

附件3.DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE 54th  
SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION



WORLD CUSTOMS ORGANIZATION  
ORGANISATION MONDIALE DES DOUANES  
ORGANIZACIÓN MUNDIAL DE ADUANAS

VT1316EbRevised

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TECHNICAL COMMITTEE  
ON CUSTOMS VALUATION

54<sup>th</sup> Session

O. Eng.

Brussels, 5 May 2022.

DRAFT REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON  
THE 54<sup>th</sup> SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

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*Opening remarks*

1. The Chairperson, Ms. Santa Marianela MARTE (Dominican Republic), who had the opportunity to be at the WCO Headquarters, warmly welcomed all delegates, in particular those in attendance for the first time, to the virtual phase of the 54<sup>th</sup> Session of the Technical Committee on Customs Valuation, which was held in a hybrid format from 21 March to 5 May 2022.
2. The Director of Tariff and Trade Affairs, Mr. Konstantinos KAIPOULOS welcomed the delegates and in particular those who attended the session in person.
3. He thanked the Chairperson for her involvement in the preparation of this session and extended his warm regards to all the delegations around the world which were interacting with the Technical Committee through their screens, in spite of the time differences and the various technical and other constraints, noting that the working methods for this session were fundamentally the same as in previous sessions, except for the hybrid format which has allowed delegates to attend this Session in person.
4. Referring to the Agenda of this Session, the Director applauded the outstanding work done during the online discussion and consultation phases. Many highly relevant comments were posted enabling great progress in examining the five specific technical questions on the Agenda. He commended the Chairperson for her dedication and determination as well as the

delegations for their constructive mind set and spirit of compromise, attributes which contributed to a very good level of discussion.

5. The attention of the Technical Committee was drawn by the Director to a matter arising out of the work done by the Policy Commission at its 85<sup>th</sup> Session which involves the planning and prioritization of activities undertaken by the Directorates and the different WCO working bodies to ensure that those activities are not duplicated, to address the identified risks and to ensure that they are consistent with the WCO Strategic Plan. He invited the Technical Committee to examine this matter, which is set out in Item VII (c) (“Other business”) on the Agenda and to incorporate its activities into the template developed for that purpose by the Secretariat.
  6. Reminding the delegates that the theme dedicated for this year “Scaling up Customs Digital Transformation by Embracing a Data Culture and Building a Data Ecosystem” is an appeal calling on Customs administrations to pave the way for increasingly digitized international trade, with emphasis on electronic transactions, he added that the digitization of information and e-commerce – a twofold aspect of the digital transformation of the economy – is increasingly impacting Customs. He noted that Customs work including valuation is also affected by its own digital transformation and invited the Technical Committee to take digital transformation into account in its work.
  7. He thanked the Technical Committee for its past work on this theme, as seen in the adoption at its 48<sup>th</sup> Session of Advisory Opinion on Flash Sales involving transactions on electronic-commerce platforms and urged Members to submit more related questions for examination by the Technical Committee.
  8. He ended by thanking the 272 delegates representing 93 countries and observer organizations who have registered for this session and in particular those delegates who have come to Brussels and hoped that the next session would be under more normal working conditions with more delegates attending in person and wished the delegates a productive and successful meeting.
  9. The Chairperson invited comments from the delegates on the opening remarks and the Delegate of Ukraine who asked for the floor made a statement regarding the situation prevailing in his country. The Delegates from Canada, the European Union, Japan, the United Kingdom and the United States took the floor to express their concern with regard to
- 2.

the situation in Ukraine. The written statements comments submitted are set out in Annex D to the draft Report.

10. The Observer from ICC requested the floor to announce the sad news of the recent death of Mr. R. Gottlieb, who had been a delegate of that Organization since the time the Agreement was signed. The Chairperson and a delegate representing the entire Technical Committee highlighted his career, recalling his invaluable contribution to the work of this Committee, and expressed their heartfelt condolences to the ICC representatives and, through them, to the family, friends and relatives of Mr. Gottlieb.

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

#### (a) Provisional Agenda

Doc. VT1293Eb

11. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1293Eb, published on the TCCV Meeting page, and on the 54<sup>th</sup> TCCV Session Forum Group on the CLiKC! platform.
12. Delegates were invited to raise any point that they wished to discuss under item VII of the Agenda - Other Business.
13. The Delegate of Korea proposed the sharing of work done in relation to Articles 5 and 6 of the Customs Valuation Agreement at the next Session. The Delegate from Guatemala suggested that the TCCV examine in future sessions the following terms “in substantially the same quantity” in the context of Articles 2 and 3 and to examine options other than the two referred to in the question submitted by Mauritius in item V(a) of the Agenda in another technical question.

#### Conclusion

14. The Technical Committee adopted the Agenda as proposed in Doc. VT1293Eb without amendment.

#### (b) Suggested programme

Doc. VT1294Ea

15. The Chairperson referred to Doc. VT12946Ea, which set out the suggested programme of work for the 54<sup>th</sup> Session prepared by the Secretariat. She noted that there were two presentations for Tuesday's session, that is, Brazil's presentation on its application of the Agreement and the OECD's presentation regarding updates on the Inclusive Framework/ Base Erosion and Profit Shifting. The Secretariat would deliver a presentation on the WCO Trade Tools on Wednesday 4 May.
16. The Delegate of China proposed to move item V (c) of the agenda from Wednesday to Tuesday 3<sup>rd</sup> May after the presentation by the OECD and move item V (b) scheduled for Tuesday, to Wednesday. The Delegate of Israel proposed to examine item V (e) on either Tuesday 3<sup>rd</sup> May or Wednesday 4<sup>th</sup> May. Item V (e) was already scheduled for Wednesday 4 May and no change was needed in the suggested programme.

Conclusion

17. The Technical Committee approved the suggested programme as set out in Doc. VT1276Ea with the above amendment.

**Agenda Item II : ADOPTION OF THE TECHNICAL COMMITTEE'S 53<sup>rd</sup> SESSION**  
**REPORT**

Doc. VT1292Ec

18. The Chairperson began by recalling the procedure for the adoption of the Technical Committee's session Report, as approved by Members during the proceedings of its 42<sup>nd</sup> Session.
  19. During the intersession preceding the 54<sup>th</sup> Session, Bosnia and Herzegovina, Canada, China, the United States and Uruguay had submitted their comments on the "a" version of the draft Report. These comments had been incorporated in the draft Report and a "b" version had then been published. The comments by Members on the draft Report are highlighted in red characters in Doc. VT1292Eb. As no further comments had been made
- 4.

regarding the “b” version of the draft Report, the “c” version had therefore been published by the Secretariat in accordance with the procedure for the adoption of the Report agreed by the Technical Committee at its 42<sup>nd</sup> Session.

20. During the online discussion phase, China had made comments on the “c” version of the Report which it justified by the wish to have a document that accurately reflected the content of the discussions. Following these comments, Uruguay and Bosnia and Herzegovina had made amendments to paragraphs 69 and 88 respectively, with China’s agreement.
21. The Chairperson invited the Technical Committee to give its opinion on this situation which was not in keeping with the agreed procedure to be followed for adopting session Reports. The Technical Committee decided, as an exceptional measure, to depart from the procedure for adopting the Report and accepted the amendments made to paragraphs 69 and 88 of the “c” version of the Report of the 53<sup>rd</sup> Session. The final Report, with the amendments, would be published in Doc. VT1292Ec.

#### Conclusion

22. The Technical Committee approved the Report of its 53<sup>rd</sup> Session, taking into account the amendments by Bosnia and Herzegovina and Uruguay following the comments by China.

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

##### (a) Director’s Report

Doc. VT1295Ea

23. The Chairperson invited the Director to present the Director’s Report, contained in Doc. VT1295Ea. The Director summarized the key intersessional activities included in the document.
24. The Director briefed the Technical Committee on a few items of the 85<sup>th</sup> Policy Commission (PC) Session as follows:
  - (i) The importance of digital Customs and data was highlighted in regional consultations held in relation to the 2022/2025 Strategic Plan. Therefore, the

WCO Secretariat had been developing a Data Strategy aimed at fully incorporating a data culture within the WCO's core activities and expertise.

