

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

VT1365Ec

56th Session

O. Eng.

Brussels, 21 May 2023.

REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON
THE 56th SESSION OF THE TECHNICAL COMMITTEE ON CUSTOMS VALUATION

Opening remarks

1. The Chairperson, Ms. Santa Marianela MARTE (Dominican Republic), who presided the 56th Session of the Technical Committee on Customs Valuation from the WCO Headquarters, warmly welcomed all delegates, in particular those in attendance for the first time, to the TCCV Session which was held for 3 days from 3 to 5 May 2023.
2. The Deputy Director of Tariff and Trade Affairs, Ms. Gael GROOBY, joined the Chairperson in welcoming all the delegates as well as the observers to the 56th Session of the Technical Committee. She noted that this Session marked the return of the face-to-face meeting mode, and spoke highly of the online discussion phase preceding the Session which allowed delegates to have interesting and enriching exchanges before the in-person meeting in Brussels.
3. In concluding, the Deputy Director wished the Chairperson and the Technical Committee a fruitful and productive Session.

Agenda Item I: ADOPTION OF THE AGENDA

(a) Provisional Agenda

Doc. VT1341Ec

4. The Chairperson invited comments on the provisional Agenda contained in Doc. VT1341Ec, published on the TCCV Meeting page, and on the 56th TCCV Session Forum Group on the CLiKC! Platform.
5. The Chair also requested delegates to raise any point that they wished to discuss under item VII of the Agenda – Other Business.
6. There was no comment on this item of the Agenda.

Conclusion

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7. The Technical Committee adopted the Agenda as proposed in Doc. VT1341Ec without amendment.

(b) Suggested programme

Doc. VT1342Ea

8. The Chairperson referred to Doc. VT1342Ea, which set out the suggested programme of work for the 56th Session prepared by the Secretariat.

Conclusion

9. The Technical Committee adopted the suggested programme as set out in Doc. VT1342Ea.

Agenda Item II : ADOPTION OF THE TECHNICAL COMMITTEE'S 55th SESSION REPORT

Doc. VT1340Eb

10. The Chairperson introduced this Agenda item, reminding the meeting of the procedure for the adoption of the Technical Committee's Session Report, approved by Members in the course of the 42nd Session.
11. During the intersession preceding the 56th Session, comments received from Canada, China, Peru, and Uruguay on the "a" version of the draft Report were incorporated in the "b" version of the draft Report and published in working document VT1340Eb, with comments from Members highlighted in red. No comments/observations were received on the comments published on the 'b' version of the draft report.
12. At the 56th Session no comments were received from Delegations on the 55th Session report.

Conclusion

13. The Technical Committee adopted the Report of its 55th Session.

Agenda Item III: REPORTS ON INTERSESSIONAL DEVELOPMENTS

(a) Director's Report

Doc. VT1343Ea

14. The Chairperson invited the Deputy Director, in the absence of the Director, to present the Director's Report on key intersessional activities.
15. Regarding the Policy Commission Session, the Deputy Director gave a summary to the delegates on the following aspects:
 - (i) Update on the harmonization and reporting of WCO work programmes - Progress Report. A progress update was presented on the common template for the work programmes of WCO working bodies, including the work programme of the Technical Committee on Customs Valuation, outlined in Doc. SP0795;

- (ii) WCO Strategic Plan 2022-2025 and Implementation Plan 2023-2024. A first draft of the Implementation Plan 2023-2024 was approved, pending further fine-tuning;
 - (iii) WCO Data Strategy. The first Meeting of Working Group on Data and Statistics (WGDS) was held in November 2022. The Policy Commission tasked the Secretariat to develop a document describing how the WGDS was coordinating its undertakings with other existing initiatives, so as to avoid duplication of efforts;
 - (iv) Green Customs. The Secretariat was tasked by the Policy Commission to develop a dedicated Action Plan on Customs and environmental matters, with Members asked to share their experiences.
16. After reporting on the Policy Commission, the Deputy Director reported that the Secretariat is organizing a refresher course on Customs valuation for all pre-accredited and accredited expert trainers on Customs valuation.
17. Regarding technical assistance activities, the Technical Committee was updated on the Customs valuation workshops hold for Member countries. Three pre-accredited expert trainers on Customs valuation successfully completed the second phase of the accreditation process in training workshops organised during the intersession and are fully accredited.
18. A summary of the Symposium on E-Commerce and Valuation, held on 15 February 2023, was provided by the Deputy Director. She brought to the attention of the Committee that a second symposium on the same topic will be held by the end of this year.
19. Finally, the Deputy Director asked Members to kindly inform the Secretariat of any changes in the contact point list and any change or cancellation of materials required.

Discussion

20. Several delegates took the floor. China wanted to clarify as to the availability of the Director's report. The Deputy Director responded by stating that the report would be published after the Session.
21. Uruguay voiced concerns about the 3-day extension to the duration of the 56th Session. He also asked that Members submitted their comments during the (three-week-long) online discussion sessions as early as possible and not on the last day, so others had time to consider them and make their comments before they closed. In addition, the Delegate stated that he was unable to access the online discussions on the CLiKC! Platform once they were closed and the Symposium on E-Commerce and Customs Valuation. Similar concern on accessing the online Symposium was also echoed by Thailand.
22. In response, the Deputy Director announced that the provisional programme for the next session foresees a duration of 5 days. She also noted that as reported the Symposium was heavily over-subscribed and access had been a problem. She noted that the forthcoming second Symposium will use a licence with a much larger capacity for connections, meaning that there should be no problem in accessing it.

Conclusion

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

(b) WTO Committee on Customs Valuation Report

24. The representative from the World Trade Organization reported on the work of the Committee on Customs Valuation (CCV), which held its last formal meeting on 4 November 2023, while the next formal CCV meeting is scheduled for Wednesday, 24 May 2023.
25. Explaining the duties of the CCV, he summarized that it reviews the following aspects concerning Customs valuation:
 - Members laws, regulations and administrative procedures,
 - Responses to check lists (notifications of Members) of issues relating to their legislation, and
 - In respect to decisions on interest charges and carrier media.
26. On the first aspect, the delegate from the WTO described that last year, the CCV received new or updated legislation from Botswana, Brazil, Georgia, Norway, UAE and Ukraine, with currently as much of a third of the WTO's membership being under the review of the Committee.
27. Examples of initiatives proposed under the stewardship of the Chair of the CCV have included sharing recent customs experiences and practices since the pandemic period, as well as developing an electronic system that would enable delegations themselves to inscribe items on an evolving agenda in advance of committee meetings.
28. In addition, the WTO representative highlighted that the WTO Secretariat has been working with the WCO Secretariat to identify areas of further engagement and collaboration, such as on the matter of technical assistance and the Symposium on E-Commerce and Customs valuation. Furthermore, a joint presentation with the WCO at the WTO CCV meeting later this month on the undertakings of the respective committees.
29. The written report from the WTO Secretariat is appended in Annex C to this Report.

