agreed to examine it as a Specific Technical Question at its 49th Session. This question related to ancillary charges, for which a second invoice had been issued by the supplier to the buyer for the importation of the goods, but which were not included in the Customs value of those goods at the time of Customs clearance. The initial text concerning the facts was set out in the Annex to Doc. VT1206E1a.
109. At the 49th Session, delegates had expressed the wish to have certain clarifications concerning the facts of the case at issue that they found very interesting. Because there was no Mauritian delegation present at that session of the Technical Committee, the concerns of the delegates could not be met.
110. In the course of the 50th/51st Sessions of the Technical Committee, discussions had focused on whether the ancillary costs related to the imported goods and whether their payment constituted a condition of sale of the goods. In order to decide on these two aspects, the delegates requested Mauritius to provide further information on the facts, for example by consulting the contracts of sale and distribution.
111. The Mauritian Administration stated that it did not have any further information on the matter. However, it considered that these ancillary charges, incurred as part of an Inventory Protection Programme, which the buyer was obliged to pay when it had opted to join the programme, should be added to the Customs value of the imported goods. In this way, it hoped to be assured that charges forming an integral part of the price actually paid or payable for the imported goods did not by this means avoid the duties and charges payable on them.
112. In response to Doc. VT1263Ea, during the intersession, Bosnia and Herzegovina and Uruguay had sent in written comments, which were set out in Annexes I and II to Doc. VT1272Ea.

Summary of discussion

113. During the stage of online exchanges on the CLiKC! platform, discussions had continued with a view to addressing the lack of clarity as to whether the charges at issue were mandatory or optional. In this connection, Uruguay proposed a draft Advisory Opinion to the Technical Committee. Uruguay's proposal received the support of Mexico, Guatemala and Bosnia and Herzegovina, which all wished to see progress in the discussion of this interesting question in order to reach a consensus and in the longer term possibly to adopt an instrument.
114. China commented about the content of Docs. VT1263Ea and VT1272Ea regarding the two fundamental questions in this case, namely whether the ancillary charges were related to the goods to be valued and whether their payment constituted a condition of sale of the imported goods. China was of the view that the first fundamental question should be "whether the

ancillary charges were paid for the goods to be valued” instead of “whether the ancillary charges were related to the goods to be valued”. Through an in-depth analysis of the facts, China considered that the charges under the savings programme and the club charges were not paid for the imported goods.

115. The second concern was whether payment of the charges constituted a condition of sale of the imported goods. As regards this concern, China said that it had not received an answer to the question it had raised during the preceding session of the Technical Committee as to whether the importer could buy the imported goods at the same price without paying the ancillary charges. However, from an analysis of the facts of the matter submitted by Mauritius, China had reached the conclusion that the charges paid under the savings programme and the club charges were not a condition of sale of the imported goods. As regards the currency surcharge, China regretted that it was unable to decide on these charges, given certain contradictions that it had noted in the facts.
116. Concerning the draft Advisory Opinion proposed by Uruguay, China noted that the facts were clearly set out and did not have the contradictions mentioned above. However, it pointed out major differences compared with the original version and wondered whether Mauritius would agree to the amendments introduced by Uruguay. As regards the analysis section of the draft Advisory Opinion, it suggested a number of amendments, including reversing the order of paragraphs 4 and 5.
117. Mauritius thanked the Secretariat for its support and the delegates who had contributed to the online discussions. It informed the Technical Committee that the importer stated that there was no contract of sale, but simply an agreement setting out and governing the distribution rights of the products. There was no mention in this agreement of the ancillary charges. However, Mauritius maintained that the charges under the savings programme and the club charges were related to the imported goods, as they were paid per unit of goods imported. Similarly, the payments made could be regarded as mandatory since the amounts paid were not refunded even if the purchasing targets were not met. Mauritius therefore considered that these charges formed part of the price actually paid or payable for the imported goods. The same applied to the currency surcharge costs, for which there was a letter from the supplier stating that they applied to all importers. While thanking Uruguay for having proposed a draft Advisory Opinion, Mauritius hoped that the Technical Committee would continue the discussions on the basis of the initial text.
118. The view of the International Chamber of Commerce (ICC) on this question of great importance to the private sector was drawn from Advisory Opinion 4.17. The ICC considered that the ancillary charges did not relate to the imported goods but were amounts paid in order to benefit from specific rights. These were the right to make savings on future purchases depending on bulk purchases and the right to participate in the incentive programme as regards the club charges, or the right to protect oneself from exchange rates, known as a “hedging strategy”.
119. In response to the clarifications provided by Mauritius concerning the mandatory nature of the currency surcharge costs, the ICC considered that these could be an optional charge in which all the distributors had chosen to participate. Moreover, and contrary to the opinion of Mauritius, the ICC affirmed that this payment was generally regarded as being in the interest of the buyer for the right to lock in the exchange rate, as distinct from a payment for the imported goods.
120. In conclusion, the ICC pointed out that, even if the charges were mandatory, they were subject to duty only if they were part of the price actually paid or payable under Article 1 of the Agreement. Moreover, they had to relate to the imported goods, as mentioned in the

Interpretative Notes to Article 1, paragraphs 1 and 4. In other words, according to the ICC, besides payment of the charges being related to the imported goods and being a condition of the sale, it would also be necessary that it be made "for the imported goods" in order to form part of the price actually paid or payable.

121. The European Union continued to consider that the currency surcharge invoiced to all the distributors as a mandatory payment was part of the price actually paid or payable for the imported goods under Article 1 of the Agreement. But, as far as the Inventory Protection Programme (IPP) and the club charges were concerned, the European Union stated that it had not yet reached a final opinion. It seemed to the European Union that it conflicted with the optional nature of the charges that they were not refundable if the buyer did not meet the criteria to benefit from the two programmes (IPP and club charges).
122. During the phase of virtual discussion on KUDO, the Chairperson of the Technical Committee gave a brief overview of the question and orientated the delegates as to the stage the discussions had reached. She then gave the floor to Mauritius so that it could let the Technical Committee know whether it was in agreement to continue the discussions on the basis of the draft Advisory Opinion proposed by Uruguay.
123. In the light of the additional information obtained on the currency surcharge, the Mauritian Administration suggested an amendment to the title of the question at issue. China gave its support to the change in the title, in relation to which it had, moreover, expressed reservations during the preceding session on the modification that had been made. Canada commented on the observations of the ICC and suggested that, rather than Advisory Opinion 4.17, Commentary 20.1, particularly paragraphs 7 and 9 thereof, which provide a practical interpretation of paragraph 2 of the Note to Article 1, may provide the most useful rationale to be applied to the analysis of the facts of this present case. Several delegations expressed their wish, via the "chat" function on KUDO, to continue the discussions on this question and to arrive at an instrument. Mauritius was in agreement to work with the Secretariat and Uruguay to provide the Technical Committee with a draft working document at its next session.

Conclusion

124. The question was kept on the Agenda for the 53rd Session of the Technical Committee.
 - (f) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods – Request by North Macedonia
Docs. VT1264Ea and VT1273Ea

Background

125. The Chairperson introduced this question from North Macedonia concerning the valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods. The essence of the question was set out in the Annex to Doc. VT1207E1a, prepared for the 49th Session.
126. In the case submitted by North Macedonia, the imported goods were carried by train. The question is thus how to treat the transportation costs of returning the empty railway carriages in which the imported goods were delivered.

127. At the 50th/51st Sessions of the Technical Committee, some Members repeated their request for further information about the facts of this question under consideration, in particular the terms relating to the return of empty railway carriages in the sales contract or, possibly, the freight contract. The Secretariat did not receive a reply from North Macedonia, and no delegate from that country was able to take part in the Technical Committee's 50th/51st Sessions to answer Members' questions. Consequently, the Technical Committee had not been able to move its examination of this question forward.
128. Some Members felt that this case was of interest in regard to the application of Article 8.2 of the Agreement, and the Technical Committee thus agreed to keep this question on the Agenda for its 52nd Session.
129. During the intersession, the Secretariat published Doc. VT1264Ea, in which it again invited North Macedonia to send it the further information Members had requested.
130. In response to the above document, the Customs Administrations of Bosnia and Herzegovina, Japan and Uruguay submitted their comments to the Secretariat in writing, and these were set out in the Annexes to working document VT1264Ea. They pointed out that the additional information requested was necessary, as it would clarify whether the question submitted by North Macedonia came under the provisions on price actually paid or payable under Article 1 of the Agreement, under the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. The Customs Administration of Uruguay proposed a draft instrument on this question by North Macedonia. This draft instrument was set out in the File Repository on the CLiKC! Platform. The Administrations of China and the United States thought that this draft instrument proposed by Uruguay was too much of a deviation from the question submitted by North Macedonia.

