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Committee on Customs Valuation

MINUTES OF THE MEETING OF 25 APRIL 1997

CHAIRMAN: Mr. P. Palečka (Czech Republic)

The agenda proposed for the meeting, circulated in WTO/AIR/572, was adopted as follows:

1. Observer status of international intergovernmental organizations (G/VAL/W/16)
2. Report on the work of the Technical Committee on Customs Valuation
3. Information on implementation and administration of the Agreement
 - (a) Notification of national legislation
 - India (G/VAL/N/1/IND/2; G/VAL/W/8; G/VAL/W/14)
 - Mexico (VAL/1/Add.25/Suppl.1, 2 and 3; VAL/2/Rev.2/Add.8)
 - Fiji (G/VAL/N/1/FJI/1; G/VAL/N/2/FJI/1)
 - Bulgaria (G/VAL/N/1/BGR/1)
 - Liechtenstein (G/VAL/N/1/LIE/1)
 - (b) Notification that national legislation under the Tokyo Round Customs Valuation Agreement remained valid under the WTO Customs Valuation Agreement (G/VAL/N/1/ARG/1)
 - (c) Notifications made by developing country members (G/VAL/2/Rev.5)
4. Information on the application of Decisions of the Committee on Customs Valuation (G/VAL/W/5/Rev.2)
5. Valuation of software imported by satellite (G/VAL/W/12)
6. Technical assistance
 - (a) Information on technical assistance (G/VAL/8/Rev.1)
 - (b) Article 20.3 technical assistance activities
7. Use of the term "entretenimiento" in the Interpretative Note to Article 1 of the Agreement (G/VAL/W/15; G/VAL/W/17)
8. Other business
 - (a) Date for the next meeting
9. Election of officers

1. Observer status of international intergovernmental organizations (G/VAL/W/16)

1.1 The Chairman noted that document G/VAL/W/16 contained a list of the international intergovernmental organizations having observer status on an *ad hoc* basis in the Committee on Customs Valuation and others whose requests for observer status were pending. He recalled that at its meeting of 18 July 1996, the General Council approved the "Guidelines on Observer Status for International Intergovernmental Organisations" (Annex 3 of document WT/L/161). However there was the issue of the status of the World Bank and the International Monetary Fund which had been left outstanding pending the finalization of the Agreements between the World Bank and the IMF with the WTO. These were resolved only in December 1996.

1.2 He considered that the Committee was presently in the position to grant observer status to those organizations which had had observer status on an *ad hoc* basis, namely the United Nations Conference on Trade and Development and the World Customs Organization. He recalled that these organizations were also observers in the Tokyo Round Committee on Customs Valuation. Concerning the pending applications of the IMF and the World Bank, he drew attention to document WT/L/195 which contained the Agreements between the IMF and the World Bank with the WTO. These Agreements provided that the WTO should invite the World Bank and the IMF to send a member of their staff to the meetings of WTO bodies. It appeared, therefore, that observer status was already being granted to these organizations by virtue of these Agreements and he requested that the Committee take note of this fact.

1.3 He added that, as was indicated in G/VAL/W/16, the requests for observer status from the African, Caribbean and Pacific (ACP) Group and the Inter-American Development Bank (IADB) had not yet been considered. These two organizations had been granted observer status in the Committee on Rules of Origin, another body dealing with customs related matters, and the Committee on Market Access. In light of this and on the basis of their applications, he proposed that the Committee also grant these two organizations observer status.

1.4 The representative of Australia noted that discussions were still on-going in the Council on Trade in Goods on the observer status of a number of inter-governmental organizations, including the ACP. Her delegation therefore considered that a decision on the status of the ACP and the IADB be deferred until a decision was taken in the CTG.

1.5 The representative of Côte d'Ivoire noted that her country was a member of the ACP. Although not speaking on behalf of the ACP, she noted that the ACP had already been granted observer status in the Committee on Rules of Origin which dealt with customs matters. She did not understand the purpose of lodging a reservation on its observer status while consideration was on-going in the CTG, since there were no customs matters being considered in that body. She urged that observer status be given to the ACP in this Committee.

1.6 The representative of the European Communities supported the statement by Côte d'Ivoire and considered that it was only in the interest of the Committee on Customs Valuation that the ACP be granted observer status.

1.7 The representative of Australia said that her delegation's concern was procedural, noting the different responses towards observers in different bodies. However her delegation did not insist on deferring a decision on the ACP in this Committee.