Discussion

30. With regard to questions raised by delegates on how to attend the WTO CCV, the WTO representative mentioned that Member Countries decided the composition of their Delegation, so there was nothing to prevent a Member from including delegates from the TCCV in their delegation to attend the CCV meeting.
31. In response to Democratic Republic of the Congo's question on how to encourage Members to notify their regulations to the CCV, the WTO representative said that there is a requirement to also notify on updated legislation and that the checklist was a way to ensure this, however, he suggested that Members keep in contact with the private sector and advocated the scrutiny of notifications.

Conclusion

32. 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

Docs. VT1344Ea and VT1356Eb

Background

33. In accordance with the Technical Committee's decision, the Secretariat has monitored and communicated the technical assistance /capacity building activities planned and/or carried out by Members in order to inform all Members for planning purposes and to prevent duplication of effort.
34. Information on technical assistance/capacity building undertaken by the Secretariat is set out in the Annex to Doc.VT1356Eb. Information was provided by Japan and Uruguay on their respective accomplishments in this area, as detailed in the Annexes to Doc.VT1356Eb.

Discussion

35. Uruguay brought to the attention of the Committee that they undertook technical assistance for the Customs Administration of Bolivia, with the support of the Latin American Integration Association (ALADI), 28 November – 9 December 2022.
36. Dominican Republic, the United States and Morocco also reported technical assistance activities carried out by them during the intersession which had not been included in Doc.VT1356Eb.

Conclusion

37. The Technical Committee took note of the technical assistance/capacity building activities in Doc.VT1356Eb, as well as those reported by the United States, Dominican Republic and Morocco during the session.

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

Docs. VT1345Ea and VT1357Ea

Background

38. During the intersession, the Secretariat asked Members to report on the progress made in the implementation of the WTO Customs Valuation Agreement, communicated through VT1345Ea. Such a report can cover any aspect of implementation e.g. legal or procedural.
39. At the 55th Session, Peru proposed to give a presentation at the 56th TCCV Session on the view of the Customs administrations of the Americas and Caribbean region regarding transactions carried out on the basis of fraudulent documents. However, Peru informed the Secretariat one week before the start of the 56th Session about its inability to make the presentation.

Conclusion

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

Agenda Item V: SPECIFIC TECHNICAL QUESTIONS

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

Docs. VT1347Ea and VT1358Eb

Background

41. The Chair presented the case which the Technical Committee agreed at its 53rd Session to examine as a Specific Technical Question.
42. The question, as originally submitted, deals with Customs valuation treatment of royalties paid by the importer to the licensor for the right to use particular distinctive signs and knowhow, 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 licensor and the suppliers of the imported goods are related within the meaning of the Agreement.
43. The Technical Committee agreed at its 55th Session to continue the discussion of this case based on the new facts proposed by Uruguay that neither the seller nor the licensor are related to the importer. It was also decided that the Technical Committee will continue the examination of this case pursuant to Article 8.1(c) of the Agreement.
44. Taking into account this and other comments, Uruguay worked with the Secretariat to redraft the text of this case which is annexed to Doc.VT1347Ea.
45. In response to working document VT1347Ea, Japan submitted written comments which are set out in the Annex to working document VT1358Eb.

Summary of discussion

46. During the online discussion phase, comments were received from a number of Delegations which focused on the following aspects:
 - the difference between “trademark P” and “distinctive sign P” in this case,
 - whether the franchise agreement covers the right to purchase (import) the goods which bear the distinctive sign “P”,
 - whether the price paid by ICO for imported goods under the supply agreement includes consideration for the use of, “trademark P” as incorporated in the imported goods,
 - whether the payment for the use of the distinctive sign “P” as well as the know-how and technical assistance under the franchise agreement in this case is related to the imported goods, and
 - whether the payment of 5% of the turnover is a condition of sale of the imported goods.
47. With regard to the first aspect, at the 56th Session, Uruguay further explained that the “trademark P” and the “distinctive sign “P” in this case are synonyms which actually refer to the same issue. The “trademark P” comes on all imported goods and is the one that identifies the goods sold in “P” commercial stores, while the “distinctive sign P” is the one defined in the franchise and supply agreements.
48. As for the payment for the use of the distinctive sign “P”, Japan was of the view that it is possible that the price paid by ICO for imported goods under the supply agreement includes consideration for the use of the distinctive sign “P” with which the goods are provided .

China, the European Union (EU) and the United States (US) also shared Japan's view and asked further clarification on whether or not the franchise agreement covers the right to purchase (import) the goods which bear the distinctive sign "P".

49. The Delegate of Brazil reiterated the opinion that Brazil had expressed at the previous session. Brazil opined that the amount paid by ICO to ZCO (which includes the right to use the distinctive sign, know-how and technical assistance) is related to the imported goods since the P stores exist solely and exclusively to sell the goods with the distinctive sign P, and the payments of this 5% of the turnover is a condition of sale of imported goods in light of the facts presented in paragraph 15 of the draft Advisory Opinion. Brazil's view was echoed by Dominican Republic, Israel, Morocco and Uruguay.
50. However, opposing opinions were expressed by a couple of delegations including Canada, China and the EU. Referring to Commentary 25.1, they were of the view that the payment for know-how and technical assistance was not related to the imported goods as they are used for managing "P" stores and selling the imported goods in the "P" stores in the country of importation, while the imported goods are not manufactured using the know-how or relevant techniques.
51. In particular, the Delegate of Canada reiterated the fact that the "four" criteria of royalties needed to be assessed, namely: (i) is it a royalty/licence fee; (ii) is it related to the goods being valued; (iii) must the buyer pay it, either directly or indirectly, as a condition of sale of the goods being valued; and (iv) to the extent that such royalties are not included in the price actually paid or payable. Canada made a detailed intervention arguing that, based on the facts of the draft text of this technical question, criteria (ii), (iii) and (iv) are not met and thus the royalty could not be added to the price actually paid or payable.
52. In addition, Japan and the EU opined that when part of the royalties or licence fees is related to the imported goods, an appropriate adjustment could be made to separate this part from the total amount of the royalties or licence fees if there is objective and quantifiable data allowing for such calculation.
53. The Observer of the International Chamber of Commerce (ICC) drew the attention of the Technical Committee to the similarity between this case and Advisory Opinion 4.17 which deals with payment under a franchise agreement. The ICC considered that in both instances, the franchise fee is paid for intellectual property which is used to promote and operate the franchisee's business of selling products at retail, and therefore the valuation treatment should be the same.
54. In response, Uruguay stated that in this case the imported goods are finished products bearing the trademark (such as clothing, shoes, bags, etc.) that the buyer is obliged to purchase only from specific authorized suppliers, which is substantially different from the facts in Advisory Opinion 4.17, in which only generic raw materials (such as flour, margarine, colourings, etc.) are imported, without a trademark and unpatented, and which, in certain circumstances, the importer may buy from other suppliers, in order subsequently to produce finished products (such as doughnuts) in the country of importation with a registered trademark, which gives rise to the subsequent payment of the royalty. Thus the conclusion of Advisory Opinion 4.17 could not be applied to this case, since the facts and the conclusions from them were completely and utterly different.
55. Uruguay, moreover, asks the Committee to bear in mind when working on this that the consideration requiring the buyer to pay 5% of the resale price of the imported goods arises precisely from the goods imported and sold in the country of importation within a period, and not in respect of the amount of know-how or technical assistance received by the importing

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buyer within that period. In view of the divergence of views of the Committee on the above-mentioned technical issues, Uruguay proposed to put this case to Part III of the Conspectus for future consideration.