- (ii) The Policy Commission discussed and provided guidance on the way forward regarding the Terms of Reference for a Feasibility Study on a Global Customs Data Exchange Platform which was agreed at the June 2021 Policy Commission and Council Sessions.
- (iii) The Policy Commission reflected on the proposal related to the replacement of the WCO Packages' Action Plans with work programmes to be used by each WCO working body and endorsed the proposed template for the work programmes.

25. With regard to Revenue Package, the Director invited the Technical Committee to consider the Phase V proposals in the interim. He urged delegates to follow up with their administrations to share their practices concerning debt and its management with a view to enriching the document "Debt Management in Customs Administrations". The delegates were also informed that the Secretariat is developing a "post implementation" diagnostic tool on the Technical Guidelines on Advance Rulings for Classification, Origin and Valuation, which will allow administrations to assess the conformity of their national legislation compared to the requirements of Article 3 of the TFA.
26. Under "Other activities and issues", the Director informed the delegates of the updates of the e-learning Customs Valuation modules on the CLiKC! platform, as well as the works of the Working Group on Performance Measurement (WGPM) regarding the evaluation of the relevant WCO instruments and tools.
27. With regard to the future activities of the Valuation Sub-Directorate, the Director indicated that a thorough examination of possible future activities of the Valuation Sub-Directorate was undertaken with a view to gearing its action on areas that could potentially have an impact on valuation work such as e-commerce, circular economy and technological development.
28. In the short term, a webinar will be organized to address digitalization and its impact on Customs valuation and its control, and activities of technical assistance and capacity building, subject to available resources, would be intensified. In this context, an accreditation workshop would be held for the WCO MENA Region to increase the number of Arabic

speaking accredited expert trainers on Customs valuation to meet the requests of Members. The Secretariat has also found that there is a need for more Spanish-speaking accredited Customs valuation expert trainers. Hence, the Director invited Members interested in supporting such a workshop, to contact the Secretariat.

29. Over the longer term, the Valuation Sub-Directorate will continue to look into ways to leverage the implementation of TFA to properly implement the CVA in areas such as publication, communication and advance rulings and to promote Customs to Customs cooperation. In the same vein, the Secretariat will continue to strengthen its collaboration with the WTO Secretariat.
30. Moreover, work in co-operation with the Compliance Sub-directorate on reviewing training materials and tools will continue with a view to making future proposals to develop or update tools. This is aimed at building revenue protection capabilities based on data analytics methods, cross-directorate synergies and best practices.
31. The Director also stated that the Secretariat will continue to be involved in the broader work of the WCO in emerging areas such as the data strategy, updates to the e-commerce guidance and work on other emerging policy issues and will keep the Technical Committee aware of what is happening generally and involved in any issues with potential impacts on valuation.
32. A number of Delegations took the floor to thank the Secretariat for its work during the intersession. Uruguay noted the importance of training carried out on e-platforms during the pandemic and encouraged the Secretariat to continue this approach. China spoke highly of the introduction of future activities in the Director's report, which would enable the Technical Committee to follow the development of these activities and ensure that the efforts of the Committee is in consistent with those of the Secretariat.
33. The Director thanked Members for their support to the Secretariat, especially their financial contributions, which are critical to the WCO's capacity building activities.

#### Conclusion

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

(b) WTO Committee on Customs Valuation Report

Doc. VT1305Ea

35. The Observer from the World Trade Organization reported on the work of the Committee on Customs Valuation, which had held a formal meeting in virtual mode on 25 October 2021 following the 54<sup>th</sup> session of the TCCV. In his report, he updated the Technical Committee about the following two topics, Notifications and Technical Assistance.
36. The four types of notifications reviewed by the Committee on Customs Valuation included the following: 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.
37. An increase in the notification activity was observed since the last session through the contribution of Members of the TCCV and the review of a number of national legislations is still ongoing pending the exchange of questions and responses from Members regarding legislation.
38. With respect to technical assistance activities, he reported that three Regional Trade Policy Courses were facilitated by the WTO Secretariat since January 2021.
39. The written report from the WTO Secretariat is appended in Annex C to the draft Report.

Conclusion

40. The Technical Committee took note of the report.

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

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



Background

41. 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.
42. Since the last session, no Member administrations had provided any information about their technical assistance activities. Only information on the technical assistance/capacity building activities undertaken by the Secretariat is set out in the Annexes to Doc. VT1306Ea.

Summary of discussion

43. During the virtual meeting, the Chairperson of the Technical Committee recalled that information on technical assistance/capacity building activities undertaken by the Secretariat was contained in the Annex to Doc. VT1306Ea. She further stated that Japan had sent the Secretariat a non-paper on its technical assistance/capacity building activities delivered or scheduled to take place during the intersession. The Chairperson informed delegates that no further observations or comments had been made regarding this item, either during the intersession or during the online discussion phase. As no delegates asked to take the floor, the Chairperson brought the discussions under this Agenda item to a close.

Conclusion

44. The Technical Committee took note of the Secretariat's report on technical assistance and capacity building activities and of the non-paper forwarded by Japan and set out in Annex E to the draft Report.

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

Docs. VT1297Ea and VT1307Ea

Background

45. 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.
46. 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.
47. Brazil offered to make an oral presentation on its experience of implementing the WTO Customs Valuation Agreement, and more specifically on the project developed by Brazil to enhance its fiscal procedures in this respect.

#### Presentation

48. The Delegate of Brazil began with a brief introduction of the Federal Revenue of Brazil, highlighting the difficulties of implementing Customs controls in all ten fiscal regions of Brazil in accordance with standard procedures. The Customs Valuation Project was therefore introduced with a view to increasing the number and the efficiency of the PCA, as well as to promote uniformity among the procedures of Customs offices.
49. As per an assessment conducted at the beginning of the Customs Valuation Project, Brazil identified a number of main challenges in Customs valuation area, such as identifying identical or similar goods, verifying the declared price of related party transactions and adjustments under Article 8. Lack of experts in the valuation team and poor cooperation of importers were also significant problems to be solved.
50. In order to address the above issue, Brazil updated its national legislation, risk management system and IT system. Administrative and legal cases and advance rulings were compiled for audit reference, and reference models were introduced to promote importers' compliance and Customs cooperation. Moreover, various relevant WCO manuals and guidelines were made available to Customs agents to enhance their knowledge of valuation.
51. Capacity Building training was another important part of Customs Valuation Project, where practical cases were shared and various presentations were made to address technical issues such as Transfer Pricing, royalties and licence fees, as well as to discuss new instruments adopted by the TCCV.

52. In addition, a new Normative Instruction would be enacted soon in Brazil which includes the Decisions of the WTO CCV, as well as the instruments adopted by the Technical Committee.
53. The Delegate of Brazil also introduced a pilot project to be started on Customs valuation, which would identify suspected incorrect declarations based on studies of the national economy, and then audit operations would be carried out accordingly. This project was expected to enhance the uniformity of Customs procedures during the application of the Agreement.

#### Conclusion

54. The Technical Committee took note of Brazil's presentation.

#### (c) Revenue Package

##### Doc. VT1298Ea

55. The Secretariat highlighted in Doc. VT1298Ea the completion of the Revenue Package Phase IV in June 2021 and the tools and materials that were developed during the previous phases.
56. Additionally, a work plan for a Revenue Package Phase V was proposed to the Working Group on Revenue Compliance and Fraud (WGRCF) for guidance and comments. The proposed work plan includes the promotion and application of the existing tools developed under the previous phases of the RP and assessment of their effectiveness besides the continuation of work on the following topics: illicit financial flows; valuation, classification and origin; assessing the impact of the Revenue Package programme; fighting commercial fraud; and new tool development for PCA.
57. Comments made by the WGRCF were taken into consideration to update the proposed work plan which was to be submitted to the Policy Commission for further comments and advice.
58. At its 85th Session, the Policy Commission, agreed for a corporate approach be defined to avoid duplication of efforts, with a view to increasing the accountability of working bodies, including the TCCV, and making sure that their activities were consistent with the WCO Strategic Plan.

59. Details on the methodology proposed in regard to the planning and prioritization of activities undertaken at the WCO working bodies to ensure activities are consistent with the WCO Strategic Plan may be found in Doc. VT1304Ea under Item VII of the Agenda.