1.8 The Committee took note of the statements made and agreed to grant observer status to those organizations which had had observer status on an *ad hoc* basis, namely the United Nations Conference on Trade and Development and the World Customs Organization, as well as to the ACP and the IADB.

2. Report on the work of the Technical Committee on Customs Valuation

2.1 The observer from the WCO presented, on behalf of Chairman Mr. P.R.V. Ramanan (India), a report on the work of the Fourth Session of the Technical Committee on Customs Valuation, held in Brussels from 3 to 7 March 1997. He noted that attendance at this session was very good with many Members in transition to implementation of the Agreement present.

2.2 Under Intersessional Developments, the observer reported that the Technical Committee had been informed of the results of the 89th Session of the WCO Council, held in Brussels on 6 December 1996. The Council had met to examine the question of the future location of the WCO Headquarters. After considering the financial, legal, strategic and financial aspects of a number of proposals, the Council decided that the Headquarters would remain in Brussels, in a new building which was to be completed by July 1998. The Committee was also informed about the continuing development of the WCO's customs reform and modernization programme, a key activity set out in the Strategic Plan adopted by the Council. The Programme is a comprehensive strategy to help Member administrations improve their customs administration to meet the challenges of the modern commercial environment. In addition to focusing on customs matters, the programme involved consideration of the trade, economic and fiscal aspects of the environment in which customs operated. It was being developed in consultation with Member administrations as well as a number of international organizations, including UNCTAD, the IMF, the World Bank and the WTO. Finally, the Committee was informed that the third edition of the "Brief Guide to the Customs Valuation Code" which incorporated the amendments introduced in the Uruguay Round was now available, and revisions of the "Customs Valuation Compendium" and the "Valuation Training Course" would be available soon.

2.3 Under Technical Assistance, he noted that the Technical Committee had taken note of information document 41.091 which updated the information on seminars and training courses organized on the WTO Valuation Agreement and the activities of the WCO in this area.

2.4 The aim of each of these activities had been to assist Members to understand the changes necessary to implement the WTO Valuation Agreement, to identify the tasks that had to be carried out and to develop their action plans for implementation by 2000 or before. These technical assistance activities went beyond pure valuation issues and encouraged Members to, in conjunction with the change to their valuation system, take the opportunity to review all aspects of their legislation, procedures and administration to bring them into line with best practices in use around the world. Topics examined during the course of these assistance activities included facilitation, the use of computers, declaration procedures, adoption of risk management techniques and post clearance audit techniques. Members were encouraged to adopt practices which reduced the burden on honest traders and which focused on the areas of greatest compliance and revenue risk. Presentations were also made to the Committee by the Secretariat which explained the WCO's customs reform and modernisation programme and the technical assistance provided by the Valuation Directorate in the context of this programme.

2.5 The WCO representative recalled that the Technical Committee had decided at its First Session to take a more active role in monitoring new Members' progress towards implementation with a view to identifying their technical assistance needs. In this regard, a new Agenda item, progress reports on implementation, has been included as part of the technical assistance item. He noted that the Committee had examined Document 41.097 which contained information regarding implementation of the Agreement provided by Chile, Panama and Thailand. Panama, although as yet only an observer to the WTO, had decided to introduce the WTO Valuation Agreement on a unilateral basis. Thailand had announced its plans to accelerate implementation to 1 January 1998, provided that the legislation could be approved by that time. The document also contained brief summaries of recent and planned technical assistance activities by the WCO and Members.

2.6 Regarding Technical Issues Currently Being Considered by the Technical Committee, he reported as follows:

(a) Scope of the term "control" in Article 15.4(e): Information document

2.7 He noted that the Technical Committee had considered an information document prepared by the Secretariat which examined the issues associated with the concept of control within the terms of Article 15.4(e) of the Agreement. This item had arisen in the context of consideration of cases involving importations by sole agents, sole concessionaires and sole distributors. At the centre of the discussion was the extent to which such associations might, in certain situations, result in the establishment of "control" and thus relationship for the purposes of the Agreement. Other issues under consideration included loan and financing arrangements as well as distribution and royalty agreements. After examining the document, the Committee had decided to re-examine Explanatory Note 4.1 with a view to amending it to address concerns expressed by Members. A proposed new Explanatory Note 4.1 which incorporated amendments suggested by Members would be circulated for consideration at the 5th Session.