56. After further consideration, the Technical Committee agreed to keep this question on the Agenda of its 57th Session allowing time for Members to reflect on how to proceed with the case.

Conclusion

57. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 57th Session.

(b) Accumulated discounts in E-Commerce sales -
Request by Uruguay

Docs. VT1348Ea and VT1359Ea

Background

58. This question, submitted by Uruguay, had been under discussion in the Technical Committee since the 53rd Session, at which it had been accepted as a specific technical question. It concerned discounts in E-Commerce transactions. The initial facts of the question were set out in the Annex to working document VT1291Ea.
59. The Technical Committee had continued discussions on this question at the 55th Session on the basis of a revised text, covering nine different scenarios proposed by some Members and set out in the Annex to working document VT1326Ea. These scenarios were considered to represent the typical issues surrounding the question.
60. During the intersession preceding the 56th Session, by means of comments set out in the Annex to Doc. VT1348Ea, China had invited the Technical Committee to examine four different opinions provided by it concerning Scenario 6 where the Shopping Points were provided by the seller. As far as Uruguay was concerned, it had proposed an updated document on the question and had considered that the new document could be used as a basis for future discussions of the Technical Committee.

Summary of discussion

61. During the online discussion phase, the Administrations of China, Brazil, Indonesia, Israel, Japan and Uruguay, and also the ICC and the European Union, shared their views on the question through the CLiKC! Platform.
 62. The discussions had revolved around the roles and the actual functions of the various actors involved in E-Commerce transactions, to establish who, between the seller and the platform owner, granted the discount in the context of Scenarios 1 to 6, and who ultimately bore the costs relating to free delivery in the context of Scenarios 7 and 8. The link between this question and Advisory Opinions 8.1, 15.1 and 16.1 was also addressed during the exchanges. Those contributing to the discussion reiterated that the Agreement remained the legal framework for determining the Customs value of imported goods in E-Commerce, even if the particular characteristics of this model had to be taken into account. Uruguay provided answers to the various questions raised for clarification. It was noted that the discussions on the forum had not led to any consensus; however, they had contributed significantly to the continuation of the discussions during the face-to-face meeting.
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63. At the face-to-face meeting, Uruguay reminded those present that it had stated that it was not relevant to know whether the seller or the platform granted the discount. China agreed that it was not the concern of the buyer, but did not agree with the comment made by Uruguay during the online discussions that Advisory Opinion 8.1 and Article 1.1(b) are based on substantially the same theory. On the question of who granted the discount, opinions differed widely within the Technical Committee. The United States, Benin and the ICC supported Uruguay's opinion and considered that the important factor was the payment made by the buyer to the seller for the imported goods, irrespective of where the discount came from. The ICC proposed that, in drawing up the instrument, it should be specified that, for fiscal purposes, it was not important where the discount came from.
64. Responding to the Chairperson's proposal, supported by Indonesia, that it would be appropriate for the Technical Committee to hear a presentation on the particular characteristics of E-Commerce, the ICC said that it would be happy to make this presentation at the next session, if the Technical Committee so wished.
65. China supported the comment of the European Union made during the online discussions and the contribution of the United States on the fact that the Agreement remained the legal framework for determining the Customs value of imported goods both in traditional trade and in E-Commerce. However, it drew Members' attention to the need to make a distinction between the discounts offered by the seller and those offered by the platform, in order to define each one's role clearly. It recognized, however, that it was not an easy task to make this distinction, as Japan had pointed out during the online discussions.
66. In this connection, China reminded the Committee that E-Commerce was characterized by a very large number of low-value transactions. This ruled out a case-by-case approach to each of the transactions, as occurred with traditional trade. Taking these constraints into account, it invited the Technical Committee to consider a creative approach, for Customs valuation for E-Commerce based on a uniform, simplified application of the Agreement, given that simplified procedures for Customs declaration and revenue collection for the E-Commerce have already been adopted by some member administrations.
67. Concerning the role of the platform, several Members recognized that it performed the function of an intermediary, bringing the seller and the buyer into contact. One Member pointed out that the remuneration of the platform would or would not form part of the price actually paid or payable, depending on whether it was fully or partially remunerated by the seller or the buyer, as set out in paragraphs 12 and 13 of Explanatory Note 2.1. This, as had been said by China, Indonesia, confirmed the need to determine the role of the various actors involved in the transaction. Canada agreed to a certain extent with this view.
68. Regarding the first scenario covered in the Annex to Doc. VT1348Ea, Canada said that it did not agree with the proposed conclusion. It maintained that this scenario could not be equated either with the situation described in Advisory Opinion 8.1 concerning credits in respect of earlier transactions, or with the content of Advisory Opinion 16.1, since this was not a retroactive discount that could be viewed as a condition or consideration for which a value could be determined. Rather it was a scenario that was more akin to a "cash discount" as outlined in Advisory Opinion 5.1. In Canada's view, Scenario 1 was similar to Scenario 3, as a promotional discount relating to the company's commercial policy. Canada backed up its view with an example that gave rise to discussions within the Technical Committee, particularly for Uruguay, Israel and the ICC. Canada's position was supported by the European Union and Norway. Indonesia agreed with Uruguay in considering vouchers granted to be means of payment, since their use as a discount could cause difficulties in terms of Customs valuation.

69. Japan opined that, according to paragraph 1(b) of Article 1, it understands that the principle of the Agreement is that the Customs value should be determined by removing any effects from other transactions, and according to Advisory Opinion 15.1, quantity discounts is exception. Since the discounts by using the coupons or points which were obtained in the previous transactions are the effects from other transactions, the discounted price should not be taken as the Customs value.
70. As regards Scenario 6, on which Brazil had commented during the online discussions, Uruguay thought that this was a promotional discount obtained from a previous, independent purchase by a third party, to which Article 1.1(b) of the Agreement and Advisory Opinion 16.1 should be applied, unlike other Members, who considered that these were retroactive discounts. China pointed out that, although Scenario 6 related to a discount in the context of a commercial policy to attract new customers, its treatment had to be different from Scenario 1, for the buyer with the voucher was identical in both transactions, which was not the case with Scenario 6, in which the buyers were different.
71. Returning to a concern expressed during the online discussions as to whether Advisory Opinion 8.1 or 16.1 or Article 1.1(b) was the most appropriate to illustrate retroactive discounts, Uruguay explained its opinion to the Technical Committee. After using an example to argue its case, Uruguay concluded that, when the invoice contained the necessary details giving the amount of the initial purchase price for the goods and of the retroactive discount, Advisory Opinions 8.1 and 16.1 should apply in order to determine the Customs value. Otherwise, if the details of the initial price for the goods and the retroactive discount were not known, but only the final net price (after deduction of the retroactive discount), Article 1.1(b) would apply, using an alternative method to determine the Customs value. China restated that it could not support Uruguay's view that Advisory Opinion 8.1 and Article 1.1(b) could be applied to the same scenario and they are based on substantially the same theory.
72. Noting that the Technical Committee would not succeed in reaching a consensus during the current session, the Chairperson proposed that the discussions should be suspended and resumed at the next session. The Technical Committee agreed with the Chairperson and decided that consideration of this question should be suspended and returned to at the next session.