#### Conclusion

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

#### **Agenda Item V: SPECIFIC TECHNICAL QUESTIONS**

- (a) Valuation treatment of ancillary charges in relation to Article 1 of the Agreement – Request by Mauritius

Docs. VT1299Ea and VT1309Ea

#### Background

61. The Chairperson recalled that this question had been the subject of discussions in the Technical Committee since the 49<sup>th</sup> Session, following its submission by the Mauritius Administration. It concerned ancillary charges in relation to the imported goods which had been included in a second invoice issued by the supplier to the buyer, but which were not included in the Customs value of the said goods in the Customs declaration. The initial text presenting the issue is set out in the Annex to Doc. VT1206E1a.
62. At its 53<sup>rd</sup> Session, the Technical Committee concluded that the Customs value should include the currency surcharge only, which was invoiced to all buyers. On the other hand, the savings programme charges and the club charges were not included in the Customs value: ~~those charges were not paid either for the imported goods or as a condition of their sale (Japan)~~. Furthermore, the savings programme charges and club charges were not covered by the exhaustive list of items that could be added to the Customs value under Article 8.
63. During the intersession, Mauritius worked with the Secretariat and forwarded to it a new draft Advisory Opinion which was set out in the Annex to Doc. VT1299Ea. The Technical Committee was to examine the draft and ultimately reach a consensus on its wording with a

view to finalizing a new instrument for adoption. In response to Doc. VT1299Ea, Uruguay submitted its comments, which were set out in the Annex to Doc. VT1309Ea. In those comments, Uruguay pledged its support in general terms for the draft text but suggested some editing adjustments for improving the content. To summarize, Uruguay suggested inserting a question into paragraph 3, deleting one sentence from paragraph 4 and amending paragraph 5 by substituting the final sentence. Uruguay also proposed some minor amendments to paragraph 7.

#### Summary of discussions

64. During the online discussion phase, the question submitted by Mauritius concerning the “*Valuation treatment of ancillary charges in relation to Article 1 of the Agreement*” was the subject of comments by Japan, China, Guatemala, Uruguay, Brazil, Mauritius, Chinese Taipei, the United States, Peru, Indonesia and the ICC. The comments made essentially comprised amendments to be made to the draft Advisory Opinion set out in the Annex to Doc. VT1299Ea or expressions of support for those amendments.
65. In its analysis of the question, Japan Customs considered that, when a charge was paid as a “condition of sale of the imported goods”, in principle, that meant that the payment was made “for the imported goods by referring to past adopted document by the Committee, Case Study 6.1 and Case Study 7.1. Moreover, Japan relied on that premise in proposing that paragraphs 5 and 7 of the draft Advisory Opinion annexed to Doc. VT1299Ea should be reworded. As regards paragraph 4, Japan’s suggestion was to delete the following sentences: “The savings program charges and club charges paid on a per unit basis of the imported goods are not refunded whether or not the purchasing target is met and remains for the benefit of the seller. Such charges should therefore be considered as being related to the imported goods.” Japan explained that this is because a payment not to be made as a condition of sale of imported goods will not be the payment for the imported goods either.
66. China shared Japan’s view of that a payment made as a condition of sale of imported goods would be the payment for the imported goods. However, it proposed making slightly different amendments to paragraphs 4, 5 and 7 of the draft Advisory Opinion. It suggested merging paragraphs 4 and 5 for streamlining purposes and deleting the phrases referring to “related to the imported goods”. China Customs still wished to keep the first sentence of paragraph 5: “The savings program charges and club charges are not paid for the imported goods [...]”. As regards paragraph 7, China agreed with the ideas expressed by Japan but proposed a

reorganization of the text, changing the order of the sentences to create a more logical and coherent conclusion.

67. An amendment proposal put forward by the United States reflected the views of many other delegations, including China and Mauritius. They felt it necessary to add that the goods were offered equally, under exactly the same conditions of sale, whether or not the buyer opted to join either programme. In other words, a buyer that chose to join either of the two programmes did not benefit from more favourable conditions (in respect of payment or delivery, etc.) than a buyer that did not join.
68. Taking into account the various comments made, including those submitted by Uruguay, Japan and China, the Mauritius Customs Administration proposed amendments to the draft Advisory Opinion. Japan supported the amendments proposed by Mauritius. They incorporated Uruguay's suggestion in relation to paragraph 3, Japan's proposed rewording of paragraph 4 and China's suggestion to merge paragraphs 4 and 5.
69. The International Chamber of Commerce adopted the same position as the other speakers on the conclusions regarding the charges under Programmes I and II. Concerning the currency surcharge, it suggested that the Technical Committee should ensure that the conclusions reached in relation to this type of charge were the outcome of highly rigorous analysis whose result was obtained indisputably on the basis of clear and precise information.
70. The consultation phase with the different delegations provided an opportunity to gain a relatively precise insight into their various positions regarding the amendments to be made to the draft Advisory Opinion. According to one delegation, it was important to obtain the views of the other delegates on those amendments at the hybrid meeting. It was universally agreed that it would be more practical to conduct discussions on the basis of a single document. The amendment proposal put forward by Uruguay and set out in the Annex to Doc. VT1309E1 was accepted as the basic document. For the purposes of the virtual meeting, an overview of the various amendments was drawn up by the Secretariat, in collaboration with Mauritius and Uruguay, and made available to the delegates in the three working languages of the Technical Committee on the CLiKC! platform.
71. The European Union requested time to become fully acquainted with the new document before submitting its comments. Its request was supported by Canada, the United States and

the United Kingdom. The Technical Committee accordingly postponed the examination of the question to allow all stakeholders to familiarize themselves with it. Upon resumption of the discussions on this question, Japan and China presented their proposed amendments. Canada welcomed the excellent work that had been completed and accepted the conclusions of the draft Advisory Opinion along with the various amendments to the text. It sought a reference in the text to paragraph 4 of the Interpretative Note to Article 1 of the Agreement. Canada offered to contribute to its improvement ahead of the next session by submitting proposals for the redrafting of some paragraphs. The proposed re-examination of the question at the next session received the support of the European Union and United States. In the light of those views, the Chairperson suggested that the Technical Committee continue the discussions on this question at the next session.

### Conclusion

72. The Technical Committee decided to continue the examination of this question at its next session, taking into account the summary of the amendment proposals drawn up by the Secretariat in cooperation with Mauritius and Uruguay.

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

Docs. VT1300Ea and VT1310Ea

### Background

73. The Chairperson introduced this question, submitted by North Macedonia, that the Technical Committee had agreed to examine as a Specific Technical Question during its 49<sup>th</sup> Session. It concerned the valuation treatment of the cost of transport for the return of empty carriages used in the transportation of imported goods. The text concerning the facts of this technical question is set out in the Annex to working document VT1207Ea for the 49<sup>th</sup> Session.
74. According to the issue presented by North Macedonia, during post-clearance audit of the accounting records of the importing company, invoices were found for the services performed for international transport, namely the return of empty carriages by which the goods in question were originally delivered. 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.

75. During the work of the 53<sup>rd</sup> Session, North Macedonia clarified the facts regarding its question, and some Members of the Technical Committee expressed their views on the treatment to be afforded to this question under consideration. Generally speaking, the Members sought clear information on the terms of the sales contract relating to the freight in order 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 and its corollaries, namely the Interpretative Note to Article 1 and paragraph 7 to Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. Following discussion, it was clear that Members held differing views on the position to be adopted in relation to the question.
76. According to some Members, insufficient information was available to determine whether the seller required the importer to bear those costs relating to the return of the empty carriages. For other Members, no commercial logic could explain the seller's insistence that the transport costs relating to the return of empty carriages that are paid to the transport company should be borne by the importer. A further group of Members took the view that those charges were costs of transport after importation and, as such, could not be included in the Customs value either under the provisions of Article 1, the Interpretative Note to Article 1 and paragraph 7 to Annex III to the Agreement, or under the provisions of Article 8.2 of the Agreement. The Delegation of the United States asked whether North Macedonia would be willing to broaden the scope of the facts it had presented, as suggested by some Members. The Committee therefore had not reached a consensus on that question at that stage.
77. In response to working document VT1300Ea, Uruguay considered that, without a change in the facts presented by North Macedonia, this question would have to be moved to Part III of the Conspectus of Technical Valuation Questions because it did not constitute rational behaviour in the commercial world. Uruguay felt that its proposed modification of the facts would afford the question a degree of commercial logic which could result in the drafting of an instrument that would be of great use to Customs officials and the private sector.