(b) Correlation between paragraphs (c) and (d) of Article 8.1 of the WTO Agreement

2.8 The Technical Committee had continued its consideration of this topic. At the centre of the discussion was the question of whether a royalty or licence fee which failed to meet the requirements for inclusion in customs value under Article 8.1(c) could be included in customs value under Article 8.1 (d) when it was a proceed of subsequent resale, disposal or use accruing to the vendor. Members of the Technical Committee continued to be divided in their position in relation to the answer to this question. In an attempt to arrive at a common position, the Technical Committee had instructed the Secretariat to work with Members during the intersession with a view to developing an instrument for consideration at the next session.

(c) Warranty charges: Information document

2.9 He reported that this topic arose from the discussion of the scope of the term maintenance during the Second Session. The Technical Committee had examined an information document which included specific examples of warranty situations. The Committee made a number of proposed amendments to the document which it would consider at its next meeting.

(d) Meaning of the expression "related to the goods being valued": Information document

2.10 The Committee had examined a draft information document which discussed how a royalty and/or licence fee might be "related to the goods being valued" under Article 8.1(c) of the Agreement. The Committee suggested a number of amendments to the document which it would consider at its next meeting.

(e) Meaning of the expression "condition of sale": Information document

2.11 The Committee had also examined a draft information document which examined the concept of how a royalty and/or licence fee might be paid as a "condition of sale" under Article 8.1(c) of the Agreement. The Committee had suggested a number of amendments to the document which it would consider at its next meeting.

2.12 Regarding the item transmission of software by satellite, the Committee had examined copies of the correspondence between the Chairman of the WTO Committee and the Secretariat relating to this issue. The Committee noted that issues associated with treatment of electronic commerce were being considered in the appropriate forum and decided to await the outcome of those consideration

before it did any further work in this regard. Members noted that there also appeared to be some confusion regarding the subject. The question initially raised by Colombia related to the treatment of software imported by satellite in its own right, however, the comments of the Secretariat related to the situations where a transmission of software was closely related to the importation of goods which were subject to customs valuation.

2.13 For its programme of future work, the Technical Committee would continue its examination of the scope of the term "control" in Article 15.4(e), the relationship between paragraphs (c) and 8(d) of Article 8.1, warranty charges and the meaning of the expressions "related to the goods being valued" and "condition of sale" in Article 8.1(c). In addition, the Technical Committee would consider proposals to amend Explanatory Note 4.1 and examine a draft information document which examined freight equalisation schemes. New Members' progress towards implementation and technical assistance needs would continue to be a major topic of interest to the Committee. The Committee also intended to spend some time during the next session to discuss the future direction of its work to ensure that it was relevant to the needs of Members, particularly to the new signatories to the Agreement.

2.14 The Committee had elected Mr. H. O. Vincente (Argentina) as its next Chairman and Mr. M. Kemp (New Zealand) as Vice-Chairman. The Fifth Session of the Technical Committee would take place from 6 - 10 October 1997.

2.15 The Committee took note of the report by the observer from the WCO.

3. Information on implementation and administration of the Agreement

3.1 The Chairman explained that there were three items to be considered under this agenda item and suggested dealing with each separately.

(a) Notification of national legislation

India

3.2 The Chairman recalled the notification made by India and circulated in document G/VAL/N/1/IND/2 which concerned amendments to the Customs Valuation Rules 1988, bringing these Rules into conformity with the method of determination of customs value as laid down in the Customs Valuation Agreement. At the April 1996 meeting of the Committee, the United States had posed several questions during the discussion of India's legislation which had been circulated in document G/VAL/W/8. The responses by India had been circulated at the October 1996 meeting of the Committee and subsequently in document G/VAL/W/14. At that meeting it was agreed to revert to this item at the present meeting.

3.3 The representative of the United States expressing his delegation's appreciation for the responses, remained concerned about the proviso to Rule 9(2) of the Indian Customs Valuation Rules which appeared to set forth arbitrary uplifts. Specifically, notwithstanding the right to provide for the inclusion for certain "cif" costs under Article 8.2 of the Agreement on Customs Valuation, such an inclusion had to be tied to actual costs and charges. Otherwise such an action would become contrary to Article 8.4 of the Agreement as an unacceptable addition to the price actually paid or payable. Moreover, it would also create an arbitrary or fictitious value contrary to Article 7.2 of the Agreement. His delegation was also concerned by the description of the circumstances where the situation arose, as being for mostly casual imports. His delegation therefore sought further and more specific clarification as to the so-called specified percentages used for additions to the price. First, his delegation was interested in what percentages were used and how they had been calculated and second, clarification that this methodology for additions was not used for commercial shipments.