Conclusion

73. The text on the question of accumulated discounts in E-Commerce sales would be included on the Agenda for the next session of the Technical Committee, so that it could continue to be examined.

c) Valuation treatment of exclusive distribution fees – Request by Fiji

Docs. VT1349Ea and VT1360Ea

Background

74. The Chairperson presented this case submitted by Fiji which the Technical Committee agreed at its 54th Session to examine as a Specific Technical Question.
75. 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. The facts pertaining to this question are set out in the Annex to working document VT1314Ea.

76. During the intersession prior to the 55th Session, Fiji submitted responses to Members' comments and questions raised during the 54th Session which are reproduced in Annex III to Doc. VT1335Ea.
77. Fiji had not attended the virtual session of the 55th Session to provide further information and clarifications that delegates deemed necessary to proceed with the examination of this case. As such, the Technical Committee agreed to keep this question on the Agenda for further discussion at its 56th Session.

Summary of discussion

78. Fiji was unable to attend the 56th Session, nor the online discussion session on the CLiKC! Platform prior to the Session to provide further information on this case.
79. In view of this, China proposed to put this case into Part III of the Conspectus as the examination could not continue without Fiji's contribution. Uruguay and Canada echoed China's proposal.
80. The Technical Committee agreed to move this case to Part III of the Conspectus of Technical Valuation Questions.

Conclusion

81. The Technical Committee agreed to move this Specific Technical Question to Part III of the Conspectus of Technical Valuation Questions with a view to its possible re-examination at a later date.

- (d) 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

Docs. VT1350Ea and VT1361Ea

Background

82. The Chairperson of the Technical Committee recalled that, at its 54th Session, the Technical Committee had agreed to consider the question submitted by Uruguay as a Specific Technical Question. The question concerned the meaning of the expression "the price for the imported goods" in accordance with paragraph 4 of the Interpretative Note to Article 1. The initial basic text, which was a draft Commentary, was set out in the Annex to Doc. VT1315Ea.
83. Consideration of the question had continued at the 55th Session on the basis of the draft Commentary proposed by China and set out in the Annex to Doc. VT1328Ea. The text proposed by China concerned an expansion of Uruguay's draft Commentary to take into account the provisions of paragraph 1 and paragraph 4 of the Interpretative Note to Article 1 and of paragraph 7 of Annex III to the Agreement. The document was supplemented by a table of examples proposed by Uruguay and set out in the Annex to Doc. VT1336Ea. Regarding the examples, it was proposed that only those not yet addressed by the Agreement or by an instrument of the Technical Committee should be used.
84. During the intersession preceding the 56th Session, Uruguay had made a comment in which it had said that it approved the draft Commentary proposed by China and suggested that this

should be adopted at the 56th Session. It had also suggested adding a final paragraph giving a list of practical examples.

Summary of discussion

85. During the online discussion phase of the 56th Session of the Technical Committee, the Administrations of Canada, China, Indonesia and Uruguay, the EU and the ICC shared their written observations on the matter under consideration on the CLiKC! Platform.
86. China first elaborated its study on the logic behind “price actually paid or payable” system: Article 1 provides for the price actually paid or payable for the imported goods, which is normally shown as an invoice price; Article 8 provides for considerations that the buyer pays for other things and that are not yet included in the price actually paid or payable but should be included in the customs value; and the Agreement emphasizes that “Article 1 is to be read together with Article 8”. China pointed out that according to Case Study 6.1 and Commentary 20.1, the definition of “price actually paid or payable” as prescribed in Interpretative Note to Article 1 is further amplified in Paragraph 7 of Annex III, which might cause problem to the uniform interpretation of the Agreement.
87. In view of above, China further explained its proposals regarding the meaning of “the price for the imported goods” as well as its understanding about the relation between the expressions of “for the imported goods” and “condition of sale of the imported goods”. China suggested that the expression “the price for the imported goods” could be interpreted as “the price paid for the acquisition of the imported goods from the seller”, and highlighted some key factors to be considered when determining “price actually paid or payable”.
88. The online discussions that preceded the formal proceedings offered a unique opportunity for Members to discuss and agree on a number of points. For example, China requested clarification on the understanding of the logic behind the “price actually paid or payable” system. As such, Uruguay had developed the two concepts of “price of imported goods” and “payment of the price of imported goods”, between which certain delegates could determine no difference. China also asked whether a situation where a seller was offsetting a debt owed to a buyer for a previous transaction with part of the payment for the valuation goods would constitute an “indirect payment”. According to Uruguay, such a situation would not constitute an “indirect payment”, but rather it was a direct payment by the buyer to the seller through the cancellation of a previous credit in its favour, forming part of the “total payment made or to be made by the buyer to (...) the seller for the imported good” (see paragraph 1 of the Interpretative Note to Article 1). An indirect payment is one made by the buyer “to a third party to satisfy an obligation of the seller”, which is not the case.
89. Indonesia expressed its concern about the costs referred to in Article 8.2, which were not necessarily paid for the benefit of the seller, and proposed inserting a sentence in paragraph 6 of the draft text to ensure that countries using a CIF system had the option to add such costs to the price actually paid or payable. The ICC restated its previous comments on the far greater benefit for Customs authorities and the private sector alike to be obtained from establishing a much-needed general statement of principle first, rather than a draft Commentary consisting of various hypothetical fact patterns from which a general principle must be inferred. The ICC added that, if a payment under examination was shown to be for something other than for the imported goods, it was consideration for that other thing and not any part of the “price for the imported goods”. Consequently, that payment could not form part of the price actually paid or payable.
90. The EU made the observation that reference should be made to Article 14 of the Agreement, since the expression “the price for the imported goods”, as referred to in paragraph 4 of the 12.

Interpretative Note to Article 1 of the Agreement, should be interpreted in the context of other relevant provisions of the Agreement, namely Article 1, the provisions of paragraph 1 of the Interpretative Note to Article 1 and paragraph 7 of Annex III. Article 14 of the Agreement required considering the provisions of the Agreement and its three Annexes as a whole. The EU also proposed that examples 9, 10, 12, 13 and 14, to which the existing instruments adopted by the TCCV referred, should not be included in the draft Commentary, and that example 8, which concerned the application of Decision 3.1 of the WTO Committee on Customs Valuation, should also not be included. Proposals for amendment were made by the EU in relation to examples 1, 2, 5, 6 and 11.