Summary of discussion

131. During the period prior to the virtual session, North Macedonia shared its observations and views on the matter on the CLiKC! platform. It told the Technical Committee that no sales contract had been found, only invoices issued to the importer of the goods in North Macedonia. The Delegate supposed that, as there was not much traffic in the rail sector, and for financial reasons, the seller of the goods had insisted that the importer should bear the cost of returning the empty carriages. He also told the Technical Committee that his Customs Administration thought that this cost should not be included in the Customs value because it was unrelated to the delivery of the goods.
132. The Customs Administrations of Bosnia and Herzegovina, China, the United States, Guatemala, Mexico and Uruguay also shared their observations on the same platform. They all agreed that the question under consideration should be discussed further, with a view to adopting a Technical Committee instrument that would provide valuable insights for Customs officials and the business world generally.
133. During the discussions held as part of the 52nd Session, North Macedonia again outlined the views it had shared on the CLiKC! platform as set out above.
134. The Delegate of Canada said that the transportation costs and charges named in Article 8.2 of the Agreement were those incurred up to the port or place of importation. In addition, paragraph 3 (b) of the Note to Article 1 states that the Customs value shall not include the cost of transport after importation. Thus, the costs of returning empty carriages, borne by the buyer after importation, should not be included in the Customs value. The United States and Chinese Taipei agreed with Canada. Chinese Taipei added that the sales contract should be

looked at to see if the costs and charges concerned were paid by the buyer to the seller as a condition of the sale. This would determine whether they were part of the price actually paid or payable.

135. The Delegate of China presented a similar case in her Administration's valuation practice, according to which payment for the return of empty tanks to the place of exportation was made a condition of the sale of the imported goods in the sales contract and constituted part of the price actually paid or payable for imported goods. She reiterated the previous comments submitted via the platform concerning three technical issues that needed to be examined.
136. Delegates agreed to continue their examination of this question from North Macedonia, taking account of the comments made by Canada. They repeated their request for further information on the terms of the sales contract concerning the return of empty carriages.
137. North Macedonia promised to provide the further information requested by Members at a later date.

Conclusion

138. At the Chairperson's request, the Technical Committee agreed to keep this question on its Agenda for further discussion at its 53rd Session.

Agenda Item VII: QUESTIONS RAISED DURING THE INTERSESSION

139. The Chairperson of the Technical Committee informed delegates that no new questions had been received by the Secretariat during the period leading up to the 52nd Session. She took the opportunity to invite Members to submit questions, as it was important for the Technical Committee to have new questions to examine. She then brought the discussions under this Agenda item to a close.

Agenda Item VIII: OTHER BUSINESS

140. The Chairperson informed delegates that there were no questions to be examined under this Agenda item. Also, she recalled that during the adoption of the Agenda no delegates had said they wished to raise any additional questions under this item. Consequently, she brought the discussions under this Agenda item to a close.

Agenda Item IX: PROGRAMME OF FUTURE WORK

141. The Chairperson invited the Secretariat to present the programme of future work. The Deputy Director, Tariff and Trade Affairs informed the Technical Committee, on behalf of the Director, that the following items would be included on the Agenda for the 53rd Session:

- I. Adoption of Agenda/Suggested programme*
- II. Adoption of the Technical Committee's 52nd Session Report*
- III. Reports on intersessional developments*

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

IV. Technical assistance, capacity building and current issues

- *Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members*
- *Progress report on Members' application of the WTO Customs Valuation Agreement*
- *Revenue Package update*

V. Specific technical questions

- (a) *Royalties and licence fees under Article 8.1 (c) of the Agreement: Request by Uruguay*
- (b) *Valuation treatment of charges paid related to an Inventory Protection Programme: Request by Mauritius*
- (c) *Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods: Request by North Macedonia*

VI. Questions raised during the intersession (if any)

VII. Other business

VIII. Elections

IX. Programme of future work

X. Dates of next meeting

Agenda Item X: DATES OF NEXT MEETING

142. The Deputy Director announced that the 53rd Session of the Technical Committee on Customs Valuation was scheduled to take place from 18 to 20 October 2021 as a virtual meeting. She added that the planned dates might be subject to change if there were positive developments with the health situation leading to the recommencement of in-person meetings. However, at this stage it was expected that the meeting would be virtual.

CLOSING REMARKS BY THE DIRECTOR

143. The Director thanked the Chairperson and all the delegates for their kind words following his election as head of the Tariff and Trade Affairs Directorate. He said he was sure he could count on everyone's support to perform his duties as effectively as possible. He had very much enjoyed taking part in this meeting and had followed the discussions with great interest. He hoped there would be progress in the valuation field in the future, particularly through capacity building in national administrations. He recalled that Customs valuation was very important as it played a key role in the collection of revenue by administrations.
144. The Director congratulated the Technical Committee on the adoption of two new instruments, and thanked all the delegates for their contributions and their very lively participation. He commended the interest and dynamism shown by delegates in the exchanges held during and after the discussion phase, to reconcile positions and reach consensus.

145. He noted that this virtual meeting had been run on a tight timetable, but, thanks to the delegates' efforts, all the items tabled had been dealt with in the time available, and two new instruments - namely Advisory Opinions 24.1 and 4.18 - had been adopted. They would be added to the 95 existing instruments assisting Members with the uniform interpretation and application of the WTO Valuation Agreement.
146. The Director specifically thanked the Technical Committee's Chairperson, Ms. Santa Marianela MARTE, for her excellent work, especially during the consultation phase where she had played a key role in resolving differences.
147. He also expressed his gratitude to all the theme meeting speakers and moderators for their valuable contributions. He hoped the information that delegates had obtained from the theme meeting would be put to good use by their administrations when dealing with certain valuation questions.
148. The Director pointed out that there would be three specific technical questions on the Agenda for the next session. He invited delegates to submit their comments and observations in good time, so that the Technical Committee could examine these technical questions efficiently and effectively. He encouraged Members to submit further technical questions to the Technical Committee for examination, with a view to the adoption of more instruments and the provision of guidance to the Members. He gave Members his assurance that the Secretariat would do its best to assist the Technical Committee in this regard, and said he looked forward to seeing them all in Brussels in the future, pandemic permitting.
149. The Director concluded by thanking all the staff of the Secretariat, his colleagues in the Valuation Sub-Directorate, the translators, the interpreters and the technicians for their support.

CLOSING REMARKS BY THE CHAIRPERSON

150. The Technical Committee Chairperson congratulated and thanked all the delegates for their support, and for the excellent work accomplished during the session. Good results had been achieved thanks to their valuable contributions to the discussions, which had been very interesting and of high quality.
151. She thanked the Secretariat for its constant and invaluable support in pursuit of the achievement of the Technical Committee's objectives, not forgetting the interpreters whose assistance made it possible to break through the language barrier, enabling the participants to understand each other and communicate effectively. She also conveyed her thanks to the technical support staff, who had been able to meet the technological challenges in order to provide the best possible conditions for the conduct of this virtual session.
152. She remarked that this had been her first meeting as Chairperson of the Technical Committee, and she wanted to thank all the delegates for their patience and support.
153. Turning to the theme meeting, she said it had been an enriching experience and an opportunity for participants to learn from each other. She expressed her thanks to the theme meeting moderators.

154. She then declared the meeting closed and said she looked forward to seeing the delegates at the next session, which hopefully could take place in-person if the pandemic situation allowed.

S. M. MARTE
Chairperson.

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(VT/52/ May2021)

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Annex B to Doc. VT1274Ec
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**REPORT BY THE WTO
TO THE 52ND SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION
5 APRIL TO 19 MAY 2021
(BLENDED FORMAT)**

The WTO last reported to the TCCV at its 50th/51st Sessions in October 2020. On 19 October 2020, the Committee on Customs Valuation (Committee) held a formal meeting in virtual mode.

Notifications

The Committee reviews four different types of notifications, which include: Members' laws and regulations; 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 Bearing Software for Data Processing Equipment". The status of notifications regarding Members' customs legislation is systematically compiled in a report, the most recent version being document G/VAL/W/232/Rev.12.

Since the WTO report to the 50th/51st Sessions of the TCCV, four Members (Mongolia, Saint Kitts and Nevis, Tonga, and the United Kingdom) have provided notifications regarding their customs legislation, and three Members have notified their responses to the Checklist of Issues (Israel, Namibia, and the United Kingdom). At the October 2020 meeting of the Committee, the national legislation of 24 Members was under review. The Committee is awaiting responses from a number of Members in connection with the review of their legislation.

As always, we wish to acknowledge the positive contribution of Members of the TCCV in encouraging the submission of legislation and responses to the Checklist of Issues. The Committee continues to appreciate this assistance in encouraging the submission of these notifications as well as the responses to questions raised by Members before the Committee in relation to notified legislation.

25th Anniversary of the Agreement on Customs Valuation

On 17 November 2020, a webinar was held commemorating the 25th Anniversary of the Customs Valuation Agreement. The webinar was comprised of two sessions and featured WTO members and other customs experts presenting their experiences and perspectives on the Agreement – the first session focused on various historical experiences with aspects of the Agreement, and the second session focused on certain perspectives regarding the Agreement going forward. Each session was followed by reactions and discussion among participants.