3.4 The representative of India, noting the technical nature of the US questions, said that his delegation would respond as soon as possible.

3.5 The Committee took note of the statements made and agreed to revert to this item at the next meeting.

Mexico

3.6 The Chairman recalled that discussion on the modifications that had been introduced to Mexico's customs legislation had been on-going for several years both in the Tokyo Round Committee and in the WTO Committee on Customs Valuation. These amendments, and Mexico's legislation had been circulated in documents VAL/1/Add.25/Suppl.1, 2, and 3. Mexico's responses to the Checklist of Issues had been circulated in document VAL/2/Rev.2/Add.8. He added that Mexico's legislation was also the subject of consultations pursuant to Article XXII:1 of the GATT 1994 and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, as well as in the Committee on Regional Trade Agreements.

3.7 The representative of Norway recalled that his Government had joined the consultations with Mexico that had been initiated by the European Communities under the Dispute Settlement Body (DSB) on the Mexican customs valuation legislation. The consultations dealt with what appeared to be a discriminatory practice of the use of "cif" and "fob" respectively: the "fob" system being granted only to goods from NAFTA countries while the "cif", entailing a higher basis for the calculation of customs, applying to other WTO Members. While not wishing to open the debate on the substance of the issue, he wished to request through the Chairman that the questions that were put to Mexico during the consultations be answered in writing. The consultations were held in September 1996 and the request for written responses was made at that time. This should have given the Mexican authorities sufficient time to respond. He reserved his delegation's rights with respect to the Mexican customs valuation legislation and wished to see this item on the Committee's agenda at its next meeting.

3.8 The representative of Switzerland stated that his Government had also joined the consultations with Mexico, initiated by the European Communities under the DSB. His delegation also requested that written responses be provided by Mexico and supported the proposal to keep this item on the Committee's agenda for its next meeting. He added that his delegation was aware that Mexico was using the "fob" system, not only in the case of products originating from NAFTA, but also for products originating from a number of other free trade areas to which Mexico was a party. He therefore requested that Mexico include all related, relevant information in the written responses. This would assist his delegation to assess the situation concerning the Mexican customs valuation legislation. His delegation reserved its rights on this issue and remained open to any bilateral discussions with Mexico on this issue.

3.9 The representative of the European Communities supported the statements made by Norway and Switzerland.

3.10 The representative of Mexico stated that this matter had been discussed by this Committee on a number of occasions over a number of years. His delegation had given a series of responses when the NAFTA was being examined, and at the initiative of the European Communities, had begun a series of consultations under Article XXII.1 of the GATT 1994 under the DSB. He did not wish to add to these responses; any reference at this meeting to the process of questions and awaited answers would be a violation of the confidential nature of the consultations in progress. His delegation had no comment to make before this Committee in light of the confidentiality required under the DSB process.

3.11 The representative of Switzerland said his delegation wished to note that it had not yet received certain information and that, therefore, it could not have a full understanding of the Mexican legislation.

3.12 The representative of Korea indicated his delegation's interest in the matter and requested a detailed explanation, including of the legal issues, for full transparency and a better understanding.

3.13 The representative of Mexico suggested that delegations wishing more information on the matter, refer to the minutes of previous meetings of the Committee. These would indicate that his delegation had consistently maintained full transparency on this matter.

3.14 The Committee took note of the statements made and agreed to revert to this item at the next meeting.

Fiji

3.15 The Chairman drew Members' attention to the notification made by Fiji which had been circulated in document G/VAL/N/1/FJI/1. This document contained the new GATT Valuation Legislation enacted in Parliament in November 1996. He also noted that Fiji had submitted its responses to the checklist of issues which had been circulated in document G/VAL/N/2/FJI/1.

3.16 The representative of the European Communities voiced his delegation's satisfaction in receiving the comprehensive notification and would be examining it.

3.17 The Committee agreed to conclude examination of this legislation.

Bulgaria

3.18 The Chairman drew Member's attention to the notification made by Bulgaria which had been circulated in document G/VAL/N/1/BGR/1. This document contained the Regulation of the Council of Ministers No. 39 of 8 March 1996 on the determination of customs value of goods imported in the Republic of Bulgaria, the Excerpt from Instruction No. 2 of the Minister of Finance of 12 March 1996, concerning the particulars of the customs value, and the Declarations of Particulars relating to customs value DCV-1, and DCV-2.

