Technical Group on Customs Administration

Preliminary draft of Technical Group's Report on Valuation

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I. General Report

1. In accordance with its terms of reference, the Technical Group has made a technical and factual study of the replies submitted by Governments to the questionnaire on valuation (L/228) which are contained in L/228/Addenda 1 – . The following contracting parties have not furnished replies:

2. The particulars furnished by the various contracting parties regarding their methods of valuation have been summarised in the attached schedule, but insofar as the study has revealed any points of unusual character or particular importance, they are referred to specially in the later sections of this report. First, however, it may be useful to describe in general terms the main systems by which values are established for the purpose of charging customs duties.

3. Valuation criteria. It emerges from the replies that three criteria are used:

   (1) the price at which goods comparable with the exported goods are sold in the internal markets of the exporting country ("current domestic value");

   (2) the price at which the imported goods are sold to the importing country ("transaction value");

   (3) the price at which goods comparable with the imported goods are sold in the markets of the importing country ("import market value").

Sec/162/54
While national legislation introduces various refinements of detail into the definitions of value which are actually applied, these definitions are broadly based on one or other of the above criteria.

4. **Current domestic value.** Countries adopting this criterion base their value for duty purposes on the price at which goods comparable with those imported are sold under fully competitive conditions on the domestic markets of the country from which the goods were exported. This price is required to be declared by the exporter and is usually subject to verification by officials of the importing country stationed in the exporting country. No account is taken, for Customs purposes, of export sales at prices less than the current domestic value. Where, however, the price at which the goods are sold to the importer is higher than the current domestic value, countries using this system invariably require that the actual sale price must be taken as the basis of value for duty purposes. Countries using this system normally establish their values at an f.o.b. level, but some countries do so at a stage earlier, i.e. an internal market price without inclusion of charges up to the f.o.b. point.

5. **Transaction value.** A second large group of countries base their value for duty purposes on the price at which the goods are sold to the country of importation, under fully competitive conditions. This can be looked at either from the standpoint of the exporting country as the export price at which the goods would be sold for exportation, or, alternatively, from the standpoint of the importing country as the import price at which the goods would be purchased. Except where the definition is subject to further qualifying conditions, the difference is often little more than a question of whether the sale price is to be taken at an f.o.b. or c.i.f. level.

6. An important group of countries in this category are the nine contracting parties which have adopted the Brussels definition of value which, briefly stated, establishes a notional standard of value, being the price which the goods would fetch on sale in the open market in the country of importation at the time and place of importation, and then sets out a number of considerations by which to judge whether the actual sale price of the imported goods does or does not provide the notional standard of value.

7. The countries which adopt the transaction value as the basis for establishing the value for duty purposes do, in practice, find that the actual invoice price at which the goods are sold to the importer is usually acceptable as providing the value on which duty is paid. They are, however, under the necessity of establishing methods of valuation to be used when the price at which the goods pass from the foreign exporter to the importer is not acceptable as the basis on which to charge duty. In some cases this is done by uplifting the import price, in other cases by basing the value on the price at which the goods are sold after importation, with or without various deductions.
8. **Import market value.** The study reveals that a few countries have legislation requiring duty to be based on the price at which goods comparable with the imported goods are currently sold in the internal markets of the importing country. In such cases deductions are made for duty, and for charges arising after importation. It is stated, however, that this basis is only applied to a very small proportion of importations, and it is clear that import market value is less significant as a method of valuation than the other two criteria.

9. **Differences in practice.** It emerges from the detailed replies which have been furnished that, apart from the nine countries which are operating a common definition of value under the Brussels Convention, there are numerous differences in practice even between countries which are using the same criterion for establishing value for customs purposes. Thus, countries which have regard to the current domestic value in the country of exportation do not all take the same time for establishing that value, some having regard to the time of the export sale, others to the time the goods are shipped from the port of exportation. Again, some countries establish the value at an f.o.b. level, others at a point prior to the f.o.b. level and others at a subsequent point, equivalent to c.i.f. Most of these countries require duty to be based on the actual export price if it is higher than the current domestic value, but this is not invariably the case (see New Zealand). In the countries which take as their criterion the transaction value there is considerable variation as to the time and place laid down for the purposes of the definition of value. In some countries it is the time and place of the export sale, in others the time and place of exportation or even the time and place of importation. The level of the price to be considered varies from ex-works to c.i.f.