Technical assistance and training

The WTO Secretariat continues to provide support for technical assistance and training on customs valuation matters. We recently delivered modules on customs valuation at two Regional Trade Policy Courses – to Caribbean Members back in September 2020, and to Arab and Middle Eastern Members in January 2021. Currently, the Secretariat is preparing an introductory e-learning course on core features of the Customs Valuation Agreement.

Advisory Opinion 4.18

**ROYALTIES AND LICENCE FEES
UNDER ARTICLE 8.1 (c) OF THE AGREEMENT**

1. Importer/buyer/licensee B of country of importation I enters into a licence agreement with supplier/seller/licensor S of country of exportation X for the use of a patent. As part of this arrangement, the parties agree that:
 - the royalty payable by B to S for the commercial use of the patent licensed in the agreement will be calculated by applying a rate of five percent (5%) of the net sale price of the patented goods in the country of importation;
 - in addition to the royalty payment, B must pay the royalty income tax on behalf of S to the Tax Authority in the country of importation in accordance with the domestic tax rules;
 - the royalty payment must be made without any deduction.

Accordingly, the royalty payment of five per cent (5 %) agreed between licensee B and licensor S is a tax-exclusive royalty, otherwise known as a net royalty. In other words, licensee B must pay both the royalty payment of five per cent (5 %) to licensor S, and the royalty income tax obligation of S to the Tax Authority.

Subsequently, S and B enter into a contract for the international sale of product P at a price of one thousand (1000) currency units. Under the contract, the patent has been incorporated in product P, such that the corresponding royalty may be considered to be related to the goods. In addition, the price does not include the royalty, which is paid as a condition of sale of the goods. Accordingly, all the requirements provided for in Article 8.1 (c) of the Agreement are met.

Given that the net sale price of product P in country I is two thousand (2000) currency units, the net royalty which B owes S for use of the patent is one hundred (100) currency units.

In accordance with the domestic tax rules in force in the country of importation I, the income derived from the royalty payment is subject to income tax, which is referred to as a "non-resident income tax". The income tax amount is calculated by applying a nominal rate of ten percent (10%) of the total royalty income. The taxpayer is licensor S, and licensee B is the withholding agent who pays the income tax on behalf of licensor S under a requirement to withhold tax at source. The tax base for calculating the royalty income tax is the total royalty income generated by licensor S in the country of importation, which is known as gross royalty inclusive of income tax.

Therefore, the royalty income subject to income tax shall be the sum of the net royalty received by licensor S and the royalty income tax paid to the Tax Authority by licensee B; with the royalty income tax as part of the licensor's gross royalty income. According to the calculation method established by the domestic tax rules: the withholding royalty income tax = net royalty / (1-income tax rate %) × income tax rate%. Based on the information above, the royalty income tax = $100 / (1-10\%) \times 10\% \approx 11.11$ currency units.

Accordingly, B pays out a total of one thousand one hundred and eleven and eleven-hundredths (1111.11) currency units: one thousand (1000) currency units corresponding to the price of product P, one hundred (100) currency units for the net royalty remitted to S, and eleven and eleven-hundredths (11.11) currency units for the income tax payment remitted to the Tax Authority. However, S receives only one thousand and one hundred (1100) currency units,

including one thousand (1000) currency units for product P, and one hundred (100) currency units for the net royalty.

The issue brought before the Technical Committee is whether 11.11 currency units of income tax paid by buyer/licensee B is part of the Customs value for the imported goods under Article 8.1(c).

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

Based on the facts, the royalty fees (paid by buyer/licensee B under the licence agreement) are related to the imported goods, have been paid as a condition of sale of the imported goods and have not been included in the price actually paid or payable. Therefore, the royalty payment should be added to the price actually paid or payable under Article 8.1 (c) of the Agreement.

In accordance with the domestic tax rules in force in country of importation I, the income derived from the royalty payment is subject to income tax, with the taxpayer being the licensor and the licensee being the withholding agent. Additionally, the licence agreement also requires B to pay the income tax on behalf of S to the Tax Authority and the net royalty payment should be made without any deduction. As a result, buyer/licensee B pays 11.11 currency units to the Tax Authority together with 100 currency units to S, the sum of which form the licensee's gross royalty payment.

Therefore, in satisfying its gross royalty obligation, inclusive of income tax, the buyer/licensee B makes two payments for the commercial use of the patent. The first is in the amount of 100 currency units for the net royalty calculated by applying the fixed rate of the net sale price of the patented goods as set out in the licence agreement. The second is in the amount of 11.11 currency units for the withholding royalty income tax. Both payments are made for the right to use the patent under the licence agreement. The 11.11 currency units are paid by the licensee to the Tax Authority on behalf of the licensor, and this royalty income tax is considered as part of the licensor's royalty income for tax purposes. Consequently, as the 11.11 currency units form part of the licensor's gross royalty income, they likewise form part of the licensee's gross royalty payment for Customs valuation purposes.

Article 8.1 (c) of the Agreement provides that, in determining the Customs value, there shall be added to the price actually paid or payable royalties and licence fees "that the buyer must pay, either directly or indirectly". Given that all the requirements provided for in Article 8.1 (c) of the Agreement are met in this case, the entire gross royalty payment, inclusive of income tax, totaling 111.11 currency units should be added to the Customs value of the imported goods.

Similar to the conclusion in paragraph 12 of Advisory Opinion 4.16, which addresses a gross royalty payment inclusive of income tax, the solution proposed in this case does not involve including in the Customs value of the goods the amount of a tax of the type referred to in Paragraph 3 (c) of the Interpretative Note to Article 1, i.e. duties and taxes of the country of importation, but rather the total amount of royalty payments inclusive of income tax agreed between the licensor and the licensee.

According to Article 8.1 (c) of the Agreement, the 11.11 currency units paid by the buyer/licensee to the Tax Authority on behalf of licensor should be regarded as part of the royalty payment, and thus the total gross payment of royalty inclusive of income tax – in the amount of 111.11 currency units – should be added to the Customs value. Therefore, the Customs value for the imported goods in this case is 1111.11 currency units.

Advisory Opinion 24.1

**VALUATION TREATMENT OF IMPORTED GOODS BEARING
THE BUYER'S OWN TRADEMARK**

1. The question was raised whether a price for imported goods bearing the buyer's own trademark can be accepted for the purposes of applying Article 1 of the Agreement in a situation where:

(a) The trademark is owned by the buyer, and no royalty or licence fee has been paid to another entity for its use.

(b) The trademark was provided free of charge by the buyer in the form of an image sent to the seller, e.g. electronically via the Internet, so that it might then be used in the production of the goods being imported.

(c) The cost of reproducing the trademark's image or logo on the imported goods is included in the price actually paid or payable to the seller.

(d) The price of goods bearing the buyer's trademark is different from the price of the same goods bearing the seller's trademark when they are sold by the same seller to the same buyer or to other buyers from the same country of importation, and which have also been:

- i. produced in the same country;
- ii. exported at or about the same time; and
- iii. sold at the same commercial level and in the same quantities.

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2. The Technical Committee on Customs Valuation considered this issue and reached the conclusion that the mere fact that a price is different to the prices of goods which are apparently the same but have different trademarks should not be grounds for its rejection under Article 1, albeit without prejudice to the provisions in Article 17 of the Agreement.

The General Introductory Commentary of the Agreement stipulates that the basis for valuation of goods for Customs purposes should be the transaction value of the goods being valued, and that the Customs value should be based on simple and equitable criteria consistent with commercial practices. Therefore, each importation of goods should be examined on its own merits and characteristics.

Based on the facts, there is no indication that special circumstances exist as set out in subparagraphs (a) to (d) of Article 1 of the Agreement that would prevent the use of transaction value. In particular, the provision in Article 1.1(b) of the Agreement is met; and it therefore cannot be construed that the existence of different trademarks on goods which are apparently the same constitutes some condition or consideration for which a value cannot be determined with respect to the goods being imported.

Additionally, although the definition of "similar goods" under Article 15.2(b) of the Agreement applies only in instances where the transaction value method is rejected, this definition does provide insights into the conclusion why the mere fact that a price is different between two similar goods bearing different trademarks is not a reason for rejecting the

transaction value. Namely, two of the factors to be considered in determining whether two goods are similar include their reputation and the existence of a trademark. These factors demonstrate how the goods may not be similar and could explain a difference in the prices in the present case.

Furthermore, Article 8.1(c) of the Agreement would not be applicable, as the trademark is owned by the buyer, and no royalty or licence fee has to be paid to another entity for its use.

4. DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE 53rd SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES
ORGANIZACIÓN MUNDIAL DE ADUANAS

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1292Eb

-
53rd Session
-

O. Eng.

Brussels, 20 October 2021.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON
THE 53rd SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. The Chairperson, Ms. Santa Marianela MARTE (Dominican Republic), warmly welcomed all delegates, in particular those in attendance for the first time, to the virtual phase of the 53rd Session of the Technical Committee on Customs Valuation, which was again held in a blended format from 20 September to 20 October 2021.
2. The Director of the Tariff and Trade Affairs Directorate, Mr. Konstantinos KAIPOULOS joined the Chairperson in welcoming the delegates and noted the high level of registration for this Session - 93 Member and observer countries including 2 international organizations with 265 delegates.
3. Highlighting the productive work of the Technical Committee in adopting 2 Advisory Opinions at the previous session, he observed that the online discussion and consultation phases had been very useful in the examination of the 3 Specific Technical Questions and in the consideration of the 3 new questions which were submitted during the intersession.
4. The Director thanked the Chairperson for her leadership and open mindedness, as well as the delegate's flexibility and contribution during the online discussion and consultation phases. He assured the Technical Committee of the support of the WCO Secretariat in its work.