3.19 The Committee agreed to conclude examination of this legislation.

Liechtenstein

3.20 The Chairman drew the Committee's attention to the notification made by Liechtenstein which had been circulated in document G/VAL/N/1/LIE/1.

3.21 The Committee agreed to conclude examination of this legislation.

(b) Notification that national legislation under the Tokyo Round Customs Valuation Agreement remained valid under the WTO Customs Valuation Agreement

3.22 The Chairman recalled that at its meeting in May 1995, the Committee had agreed on procedures for the notification and circulation of national legislation for Members who were Tokyo Round signatories and whose legislation had already been examined (paragraph 34(1) and 35 of G/VAL/M/1). Since the last meeting, one Member, namely Argentina, had submitted a communication indicating that its legislation notified under the Tokyo Round Customs Valuation Agreement remained valid under the WTO Customs Valuation Agreement (G/VAL/N/1/ARG/1).

3.23 The Committee took note of the information.

3.24 The Chairman urged those Members who had not notified their legislation, as well as their replies to the checklist of issues, to submit the required notifications as soon as possible.

(c) Notifications made by developing country Members

3.25 The Chairman noted that document G/VAL/2/Rev.5 contained a list of developing country Members that had invoked special provisions available to them under Article 20.1 and 20.2 and under paragraphs 2, 3 and 4 of Annex III of the Customs Valuation Agreement. The document also listed the developing country Members affected by the Decision on "Continued Application under the WTO Customs Valuation Agreement on Invocations of Provisions for Developing Countries for Delayed Application and Reservations Under the Customs Valuation Agreement 1979" (WT/L/38).

3.26 He added that there were now 51 developing countries that had invoked the special provisions under Article 20.1, which allowed them to delay application of the Agreement for a period not exceeding five years. He recalled that this delay period was given in order to allow developing countries the time necessary to bring their systems into conformity with the WTO Agreement. For 27 of these countries, the delay period would expire on 1 January 2000. That meant that the period during which this transition should be made was half over. For another 20 developing countries, the end of the year 2000 would signal the expiration of their delay period. He considered it appropriate to remind developing countries that they should be using this time to prepare for implementation of the WTO Agreement, and, at the same time, note that Article 20.3, also contained provisions for furnishing technical assistance on a request basis. Article 20.3 stated that developed country Members should furnish to developing countries that so request, programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

3.27 The Committee took note of the information.

4. Information on the application of Decisions of the Committee on Customs Valuation

4.1 The Chairman drew Members attention to document G/VAL/W/5/Rev.2 which contained the document references of notifications that had been received pursuant to the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods and the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, both adopted by the Committee and contained in document G/VAL/5. The document circulated for the present meeting updated the information contained in G/VAL/W/5/Rev.1 with the addition of a new document reference for Brunei Darussalam. Specifically, in document G/VAL/N/1/BRN/1, the Government of Brunei Darussalam had notified that it did not apply the treatment of interest charges in the customs value of imported goods and on the valuation of carrier media bearing software for data processing equipment.

4.2 The Committee took note of the information.

5. Valuation of software imported by satellite

5.1 The Chairman recalled that at the October 1996 meeting, the Committee had taken note of the letter from the Director of the Valuation Directorate of the WCO, circulated in G/VAL/W/12 providing further explanation and elaboration of the circumstances where the cost of software "imported" by satellite may form part of the customs value of imported goods. He noted that this letter was in response to his letter to the Chairman of the Technical Committee which had been circulated in document G/VAL/W/7. It was agreed at the October meeting to revert to this item at this meeting.

5.2 The representative of the United States understood that this issue had been raised at the last WCO Technical Committee meeting. At that time it was noted that the question presented by software down-loaded from a satellite involved questions outside the realm of customs valuation, in fact the question of whether an importation had even taken place. In view of the referral of this question to appropriate experts, as far as his delegation was concerned, the matter had been satisfactorily resolved.

5.3 The observer from the WCO clarified that the Technical Committee had reviewed the matter and noted that this particular issue raised by the correspondence between the two Committees related to very limited circumstances. The point that had been made was that the delivery of information or software via satellite did not conform to the traditional definition of importation of goods upon which customs duty might be payable. The WCO Secretariat had suggested that there could be circumstances where the delivery of information was closely associated to the importation of goods and, in this case, the software could be taken into account in the determination of the value of the imported goods. He had provided two examples of this situation. Both were in respect to additions that would be made to the price actually paid or payable under the provisions of Article 8(b) of the Agreement, if the value of these elements were to be included in the price of the goods. The Committee did not consider that it needed to comment further on these situations and that they did not fall within the area concerned that had been raised by this Committee. The Technical Committee had deferred to the outcome of discussions of these questions in other fora.