10. **Currency conversion.** The method of converting prices which are not expressed in the currency of importation varies in detail from country to country, but in general it can be said that a recognised rate of exchange is adopted.

11. **Residual assessments.** All countries have procedures for establishing an acceptable value for duty purposes in cases where the commercial transaction is such that no satisfactory evidence of value can be produced by the importers. The method used varies according to the basis of valuation adopted and may involve either a suitable adjustment of the invoice price, calculation of import values by reference to the selling prices of the imported goods in the country of importation or valuation by reference to comparable goods. Establishment of values on the basis of cost of production in the country of origin is only rarely resorted to.
II. Points arising out of Contracting Parties' replies to the questionnaire

1. Do you have any administrative or legal provisions which permit valuation for customs purposes to be based on arbitrary or fictitious values, in the sense that such values are not related to the value of the imported merchandise in question or of like imported merchandise? If so, give particulars of any such provisions, of the class or nature of the importation to which they are applied, and of the method by which the values used are determined.

No countries admit to having resort to fictitious values, but some countries (Australia, Canada, Rhodesia and Nyasaland) have provisions giving very wide powers of decision, in residual cases, to a Minister. The delegations concerned said that in the rare cases where such provisions are called into play, the Minister would endeavour to establish a fair and reasonable value.

Some countries have in force a system of fixed import values to which ad valorem rates of duty are applied. In France such values are applied to mineral oils. They are fixed by the fuel section of the Ministry of Commerce on the basis of prices ruling during the previous period. It is stated that this system facilitates the assessment of internal taxes which are required to be collected at the same time as the customs duties.

India and Pakistan also have a system of fixed values for a number of products for which it is considered simpler both for traders and customs authorities not to require actual values to be declared. In the case of each product concerned the value fixed is based on the average values of importations during the preceding year, and the price is only fixed after consultation with the principal Chambers of Commerce. When fixed, the values normally remain in force for one year.

In the United States of America there are some arbitrary elements in the statutory limitations on certain deductions and additions which fall to be made in computing United States value and cost of production when it is necessary to use either of these methods for establishing the value for duty purposes.

The United States delegate made the following additional statement:

"It is true that as the questions are worded, the United States of America must reply in the affirmative, since under certain circumstances it applies arbitrary or fictitious values, and also the value of comparable domestic products. But it must be stated, however, that the extent to which such values are applied is limited to cases for which other countries arrive at
similar solutions by legislation less open to comment. Thus, for example, the "American selling price" (which is based on Section 336 of the Tariff Act) obviously has the same function in the United States as the anti-dumping and countervailing provisions in other states. This regulation can only be applied to articles which are not bound under any bilateral or multilateral treaty (including such treaties giving a country the right to most-favoured-nation treatment) and is limited to six specified commodities. Also the application of the "United States value" and the "cost of production" (Section 402) is probably not unprecedented in the practice of other countries which inevitably have to use similar criteria if the value cannot be determined in a normal way. The difference as compared with other countries seems to lie in the fact that other countries can use administrative measures more flexibly, whereas under the American system, the administration has no right to act without precise legal provisions".

2. Do you have any administrative or legal provisions which permit valuation for customs purposes to be based on the values of comparable domestic products? If so, give particulars of any such provisions, cf. the class or nature of the importations to which they are applied, and cf. the method by which the values used are determined.

The United States of America have a provision requiring the value of six classes of products to be established on the basis of the price at which comparable goods of United States origin are sold in the United States.

In theory, the Burmese definition of value would permit the market price of domestic goods to be taken into consideration in fixing values, but it was stated that in practice this did not happen.

3. Is valuation, apart from the cases mentioned in 1 and 2, based on a definition of value which seeks to establish as a standard the actual value of the imported merchandise on which duty is to be assessed or of like imported merchandise? If so, indicate what provision is made for establishing this standard and furnish a copy of the legal provision containing the definition.

All countries have definitions of value which seek to establish as a standard the actual value of the imported merchandise or like merchandise. The application of these definitions is brought out in the replies to Questions 4, 5, 6, 7 and 8.