5. Regarding the future session format, the Director informed the delegates about the discussion held at the Secretariat to possibly organize hybrid sessions, where delegates could come into the sessions in Brussels at the WCO headquarter or attend online. Delegates will be updated with any related decision.
6. He wished the delegates a productive and fruitful session and announced the arrival of a new Professional Associate, Mr. Edem Leonard Cosmos from Ghana, in the Valuation Sub-Directorate.

Agenda Item I: **ADOPTION OF AGENDA**

(a) Provisional Agenda

Doc. VT1275Ec

7. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1275Ec, published on the TCCV Meeting page and on the 53rd TCCV Session Forum Group on the CLiKC! Platform. She noted that no written comments were made during the discussion phase.
8. Delegates were invited to raise any point that they wished to discuss under item VII of the Agenda - Other Business. No further comments or objections were made during the virtual phase.

Conclusion

9. The Technical Committee adopted the Agenda as proposed in Doc. VT1275Ec without amendment.

(b) Suggested programme

Doc. VT1276Ea

10. The Chairperson referred to Doc. VT1276Ea, which set out the suggested programme of work for the 53rd Session prepared by the Secretariat. She noted that three questions were received during the intersession for consideration by the Technical Committee.
11. No comment was made on the suggested programme as published in Doc. VT1276Ea neither during the discussion phase nor during the virtual phase through the KUDO platform.

Conclusion

12. The Technical Committee approved the suggested programme as set out in Doc. VT1276Ea without amendment.

Agenda Item II :

**ADOPTION OF THE TECHNICAL COMMITTEE'S
52nd SESSION REPORT**

Doc. VT1274Ec

13. The Chairperson reminded the delegates of the reporting procedure approved by the TCCV at its 42nd Session.
14. During the intersession preceding the 53rd Session, comments received from Canada, China, Japan, the European Union and Uruguay on the "a" version of the draft Report were incorporated in the "b" version of the draft Report and published. The comments from Members on the draft Report are highlighted in red in working document VT1274Eb.
15. Japan and Uruguay commented on paragraph 24 of the "b" version of the draft Report. After these comments were taken into account, a revised "b" version was published. Following a consultation initiated by the Chairperson, the two delegations agreed to revert to the initial version of the paragraph set out in Doc. VT1274Ea. During the virtual meeting, a comment was made by China on paragraph 83 of the English version of the draft Report.
16. The "b" version of the draft Report was edited into a "c" version which was published on the WCO Members' website.

Conclusion

17. After taking into account the comments made by China, the Technical Committee approved the Report of the 52nd Session of the Technical Committee.

Agenda Item III

REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director's Report

Doc. VT1277Ea

18. The Director's Report, contained in Doc. VT1277Ea, was published on the website and CLiKCI!. The report refers to the "Policy Commission and Council Sessions" and includes "the Revenue Package", "the WTO Committee on Customs Valuation", "Technical assistance and capacity building activities", and "Other activities and issues".

Policy Commission and Council Sessions

19. The Policy Commission held its 84th Session from Monday 21 to Wednesday 23 June 2021 under the chairmanship of Mr. Ahmed AL KHALIFA (Bahrain) followed by the 138th Session of the Council which was held from 24 to 26 June 2021. Due to COVID-19 pandemic, both Sessions were held in a virtual online format.
20. In his report, the Director updated the Policy Commission and the Council about the following:
- (i) The adoption of 2 new instruments (Advisory Opinion 4.18 on "Royalties and license fees" and Advisory Opinion 24.1 on the "Valuation treatment of imported goods bearing the buyer's own trademark") by the TCCV at its 52nd Session.
 - (ii) The instruments and tools available online when the integrated training program was developed in adaptation to the e-environment / digital environment. The COVID 19 Action Plan became a priority for the WCO and as such training activities were increasingly technology-based.
 - (iii) The launch of an important new tool, WCO Trade Tools, reachable on the following link: (<https://www.wcotradetools.org/>). He explained that this Tool brings together Origin, Valuation and HS. This Tool facilitates research activities by Members and interested researchers. The Director encouraged delegates to visit the website.
21. The Council endorsed the Report of the 49th Session of the Technical Committee on Customs Valuation and took note of its draft report of the 50th/51st Sessions.

Revenue Package

22. The Director highlighted the importance of the tools and instruments developed under the Revenue Package to Customs Administrations in the collection of revenue. He announced the development of a new phase V of the Revenue Package for the years 2022- 2024 after the completion of the phase IV in June 2021.

WTO Committee on Customs Valuation

23. The World Trade Organization (WTO) Committee on Customs Valuation (CCV) held its last meeting on 27 May 2021. A report provided by the WTO Secretariat on the work of the CCV has been posted on CLiKC!.

Technical Assistance/Capacity Building Activities

24. Amidst the challenges posed by the COVID-19 pandemic, the Secretariat has been making efforts to adapt its capacity building delivery to Members' needs under the 'new normal' by continuing to provide technical assistance through virtual platforms such as GoToWebinar, GoToMeeting and CLiKC!. Report on the technical assistance/capacity building activities undertaken by the Secretariat has been reported in Doc. VT1284E and covered under item IV (a) of the Agenda.

Other activities and issues

25. The Director invited the delegates to review the **contact point list** for exchanges of information on Customs Valuation and to advise the Secretariat of any changes.
26. In response to a comment from the Delegate of China regarding any existing programme to further innovate and keep the instruments and tools relevant to ensure effective and efficient support to Members, the Director explained that related work is under way and includes the evaluation of current tools and instruments and the examination of new approaches and of proposals for new projects to respond to new challenges ahead. The work has not been concluded yet and the Secretariat will update the Technical Committee on the outcome at the next Session.
27. The Delegate of Uruguay, on behalf of the Technical Committee, welcomed Mr. Cosmos, the new Professional Associate who has joined the Valuation Sub-Directorate, wishing him great success in his work ~~with new ideas and opined that it is good to have on board people with different realities.~~ Highlighting how the pandemic has led to the development of new tools ~~and to the intensive use of new technologies and virtual platforms for communication,~~ he requested that these new technological tools, ~~technologies and virtual platforms~~ to continue to be used in technical assistance and capacity building activities, and especially ~~for experts as well as for developing small countries and economies.~~ He noted that, for all Members to benefit from these tools, in turn these activities should be available in different languages ~~to benefit all Members.~~ (Uruguay)

28. The Chairperson was joined by the Delegate of Uruguay to thank the Director for his informative and comprehensive report.

Conclusion

29. Technical Committee took note of the above report.

(b) WTO Committee on Customs Valuation Report

30. The WTO Secretariat reported on the work of the Committee on Customs Valuation, which held a formal meeting in virtual mode on 27 May 2021. The report makes reference to two topics, Notifications and Technical Assistance.
31. Regarding notifications, an increase in the notification activity was observed since the last session through the contribution of Members of the TCCV. However, there are still a number of national legislations that have remained under review pending the exchange of questions and responses from Members regarding legislation.
32. With respect to technical assistance support, two Regional Trade Policy Courses were facilitated by the WTO Secretariat during this year.
33. The written report from the WTO Secretariat is appended in Annex C to the draft Report.

Conclusion

34. The Technical Committee took note of the WTO written report.

Agenda Item IV :

**TECHNICAL ASSISTANCE, CAPACITY BUILDING AND
CURRENT ISSUES**

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

Docs. VT1278Ea and VT1284Ea

Background

35. In accordance with the Technical Committee's decision, the Secretariat had monitored and communicated the technical assistance/capacity building activities scheduled or delivered by Members in order to provide useful information to all Members for planning purposes and to prevent duplication of effort.
36. Since the last session, the Japanese Administration had provided information about its technical assistance activities. This information, together with information on the technical assistance/capacity building activities undertaken by the Secretariat, was set out in Annexes I and II respectively to Doc. VT1284Ea.

Summary of discussion

37. During the virtual meeting, the Chairperson of the Technical Committee recalled that information on technical assistance/capacity building activities undertaken by the Secretariat and Members was contained in Annexes I and II to Doc. VT1284Ea. Since no observations or comments had been made regarding this item, she invited the Technical Committee to take note of the content of the information contained in Doc. VT1284Ea and its Annexes and to move on to the next item on its programme of work.

Conclusion

38. The Technical Committee thanked Japan for its ongoing support for the training of other Members and (Uruguay) took note of the Secretariat's report on technical assistance/capacity building activities.