#### Summary of discussions



78. During the online discussion phase of the 54<sup>th</sup> Session of the TCCV, China, Uruguay, Japan, Bosnia and Herzegovina, Brazil, North Macedonia, Indonesia and the ICC each presented comments on the question submitted by North Macedonia. All speakers acknowledged the relevance of the topic and the need to produce an instrument, because the subject had not been addressed thus far in the Technical Committee’s work. However, some delegates expressed concern that the lack of sufficient information on the facts of this interesting question might compel the Technical Committee to move it to Part III of the Conspectus of Technical Valuation Questions. Various Members, including Japan, sought to have the nature of the cost clarified, namely determining whether the cost was included in the price actually paid or payable under Article 1 of the Agreement, the Interpretative Note to Article 1 and paragraph 7 of Annex III to the Agreement, or whether it was treated as an adjustment under the provisions of Article 8.2 of the Agreement.
79. The specific question of determining whether the “cost of transport relating to the return of empty railway carriages” covers the “cost of transport after importation” as laid down in paragraph 3 (b) of the Interpretative Note to Article 1 or the “cost of transport of the imported goods to the port or place of importation” also continued to be a matter of concern for Members. On that question, China had expressed two positions which were shared by Uruguay. The first involved interpreting “the cost of transport of the imported goods to the port or place of importation” under Article 8.2 (a) of the Agreement as covering “the cost of transport of the imported goods before their arrival at the port or place of importation”. It was explained that the cost of returning the empty carriages to the exporting country after the importation of the goods did not constitute such an adjustment because it was borne after the arrival of the goods at the place of importation. The second position was that payment of the cost of transport relating to the return of carriages was a condition of the transportation of the goods in the country of importation. In that case, the cost could be regarded as part of the cost of transport under Article 8.2.
80. To avoid the impasse of Part III of the Conspectus of Technical Valuation Questions, some delegates (Bosnia and Herzegovina, North Macedonia, Brazil, Uruguay and China) proposed broadening the scope of the question to cover a number of scenarios. To that end, in response to an appeal from one delegate, the ICC expressed its willingness to assist with identifying possible scenarios covered by this question.
81. It was apparent from the various comments that the first scenario could be the situation presented by North Macedonia. Added to that were the two situations proposed by Uruguay

in the Annex to Doc. VT1310. Taking those various scenarios into account and with a view to facilitating the discussions, it would be necessary to provide clarification (a) on the relevant Incoterm and (b) as to whether the transport contract stipulated payment of the “cost of return transport” as a condition of the transportation of the imported goods. China added a further scenario, where the transport costs relating to the return of the empty carriages would be set out in the contract of sale between the seller and the buyer. In other words, the seller would request that the importer bear the costs relating to the return of the empty carriages, with the result that the payment could be included in the price actually paid or payable for the imported goods under Article 1.

82. During the virtual and face-to-face meeting (in the hybrid format), North Macedonia confirmed to the Technical Committee that it had no further information on the facts of the question. It commented that it had no objection to a broadening of the scope of the facts, as proposed by some delegates, if that was the prerequisite for the drafting of an instrument. Many delegations supported that proposal.

#### Conclusion

83. The Technical Committee took the view that it should continue to examine this question, broadening the scope of the facts, at its 55<sup>th</sup> Session.

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

Docs. VT1301Ea and VT1311Ea

#### Background

84. The Chairperson presented the question submitted by Uruguay, which the Technical Committee had agreed at its 53<sup>rd</sup> Session to examine as a Specific Technical Question.
85. The question deals with Customs valuation treatment of royalties paid by the importer to the licensor for the right to use particular distinctive signs and know-how, as well as licensor’s technical assistance, in order to establish and operate chain stores where the imported goods are sold in the importing country. The importer, the licensor and the suppliers of the imported goods are related under the terms of the Agreement.

86. During the intersession, the Secretariat worked with Uruguay to redraft the case to facilitate the examination. The text is set out in the Annex to working document VT1301Ea.
87. Turkey submitted written comments in response to Doc.VT1301Ea, which are set out in Annex I to working document VT1311Ea.

Summary of discussion

88. During the online discussion phase, Bosnia and Herzegovina, Brazil, China, Indonesia, the ICC, the United States and Uruguay each presented comments on the question submitted by Uruguay. China proposed to analyse this case from a transfer pricing perspective as the transactions took place between subsidiaries of a multinational enterprise and it involved both transfer of goods and provision of services within the group, noting that the pricing of the goods and service (including royalty rates) could be influenced by the special relationship between the parties. However some Delegations were of the view that Article 8.1(c) or (d) could apply in this case.
89. Uruguay, during the virtual session, reiterated that the analysis of this case should be based on the contract which provides that the royalties are paid for the distinctive signs and operation of the chain stores, rather than for the trademark.
90. In addition, Uruguay opined that this case is totally different from Advisory Opinion 4.17 in which the imported inputs are not patented and not protected by intellectual property rights and the importing company can buy from third-party suppliers if lower prices are available, subject to the prior authorization of the licensing company.
91. China did not agree to consider the royalty in this case under Article 8.1 (c) as there was not enough information to establish a relationship between the royalty payment and the imported goods, nor did China agreed to include the royalty under Article 8.1 (d), as the payment is made for distinctive signs, knowhow and technical assistance, and therefore could not be treated as subsequent proceeds.
92. The OECD opined that it is premature to draw a conclusion on this case in the absence of key information, such as whether the exporter owns the marketing intangible and whether the value of intangible has been reflected in the price of the imported goods. From transfer

pricing perspective, this information may be found in the master file which provides an overview of an MNE's global operations, and taxpayers could also be requested for further clarifications in this regard.

93. ICC noted that, in practice, it is common for one royalty to cover a variety of intangibles, and it could be difficult for companies and Customs to allocate part of the royalty to certain intangibles. Uruguay drew the Committee's attention to the fact that this form of marketing and this type of contract arise when the importer belongs to the same economic group as the licensor and the suppliers of the goods abroad, and when the importer is not related to the licensor and suppliers and does not belong to that economic group; thus, where the import Customs value of these goods is concerned, there is no reason necessarily to apply the transfer pricing regime, and only the provisions of our Agreement should apply. Uruguay also called on the Committee to bear in mind that the final payment of this royalty over a period is related to the imported goods and their resale in the country of importation, and not to the distinctive signs, know-how and technical assistance actually provided by the licensor to the importer.

#### Conclusion

94. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 55<sup>th</sup> Session.

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

Docs. VT1302Ea and VT1312Ea

#### Background

95. The Chairperson presented this question submitted by Uruguay which concerns the treatment of an additional cost imposed by the insurance company.
96. The Technical Committee during its 53<sup>rd</sup> session, agreed to examine this question as a Specific Technical Question. The text concerning the facts of this question submitted by Uruguay was set out in the Annex to working document VT1290Ea, issued for the 53<sup>rd</sup> Session. According to the facts as stated, the question concerned the treatment applicable to the security costs that were imposed by the insurance company as the imported goods posed a high risk of theft

during international transportation. Specifically, in addition to the initial insurance policy taken out by the importer, the insurance company required the importer to take out a “special policy” to purchase an armed guard service to accompany the goods during transportation from their departure from the country of exportation to the place of importation.

97. While considering this question raised during the intersession at the 53<sup>rd</sup> TCCV Session, the delegates asked for additional information regarding: the exact nature of the payment made by the importer to the armed guard service through a “special policy”; whether the initial contract of insurance contained clauses relating to this “special policy”; and whether this payment should be included in the Customs value of the imported goods under Article 8.2 (c).
98. No written comments in response to Doc. VT1302Ea was received during the intersession.