Attention was drawn to two exceptional features in the Canadian legislation. One is that where, as a result of the advance of the season or marketing period, the market price has declined to a level that does not reflect its normal price, the value for duty may be taken to be the average price, weighted as to quantity, at which the like or similar goods were sold for home consumption in the country of export during a
reasonable period, not exceeding six months, immediately preceding the date of shipment of the goods to Canada. For the purposes of the operation of this provision, exporters are required to declare, additionally, the average price during the preceding six months. In fact, for almost all kinds of manufactured goods the exporter is required to declare such average selling prices. There is a similar provision regarding end of the day sales of cut flowers. Canadian Customs Collectors are in a position to fix minimum prices based on average market prices in the preceding season and duty is charged on the basis of these fixed prices in any case where it exceeds the actual selling price. The Technical Group considered that the values required in these two cases could not be regarded as being actual values within the meaning of Article VII.

The principal feature in the valuation system of the United States which has given rise to difficulties to exporters in other countries is the provision by which the price at which manufacturers normally sell goods to wholesalers in the country of exportation is not acceptable as the basis of value for duty purposes if manufacturers also sell to retailers at a higher price. The United States delegate explained that this is due to the judicial interpretation of the wording in Section 402 of the Tariff Act which establishes "foreign value" at the price at which such or similar merchandise is freely offered for sale.... The term "freely offered for sale" has been interpreted in the United States courts as meaning the price at which the goods are available to all purchasers in the ordinary course of trade and the lower prices to wholesalers have not been accepted as meeting this requirement. The United States delegate drew attention to the fact that the Customs Simplification Bill which had failed to secure passage through Congress would have discontinued "foreign value" as a method of valuation.

4. What is the time which is accepted in your legislation as the time of sale, or offer for sale, for valuation purposes?

5. What is the place accepted in your legislation as the place of sale, or offer for sale, for valuation purposes?

The time and the place of valuation vary according to the basis of valuation used. Where the current domestic value is the basis, the time and place of valuation are usually either the time and place of the export sale, or else the time and place of exportation. Where transaction value is the basis of valuation, the time and place of valuation may be either the time and place of importation or the time and place of the sale for exportation. Where the import market value is the basis, the time is usually the time of importation.

It will be noted from the replies that there are a number of minor differences in these respects, even between countries using the same main criterion. As regards place of valuation, the different definitions of value in force result in duty being charged as between one country and any other, on the basis of various price levels, e.g. ex-works, f.o.b., c.i.f.,
o.i.f. plus landing charges and value in bonded warehouse. Time of valuation varies similarly in the various definitions but in practice, for the large proportion of shipments for which the invoice price is acceptable as the basis for charge of duty, that price is accepted without regard to the date at which the sale was actually made.

6. State whether, and to what extent, valuations are based on:

(a) the internal price of the goods in the market of the exporting country;
(b) the export price in the exporting country; or
(c) the landed price in the importing country.

Countries can be classified as follows; a further category is needed to meet the case of Burma, Ceylon and India.

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<th>Country of Export</th>
<th>Export Price</th>
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In France pharmaceutical products are, exceptionally, valued on the basis of the retail sale price.

In New Zealand, where the value is established on the current domestic value in the country of importation, this value is in all cases increased by 10% in order to arrive at the value for duty purposes. This increase represents a flat rate addition equivalent to freight and insurance costs.
7. Where the price depends upon quantity, is the price used for valuation uniformly that which relates to quantities comparable to the quantity to be valued? If not, please state what quantity basis is used.

In most cases valuation is determined by reference to the price for a quantity of goods comparable to the quantity which is actually imported. The exceptions are Rhodesia and Nyasaland, the Union of South Africa and the United States of America, which require values to be established by reference to the usual wholesale quantities in the principal markets of the country of exportation.

8. To what extent, and subject to what conditions, is the price at which the merchandise has been sold or is offered for sale (i.e. the invoice value) accepted as the basis for valuation? Where invoice value is not so accepted as a basis (because, for example, the transaction does not take place under fully competitive conditions):

(a) do you use, uniformly or as appropriate (state which), any of the following bases -
- the invoice price subject to corrections,
- the sale price of the imported product on the importing market, adjusted to take account of expenses and profits incurred after importation,
- the cost of production of the imported product?

(b) if not, how do you assess the value? (Give particulars of any such methods).