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

Docs. VT1279Ea and VT1285Ea

Background

39. Following the decision taken by the Technical Committee on Customs Valuation, the Secretariat had been monitoring progress with the application of the WTO Customs Valuation Agreement by Members and issuing reports on the subject.

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40. Before the session, the Secretariat had published Doc. VT1279Ea, inviting Customs administrations to provide information on the progress made with regard to the application of the WTO Customs Valuation Agreement in their respective countries.
41. During the intersession, no information had been received by the Secretariat in response to the above-mentioned working document.

Conclusion

42. The Technical Committee took note of the progress report on Members' application of the WTO Customs Valuation Agreement.

(c) Revenue Package

Doc. VT1280Ea

43. The Secretariat highlighted in Doc. VT1280Ea the relevance of the Revenue Package, which was developed as a response to Members' concerns regarding declining revenue returns following WCO Council's Resolution in June 2009, in the global pandemic situation commencing in 2020. The resulting disruptions to trade and revenue collection highlighted the on-going need for robust revenue collection systems.
44. Throughout its different phases, further series of tools and materials were developed. The Action Plan for Phase IV, which was endorsed by the Policy Commission and approved by the Council in June 2019, available in the Annex to Doc. SP0678E1a, was completed in June 2021². (China)
45. During the Phase IV of the Revenue Package, in addition to capacity building activities carried out by the Secretariat, the Comparative Study on Certification of Origin was updated and a new document on Debt Management in Customs Administrations has been published. The complete report on the completion of the Revenue Package Phase IV is available in Doc. SP0736Ea.
46. All Revenue Package tools are available via the Members' website at this link:
<http://www.wcoomd.org/en/topics/key-issues/revenue-package/latest-updates-policy.aspx>

47. A proposal for a Phase V of the Revenue Package for 2022 - 2024 will be submitted by the Secretariat to the Working Group on Revenue Compliance and Fraud at its 8th Session for guidance.
48. No comments were received on the report and the Chairperson invited the Committee to take note of the report.

Conclusion

49. The Technical Committee took note of the updated report on the Revenue Package.

Agenda Item V: SPECIFIC TECHNICAL QUESTIONS

(a) Royalties and licence fees under Article 8.1 (c) of the Agreement: Request by Uruguay

Docs. VT1281Ea and VT1286Ea

Background

50. The Chairperson introduced this case that was submitted by Uruguay and accepted by the Technical Committee for discussion as a Specific Technical Question at its 46th Session. The case concerns a single royalty paid by the buyer for the use of the patented concentrate and the use of trademark on the finished product.
51. At its 50th/51st Sessions, the Technical Committee agreed that the issue of apportionment, which had been raised during discussion of this case, would be examined by the Technical Committee as a separate consideration in case that a relevant question is submitted by Members.
52. At the 52nd Session, a number of delegates proposed to amend the text of the draft Advisory Opinion with a view to adopting a new instrument, while another view was also expressed that the technical issues in this case have been addressed in Advisory Opinions 4.4 and 4.6.
53. During the intersession prior to the 53rd Session, Uruguay worked with the Secretariat and prepared an updated text which incorporated the comments and observations made by Members and observers at the 52nd Session. The text was set out in the Annex to Doc. VT1281Ea.

54. In response to working document VT1281Ea, Uruguay submitted written comments which were set out in Annex I to working document VT1286Ea. Uruguay, in its comments, suggested to reposition paragraph 6 and to make further amendments to paragraph 9.

Discussion

55. During the online discussion phase, Delegations carried out a paragraph by paragraph examination of the draft Advisory Opinion attached to Doc.VT1286a.
56. Uruguay, in response to Peru's suggestion, proposed to amend the cost structure in paragraph 3 of the draft Advisory Opinion, raising the price of the imported goods from 10 c.u.to 30 c.u. Uruguay's proposal was supported by Peru and China.
57. China and Japan opined that it is unnecessary to refer to generally accepted accounting principles in paragraph 8 and suggested to delete the relevant sentence, which was agreed by Uruguay after discussion on the CLiKC! platform.
58. During the virtual meeting phase, further amendments were made to paragraphs 1, 4, 5, 7, and 9 of the text of the draft Advisory Opinion in light of comments from Delegations. The Technical Committee then agreed by consensus on the amended text reproduced in Annex D to this document.

Conclusion

59. The Technical Committee adopted a new instrument, Advisory Opinion 4.19, which will be submitted to the WCO Council for approval.

(b) Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius

Docs. VT1282Ea and VT1287Ea

Background

60. The Chairperson presented this question, submitted by the Mauritian Administration at the 49th Session of the Technical Committee. This question relates to ancillary charges in relation to the imported goods, for which a second invoice has been issued by the supplier to the buyer ~~for the importation of the goods~~ (China), but which were not included in the

Customs value of those goods at the time of Customs clearance. The initial text concerning the facts is set out in the Annex to Doc. VT1206E1a.

61. The discussions at the following sessions focused on whether the charges in question were mandatory or optional. Mauritius sent the information at its disposal, so that the Technical Committee could decide as to whether the ancillary charges related to the imported goods and whether their payment constituted a condition of sale of the goods.
62. At its 52nd Session, the Technical Committee continued examining the technical question submitted by the Mauritian Administration on the same issue that had been discussed at the previous sessions. However, delegates drew attention to certain contradictions in the facts about the question in the initial document set out in the Annex to Doc. VT1206E1a. In order to make up for these deficiencies, Uruguay proposed a draft Advisory Opinion to serve as a basis for the discussions. The Mauritian Administration was not fully in agreement with the draft Advisory Opinion proposed by Uruguay, even though several delegates preferred it to the initial document concerning the facts of the case. Working jointly with the Secretariat, Mauritius prepared a new document for consideration by the Technical Committee at its 53rd Session. This draft Advisory Opinion is published in the Annex to Doc. VT1282Ea.
63. In order to reflect the content of the discussions to date, and for alignment with the updated facts of the case, the Secretariat has reworded the title of the question. In response to Doc. VT1282Ea, the Administrations of Japan and Uruguay submitted written comments on the draft Advisory Opinion, which are set out in Annexes I and II to Doc. VT1287Ea.

Summary of discussion

64. During the online discussion phase of this session of the Technical Committee, the Customs Administrations of the United States, China, Brazil, Uruguay, Mauritius, Chinese Taipei and Peru and the International Chamber of Commerce commented on the question at issue submitted by Mauritius. All the comments confirmed the relevance of the question and welcomed the adoption of a document that would be extremely useful to Customs and the private sector. Almost all of the contributors took the view that this question could be resolved by taking into account the provisions of paragraph 7 of Annex III and of the Interpretative Note to Article 1 of the Agreement. Indeed, the inclusion or otherwise of the ancillary charges would depend on whether they had been paid for the imported goods and whether their payment was a condition of sale of the imported goods.

65. The United States considered that, in order to establish whether a payment was “for the goods”, paragraph 4 of the Interpretative Note to Article 1 was also instructive, and the Agreement stipulated that it must be considered whether the payment related to the imported goods. China pointed out that it could not find any provision in the Agreement allowing such conclusions to be drawn. In its view, a payment for the imported goods was different from a payment relating to or connected with the imported goods, and it should be further discussed whether the former could be interpreted as the latter (China). In the view of the United States, the fact that the ancillary charges were invoiced per unit of imported goods and they were not refunded to the buyer, even if the purchasing targets were not achieved, was relevant for the purpose of analysing whether they related to or had a link with the imported goods. Moreover, the Delegate added that the charges could be included in the price actually paid or payable, even if they were invoiced separately from the price of the goods, as was the case in the example set out in Case Study 6.1.
66. As the expression “for the imported goods” was not defined precisely in the Agreement, the Chinese Delegation proposed that the Technical Committee should provide a uniform interpretation regarding the meaning and the scope of this wording. The United States supported a study of this kind on the scope of the expression “for the imported goods” under Article 1 and (USA) of paragraph 4 of the Interpretative Note to Article 1 of the Agreement, which would be likely to prove extremely useful to Customs and the private sector. Taking its relevance into account, this proposal was supported by the other delegates and could be discussed during the upcoming sessions. It should be pointed out that this was a new question, separate from the one submitted by Mauritius, and it did not affect how the latter was handled.
67. China mentioned that, during the intersession between the 50th/51st and the 52nd Sessions of the Technical Committee, it had suggested that, in order to deal with this question, it was essential to know whether or not the charges had been paid for the imported goods and whether the payment constituted a condition of sale of the imported goods. After analysing the facts pertaining to the question, China thought that the savings programme charges and the club charges were not paid for the imported goods but rather for the ~~in order to enjoy particular~~ rights of receiving free units of the imported goods or gifts or hotel packages when specific purchasing targets are met (China). Nor did these two categories of ancillary charges constitute a condition of sale of the imported goods, as the buyer could purchase the goods without paying those charges.