Summary of discussion

99. During the online discussion phase of the 54<sup>th</sup> TCCV Session, comments on this case were received from several delegates. Uruguay thanked the Delegate of Brazil for its support and for pointing out the typological error made during the discussion phase. He explained the importance of this question to Members that have opted to include the elements of Article 8.2 to arrive at the Customs value. Referring to paragraph 7 of Annex III of the Agreement, the Delegate of Uruguay reminded that in this case, it was not the seller, but rather the insurance company that had imposed on the buyer, as a condition of sale of its insurance service, the payment to a third party (to the security company) of a service accompanying the goods with an armed guard.
100. The EU supported the opinion of Japan that the scope of insurance cost under Article 8.2 (c) is provided in Advisory Opinion 13.1 which interprets cost of insurance as referring solely to insurance costs incurred for the goods during the operations specified in Article 8.2 (a) and (b) of the Agreement. They considered that the cost of the armed guard service should not be an insurance cost, but may be considered as a transport-related cost.
101. In its comments, China agreed with Japan that the additional costs paid for “armed guard service” is very different from “the cost of insurance” in relation to the transport of goods, that the payment of “armed guard service” is a condition of insurance contract and should not be included in the Customs value of the imported goods as any form of insurance. China observed that there is no definition of handling charges in the Agreement and was of the view that the

armed guard service by nature is not within the meaning of “loading, unloading and handling” operations associated with the transport of the imported goods and, in the absence of a definition of handling charges, could not accept its addition to the price actually paid or payable under Article 8.2 (b) as suggested by Japan.

102. The Delegate of Indonesia opined that the cost for armed guard service should not be part of the Customs value.
103. The Observer from ICC distinguished between two kinds of insurance in international trade: a cargo insurance, which is taken out by the shipper, and a civil liability insurance, taken out by the transporter. He opined that this case focuses on the first kind and gave a number of risks that the shipper may decide to be protected from by a cargo insurance.
104. He added that insurers may also impose additional conditions to the shipper in order to guarantee the requested level of insurance which could include an armed guard service especially for high valued goods. The cost for the armed guard service could be included in the global insurance fee or broken down on the insurance service invoice. He highlighted that the armed guard service provided during transportation of high-valued goods is not limited to the international transportation flow, but also covers risks present in the country of importation after customs clearance, up to the point of delivery.
105. Another common practice for the transport of high-valued goods, consisted of operators requesting the services of specific transport service providers specialized in the transportation of rare or high-valued goods, which provide, as a standard service, additional security during transportation. Additional security includes armed guarded service, and the cost of the latter is usually automatically included in the global transportation fee.
106. The Delegate of the US pointed out that the US has opted for a FOB system of customs valuation and do not include elements listed in Article 8.2 of the Agreement in the valuation of goods. She added that additional cost for an armed guard to accompany the goods during international transport is not dutiable whether paid by the importer to an insurance company or to a security company. If the price included the insurance cost and security costs a deduction will be allowed if the importer produces evidence of the actual costs for these services. She believed that it would not be appropriate to read the conditions of sale elements in paragraph 7 of Annex III into other provisions of the Agreement like insurance and freight.

107. Noting that the comments made pointed towards considering the armed guard cost as a transport related costs under 8.2 (b), the Delegate of Uruguay said he could agree with the comments only if there is a change in the text that would specify that the armed guard service is not imposed by the insurance company but by the transport company. He however, disagreed to considering the armed guard service as a handling cost and suggested to move the question to part III of the conspectus for the sake of efficiency of the Technical Committee.
108. The proposal was supported by Guatemala.

### Conclusion

109. The Technical Committee agreed to move this Specific Technical Question to Part III of the Conspectus and to be examined at a later time.

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

Docs. VT1303Ea and VT1313Ea

### Background

110. The Chairperson presented the question submitted by Uruguay, which the Technical Committee had agreed to examine as a Specific Technical Question at the 53<sup>rd</sup> Session. It 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. The facts relating to the question were set out in the Annex to working document VT1291Ea.
111. During the intersession, Uruguay forwarded to the Secretariat its analysis of the question, in which it presented the facts along with a corresponding final position. Uruguay's analysis was set out in the Annex to Doc. VT1303Ea, and the Members were invited to submit comments for inclusion in a working document to be examined by the Technical Committee at its 54<sup>th</sup> Session. No comments were received in response to Uruguay's proposals.

### Summary of discussions

112. During the online discussion phase of the 54<sup>th</sup> Session of the TCCV, the question submitted by Uruguay on the "*accumulated discounts in e-commerce sales*" coming under Item V (e) on the Agenda was the subject of comments by China, Chinese Taipei, Uruguay, Israel, Peru, Indonesia and Brazil. Like other delegates, China sought further details and clarification on

the six factual situations mentioned by Uruguay in the Annex to Doc. VT1303Ea and shared its thoughts on the technical issues associated with this question. It proposed adding another situation to those mentioned by Uruguay. The proposed situation concerned the “discount points” obtained from previous purchases which could be used to reduce a proportion of the payment for future purchases. Three new situations were also proposed by Israel Customs, the details of which would be incorporated into the other situations.

113. The various new situations presented as well as the previous ones set out in the Annex to Doc. VT1303Ea were analysed by the delegates. In some situations, the discount voucher could be regarded as a means of payment, that is to say, a fixed monetary amount which can be used for any subsequent transaction. Furthermore, it was important to clarify whether the seller operated on its own platform or that of a third party and whether the discount voucher was granted by the seller or via the independent platform. Some delegates maintained that the analysis would differ depending on the situation involved.
114. After answering some of the requests for clarification made by the delegates, the Delegate of Uruguay voiced his support for adding the new situations proposed by China and Israel, even though he did not share the conclusions of one of those delegations. He also proposed removing factual situation No. 3 presented in the Annex to Doc. VT1303Ea since it did not reflect commercial reality.
115. During the hybrid meeting, Uruguay recalled that this question did not arise out of a real situation and was completely open-ended. Furthermore, it was for the Members to flesh it out with as many scenarios as possible in order to cover a broad range of possible situations. Israel suggested including the three situations it had presented during the online discussions in a document for more in-depth discussion at the next session. Israel’s suggestion was supported by other Members, including China which, moreover, pledged to provide clarification on its proposed scenario to achieve the further clarity requested by various Members. The International Chamber of Commerce suggested whether this question might present the opportunity for the Technical Committee to revisit the scope of the discounts and, more specifically, the boundaries of their acceptability.
116. Canada noted that Advisory Opinion 15.1 Treatment of quantity discounts, might also apply in the analysis of some of the scenarios, as there appear to be incentives for the buyer to make further purchases and a price reduction is granted if they do so. Following a number of requests for further information on the various scenarios, Uruguay reminded the Members that their assistance was requested in providing the additional information on the different



scenarios based on their own experiences. The Chairperson echoed those remarks, confirming that the situations in question were a work in progress and the delegations were invited to contribute to those efforts. She suggested including the situations proposed by Israel and China in a document for examination at the next session.

#### Conclusion

117. The Technical Committee decided to continue discussions on this question at its next session on the basis of a document which would include the scenarios already proposed by some Members.

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

- (a) Valuation treatment of exclusive distribution fees: Request by Fiji

Doc. VT1314Ea

#### Introduction

118. The Chairperson presented the new question submitted by Fiji during the intersession prior to the 54<sup>th</sup> Session. The facts pertaining to this question are set out in the Annex to working document VT1314Ea.
119. The question deals with an annual payment made by the buyer to the seller for exclusive distribution rights of trademarked products in the importing country's territory.

#### Summary of discussion

120. Fiji took the floor to request the assistance of the Technical Committee in resolving this challenging case and looked forward to the adoption of an instrument.
121. A number of delegations supported the proposal to examine this case as a Specific Technical Question at the next session, which echoed the comments received from delegations on the CLiKC! platform during the online discussion phase.
122. The ICC proposed to make a presentation at the next session to introduce usual practice of private sectors in exclusive distribution agreement, which was agreed by the Technical Committee.

### Conclusion

123. The Technical Committee agreed to include this question on the Agenda of its 55<sup>th</sup> Session as a Specific Technical Question.