The invoice price at which the goods pass to the importer is, in practice, the value on which duty is paid in the majority of cases, both in the case of countries whose definition is framed in terms of the current domestic value in the country of exportation and also the countries whose definition is framed in terms of the landed value. Where, however, the invoice price is not acceptable, the former have regard to the current domestic value of comparable goods, while the latter usually establish the value either by uplifting the invoice price or making suitable deductions from the importer's resale price. The cost of production is only rarely resorted to as a means of establishing the value for duty purposes.

9. If your administrative or legal regulations provide for the use of alternative methods of valuation, state to what extent the customs officer or appraiser is free to choose between such alternatives, or is obliged to adopt that which gives the higher value, or is obliged to make use of them in accordance with prescribed rules.

No country has reported that its Customs officers have freedom of choice between different methods of valuation. While some countries have two alternative standards in force, it is
stated that Customs officers are obliged to proceed to apply these alternatives as directed by the law; they have no freedom of choice in the matter.

10. Do you exclude from the value of imported goods the amount of internal taxes from which the imported product has been exempted in the exporting country?

Do you limit this exclusion to specified taxes (such as purchase tax, etc.), or do you grant it to any internal tax or charge from which exemption has in fact been granted by the exporting country?

In almost all cases the value for duty purposes excludes the amount of internal taxes in the exporting country from which the exported product has been relieved.

In the Federal Republic of Germany while it is accepted that the value for duty purposes should not include the amount of any internal tax from which relief has been given in the country of exportation, it is stated that steps may be taken soon to draw a line between direct taxes and indirect taxes, and the deduction of amounts of direct taxes may no longer be allowed.

11. What is the system adopted by your Administration for the conversion of foreign currencies for valuation purposes?

Do you apply the official rate of exchange based on the par value recognised by the International Monetary Fund, or market rates?

If your currency has no par value recognised by the Fund, or if various rates are applied in your country for the purchase of foreign exchange, what rate do you apply for valuation purposes?

If the product is coming from a country applying multiple rates of exchange, do you always apply the official rate of exchange of that country as a basis for valuation, or do you apply different rates in certain cases, or do you apply other corrections?

Nearly all countries apply the official rates or market rates (which include par values where such values have been recognised by the I.M.F.).

Very few countries appear to have special provision for goods coming from countries applying multiple rates of exchange. In general, the official rate or the effective rate is adopted.

The delegate of Indonesia explained that in order to be able to acquire foreign exchange to pay for imported goods, the importer has to pay a charge ranging from nil to 200% of the amount of the foreign exchange. The amount of this charge has to be included in the value for duty purposes since it falls
within the cost at which the importer can obtain the goods "in
entrepot", all charges other than customs duty having been paid.
The Indonesian delegate agreed that the exchange charge was in
the nature of a multiple currency practice and stated that it
had as such been reported to the International Monetary Fund.
The Technical Group considers it desirable to draw attention to
the considerable effect of the charge on the amount of duty
payable.

12. What charges on imports, other than ordinary customs duties,
are assessed on the value of imported goods? Do you apply the
same method of valuation for the levy of such charges as for the
levy of customs duties?

If so, in which cases? If not, what method does your
Administration apply?

Do you apply the same methods of valuation in the case of
internal taxes or equivalent charges levied on imported goods?

In some countries there are no ad valorem charges, other
than ordinary customs duties, which are applied to imported
goods. In others, there is a variety of charges ranging from
small statistical taxes to various excise duties and internal
taxes. In general, where the charge is a tax countervailing
the charge made on similar goods produced domestically, the
charge is based on the duty paid import value (sometimes with
an addition to raise it to a higher market level) but other
import charges are usually based on the import value exclusive
of duty.

13. Has your export trade met with serious difficulties
resulting from methods or practices adopted by other contracting
parties for determining the value of imported products?

Several contracting parties drew attention to difficulties
met by their exporters, particularly in countries basing the
value for duty purposes on the current domestic value in the
country of exportation.

14. Do you base your valuation for duty on the value of (a) the
merchandise actually imported, or (b) like merchandise? If (b)
do you use the price at which the merchandise is generally sold
or offered for sale to the equivalent class of trade, e.g.
jobbers, wholesalers, retailers, etc.? (Additional question
circulated on 24th November).

In general, the countries using landed value as a method
of valuation determine it by reference to the merchandise
actually imported, whereas the countries using current domestic
value or import market value have regard to the value of like
merchandise. In the latter case regard is usually had to the
class of trade involved.