68. The Chinese Delegation considered that both the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement were applicable to the question submitted by Mauritius. It pointed out that the draft Advisory Opinion had analysed ~~the fact that the ancillary charges were paid for the imported goods, without examining whether the payments constituted a condition of sale of the imported goods, without examining whether the ancillary charges were paid for the imported goods (China).~~ In order to do this, it proposed that the text should be revised to take this into account. Indeed, the Chinese Delegation maintained that, if a payment was made for the imported goods, it must also be a condition of sale of the goods, and vice versa. As far as China was concerned, these were two relevant, mutually reinforcing aspects of a single question. It was supported by the other delegates, including the Delegate of Mauritius, who was in favour of amending the text of the draft Advisory Opinion.
69. The Delegate of Uruguay considered that, in order to analyse this question, the provisions of paragraph 7 of Annex III to the Agreement were sufficient. By way of illustration ~~in order to illustrate his point,~~ he thought that, for the identification of ~~certain indirect payments imposed by the seller on the buyer as a condition of sale of the goods,~~ there was no need to refer to paragraph 4 of (Uruguay) the Interpretative Note to Article 1. The Delegate of China did not share the view of Uruguay. In China's view, an indirect payment imposed by the seller on the buyer as a condition of sale of the imported goods was also a payment for the imported goods and formed part of the price actually paid or payable. On the other hand, if it is ruled out that a payment is an indirect payment, then it should indeed be analysed whether paragraph 4 to the Interpretative Note to Article 1 applies or not (in other words, whether it applies in respect of the imported goods). ~~Similarly, if a payment was not made for the imported goods directly or indirectly, that payment could not be a condition of sale of these goods.~~ (Uruguay)
70. In its comments, Brazil made a correction to the Spanish version of the draft Advisory Opinion annexed to Doc. VT1282Ea. The Delegates of Peru and Chinese Taipei agreed with the conclusions of the draft Advisory Opinion set out in the Annex to Doc. VT1282Ea. In their view, the savings programme charges and the club charges, which were not paid as a condition of sale of the imported goods, were not part of the Customs value, either under Article 1 or under Article 8 of the Agreement. On the other hand, the currency surcharge, invoiced by the seller to all the buyers, was part of the Customs value of the imported goods as a charge imposed by the seller on the buyers as a condition of sale.

71. In response to Peru's concern about the valuation treatment of the free goods under the savings programme, China considered that this was not the purpose of the question at issue and thought that a sentence could be inserted at the end of the draft Advisory Opinion to deal with this situation. For a better understanding of the facts, the Delegate of Mauritius agreed with Peru and China that it should be specified in paragraph 5 that the buyer could always buy the goods on the same terms without paying the savings programme charges and the club charges.
72. The International Chamber of Commerce (ICC) proposed an amendment to paragraph 5 of the draft Advisory Opinion. It then listed the reasons why it considered that the savings programme charges and the club charges were not part of the price actually paid or payable, either under Article 1 of the Agreement or under Article 8. As regards the currency surcharge, the ICC thought that further information was needed in order to decide on these charges.
73. The Delegate of Mauritius returned to the reasons that had led to the conclusions of the draft Advisory Opinion. It took the view, along with the other contributors, that the two conditions, namely : (1) the fact of having been paid for the imported goods, and (2) being a condition of sale of the imported goods, both needed to be met simultaneously in order for the ancillary charges to be included in the Customs value. That was not the case for the savings programme charges and the club charges, even if the manner in which they were invoiced established their link with the imported goods and they were not refunded if the purchasing targets were not achieved. Because they were optional, they were payments that were not a condition of sale of the imported goods. As for the currency surcharges, they-it should be added to the price actually paid or payable. Indeed, they-it constituted a condition of sale of the imported goods, because they-were-it was invoiced to every importer of the product and were-was also linked to the goods as they-were-it was (Canada) invoiced per unit.
74. As regards the additional information requested by the United States on Programmes I and II, Mauritius gave its assurance that it had no more information than during the previous sessions of the Technical Committee. However, it restated that : (1) the optional nature was confirmed in a communication from the seller; (2) no information was available concerning what would happen if a buyer should withdraw from Programmes I and II, as the importer was the only one for this product in the country concerned; and (3) the risk of a tactic aiming to have one part of the total price regarded as a payment for the goods and the other part as

a payment for something else, in order to remove it from the Customs value, could not be excluded.

75. During the virtual meeting, the delegates agreed on the conclusions of the draft Advisory Opinion, in that the savings programme charges and the club charges should not be included in the Customs value. On the other hand, the currency surcharges were part of the Customs value, as they were paid for the imported goods and as a condition of sale of the imported goods.
76. It was now for the Committee to determine how to continue examining this question submitted by Mauritius. Uruguay proposed the broad lines along which the new document, awaiting preparation, should be constructed, which should serve as a basis for the discussions of the Technical Committee at its next session. Mauritius agreed to work together with the Secretariat in order to amend the draft Advisory Opinion to take into account the comments made by the delegates.

Conclusion

77. The Technical Committee decided to continue its examination of this question at its next session on the basis of an amended new draft Advisory Opinion.

(c) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods :
Request by North Macedonia

Docs. VT1283Ea and VT1288Ea

Background

78. The Chairperson presented this question submitted by North Macedonia which concerns the treatment of the cost of transport relating to the return of empty railway carriages that were used to transport the imported goods.

79. The Technical Committee had agreed to examine this question, submitted by North Macedonia, as a Specific Technical Question during its 49th Session. The text concerning the facts of this technical question is set out in the Annex to working document VT1207Ea, prepared for the 49th Session. According to the facts submitted by North Macedonia, during a post-clearance audit of the accounting records of an importing company, invoices were found for international transport services, namely the return of empty carriages in which the goods in question were originally imported. Those invoices had been drawn up by the transport company that had brought the imported goods. The importer initially paid an invoice for the transport of the goods, and, following the import, it paid the same transport company for the return of the same carriages.
80. For the purpose of examining this question, several Members rightly took the view that it was necessary to clarify whether the sales contract or freight contract contained any terms on costs relating to the return of empty railway carriages and whether the payment of such costs was a condition of sale of the imported goods for valuation purposes. They underlined the need for further information, which would enable them to establish whether the question submitted by North Macedonia came under the provisions relating to the price actually paid or payable laid down in Article 1 of the Agreement, the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement.
81. In response to the Members' request for further information, North Macedonia provided the Secretariat with that information, which was set out in the Annex to working document VT1288Ea. It reiterated that the invoices for transport costs relating to the return of empty carriages had been issued by the transport company that had brought the imported goods; the importer had been charged for the cost of returning empty carriages due to economic circumstances, in this case reduced rail traffic; and no contracts were found or provided.

Summary of discussion

82. At the request of some Members who sought the opinion of the ICC on the practice described in this case submitted by North Macedonia, the ICC replied that there was, in principle, a single contract entered into with the transport company which may include a number of contract terms. The parties to the contract could still negotiate and introduce a specific term on the costs relating to the return of carriages.

83. It is clear from the discussions which took place at the 53rd Session, in which the Delegate of North Macedonia was actively involved, that no information was available to determine whether the seller required the importer to bear those costs relating to the return of the empty carriages, in which case the Technical Committee would examine whether those costs could be taken into consideration in the Customs value for the purposes of Article 1, the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement.
84. The Delegate of Uruguay asserted that no commercial logic could explain the seller's insistence that, the goods having been purchased on EXW delivery terms (at the seller's premises), the transport costs relating to the return of empty carriages that are paid to the transport company should be borne by the importer. And there was even less logic in the importer paying these costs for the return of empty carriages at the "insistence" of a third party (the seller) and not as a contractual obligation. In his view, these circumstances were not in line with commercial realities, and it seemed very likely that material information for the proper interpretation of this case was missing. (Uruguay)
85. According to the Delegate of Canada, those costs paid by the importer to the transport company for the return of empty carriages which had been used to transport the imported goods ~~could not be treated as a payment made as a condition of sale within the meaning of paragraph 7 of Annex III to the Agreement or be part of the price actually paid or payable for the imported goods~~, are, by nature, transportation costs after importation. Thereby, as per paragraph 3 (b) of the Note to Article 1, they shall not be included in the Customs value. ~~f~~Furthermore, even if those costs would be charged by the seller and included in the price actually paid or payable, those costs should not be treated as an indirect payment for the settlement of a debt owed ~~to~~ by the seller of the imported goods. He referred to Commentary 21.1 which provides an example where the actual freight paid to the carrier and included in the price actually paid or payable by the seller is deducted from the Customs value. (Canada)
86. The Delegate of the United States maintained that, in the light of the information presented by North Macedonia, those costs paid by the importer to the transport company for the return of the empty carriages could not be included in the Customs value either under the provisions of Article 1, the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. The United States inquired whether North Macedonia was interested in broadening the scope of the facts submitted as suggested by some members. ~~Consideration of that issue would be possible only if North Macedonia agreed to broaden the scope of the facts submitted.~~ (USA)