91. Canada proposed changes to the draft Commentary set out in the Annex to Doc. VT1328Ea, in particular its paragraphs 3 to 6. Canada stated that it agreed with the wording used in paragraphs 1 and 2. The EU's view that reference should be made to Article 14 of the Agreement was supported by Canada. Similarly, it agreed with China, the EU and other Members who had proposed, during the previous session, that examples for which a Technical Committee instrument or a provision in the Agreement already existed should be excluded from the document. These would include examples 2, 3, 8, 9, 10, 11, 12, 13, 14 and 16. The various proposals for amendment by Canada to the draft Commentary were set out in a document appended to its comments during the online discussion phase on the CLiKC! Platform.
92. During the face-to-face proceedings, China noted that the Technical Committee appeared to have almost reached a consensus on the examination of this matter. It also agreed with the EU's approach of examining the different examples one by one, in order to identify any shortcomings and to complete any missing elements. The Democratic Republic of the Congo hoped that an instrument clarifying the concept of "the price for the imported goods" could be drawn up so as to ensure that Customs officials and the private sector were better equipped. It added that it would be very helpful if other concepts set out in the Agreement could also be clarified by the Technical Committee. The ICC restated its position expressed at previous sessions and during the discussions on the CLiKC! Platform, namely that a general principle should first be defined that would then be supported by examples.
93. It was then a question of choosing between two options for the procedure to be adopted for further examination of the text proposed by China, supplemented with the examples prepared by Uruguay. According to Uruguay, it could either be limited to cases where the matter had not yet been addressed by a Technical Committee instrument, or alternatively all the proposed examples could be considered without restriction. The Administration of Uruguay favoured the second option and took the view that, if the document was as exhaustive as possible, with a very broad scope, it would be far more useful both for Customs and for the private sector. However, Uruguay would have no issues with working on the basis of the first option. Guatemala, Dominican Republic and the United Kingdom were in favour of an expanded flexible document, while being flexible in this respect. The EU was in favour of a less expanded document, but it could also show some flexibility. Canada was in favour of the first option because, in its view, a fully exhaustive document would not be possible. It proposed inserting a sentence such as "see these instruments for more information on the price actually paid or payable". Brazil, Côte d'Ivoire, the United States and Morocco agreed with Canada's position. China shared Canada's view that a fully exhaustive document would not be possible.
94. The Chairperson concluded that the Technical Committee had almost reached a consensus, given that the majority of Members agreed with Canada's proposal and the position of the other Members was flexible. The Technical Committee could therefore begin its examination of the matter from the document submitted by China and set out in the Annex to Doc. VT1328Ea.

95. Canada was invited to comment on its proposed amendments to the draft Commentary proposed by China, which the Technical Committee had used as a background document for its examination of this matter. It was recalled that Canada had shared these observations during the online discussions on the CLiKC! Platform. However, because its comments were submitted late, certain Members had not been able to access that document. Canada confirmed that the changes it had made to the document related to paragraphs 3 to 6. The changes suggested by Canada could be summarized as follows: with regard to paragraph 3, Canada proposed including a reference to Article 14; with regard to paragraphs 4 and 5, Canada proposed some significant edits aimed at simplifying the text and merging the concepts raised in paragraph 5 into paragraph 4. The changes to paragraph 6 aimed to place the “condition of sale” element in the complementary and supportive role that Canada believed it had.
96. The proposed changes by Canada were the subject of intense discussions within the Technical Committee. The United States said that it agreed with Canada’s changes to paragraph 4. China took the view that, according to A.O. 25.1, the “condition of sale” element was just as important as the “for the imported goods” element. However, there was no reference to whether the payment was “related to the imported goods” in the analysis part of A.O. 25.1. In addition, the Agreement did not specify the concept of “related to the imported goods”, which meant it was difficult to have a shared understanding of this concept. According to Uruguay, it was important to clarify the concepts of “price actually paid or payable”, “transaction value” and “Customs value”, and not to mix them up, because they referred to substantially different definitions. The ICC made adjustments to Canada’s proposed changes, stating that it made no difference to the concepts of “price actually paid or payable”, “transaction value” and “Customs value”. Japan shared the principle of the amendments proposed by Canada and opined that in order to determine whether or not a payment constitutes part of the price actually paid or payable for the imported goods, it is necessary to examine whether or not a payment relates to the imported goods in addition to whether or not a payment is a condition of sale of the imported goods. In order to further clarify this point, Japan proposed changes to the amendments proposed by Canada.
97. In the light of the differences of opinions on the concept of “price actually paid or payable”, which some Members viewed as a prerequisite for further consideration of this matter, it appeared that the Technical Committee would not be able to reach a shared understanding of this concept during this session. The Chairperson therefore proposed postponing examination of this matter until the next session. The Technical Committee stated that it agreed with the Chairperson’s proposal.

Conclusion

98. The Chairperson therefore closed the discussion on this item on the Agenda for the 56th Session of the Technical Committee. Discussions on the matter would continue at the next session on the basis of Canada’s document, which was derived from the Annex to Doc. VT1328Ea, and on the basis of the Annex to Doc. VT1350Ea.

(e) Meaning of the expression "in substantially the same quantities" according to Articles 2 and 3 and the respective Interpretative Notes to those Articles : Request by Guatemala

Doc. VT1351Ea and Doc. VT1362Ea

Introduction

99. During the 55th Session, the Technical Committee agreed to examine the question submitted by Guatemala as a Specific Technical Question at its 56th Session.
100. The question, set out in Doc. VT1337Ea, is about the meaning of the expression “In substantially the same quantity” as referred to in Articles 2 and 3 and in the corresponding Interpretative Notes of Annex I to the WTO Customs Valuation Agreement.
101. Since there is no definition or interpretation provided in the Agreement for the expression, the Technical Committee’s guidance was sought to ensure a uniform interpretation and application by Customs and the private sector when applying Articles 2 and 3 of the Agreement.

Summary of discussion

102. The Delegate of Guatemala highlighted that this question was brought to the Technical Committee with the view to developing a definition with objective criteria to interpret the expression “in substantially the same quantity” when applying Articles 2 and 3 of the Agreement to ensure a uniform interpretation, as well as certainty and transparency, and to learn how other Customs Administrations deal with this issue.
103. According to the Delegate of Indonesia, the main problem is not the interpretation of the expression “substantially the same quantity”, but the main concern on this Agreement that there shall be an adjustment when there are differences in commercial levels and quantity levels using objective and quantifiable data. Hence it is still possible to use provisions of Article 2 and 3 under the different conditions of commercial levels and quantity levels provided that the absence of the objective and quantifiable data means that the differences do not influence the price of the imported goods.
104. In its written comments made during the intersession prior to the 56th Session of the TCCV, Uruguay reiterated its position made at the 55th Session that (i) it is not possible to assign in advance or approve levels of prices, based on the quantities of the goods purchased and (ii) the interpretation of the expression “with substantially the same quantities” will strictly depend on market conditions, which cannot be anticipated, programmed or fixed in advance since the trade is highly variable and unpredictable.
105. The United States highlighted in its written comments that the purpose of this question, as stated in the draft Commentary proposed by Guatemala, is to develop a comprehensive understanding of the concept and meaning of the expression “in substantially the same quantity” for purposes of applying Articles 2 and 3. It supported the views expressed by several other administrations that what constitutes “substantially the same quantity” could vary according to numerous different factors and for this reason it would not be appropriate to set a fixed percentage range that would be applicable in all circumstances.
106. The United States also suggested to analyse this question along the lines of Explanatory Note 1.1 and to apply the similar analysis in this case. Accordingly, the word “substantially” is intended to make the term “the same quantity” somewhat less rigid. Moreover, consistent with the General Introductory Commentary’s recognition that customs value should be based on simple and equitable criteria consistent with commercial practices, “substantially the same quantity” could be interpreted to cover a quantity for which the relevant commercial practices remain the same.
107. The European Union made a reference to the on-line Cambridge Dictionary to find a meaning for the term “substantially” which is defined as “to a large degree” and indicated that

similar terms are used in the Agreement which are necessary to guarantee some limited flexibility while the provisions of the Agreement are applicable. It also agreed with the opinion expressed by the United States.