5.4 The Committee took note of the statements.

6. Technical assistance

(a) Information on technical assistance

6.1 The Chairman noted that there were two subitems under this agenda item. The first was information on technical assistance which was contained in document G/VAL/8/Add.1. This document provided additional information on technical assistance activities conducted by the WCO. The second sub-item, Article 20.3 technical assistance activities, had been added to the agenda following agreement by the Committee at the October 1996 meeting.

(b) Article 20.3 technical assistance activities

6.2 The representative of the United States noted that his delegation had requested that this be on the agenda for this meeting. He presented his delegation's proposal on technical assistance which was distributed to participants as a non-paper, and subsequently circulated as G/VAL/W/18.

6.3 The representative of New Zealand believed that the US proposal warranted a positive and favourable hearing in this Committee. New Zealand had recently accepted an ASEAN request for training of ASEAN customs officials in the implementation of the Customs Valuation Agreement. His Government's acceptance of this request underscored the importance it attached to encouraging trading partners to implement the Agreement as soon as possible. Even if countries had invoked Article 20.1 to delay implementation, they would benefit by implementing the Customs Valuation Agreement as soon as possible. The US proposal would go a long way toward coordinating technical assistance efforts and ensuring no duplication of technical assistance in relation to implementing this Agreement. His delegation supported the proposal and encouraged other Members to do the same.

6.4 The representative of Pakistan welcomed this timely and constructive US initiative. It was timely because almost half of the transition period that had been granted to certain developing countries was over and there was still a lot of work to be done. His delegation was generally in agreement with the US proposal and offered two preliminary comments at this stage. One was substantive: on the

first page, in the last paragraph, there were four basic elements mentioned and he wondered if elements 3 and 4 could be combined. The second was a procedural comment: he agreed to proceed as suggested in the US paper and considered that this paper itself could be the first substantive input for the work of the informal working group. Since quick progress was desirable, he suggested that this informal working group report its findings, conclusions or recommendations to the next meeting of the Committee for further action as required.

6.5 The representative of Canada stated his delegation's support for the US proposal. Clearly, technical assistance in the area of customs valuation was important. This was highlighted in the report of the Committee to the Singapore Ministerial Conference. The ideas contained in the US paper were worth pursuing because problems of implementation of the Agreement required a fair degree of commitment and necessary resources, given that the problems were often unique to particular countries. The identification of these problems required a fair degree of thoroughness, and clearly a more systematic approach to technical assistance would likely improve the likelihood that these Members would be able to apply the Agreement as soon as possible. As a preliminary comment on the three steps proposed in the US paper, he considered it would be helpful to hear the views of the WCO, in particular on the suggestion that the Committee request the Technical Committee to provide additional background information. He was not too sure about the timing for this preparation, whether this would complicate the Committee's task, and whether there could be better ways of initiating informal consultations, including perhaps through the participation of a WCO representative in the informal consultations. Clarification in this area would be welcome. Finally, he noted that technical assistance was a horizontal issue and there were competing demands for this assistance, but customs valuation should be given a priority.

6.6 The representative of Singapore, speaking on behalf of the ASEAN Members, said that his delegation could agree with the general thrust of the US proposal on the need for a cooperative and coordinated approach on technical assistance for developing countries as concerned customs valuation. Preliminarily, his delegation had doubts on the need for a group as proposed because of budgetary implications. Perhaps the Committee could meet in an informal setting prior to the formal Committee meeting. The US paper was interesting and merited further consideration in respective capitals. He also thanked New Zealand for the technical assistance provided to the ASEAN countries.

6.7 The representative of the European Communities agreed on the importance of technical assistance. Thought should be given as to how this technical assistance could best be granted. His delegation would examine the paper, and was interested in the reaction of the WCO to the third proposal in the paper.

6.8 The representative of Australia also agreed with the broad thrust of the US proposal, in particular, the general idea of supporting effective technical assistance to help WTO Members meet their forthcoming obligations. Her delegation had some queries and reservations regarding in particular the role of the WCO and the potential for an overlap of responsibility, although greater coordination may ameliorate this situation. In that regard, her delegation would be interested in any clarification of the third point, as was raised by Canada. Another point in this regard was whether it would be prudent to be guided by the outcome of the Fourth Session of the WCO Technical Committee. Overall, she noted a positive initial response to the US proposal and openness to further consideration.