87. The Delegate of China reiterated that this question entails three sub-questions in terms of customs valuation, namely: whether “transportation cost in this case” (1) constitutes part of price actually paid or payable of imported goods under Article 1; or (2) could be considered as “the cost of transport after importation” under paragraph 3 (b) of the Interpretative Note to Article 1; or (3) falls under Article 8.2 of the Agreement in a CIF country. She indicated that, under special circumstances, the freight contract might include a term which requires the importer to pay for the return of carriages, and the imported goods might not have been transported into the importing country without paying the charges. (China)
88. In its comments to the working document VT1288Ea, the Delegate of Bosnia and Herzegovina drew the attention to Commentary 9.1 and the meaning of the term “importation”, namely the phrase “undertaken after importation”. He opined that such term and phrase should be flexibly interpreted, as it stated in paragraph 6. In that regard Bosnia and Herzegovina was of the view that the term “undertaken after importation” might be interpreted as “in country of importation”. During online discussion phase, the Delegate of China highlighted that opinion, furtherly elaborating that “the cost of transport of the imported goods to the port or place of importation” and “loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation” under Article 8.2, cannot be interpreted to cover “transportation charges relating to the return of means of transport”. (Bosnia and Herzegovina)
89. In addition, the Delegate of Bosnia and Herzegovina expressed its view and proposed to deepen the discussion with a view to adopting a Commentary which would cover several possible and similar scenarios, together with valuation treatments as to each scenario. This proposal was supported by the delegates of Uruguay and China. (Bosnia and Herzegovina)
90. 87 At the end of the discussions held during this session on the basis of the facts presented by North Macedonia, the Technical Committee was unable to give its opinion on the treatment of transportation charges relating to the return of empty carriages.

Conclusion

91. 88 At the Chairperson’s request, the Technical Committee agreed to keep this question on the Agenda for further discussion at its 54th Session.

Agenda Item VI : QUESTIONS RAISED DURING THE INTERSESSION

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

Doc. VT1289Ea

Introduction

92. 89 The Chairperson presented this new question submitted by Uruguay during the intersession prior to the 53rd Session. The facts pertaining to this question are set out in the Annex to working document VT1289Ea.
93. 90 The question deals with royalties paid by the importer ICO to the licensor ZCO for the right to use particular distinctive signs and know-how, as well as ZCO's technical assistance, in order to establish and operate the chain of P stores in the importing country. The issue to be determined is whether the royalties paid by ICO should be included in the Customs value of the imported goods bearing the P trademark which are purchased by ICO from foreign suppliers and sold in the P stores operated by ICO in the importing country. ICO, ZCO and the suppliers are wholly owned by the international economic group P and are related to each other under the terms of the Agreement.

Summary of discussion

94. 91 During the online discussion phase and the virtual meeting phase, a number of Delegations supported the proposal to examine this case as a Specific Technical Question and considered that its examination will be helpful for both the Customs and the private sector.

Conclusion

95. 92 The Technical Committee agreed to include this question on the Agenda of its 54th Session as a Specific Technical Question.

- (b) Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay

Doc. VT1290E1a

Introduction

96. 93 The Chairperson introduced this new question, submitted to the Secretariat by Uruguay for consideration by the Technical Committee. The text concerning this question is set out in the annex to working document VT1290Ea.
97. 94 According to the facts pertaining to this question, set out in the Annex to the aforementioned working document, it concerns the treatment applicable to the security costs imposed by the insurance company in view of the fact that the imported goods pose a high risk of theft during international transportation. Specifically, in addition to the initial insurance policy taken out by the importer, the insurance company stipulated that the latter must take out a “special policy”, under which the importer was required to (Uruguay) purchase an armed guard service to accompany the goods during transportation from their departure from the country of exportation to the place of importation in the country of importation.

Summary of discussion

98. 95 Some Members shared their written comments on the WCO’s CLiK! platform during the online discussion phase and the exchanges of views on this question submitted by Uruguay continued during the 53rd Session.
99. 96 The discussions that took place during these two periods were aimed primarily at obtaining greater clarity on the facts pertaining to this question. Some Members wanted to know the exact nature of the payment made by the importer to the armed guard service through a “special policy” : was it a form of insurance or a service procured under a separate contract? Did the initial contract of insurance contain clauses relating to this “special policy”? Should this payment be included in the Customs value of the imported goods under Article 8.2 (c) or not?
100. 97 Moreover, some Members stated that this payment made to the armed guard service was different from the “War Clauses” or “Strikes Clauses” cover that might be included in some contracts of insurance for imported goods.
101. 98 The Members unanimously supported the examination of this new question by the Technical Committee as a Specific Technical Question. They considered that, by means of this examination, it would be possible to study the scope of insurance under Article 8.2 (c) of the Agreement and to see whether this “special policy” fell within that scope.
102. 99 Uruguay thanked the Members who supported the examination of this question. It informed the Technical Committee that this was not an actual case but a practice that existed
- 20.

in international trade. In response to the requests for further details made by some Members, it promised to submit to the Secretariat at a later date an improved text of its question, taking into account their comments and suggestions.

Conclusion

103. 400 The Technical Committee decided to include this question as a Specific Technical Question to be examined at its next session.

(c) Accumulated discounts in e-commerce sales : Request by Uruguay

Doc. VT1291Ea

Introduction

104. 401 The Chairperson of the Technical Committee presented this new question which had been submitted to the Secretariat by Uruguay during the intersession for consideration by the Technical Committee at its 53rd Session. The text setting out the facts of this case is reproduced in the Annex to working document VT1291Ea.
105. 402 This question concerns a discount in an e-commerce transaction using an IT platform. Seller XCO grants buyer ICO a discount in the form of a voucher generated in a previous sale, providing a special code to be used for a future purchase on the same IT platform.

Summary of discussion

106. 403 During the online discussion phase on the CLiKC! platform, a number of delegations expressed their views on the question. All the delegates commended Uruguay for submitting this question which was, in their view, worthy of consideration. After commenting on the facts of the case set out in the Annex to Doc. VT1291Ea, some delegations asked for clarification, particularly with respect to the nature of the discount voucher, the conditions under which the discount vouchers are granted, the manner in which they are applied and whether all importers could access them. Uruguay responded to all of those concerns.

107. 404 During the virtual meeting, the Chairperson invited Uruguay to comment on or provide further clarification on the new question that it had submitted during the intersession. The Delegate of Uruguay thanked the various delegations for their support and pointed out that this case was more general than the previous ones and that it would be necessary to provide a document setting out all the options for considering how to establish the Customs value in each instance. He commented that it would all depend on the delegates' imagination. He trusted that this question would result in the adoption of an instrument that would provide a benchmark for the Customs administrations and the private sector generally.
108. 405 In response to the Chairperson's request for the Technical Committee's views on this question, all those taking part in the meeting expressed their unanimous support for it and sought to examine it in future work.

Conclusion

109. 406 The Technical Committee decided to include this question as a Specific Technical Question to be examined at its next session.

Agenda Item VII: OTHER BUSINESS

Presentation by the ICC – Commercial practices regarding transport costs

Background

110. 407 During the intersession, the ICC offered to make a presentation on commercial practices regarding transport costs, providing background information to facilitate the discussion of the question submitted by North Macedonia on "Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods".

Presentation by the ICC

111. 408 The Observer from the ICC made an introduction of a number of challenges faced by the shipping industry in the last 18 months. These unprecedented challenges had resulted in the increase of freight costs and new charges imposed by shipping companies, which might fall within the scope of Customs value under Article 8.2 of the Agreement.
112. 409 Regarding freight charges, the observer noted that various charges could be incurred, and that in some cases it could be difficult to identify the nature of these charges. He observed that the commercial practice of most companies is to declare all charges related
- 22.

directly to the international movement of the imported goods. He added that ancillary costs that not related to the specific inbound movement are typically not treated as a part of the purchase price, therefore are not included in the declared Customs value.

Discussion

113. 440 In response to questions from delegates regarding whether the freight arrangement in the North Macedonia case is normal in commercial practice, the observer from the ICC stated that there is no “normal” arrangement or industrial standards, and the freight arrangement could vary from company to company.
114. 441 When asked whether the delivery delays caused by current challenges would force companies to shift from sea to air, the observer commented that while there may be relevant provisions in the contract to change the mode of transport in the event of delay, companies could show great flexibility in dealing with delayed shipments and resolve specific problems through negotiations.

Conclusion

115. 442 The Technical Committee took note of the presentation by the ICC and the subsequent discussion.

Agenda Item VIII: ELECTIONS

116. 443 The Secretariat informed the Committee that as provided in the Customs Valuation Agreement, the Chairperson and Vice-Chairpersons shall each hold office for a period of one year. One year has elapsed since the last election was held and it was again time to hold an election for the post of the Chairperson and two Vice-Chairpersons for the coming year.
117. 444 The Delegate of the EU seconded by the Delegate of the US nominated Ms. Santa Marianela Marte as Chairperson of the Technical Committee on Customs Valuation for the next term. Several other delegates supported the nomination. There was no objection to the nomination and Ms. Marte was re-elected by acclamation for the post of Chairperson of the Technical Committee on Customs Valuation for one year.
118. 445 Ms. Qianyu LIN of China was nominated by the Delegate of Uruguay as Vice-Chairperson. The Delegate of Mauritius seconded this nomination and was joined by other

delegates. There was no objection to the nomination and Ms. Lin was re-elected as Vice-Chairperson by acclamation.