- (b) Meaning of the expression “the price of the imported goods” according to paragraph 4 of the Interpretative Note to Article 1: Request by Uruguay

Doc. VT1315Ea

### Introduction

124. The Chairperson introduced this new question, submitted by Uruguay for consideration by the Technical Committee. The text concerning this question was set out in the annex to working document VT1315Ea.
125. This question stemmed from the 53rd Session of the TCCV when delegates had examined the question submitted by Mauritius concerning the Valuation treatment of ancillary charges in relation to Article 1 of the Agreement to determine whether this element should be part of the Customs value. In their analysis, they had referred to the price actually paid or payable for the imported goods.
126. It was highlighted that the expression “for the imported goods” is not precisely defined in the Agreement and many delegates supported a study on the scope of this expression under Article 1 and paragraph 4 of the Interpretative Note to Article 1 - price actually paid or payable - of the Agreement.
127. Uruguay had proposed a text for examination by the Technical Committee in the form of a Commentary, set out in the annex to Doc. VT1315Ea.
128. At this Session, the Technical Committee had to decide whether it accepted that it would examine the question as a Specific Technical Question.

### Summary of discussion

### **Online Discussion Phase**

129. During the discussion phase written comments on the text were received on the WCO's CLiKC! platform from China, Japan, Bosnia and Herzegovina and the ICC. All Members including Bosnia and Herzegovina were favourable for the question to be upgraded as a specific technical question for examination at the next TCCV Session.
130. China had posted an alternative text for consideration by the Technical Committee and Bosnia and Herzegovina had suggested to extend the scope of the question to include "related to the imported goods". Japan had enquired about the possibility of discussing the commentaries in themselves after solving the Mauritius case. The Observer from ICC had suggested another approach in the examining of this question by establishing the relevant operating principles in a Commentary, which could then be followed by specific case studies. ICC had also submitted a historical review of paragraph 7 of Annex III.

### **Virtual Phase**

131. During the virtual phase, the Delegate of Uruguay thanked China for its improved text and stated that this question could be referred to as "Uruguay/China Case". The Delegate of China thanked the Delegate of Bosnia and Herzegovina, who reiterated his proposal to extend the scope of the question as this extension would enable the Technical Committee to understand the concepts of payment for the imported goods and payment related to the imported goods under Article 1, paragraphs 1 and 4 of the Note to Article 1 of Annex I (Interpretative Note) and paragraph 7 of Annex III of the Agreement
132. The Delegate of Japan suggested completing the examination of the question of Mauritius first and to examine the question submitted by Uruguay subsequently as the Mauritian case could be a stepping stone to considering the concept of the price for the imported goods. The delegate also highlighted the different levels of knowledge by Customs about transfer pricing when the Commentary 23.1, and subsequently Case Studies 14.1 and 14.2, were adopted as compared to the level of knowledge by Customs on the price actually paid for the imported goods which has been examined since the early years when the Agreement was implemented.
133. Referring to Paragraph 66 of the Report of the 53<sup>rd</sup> Session of the TCCV, the Delegate of China highlighted that the Technical Committee had agreed that the question on the "price for the imported goods" would be a new question separate from the question submitted by

Mauritius and the current issue would not affect how the new question would be handled. She also added that the focus on the new question would be on the general aspect while the focus on the Mauritian question is to apply the principles in a specific case. While understanding the reasoning of the proposal from the ICC, taking into account the number of sessions during which the Mauritian case had been examined, she considered that there was no reason to stop examining the question and suggested the realistic way was to proceed with both cases concurrently.

134. Several delegates supported the examination of this question as a Specific Technical Question. It was agreed that the text posted on CLiKC! platform by China would be also considered in future discussion on the topic.

#### Conclusion

135. 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**

- (a) Presentation by the OECD – Inclusive framework on BEPS

#### Background

136. During the intersession, the OECD was invited to make a presentation regarding updates on the Inclusive Framework / Base Erosion and Profit Shifting.

#### Presentation by the OECD

137. The Observer from the OECD introduced the work of the OECD in the international tax area, in particular, the current activities of the Inclusive Framework (IF) on BEPS. He highlighted the BEPS Action Plan regarding Digitalization, which was launched in 2013, and the production of the Two-Pillar Solution in 2021 to address the tax challenges arising from the digitalization of the economy.

138. The Two Pillar Solution brought fundamental changes to international tax: Pillar One allows market jurisdictions to tax global companies even if they don't have a physical presence there, while Pillar Two sets a global minimum corporate tax rate of 15%. Developing countries were active during the negotiations and were expected to have a lot to gain if they can implement it effectively.
139. With regard to the implementation of the Two Pillar Solution, the OECD was working on instruments and guidance on Pillar One with a view to signing a multilateral convention on implementation of Amount A by mid-2022 and finalizing the work on Amount B by the end of 2022. An implementation package on Pillar Two was also under development.
140. Moreover, the Observer wished to draw attention to two focus areas in the implementation of the Two Pillar Solution, that is, VAT and tax incentives. For the former, the OECD was developing toolkits for different regions respectively; while for the latter, analysis would be made on the impact of Pillar Two on tax incentives offered by developing countries and how they could adjust their tax policy accordingly.

#### Discussion

141. In response to questions from delegates regarding the impact of Two Pillar Solution on Customs valuation and whether the arm's length principle could still apply, the Observer from the OECD stated that Amount A of Pillar One relates only to the largest and most profitable companies, and the arm's length principle is still applicable for other companies. As to the impact on Customs, he was of the view that Two Pillar Solution, in particular Pillar Two, may lead private sectors to simplify their supply chain, as it is no longer profitable to use financial centres to allocate profits to low-tax jurisdictions.
142. When asked to what extent the transfer pricing rules could be used for Customs valuation purposes, the Observer commented that despite the fact that transfer pricing and Customs valuation are provided for in different frame works, transfer pricing principles could help Customs to determine whether the declared price is influenced by the relationship between the transaction parties.

#### Conclusion

143. The Technical Committee took note of the presentation by the OECD and the subsequent discussion.

(b) The WCO Trade Tools

Presentation by the Secretariat

144. The WCO Secretariat made a presentation on the WCO Trade Tools, the official platform developed by the WCO where Valuation, HS and Origin tools could be accessed by both Customs and traders to facilitate international trade.
145. The platform is a powerful tool which, inter alia, facilitates the work of actors within international trade to classify products, find applicable origin rules and consult the valuation decisions and tools. It thereby provides support to the exportation/importation of goods.
146. The Secretariat gave a live demonstration on how to access the WCO Valuation Compendium and to navigate through Article VII and the Agreement, Decisions, TCCV texts, Alphabetical index and Subject index.
147. Members were encouraged to sign up to the platform and it was noted that WCO Members can access reduced prices.

Conclusion

148. The Technical Committee took note of the presentation by the Secretariat.

(c) Templates for work programmes of WCO Working bodies

Background

149. At its 85<sup>th</sup> Session held in December 2021, the Policy Commission examined the WCO packages and their respective Action Plans and other work programmes and the WCO Strategic plan.
150. It was found that these programmes were all different in terms of their structure and time frames and were not aligned with the Strategic Plan. It had therefore been suggested that a

corporate approach be defined to avoid duplication of effort, with a view to increasing the accountability of working bodies and making sure that their activities were consistent with the WCO Strategic Plan.

151. This approach would also provide a potential way forward in addressing some of the red risks identified, such as the prioritization of topics and the lack of consideration of technical committees. The Policy Commission endorsed the template developed by the Secretariat for the work programmes.
152. The Secretariat had prepared an initial draft to assist the Technical Committee for its consideration. The activities were completed based on Annex II of the WTO Customs Valuation Agreement and the current work of the TCCV. This document can be found in Annex I to Doc VT1304Ea.

#### Discussion

153. The Deputy Director explained that the direction that is being taken is to move the work into work plans underneath the WCO working bodies. Each Committee will take on the ownership for what it is going to produce or endorse. She indicated that the way the Secretariat would support the work, for example, drafting the working documents and tools, would remain, but the Committee would have a clearer view of the processes as it would be deciding the work plan related to itself.
154. She added that as the implementation will take effect as from July 2023, there is still more time for the work plan to be endorsed by each relevant body before June 2023 but there is need to come up with an agreed package. The Tariff and Trade Affairs Directorate (TTA) has gone through each Committee including the Harmonized System Committee, RSC and Technical Committee on Rules of Origin's work plan and had prepared plans based upon their current rules of procedure, scope and other documents and is doing the same with the TCCV.
155. During the Discussion phase, the Delegate of Uruguay submitted the following three proposals for consideration by the Technical Committee:
  - (a) Develop a "Thematic Meeting" at the TCCV on technical analysis of customs valuation, once a year or every two sessions.