108. China shared the views presented by the United States and echoed by the European Union and reiterated its comments that the expression "in substantially the same quantity" should be defined or interpreted from a qualitative perspective rather than a quantitative perspective and believed that Commentary 10.1 and Explanatory Note 1.1 will shed light on the examination of this issue.
109. Uruguay, considering that examining the case with a fixed percentage would not progress and taking into consideration the provisions of the Agreement which provides that Customs have the right to check all information, documents or declarations presented and to expect full cooperation from importers, suggested that it might be useful to consult with the private sector in order to understand the pricing conditions of the imported goods. This could be the basis for Customs to work on and Uruguay offered to work with Guatemala and the Secretariat to rearrange the case and come up with a generic document.
110. China agreed with the proposal of Uruguay for a generic document to be applied on a case-by-case basis. The ICC offered to make a presentation at the next Session on materials that may have a bearing on what is meant by substantially the same quantity from one industry sector to another.
111. The European Union agreed with the proposal from the ICC and proposed to consult internally among EU Member States for examples of specific situation where they have been involved and which be shared.

Conclusion

112. The Technical Committee agreed with the proposal of the ICC to make a presentation, the case be rearranged for examination at the next session taking into account the views of China and Uruguay.

(f) Treatment applicable to transactions agreed in cryptocurrency units Submitted by Uruguay

Docs. VT1352Ea and VT1363Ea

Background

113. The Chairperson recalled that the Technical Committee agreed to examine this question submitted by Uruguay as a Specific Technical Question at the 55th Session. It concerned Customs valuation treatment of imported goods when the price is based on cryptocurrency units.
114. At the 55th session, some delegates were of the view that cryptocurrency is a special kind of good and Advisory Opinion 6.1 could apply. Others, however, felt that cryptocurrency could be accepted as a payment instrument for Customs valuation purposes.

Summary of discussion

115. The Delegate of Uruguay stated that his Administration, in the absence of legal support for the use of cryptocurrency, handled transactions agreed in cryptocurrency units in accordance with Advisory Opinion 6.1. He acknowledged that other countries that have legalized the use
- 16.

of cryptocurrencies may have different approaches in this regard, and he was open to the inclusion of these approaches in the draft instrument. As such, different valuation treatment could be applied to transactions expressed in cryptocurrency depending on the national legal framework.

116. The Delegation of the European Union shared the practice on the valuation treatment of cryptocurrency in the European Union where the cryptocurrency was not recognized as a legal tender. In cases where the price is expressed in cryptocurrency while the invoice provides for a conversion into a national currency, the Customs value is to be based on the currency of settlement with reference to Advisory Opinion 20.1.
117. Uruguay pointed out that the intention of the case is to address situations where the price is expressed and settled exclusively in cryptocurrency without involving any other legal tender. The Delegate opined that a transaction agreed in cryptocurrency units when cryptocurrency was not recognized as legal tender in the importing country should be considered a barter even if it was linked to a legal currency, and Advisory Opinion 6.1 should also apply in such cases as it is stated in the Advisory Opinion that “barter transactions expressed in monetary terms can be regarded as sales, such transactions however will of course be subject to the provisions of Article 1, paragraph 1 (b).”
118. Norway and Japan also shared the practices of their Customs Administrations. Both of them do not recognize cryptocurrencies as official currencies and alternative methods are applied when the price is expressed and settled in cryptocurrency.
119. Brazil was of the view that in countries where there is no regulation of cryptocurrency as a legal means of payment, these transactions settled with cryptocurrencies should be considered as barter. In such cases, the alternative methods would be used unless objective and quantified data could be provided by the importer for the application of the transaction value method.
120. The United States invited the ICC to make a presentation on cryptocurrency at the next session with a view to facilitating an informed and thoughtful discussion. The ICC accepted the invitation and would like to deliver a presentation on the legal framework and practical use of cryptocurrencies.

Conclusion

121. The Technical Committee agreed to keep this question on the Agenda for further discussion at its 57th Session.

Agenda Item VI : QUESTIONS RAISED DURING THE INTERSESSION

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

Doc. VT1346Ea

Introduction

122. The Chairperson presented this new question submitted by Brazil for consideration by the Technical Committee during the intersession prior to the 56th Session.

VT1365Ec
(VT/56/May 2023)

123. This case concerns a transfer pricing study using the Cost Plus Method, and a draft case study is set out in the Annex to Doc. VT1346Ea.

Discussion

124. During the online discussion phase, China and Uruguay submitted their written comments supporting the examination of this case as a Specific Technical Question at the next session.
125. At the 56th Session, China, supported by Chile, proposed to invite the OECD to present on the Cost Plus Method at the next session of the Committee, in order to ensure there is a uniform understanding when discussing the Case. The Secretariat confirmed that the invitation will be extended to the OECD who holds observer status with the TCCV.

Conclusion

126. The Technical Committee agreed to include this question on the Agenda of its 57th Session as a Specific Technical Question.

(b) Valuation treatment of freight and freight charges under Article 8 of the Agreement: Request by Mauritius

Doc. VT1364Ea

Introduction

127. The Chairperson presented this new question submitted by Mauritius during the intersession prior to the 56th Session.
128. The question centres on whether the lower CIF invoice value or a higher value, inclusive of additional freight charges (so called Bunker Adjustment Factor), is to be considered for the purposes of assessing the Customs value as set out in VT1364Ea.

Discussion

129. During the online discussion phase, Mauritius provided further clarification on the facts of this case in response to questions raised by Members on the CLiK! Platform.
130. Given the absence of Mauritius at the 56th Session, some Delegations, though supporting the value of examining this case, expressed concerns on whether Mauritius could attend the next session to facilitate the discussion.
131. A number of Delegations, nevertheless, remained in favour of proceeding to include the question as a Specific Technical Question on the Agenda at the 57th Session.

Conclusion

132. The Technical Committee agreed to include this question on the Agenda of its 57th Session as a Specific Technical Question.

Agenda Item VII: OTHER BUSINESS

(a) Theme Meeting

18.

