

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 582 final

Brussels, 25th October 1979

GATT – MULTILATERAL TRADE NEGOTIATIONS

(Communications from the Commission to the Council)

SUPPLEMENT TO THE FINAL REPORT ON THE GATT MULTILATERAL

TRADE NEGOTIATIONS IN GENEVA (TOKYO ROUND)

AND PROPOSAL FOR A COUNCIL DECISION

(doc. COM(79) 514 final)

CUSTOMS VALUATION

(Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade)

COM(79) 582 final

Introduction

1. In its report on the negotiations on Customs Valuation in the GATT MTN (doc. COM(79)514 Final, Part II page 27), the Commission reported on the existence of two versions of the Valuation Agreement and invited the Council to conclude the agreement contained in GATT document MTN/NTM/W/229 Rev. 1, as modified by document MTN/NTM/W/252, subject to the outcome of discussions on the alternative version.

2. Further discussions were held in Geneva during the week of 1 October 1979 between representatives of a considerable number of developed and developing countries. These discussions resulted in an "ad referendum" agreement on the text of the Protocol which is annexed to this communication. It was agreed that this Protocol would be annexed to the Valuation Agreement (doc. MTN/NTM/W/229 Rev. 1) if none of the countries participating in the discussions raised objections by 19th October. No such objections have been raised. The GATT Secretariat therefore intends to open the Valuation Agreement and the Protocol for signature on 1 November 1979. It was further agreed that, in these circumstances, the alternative version of a valuation agreement sponsored by a number of developing countries would not be opened for signature.

Conclusion of the Valuation Agreement

3. The Commission considers the outcome of the further discussions satisfactory and considers that the Community should accept the Protocol, provided that firm assurances are received from a sufficient number of developing countries that they will sign the Valuation Agreement before it comes into force on 1 January 1981. It is not proposed to specify "key" developing countries at this stage, but the sufficiency of commitments from developing countries to sign the Agreement can be examined before the Community is finally committed to acceptance of the Protocol.

4. The Valuation Agreement and the Protocol will both have to be signed for the Protocol to come into effect. It will therefore be possible for the Community to accept the Valuation Agreement itself and to defer acceptance of the Protocol until it is satisfied that its conditions have been met.

It is understood that the United States of America will only be prepared to accept the Protocol under similar conditions to those specified in paragraph 3 above. Since acceptance of the Protocol by the US implies an amendment of the legislation which has already been adopted to implement the Valuation Agreement, the US will not be able formally to accept the Protocol until the necessary legislative changes have been made. It is envisaged, therefore, provided the conditions are fulfilled, that the Protocol would in practice be accepted on behalf of the Community and the US at the same time, probably in mid-1980.

Conclusion

The Commission recommends the Council in the light of the results of the further discussions with developing countries, to approve the Valuation Agreement and its annexed Protocol on the understanding that the Protocol will not be formally accepted on behalf of the Community until firm assurances are received from a sufficient number of developing countries that they will sign the Valuation Agreement before it comes into force on 1 January 1981. To this end the Commission proposes the following amendment to its draft decision contained in Annexe I to Part II of its report.

In the list of Agreements in the Preamble and in Article 1 there should be added to the words "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade" the following "and the Protocol annexed thereto".

October 1979

Customs Valuation

Agreement on Implementation of Article VII
of the General Agreement on Tariffs and Trade

Addendum

This document is circulated at the request of a number of delegations

Consultations have recently been held between delegations from developed countries and developing countries in order to arrive at a single text of an Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade. As a result of these consultations, the attached Protocol has been drawn up. It is the intention of these delegations to seek the approval of their respective authorities to sign this Protocol so as to ensure that the Agreement is applied together with the Protocol.

Protocol to the Agreement on Implementation of Article VII of the
General Agreement on Tariffs and Trade

The Parties to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (hereinafter referred to as "the Agreement"),

Having regard to the Multilateral Trade Negotiations and to the desire expressed by the Trade Negotiations Committee at its meeting of 11 and 12 April 1979 to arrive at a single text of an Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade;

Recognizing that developing countries may have particular problems in applying the Agreement;

Considering that the provisions of Article 27 of the Agreement relating to amendments have not yet entered into force;

Hereby:

- I.
1. Agree to the deletion of the provision of Article 1.2(b)(iv) of the Agreement;
 2. Recognize that the five-year delay in the application of the provisions of the Agreement by developing countries provided for in Article 21.1 may, in practice, be insufficient for certain developing countries. In such cases a developing country Party to the Agreement may request before the end of the period referred to in Article 21.1 an extension of such period, it being understood that the Parties to the Agreement will give sympathetic consideration to such a request in cases where the developing country in question can show good cause;
 3. Recognize that developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Parties to the Agreement;
 4. Recognize that developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

"The Government of reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;

.../...

5. Recognize that developing countries may wish to make a reservation with respect to Article 5.2 of the Agreement in the following terms:

"The Government of reserves the right to provide that Article 5.2 of the Agreement shall be applied in accordance with the provisions of the relevant note there- to whether or not the importer so requests."

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;

6. Recognize that certain developing countries have expressed concern that there may be problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. The Parties to the Agreement agree that, if such problems arise in practice in developing countries applying the Agreement, a study of this question shall be made, at the request of such countries, with a view to finding appropriate solutions;

7. Agree that Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. They further agree that the Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. They recognize that Parties to the Agreement, subject to their national laws and procedures, have the right to expect* the full cooperation of importers in these enquiries;

* The words "have the right to expect" shall be translated "ils ont le droit de compter sur" and "tienen el derecho de contar con" respectively.

8. Agree that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

II.

1. Upon the entry into force of the Agreement the provisions of this Protocol shall be deemed to be part of the Agreement.

2. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT. It is open for acceptance, by signature or otherwise, by signatories of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and by other governments accepting or acceding to the Agreement pursuant to the provisions of Article 22 thereof.

Done at Geneva this first day of November 1979 in a single copy..... the English, French and Spanish languages, each text being authentic.