- (b) Present a report to the TCCV of (at least) one member on the progress in the application of the WTO Valuation Agreement, once a year or every two sessions.
- (c) Submit a report to the TCCV from (at least) one member on a final court decision in their country on customs valuation, once a year or every two sessions.

156. At the virtual phase of the Session, the Delegate of the EU supported the adoption of the Template for Work Programmes of WCO Working Bodies, endorsed the activities undertaken as continuous process in Annex I of Doc. VT1304Ea and thanked the Delegate of Uruguay for his proposals for a more elaborate discussion in the next Session. The Delegate of Brazil supported the Work Programmes as well as the proposal to share judicial decisions which would be very helpful to Customs Administrations.
157. The Delegate of China referred to the responsibilities of the Technical Committee as listed in the WTO Customs Valuation Agreement which includes to examine technical questions and to provide guidance on valuation issues. She agreed with the EU that this Technical Committee is working on a continuous basis and with the template for activities undertaken as continuous process.
158. However, she drew the attention of the delegates about one element in the template which refers to the key performance indicators (KPI). She was concerned that if an input was inserted in the template, it would mean that this item would be subject to a performance assessment by the Policy Commission. Referring to the second proposal of Uruguay, she felt that it would mean that we have to ensure that a Member presents its progress report on the implementation of the Agreement or else the Technical Committee will not pass the KPI and urged the Technical Committee to be cautious before adding a new element in the template. The Delegate of Guatemala supported the views of China with respect to the KPI.
159. The Deputy Director explained that in the recent past there was already a KPI for the TCCV based on the number of instruments adopted by the TCCV. However, this was not easily visible to the TCCV. The Secretariat added that in the template, it was up to the Committee how it drafted its KPIs and these could be formulated in a way suitable to the work. However, it was clarified that the template needed to be fully completed, including this field.
160. In response to an issue raised by the ICC, the Deputy Director replied that it was for the Technical Committee to decide whether it would include the experience sharing by other bodies if it decided to make experience sharing part of the outcomes in the template.



Conclusion

161. The proposals submitted by Uruguay will be included in the working document to be further examined by the Technical Committee at its next session.

**Agenda Item VIII:**

**PROGRAMME OF FUTURE WORK**

162. The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 55<sup>th</sup> Session:

**I. Adoption of Agenda/Suggested programme**

**II. Adoption of the Technical Committee's 54<sup>th</sup> 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) Accumulated discounts in e-commerce sales : Request by Uruguay
- (e) Valuation treatment of exclusive distribution fees: Request by Fiji
- (f) Meaning of the expression “the price for the imported goods” in accordance with paragraph 4 of the Interpretative Note to Article 1: Request by Uruguay

**VI. Questions raised during the intersession**

**VII. Other business**

**VIII. Election**

**IX. Programme of future work**

**X. Dates of next meeting**

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

163. The Secretariat informed the Technical Committee that the 55<sup>th</sup> Session of the Technical Committee on Customs Valuation is provisionally scheduled to take place from 17 to 21 October 2022.

**CLOSING REMARKS BY THE DIRECTOR**

164. The Director thanked all delegates for their contribution and interest in trying to resolve differences and reach consensus. He particularly thanked the Chairperson, Ms. Santa Marianela MARTE, for her excellent work during the session.
165. Quoting “what matters is the journey, not the destination” in Homer’s epic poem, the Director spoke highly of the experience shared by the delegates in the discussion phase even though the TCCV did not reach a consensus to adopt any instrument and encouraged them to contribute during this intellectual journey at the TCCV sessions. That being said, he remind that the destination is of course also important. Ultimately, ~~legal~~ instruments adopted by TCCV, enable Members to interpret and apply the WTO Customs Valuation Agreement uniformly and thus facilitate the international trade.

166. The Director noted that there will be six specific technical questions on the agenda of the next session, and invited the delegates to submit timely comments to enable the Technical Committee to examine the technical questions in an efficient and effective manner.
167. 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 support.

**CLOSING REMARKS BY THE CHAIRPERSON**

168. The Chairperson joined the Director to thank the delegates of the Technical Committee. She also extended her thanks to the Secretariat for its outstanding work and efforts to make sure that the Committee could held a hybrid session and discuss the technical questions online before the session .
169. She thanked the interpreters and technical staff for their great effort in supporting the Technical Committee throughout the session.
170. The Chairperson concluded her remarks by declaring the meeting closed.

S. M. MARTE  
Chairperson.

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TABLE OF CONTENTS

<u>Agenda Item number</u>	<u>Subject</u>	<u>Paragraphs</u>
<b>I</b>	<b><u>Adoption of Agenda</u></b>	
	(a) Provisional Agenda	11-14
	(b) Suggested programme	15-17
<b>II.</b>	<b><u>Adoption of the Technical Committee's 53<sup>rd</sup> Session Report</u></b>	18-22
<b>III.</b>	<b><u>Reports on intersessional developments</u></b>	
	(a) Director's report	23-34
	(b) WTO Committee on Customs Valuation report	35-40
<b>IV.</b>	<b><u>Technical assistance, capacity building and current issues</u></b>	
	(a) Report on the technical assistance/capacity building activities undertaken by the Secretariat and Members	41-44
	(b) Progress report on Members' application of the WTO Valuation Agreement	45-54
	(c) Revenue Package update	55-60
<b>V.</b>	<b><u>Specific technical questions</u></b>	
	(a) Valuation treatment of ancillary charges in relation to Article 1 of the Agreement : Request by Mauritius	61-72
	(b) Valuation treatment of the cost of transport for the return of carriages used in the transportation of imported goods : Request by North Macedonia	73-83
	(c) Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay	84-94
	(d) Treatment applicable to goods subject to additional costs imposed by the insurance company : Request by Uruguay	95-109
	(e) Accumulated discounts in e-commerce sales : Request by Uruguay	110-117



<u>Agenda Item number</u>	<u>Subject</u>	<u>Paragraphs</u>
<b>VI.</b>	<b><u>Questions raised during the intersession</u></b>	
	(a) Valuation treatment of exclusive distribution fees : Request by Fiji	118-123
	(b) Meaning of the expression “the price for the imported goods” in accordance with paragraph 4 of the interpretative Note to Article 1 : Request by Uruguay	124-135
<b>VII.</b>	<b><u>Other business</u></b>	
	(a) Updates on the Inclusive Framework / Base Erosion and Profit Shifting – Presentation by the OECD	136-143
	(b) The WCO Trade Tools – Presentation by the Secretariat	144-148
	(c) Template of Work Programmes of WCO Working Bodies	149-161
<b>VIII.</b>	<b><u>Programme of future work</u></b>	162
<b>X.</b>	<b><u>Dates of next meeting</u></b>	163
	<b><u>Closing remarks</u></b>	164-170

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<p><b>WTO MEMBERS</b> <b>MEMBRES DE L'OMC</b> <b>MIEMBROS DE LA OMC</b></p>
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ALBANIA / ALBANIE

Delegate/Délégué/Delegado

O. VRIONI  
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Annex B to Doc. VT1316Ec  
(VT/54/May 2022)

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Annex B to Doc. VT1316Ec  
(VT/54/May 2022)

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(VT/54/May 2022)

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Annex B to Doc. VT1316Ec  
(VT/54/May 2022)

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(VT/54/May 2022)

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Annex B to Doc. VT1316Ec  
(VT/54/May 2022)

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(VT/54/May 2022)

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Annex B to Doc. VT1316Ec  
(VT/54/May 2022)

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Annex B to Doc. VT1316Ec  
(VT/54/May 2022)

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(VT/54/May 2022)

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REPORT BY THE WTO  
TO THE 54TH SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

21 MARCH TO 5 MAY 2022  
(BLENDED FORMAT)

The WTO last reported to the TCCV at its 53<sup>rd</sup> Session in October 2021. Following the TCCV meeting, the Committee on Customs Valuation (Committee) held its autumn formal meeting on 25 October 2021. The next formal meeting of the Committee will be convened on 17 May 2022.