Background

133. The Chairperson introduced the background of Theme Meeting which is a regular feature of the Technical Committee with various subjects being examined.
134. At its 55th Session, the Technical Committee agreed to include an item on the discussion of the possible topic of the “Theme Meeting” in the Agenda of the 56th Session with a view to holding the Theme Meeting at its 57th Session.
135. During the intersession, Uruguay suggested to include Customs valuation control processes used by various Customs administrations as a topic of the Theme Meeting. Uruguay’s proposal is set out to Doc. VT1353Ea, it also expressing an interest to present at the Theme meeting.

Discussion

136. The Delegate of Uruguay elaborated on the background of the topic proposed by his Administration for the Theme Meeting. A forum on the same topic was held in the AMS Region last year, providing an opportunity for Customs administrations in that region to exchange practices and experiences on Customs valuation control. He was of the view that it would be beneficial to extend this approach to other members through the Theme Meeting.
137. Uruguay’s proposal was supported by a number of Delegations. In addition to Uruguay, Argentina, Canada and Dominican Republic also volunteered to make presentations on this topic at the Theme Meeting.
138. The Delegate of Canada proposed another additional topic, namely, the application of deductive method, especially in the case of Transfer Pricing where the transaction value method was rejected due to the relationship having influenced the price and where the parent companies sold goods only to their subsidiaries, thereby also precluding the use of the transaction value of identical or similar goods in accordance with Articles 2 and 3 of the Agreement. However, he also agreed that this topic might be considered at a future Theme Meeting if there were no other volunteers to make presentations on it for the 57th Session.
139. The Technical Committee agreed with the Deputy Director’s proposal to invite the Enforcement Sub Directorate of the Secretariat and cross-skill experts to the Theme Meeting at the next session.
140. In view of the number of presentations, the Technical Committee agreed that half a day would be allocated to the Theme Meeting at the 57th Session.

Conclusion

141. The Technical Committee agreed to hold a Theme Meeting at its 57th Session. The topic agreed is “Customs valuation control processes used by Customs”.

(b) Mechanism to ensure Member’s report on the progress in the application of the WTO Customs Valuation Agreement

Doc. VT1354Ea

142. The Chairperson introduced this Agenda item, noting that during the discussion of the “Template for Work Programmes of WCO Working Bodies” at the 55th Session, the Committee agreed to include Uruguay’s proposal of reporting progress with the

implementation of the WTO Customs Valuation Agreement, but with this being held once every two years, rather than annually as suggested initially by Uruguay.

143. In order to ensure that there is commitment by Members to present their implementation of the Agreement, China suggested to develop a mechanism/rules to ensure commitment.
144. To support the Technical Committee in this process, the Secretariat prepared a summary table showing Members' participation in the Technical Committee's work over the past ten sessions, which is appended to Doc.VT1354Ea.

Discussion

145. There was much discussion on the approach to be used to ensure Members' presentation on the application of the Agreement. Uruguay advocated that an encouragement and voluntary mechanism approach should be followed. China, commending previous presentations, supported Uruguay's proposal and agreed that there was no need to establish another mechanism.
146. Chile volunteered to present on its experience in respect to royalties and licence fees under Article 8.1(c). South Africa was also willing to make a presentation on its application of the Agreement.
147. The ICC briefly summarized the preliminary findings of an ongoing survey it is conducting on current compensatory adjustment practices. Comprehensive information on the survey will be presented at the next session.

Conclusion

148. The Technical Committee agreed that current voluntary-based mechanism would continue to be used to ensure Members' presentation on the progress in implementing the Agreement.

(c) Study on the format of TCCV instruments

Doc. VT1355Ea

Background

149. During the drafting of the final text preceding the adoption of Advisory Opinion 25.1, a comment was made by a Member concerning the numbering used for the paragraphs of the document. Whereas the Secretariat proposed that the document be numbered as two paragraphs, like other Advisory Opinions adopted by the Technical Committee, certain Members proposed that all the paragraphs be numbered, as was the case for Advisory Opinion 4.16, arguing that this numbering format made it much easier to refer to the text.
150. Following the difference of opinion noted between Members who wanted all the paragraphs of the Advisory Opinion to be numbered and those who were in favour of numbering in two sections, the Director of Tariff and Trade Affairs suggested that the numbering in two sections, as used in most of the Advisory Opinions, be maintained. He promised that the Secretariat would present a study on the question of the numbering of Advisory Opinions to the Technical Committee on Customs Valuation for examination at its next session.
151. It is worth mentioning that there are three different types of numbering in the Advisory Opinions.

Numbering in two sections

152. For almost all the Advisory Opinions which are numbered in two sections, the first section is comprised of a question, usually consisting of one paragraph, on which the Technical Committee is to give its opinion in the second section. However, within this category there are some Advisory Opinions in which the first section contains more than one paragraph (A.O. 4.15, A.O. 4.17 and A.O. 4.18, for instance), making it difficult to establish a rationale for the editorial form used for these instruments.

Further numbering

153. In the category of Advisory Opinions with further numbering, i.e. where all the paragraphs are numbered from start to finish, the constant factor is that each of the two sections – the section covering the issues and the one setting out the opinion of the Technical Committee – is relatively long and includes several paragraphs. These are Advisory Opinions 4.16 and 4.19. However, Advisory Opinions 4.15, 4.17 and 4.18 are of approximately the same length, but they are numbered in two sections.

Other numbering

154. A final category of numbering exists, and concerns Advisory Opinion 1.1 in which alphabetical numbering has been used in the first section, whereas the second section is numbered in Roman numerals.
155. An examination of the various Advisory Opinions already adopted by the Technical Committee on Customs Valuation therefore shows that there are three ways of numbering the paragraphs. After analysing the various situations, the Secretariat has been unable to identify any guiding principle determining the rationale for each of the numbering choices. The choice seems to be one of principle rather than logic. Thus, most of the Advisory Opinions (43 out of 46) are numbered in two sections, two Advisory Opinions are numbered throughout, and the paragraphs of one Advisory Opinion have been numbered using a system which differs from the others.

Summary of discussion

156. After the Chairperson of the Technical Committee had introduced this Agenda item, China pointed out that according to the study conducted by the Secretariat, three different types of paragraph numbering were used in the Advisory Opinions. China considered that, even if each type of numbering had its own advantages, the numbering of the paragraphs would appear to depend on the length of the text as well as its content. In any event, the purpose of numbering was to provide ease of reference for the future. The shorter Advisory Opinions consisted of only two paragraphs; but for the longer ones it would be helpful to have further numbering of the paragraphs, throughout the document. China was in favour of numbering in two sections for those Advisory Opinions which were relatively short. On the other hand, for longer Advisory Opinions it proposed that all the paragraphs be numbered, with the possibility of giving titles to each of the two sections. This would make it easier to refer to the text. Canada proposed that future instruments be subdivided into two sections, with all paragraphs in each section being numbered. Canada appreciated that renumbering earlier Advisory Opinions would be very time-consuming, and, following the remarks made by some other Members, agreed that existing Advisory Opinions should remain unchanged (i.e. not be renumbered). The International Chamber of Commerce and the European Union shared Canada's view, for the sake of ease of reference. Uruguay was in favour of the traditional numbering system, i.e. just two sections, with no paragraph numbering. Morocco favoured numbering, with subdivisions. Argentina proposed acting according to the document to be adopted, while maintaining the subdivision into two sections. The United States supported the latter proposal.