6.9 The representative of Switzerland shared the concerns in relation to duplicating efforts as well as the appeal for more cohesion in providing technical assistance for customs valuation purposes or for any other WTO-related activities. Preliminarily, he noted that technical assistance was a horizontal issue, that there were discussions in other fora concerning the systematic provision of technical assistance, and that guidelines had been adopted. The thrust of the US paper went in the right direction, and was within the framework of this general WTO effort. However, there was a need to further think and consult on practical action the WTO could take in this context. His delegation reserved its position

on the constitution of an informal working group. Should such an informal working group be created, it would have to base its work on a number of assessments such as on the technical assistance which could be conducted by the WCO. He noted that transparency had been mentioned by the US and was also an element which should guide, not only the organizations dealing with technical assistance, but also individual Members providing technical cooperation. In that regard, the general assessment this Committee could make on the state of affairs in technical assistance and what to do next would also have to rely on information provided either by individual or groups of Members. He was pleased to hear that in the context of APEC some activities had been developed. It would be useful to share such activities among the Members of the Committee for a full picture of the situation. It was also necessary to base any technical assistance on the needs identified by developing countries. In that regard, the role of the developing countries in such consultations was vital to guarantee that the outcome would address their issues, problems, and questions. He agreed that the Chairman conduct open consultations to determine the basis for further work. In that regard it would certainly be useful and necessary to invite the WCO.

6.10 The representative of Hungary welcomed the US proposal, believing that it was in the common interest to ensure the effectiveness of the operation of Article 20 of the Agreement. She agreed that this matter related to the operation of the Agreement, and could not be considered as a technical issue. Her delegation realised the importance of technical assistance, but needed more time to comment further, particularly on the proposal to establish an informal working group.

6.11 The representative of Hong Kong also welcomed the US initiative which provided a possible approach to assessing the need for technical assistance to developing countries. He agreed that given the diversity of situations and problems encountered by European countries, there was merit in tackling the task with a more specific approach, namely finding out the expectations of individual developing country Members with regard to compliance with the Agreement.

6.12 The representative of Mexico welcomed the US document. He considered it a good idea to grant technical assistance to developing countries for the implementation of the Agreement. His delegation agreed with other delegations in this regard, but was not in a position to comment on the specific proposals. He agreed that it would be a good idea for the Chairman to hold informal consultations to see exactly how the entire issue of technical assistance could be approached.

6.13 The representative of the WCO considered it important to clarify, for the purposes of the Members, exactly what the WCO was doing. Technical assistance was one of the most fundamental activities that attracted countries to become Members of the WCO. They counted on the organization to carry out, as a primary objective, the development of international instruments for the harmonization of simplified and effective customs systems and procedures. They also counted on the fact that the WCO would promote and support such instruments which it did through its technical assistance programmes. In valuation, the entire thrust of the technical assistance programme prior to the WTO was to promote the GATT (now WTO) Valuation Agreement to its Members. This had resulted from a Council Decision that this Agreement had the best chance of achieving universal application in fulfilment of the Council's goal in respect of all its Conventions, i.e. the simplification and standardization of Customs procedures and systems around the world.

6.14 He considered that it had been the WCO on which both WTO and WCO Members had relied to fulfil the Annex II and Article 20 commitments with respect to technical assistance. The technical assistance document which this Committee had adopted into its body of work was a testimonial to that effort and he considered that this work had assisted the Committee in arriving where it was at present. Could the WTO Agreement have been accepted by so many countries without the missionary work undertaken on the Valuation Agreement by the WCO? He added that the technical assistance work had largely been a WCO effort, in that WCO Members sponsored and financed some of the programmes,

they had participated with the Secretariat in some programmes, and had undertaken bilateral assistance in valuation over the years, i.e. the EC Phare programme and the current initiative underlay with APEC countries were good examples. Since most of the WCO Members were also WTO members, and customs valuation was one of the most basic of customs functions, this had been an appropriate course to follow.