**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.14.

At the October 2021 meeting of the Committee, the Chairperson of the Committee (Mr Buddhi Prasad UPADHYAYA of Nepal) remarked on the continued encouraging trend in notification activity over the course of recent meetings of the Committee. He noted that, since the previous formal meeting in May 2021, notifications on customs legislation had been submitted by the following four Members: Benin, El Salvador, Iceland, and Viet Nam; and that responses to the checklist of issues regarding their customs legislation had been notified by the following three Members: El Salvador, the Gambia, and Guatemala. Since the fall meeting in 2020, there has been an increase of over 40% of the agenda items (from 24 to 34) concerning the national customs legislation of Members that remained under review pending exchanges of questions and responses before the Committee.

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 remains available to provide support for technical assistance and training on customs valuation matters to WTO Members. In 2021, modules on customs valuation were offered at three Regional Trade Policy Courses – to Arab and Middle Eastern Members in January 2021; to English-Speaking African Members and Observers in June 2021; and to Latin American Members in September 2021.

Written statements regarding situation in Ukraine

**Statement of Ukrainian delegation**

Dear Chair, Colleagues

We would like to make a statement regarding the current situation in Ukraine and its global impact on the World Customs Organization (WCO).

On 24 February 2022 the Russian federation with the involvement of the Republic of Belarus started the full-scale war against Ukraine. Russia disregard international law, the UN Charter and peace in the XXI century. Instead of developing its own economy and creating favorable conditions for its own people, the Putin regime decided to destroy the neighboring country, the largest country by territory in Europe with the population exceeding 43 million people.

Immediate effects of this war are catastrophic not only for Ukraine but for the aggressor countries and for the whole world, namely:

- According to the WTO and the ICC international trade and supply chains are disrupted.
- According to the World Bank Russia's invasion will cause more economic damage across eastern Europe and parts of Asia than the coronavirus pandemic. The World Bank said, the war is catastrophic for global food and called the war an "economic catastrophe".
- More than 10 mln people in Ukraine were displaced, almost half of them fled to neighboring countries.
- Russia destroys Ukraine's critical infrastructure. For example, the city of Mariupol with the population of nearly half a million people was smashed down by the Russian troops. A lot of settlements were destroyed. My friends were lucky to escape from Mariupol and they witnessed the horrors brought by the Russian troops to this city.

Imagine the huge human tragedy - millions of people who lost everything – their homes, values, money... everything.

Atrocities of the Russian troops are beyond human imagination.

- Russia uses civilians as hostages and human shield, with no food, water, electricity, and communication. My loved ones survived this horror.
- The Russian army kill civilians and among them – children. More than 200 children were killed and around 500 – wounded.
- The Russian troops commit war crimes against civilians, including repeated rapes, summary execution, looting and violent acts. The world was shocked by atrocities committed by the Russian army in Bucha, Irpin, Belogorodka where took place a massive killing of civilians.
- The Russian military use prohibited weapons including anti-personnel cluster bombs.

The war unleashed by the Russian regime contradicts the basic principle of the WCO involving promotion of cooperation between customs administrations. Russian troops ruined Ukraine's border crossing points, and many customs officers were killed. This undermines trust in Russia and Belarus and their customs administrations. Russian aggression against Ukraine impacted all

committees and working groups in the WCO. Russia demonstrated that currently there is no security at borders.

In March 2022 the UN General Assembly with 141 votes in favor condemned Russia for its invasion of Ukraine and called for immediate ceasefire, extraction of the Russian troops from Ukraine and reaffirmed that Russia bears exclusive responsibility for the humanitarian consequences of the aggression against Ukraine.

Many international organisations condemned aggression of Russia against Ukraine, e.g.:

- The OECD, the World Tourism Organisation, the European Conference of Postal and Telecommunication Administrations, the UN Human Rights Council and many others suspended membership of Russia and Belarus.
- Appointment of Russia's candidates was blocked in a number of the UN bodies.
- Russia and Belarus were banned from up to 95% world sport organizations.

Therefore, we call on all customs administrations to act together to restrict and to suspend membership of the Russian federation and the republic of Belarus in the WCO.

We thank all our partner countries and customs administrations who provided strong support and assistance to Ukraine. We hope for the solidarity of all members.

Thank you for your attention.

#### Canada

- Canada echoes the statements and concerns from the EU, the United States, the United Kingdom.
- Canada strongly condemns President Putin's unjustifiable, unprovoked and illegal invasion of Ukraine, with the involvement of the Belarusian regime.
- The international community must be seized of this issue. This is not just an attack on Ukraine, this is an attack on international law, as well as democracy, freedom, and human rights. The consequences of President Putin's war of choice will extend well beyond Ukraine's borders.
- Canada stands with the government of Ukraine as it defends its brave and resilient people, its sovereignty, its territorial integrity and its independence.

We must act immediately with one global voice to condemn President Putin's aggressive actions

#### European Union

The European Union and its Member States condemn in the strongest possible terms the unprovoked and unjustified military aggression by the Russian Federation and the involvement of Belarus against Ukraine in this aggression. This unacceptable action undermines international security and stability. It is also a gross violation of the vision and values of the World Customs Organisation (WCO) and the European Union and its Member States wish to express their full solidarity with Ukraine and the Ukrainian people at this particularly serious time.

This condemnation is echoed and shared in many international organisations, most notably by the General Assembly of the United Nations, and it is important that the WCO also expresses its unequivocal rejection of violations of international law.

We therefore consider that all available options should be identified and pursued to limit and restrict the participation of the Russian Federation and Belarus in the work of the WCO until conditions are restored to ensure the territorial integrity, sovereignty and independence of Ukraine.

#### Japan

Japan would also like to express our full solidarity with Ukraine and the Ukrainian people, and echoes and support the statements made by the European Union, the United States, the United Kingdom, and Canada. We condemn in the strongest terms Russian Federation's acts of aggression.

#### United Kingdom

Good morning, afternoon and evening to all colleagues across the world.

Thank you to the chair for giving me this opportunity to take the floor.

"The United Kingdom thanks Ukraine for its intervention. The invasion of Ukraine is an outrageous violation of international law and strikes at the very heart of international cooperation, whether on Customs matters or anything else. Business as usual with countries that take part in such a gross violation of the principles of the United Nations is simply not possible. We stand in full solidarity with Ukraine" (United Kingdom).

#### United States

The United States stands in solidarity with the people of Ukraine and condemns in the strongest possible terms Russia's premeditated, unprovoked, and unjustified attack, which is supported by Belarus. These actions call into serious question the respect of the Russian Federation for all international institutions, disciplines, and norms.

Today at the Technical Committee on Customs and Valuation, we are here together to enhance customs cooperation, further the consistent application of our customs laws, procedures, and processes, and to contribute to the strategic direction of the work done by the WCO. The very work of this Technical Committee is grounded in respect for and adherence to customs and international law. Contrary to the very nature of these efforts are the actions taken by the Russian Federation against a sovereign democratic state, which the United States considers to be an egregious violation of international law and the fundamental principles of international peace and security.

This unprovoked attack by the Russian Federation has unnecessarily disrupted the stability and integrity of the international standards we develop here in the World Customs Organization, harmed the global economy, and seriously threatened the harmony of global customs cooperation. We call on Russia to cease its aggression against Ukraine and its flagrant violations of international law.

**NON-PAPER**

**TECHNICAL ASSISTANCE/CAPACITY BUILDING ACTIVITIES**  
**UNDERTAKEN BY MEMBERS**

**Japan**

1. Japan has conducted technical assistance / capacity building activities online to enhance the knowledge of Customs Valuation / Post-Clearance Audit (PCA) and to support the implementation of the WTO Valuation Agreement.
2. The details of the technical assistance / capacity building activities, which Japan has carried out since the last session and is planning to implement by 29 April 2022, are listed below.

<b>Period of dispatch</b>	<b>Course</b>	<b>Recipient Country</b>	<b>Number of Experts</b>
November 9, 2021 ~ November 11, 2021 *1	Valuation	Indonesia	6
March 11 and 18, 2022 *1	PCA	Myanmar	4
April 11, 2022 ~ April 14, 2022 *1	Valuation	Cote d'Ivoire	To be Determined
April 25, 2022 ~ April 29, 2022 *2	Valuation	Fiji, Papua New Guinea, Samoa, Timor-Leste, Tonga and Vanuatu	To be Determined

\*1 Scheme: Japan Customs

\*2 Scheme: JICA (Japan International Cooperation Agency)/WCO

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