Conclusion

157. The Technical Committee agreed that the numbering format of future Advisory Opinions would be decided when they were examined.

(d) Presentation by the Secretariat: PCA data analysis on Customs Valuation issues

Introduction

158. The Secretariat delivered an oral presentation on a data analysis tool for the purposes of targeting in preparations for an audit, something that would be of benefit for measuring and improving trader compliance in respect to the WCO PCA Guidelines. This concept was in line with the "audit-based controls" regulated in the Revised Kyoto Convention (Chapter 6 of the General Annex) and the WTO Agreement on Trade Facilitation (Article 7.5).
159. The Secretariat then demonstrated how the tool could be used in a number of scenarios, concluding with areas of further research, for example, in respect to undeclared freight, in view of inconsistencies in Incoterms, or misapplication of preferential origin.

Discussion

160. China commended the Secretariat on the presentation, suggesting improvements to reflect dutiable assists, in particular when assists are provided from a third country, or when the assists are intangible, such as knowhow and trademarks, where there may be no sign of exportation.
161. In responding to China, the Secretariat underlined the limitations of scrutinising Customs data, meaning the area of assists and intangibles were only discernible when undertaking an audit at the premises.
162. The US also praised the presentation, commenting that they were especially interested in the analysis on unit prices, with a large difference in the average price of a declared value being an indication of risk and pointing to a potential intervention. The US, however, urged caution that differences between prices and those declared shouldn't be a reason to rule out the declared value outright.
163. The ICC stressed there are instances of databases being heavily used, wanting to underscore a process that focussed on post clearance audits instead.
164. In addition, in response to Members' questions on the use of the tool, the Secretariat reaffirmed that the presentation centred on risk assessment and the project is in its pilot phase. On approval of the next working group on compliance and fraud, the output will be shared with Members.

Conclusion

165. The Technical Committee took note of the Secretariat's presentation on PCA data analytic techniques on Customs valuation issues.

Agenda Item VIII: PROGRAMME OF FUTURE WORK

166. The Secretariat informed the Technical Committee that the following items would be included on the Agenda for the 57th Session:

- I. Adoption of Agenda/Suggested programme**
- II. Theme Meeting**
- III. Adoption of the Technical Committee's 56th Session Report**
- IV. Reports on intersessional developments**
 - Director's Report
 - WTO Committee on Customs Valuation report
- V. 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
- VI. Specific technical questions**
 - Treatment applicable to goods subject to licensing contracts for distinctive signs : Request by Uruguay
 - Accumulated discounts in E-Commerce sales : Request by Uruguay
 - 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
 - Meaning of the expression "in substantially the same quantities" according to Articles 2 and 3 and the respective Interpretative Notes to those Articles : Request by Guatemala
 - Treatment applicable to transactions agreed in cryptocurrency units: Request by Uruguay
 - Use of transfer pricing documentation when examining related party transactions under Article 1.2 (a) of the Agreement : Request by Brazil
 - Valuation treatment of freight and freight charges under Article 8 of the Agreement : Request by Mauritius
- VII. Questions raised during the intersession**
- VIII. Other business**
 - Presentations by the ICC
- IX. Elections**
- X. Programme of future work**
- XI. Dates of next meeting**

Agenda Item IX: DATES OF NEXT MEETING

167. The Secretariat informed the Technical Committee that the 57th Session of the Technical Committee on Customs Valuation had been provisionally scheduled for 9 to 13 October 2023.

CLOSING REMARKS

168. The Chairperson and the Deputy Director thanked delegates, the Secretariat and support staff for their efforts during the week before the Chairperson formally declared the 56th Session closed. This being the last attendance by Luximan Babajee as Senior Technical Officer, Customs Valuation, in the WCO Secretariat, several delegates expressed very heartfelt, well-deserved appreciation to him for all his work for the Technical Committee, thanking him for the services he had provided and wishing him the best of luck in his new activities.

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(VT/56/May 2023)

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**REPORT BY THE WTO
TO THE 56TH SESSION OF THE
TECHNICAL COMMITTEE ON CUSTOMS VALUATION**

3-5 MAY 2023

The WTO last reported to the TCCV at its 55th Session in October 2022. Following the TCCV meeting, the WTO's Committee on Customs Valuation (WTO CV Committee) held its formal meeting on 4 November 2022. As a matter of practice, the WTO seeks to schedule its formal meetings to follow those of the TCCV. The next formal meeting of the WTO CV Committee is scheduled for Wednesday, 24 May 2023.

The WTO CV Committee reviews four types of notifications pertaining to the customs valuation legislation of Members, which include: Members' laws, regulations, and administrative procedures; Members' responses to a checklist of issues related to their legislation; Members' date of implementation of the Decision on Interest Charges; and whether Members adopt the practice referred to in paragraph 2 of the Decision on the Valuation of Carrier Media. The status of notifications regarding Members' customs valuation legislation, and any questions and responses pertaining to that legislation, is compiled in a report, the most recent version being document G/VAL/W/232/Rev.16.

Status of Notifications relating to Customs Valuation Legislation

At the November 2022 meeting of the WTO CV Committee, the Chairperson (Mr Frank RITTNER of Germany) acknowledged the work by Members in submitting notifications pertaining to their customs valuation legislation; in the last year, new or updated legislation had been submitted by Botswana, Brazil, Georgia, Norway, UAE and Ukraine. The Committee also remains active in its consideration of questions and responses pertaining to this legislation, with more than a dozen such notifications having been submitted since its last meeting. With 36 items on the agenda, the customs legislation of more than a third of the Membership is presently under the WTO CV Committee's review.

As always, the WTO Secretariat wishes to acknowledge the positive contribution of Members of the TCCV to the work of the WTO CV Committee and appreciates their work in encouraging the submission of customs legislation notifications as well as responses to questions raised by Members in relation to that legislation.

Other Activities

The Chairperson of the WTO CV Committee has also been active on several fronts. First, he has been urging WTO Members to share information at the next meeting on recent customs experiences and practices since COVID-19 pandemic period. He also has guided the Committee is evaluating ways to improve its work, both as part of a larger WTO-wide process to improve the functioning of its committees, as well as in discrete areas, such as in the development of an electronic system to enable delegations themselves to inscribe items on an evolving electronic agenda in advance of Committee meetings.

In addition, the WTO Secretariat has been working with the WCO Secretariat to identify areas for further engagement and collaboration. We were delighted that the Director of the WTO's Market Access Division was able to provide an opening address at the WCO's recent Symposium on E-Commerce and Customs Valuation, and we look forward to a joint presentation by our respective Secretariats at the WTO CV Committee meeting later this month on the work and activities of each of our committees. Finally, we are grateful for the

ongoing collaboration of the WCO Secretariat and its technical experts in organizing and delivering technical assistance activities that are requested by our Members.