119. 446 Mr. Laurent Blaise KABORE of Burkina Faso was nominated by the Delegate of China as Vice-Chairperson. The Delegate of Canada seconded this nomination, supported by other delegates. There was no objection to the nomination. Mr. Kabore was re-elected as Vice-Chairperson by acclamation
120. 447 Ms. Marte agreed to serve as Chairperson and Ms. Lin and Mr. Kabore as Vice Chairpersons for the next term.

Agenda Item IX: PROGRAMME OF FUTURE WORK

121. 448 The Secretariat informed the Technical Committee, on behalf of the Director, that the following items would be included on the Agenda for the 53rd Session:

I. Adoption of Agenda/Suggested programme

II. Adoption of the Technical Committee's 53rd 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 the technical assistance/capacity building activities undertaken by the Secretariat and Members*
- *Progress report on Members' application of the WTO Customs Valuation Agreement*
- *Revenue Package update*

V. Specific technical questions

- (a) *Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius*
- (b) *Valuation treatment of the cost of transport for the return of carriages used in the*

- transportation of imported goods : Request by North Macedonia*
- (c) *Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay*
- (d) *Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay*
- (e) *Accumulated discounts in e-commerce sales : Request by Uruguay*

VI. Questions raised during the intersession

VII. Other business

VIII. Programme of future work

IX. Dates of next meeting

Agenda Item X: DATES OF NEXT MEETING

122. 449 The Director announced that the 54th Session of the Technical Committee on Customs Valuation was provisionally scheduled to take place from 3 to 5 May 2022 as a virtual meeting in a possible hybrid format, depending on the situation of the pandemic.

CLOSING REMARKS BY THE DIRECTOR

123. 420 The Director congratulated the Technical Committee for adopting a new instrument at this Session, and thanked all the delegates for their participation and contribution, the interest and the dynamism showed to resolve differences and achieve consensus.
124. 424 He thanked all delegates, who through their contribution all meeting items were completed on schedule, with one new instrument adopted, that is, Advisory Opinion 4.19. This instrument will add to the 97 existing instruments to help Members in the uniform interpretation and application of the WTO Customs Valuation Agreement.
125. 422 He extended a special thanks to the Chairperson, Ms. Santa Marianela MARTE, for her excellent work in leading the Technical Committee as well as to Uruguay for taking the initiative to submit the technical question that gave rise to this instrument and the EU for its flexibility on this subject.

126. 423 Looking at the five specific technical questions on the agenda of the next session, the Director invited the delegates to submit in a timely manner their responses, comments and observations, to enable the Technical Committee to examine the technical questions in an efficient and effective manner and encouraged Members to follow the example of Uruguay, which rightly takes centre stage and to submit technical questions to the Technical Committee for consideration, with a view to adopting more instruments and providing guidance to Members as it is mandated.
127. 424 The Director concluded by thanking all the staff of the Secretariat, his colleagues in the Valuation Sub-Directorate, the translators, the interpreters and the technical staff for their invaluable support.

CLOSING REMARKS BY THE CHAIRPERSON

128. 425 The Chairperson joined her voice to the kind words of the Director. She wished to see the delegates present new technical questions to be examined by the Technical Committee.
129. 426 She thanked the delegates for their support and patience during the technical problem she faced and congratulated the Technical Committee for adopting a new Advisory Opinion, thanks to the effort and flexible spirit shown by everybody during the consultation phase and during the virtual phase and in particular by the EU.
130. 427 She thanked the Secretariat including the interpreters and technical staff for their great effort in supporting the Technical Committee and making available the draft Advisory Opinion in the three official languages for its adoption.
131. 428 The Chairperson concluded her remarks by congratulating the Vice Chairpersons for their re-election before declaring the meeting closed and wished to see the delegates in a face to face meeting at the next session.

S. M. MARTE
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**REPORT BY THE WTO
TO THE 53RD SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION
20 SEPTEMBER TO 20 OCTOBER 2021
(BLENDED FORMAT)**

The WTO last reported to the TCCV at its 52nd Session in May 2021. On 27 May 2021, the Committee on Customs Valuation (Committee) held a formal meeting in virtual mode.

Notifications

The Committee reviews four types of notifications, which include: Members' laws and regulations; 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 legislation is systematically compiled in a report, the most recent version being document G/VAL/W/232/Rev.13.

At the May 2021 meeting of the Committee, the Chair of the Committee remarked on an encouraging increase in notification activity since the Committee's previous meeting in October 2020. He noted that notifications on customs legislation had been submitted by the following six Members: Afghanistan, Colombia, Mongolia, Saint Kitts and Nevis, Solomon Islands, and the United Kingdom; and that responses to the checklist of issues regarding their customs legislation had been notified by the following six Members: Colombia, Israel, Namibia, Paraguay, Tonga, and the United Kingdom. At the May 2021 meeting of the Committee, the national legislation of 29 Members remained under review pending exchanges of questions and responses from Members regarding such legislation.

As always, we wish to acknowledge the positive contribution of Members of the TCCV in encouraging the submission of legislation and responses to the checklist of issues. The Committee continues to appreciate this assistance in encouraging the submission of these notifications as well as the responses to questions raised by Members before the Committee in relation to notified legislation.

Technical assistance and training

The WTO Secretariat continues to provide support for technical assistance and training on customs valuation matters. This year we have delivered modules on customs valuation at two Regional Trade Policy Courses – to Arab and Middle Eastern Members in January 2021 and to English-Speaking African Members and Observers in June 2021.

ROYALTIES AND LICENCE FEES**UNDER ARTICLE 8.1 (c) OF THE AGREEMENT**

1. A patented concentrate is purchased by importer ICO from manufacturer XCO who is also the patent holder. The imported concentrate is simply diluted with ordinary water, not using a patented process, and is consumer-packed with a trademark owned by XCO for its sale in the importing country as a soft drink.
2. In addition to the price of the goods, ICO is required to pay to manufacturer XCO, as a condition of sale, a single royalty for the right to incorporate or use the patented concentrate in products intended for resale and for use of the trademark. The amount of the royalty was set at 15% of the sale price of the finished product, the soft drink.
3. XCO sells to ICO at a price of 30 c.u. each 0.10 litre of concentrate, which is used to produce one litre of soft drink. The production costs per litre of finished soft drink, in line with the generally accepted accounting principles of the country of importation, are :

| | |
|--|-------------|
| (a) Cost of imported concentrate (price actually paid or payable to XCO per 0.10 litre): | 30 c.u. |
| (b) Import cost of imported concentrate (port charges, customs duties, inland transport and other costs per 0.10 litre): | 6 c.u. |
| (c) Cost of other inputs: | 4 c.u. |
| (d) Labour costs: | 3 c.u. |
| (e) Other production costs: | 7 c.u. |
| Total cost of production per litre of finished soft drink: | 50 c.u. |

4. ICO subsequently sells the soft drink to retailers in the country of importation at a price of 100 c.u. per litre, of which it pays to XCO a single royalty of 15 c.u. as compensation for (a) incorporation or use of the imported concentrate in the production of the soft drink and (b) for use of the trademark of the soft drink.
5. With the other conditions imposed under Article 8.1(c) of the Agreement having been fulfilled, as indicated in paragraph 2, the issue is to determine whether the royalty is related to the imported

goods and if so, what amount of royalty payment is to be added to the price actually paid or payable for the imported concentrate.

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The Technical Committee on Customs Valuation expresses the following view.

6. Advisory Opinions 4.4 and 4.6 address royalties paid for the right to incorporate or use a patented concentrate and for the right to use a trademark, respectively. The royalties in each case are considered as dutiable.
7. The royalty payment is a condition of a sale as provided in the facts and the entire royalty is related to the imported goods because the imported concentrate is simply diluted with the ordinary water, not using a patented process, and is consumer-packed with trademark of XCO for sale in the importing country as a soft drink.
8. The amount of the royalty to be added to the price actually paid or payable will result from the corresponding final amount of the royalty generated from the sale of the soft drink, per unit of imported concentrate. For this purpose, objective and quantifiable data should be used to relate the royalty payable on the soft drink produced to the price actually paid or payable for the imported concentrate used.
9. Under the facts presented in the case, and given that payment of the royalty is not based on other factors which are totally unrelated to the imported goods, as contemplated in the Interpretative Note to paragraph 3 of Article 8 of the Agreement, it is appropriate to include it in the Customs value.
10. In this case, 0.10 litre of concentrate is used to finally produce one litre of soft drink. Accordingly, the Customs value per 0.10 litre of imported concentrate will be the price actually paid or payable for the imported concentrate, plus the required adjustment for royalties generated from the sale of a litre of soft drink.
11. In other words, the Customs value will be a total of 45 c.u. per 0.10 litre of concentrate: 30 c.u. which is the price actually paid or payable, plus 15 c.u. arising from an adjustment to that price under Article 8.1 (c) of the Agreement for the subsequent payment of the corresponding royalty.