6.15 However, the situation had evolved dramatically. The number of Members to the Agreement had risen from 44 to 130. Where before the large majority of the countries applying the Valuation Agreement had been developed countries, now the bulk were in the developing country category. Before, the timetables for implementation had been spread out, depending on when a country signed the Valuation Agreement. Now the timetable for the 80 or so new Members were all the same, with a final date for full implementation on 1 January 2000 or before. In its recently-agreed Strategic Plan, the WCO listed the implementation and application of the WTO Valuation Agreement as one of the Council's key activities for the first three years of the Plan. He stressed that this was not a plan for the work of the Secretariat but rather a plan for the work of the WCO as a whole: the Members supported by its Secretariat. The second part of the key activity in the WCO's Strategic Plan gave recognition to the fact that special emphasis would have to be given to the needs of new signatories - this was where technical assistance came in.

6.16 He noted that by identifying valuation as a key activity, the Council had authorized the Secretary General to allocate part of the budget of the Secretariat to valuation. The budget was funded by Members' contributions, and the valuation portion itself covered all of the work undertaken by the Secretariat on behalf of the Committee as well as a portion allocated to technical assistance work. The Secretariat staff that was devoted solely to valuation was very limited. It would be impossible to foresee that each new Member of the Valuation Agreement could receive assistance on an individual basis from the WCO Secretariat, neither from a personnel standpoint nor from a budgetary standpoint. The WCO was providing a considerable amount of documentation and sources of information to assist countries in their implementation planning - it had a range of brochures, papers, etc. - and was ensuring that direct assistance projects, principally the seminars, workshops and missions conducted were carried out as much as possible within specific regional priorities - in Latin America, in West Africa, in South and Eastern Africa and in Asia/Pacific, etc. A specific emphasis was put on providing, as much as possible, individual attention to those Members that expressed the greatest and most urgent need.

6.17 He acknowledged that the WCO could do more. Some Members were asking for the secondment of advisors - some long term - to assist in specific aspects of implementation. But one of the major constraints was funding. He called upon the expertise of Members which were already applying the Agreement to take on some of the technical assistance work. However, in these times of restraint, he noted that Members were often not able to commit resources without financial compensation but, many would not have the resource to commit, regardless of funding. The WCO had had extensive discussions with international lending organizations (IMF, World Bank) and others (OAS, UNDP, UNCTAD) about the possibility of obtaining sponsorship. He noted that there appeared to be considerable interest in ensuring that countries were able to successfully implement new valuation procedures, particularly where this was accompanied by an overall review of the customs and a push towards modernization. However, the funding request must be initiated by the country concerned and the project managed at that level. WCO support for such projects would be a plus in obtaining the financing. Therefore, Members needed to be aware that they did have possibilities in this regard but that it was up to them to exploit it. They would then be in a position to manage and direct their own assistance needs.

6.18 He explained that the WCO now had a Strategic Plan for the key activity of valuation, approved by the Council. The plan called for work to continue in the area of technical interpretation of the Agreement, the resolution of issues and difficulties raised by administrations and the adoption and sharing of "best practices" among Members. Much of this work would continue to be accomplished through

the work of the Technical Committee. The Committee had also undertaken to monitor the progress of Members as they moved towards implementation in order that the WCO could quickly react, where asked, to identify problem areas. Implementation strategy was also covered by the Plan, with the key areas to be focused on by new signatories set out therein. A good deal of information had already been disseminated on all the key areas but the main aspects of concentration now were for the countries concerned to establish project teams to plan their implementation work; their first area of concentration should necessarily be in ensuring the preparation of the legislation base for their new valuation system. Direct assistance by the Secretariat in the form of seminars and expert missions focused on these issues. This change in strategy - from promotion of the Agreement to assisting in its implementation - was the main focus of WCO programmes as it moved towards 2000. He emphasized again that this strategy was adopted by WCO Members and was not a Secretariat strategy.

6.19 He noted that the Secretariat's plan of activities was driven to a considerable extent by the specific requests received from Members. The WCO managed the identification of Members' specific needs in all areas of technical assistance, including valuation, through a sophisticated data management system which was called WIDEBAND. Although relatively new, this system was a valuable tool in both data gathering and retention and the yearly action plans were largely based on the information input into the system from information received from Members. In large part, given the resource constraints placed upon the organization, activities were decided with a view to responding to several requests through one activity, a regional seminar, for example. The organization was, however, able to undertake several short-term missions each year to provide more direct advice. Sometimes, these depended on the availability of sponsor's funding. For example, the Japan/CCC Customs Cooperation Fund had been a welcome source of sponsorship in this regard. Although technical assistance had not been a WTO priority in the past, especially in the valuation area, the WCO would welcome a more direct involvement in the future.

6.20 He considered it important that governments recognize and accept the responsibilities undertaken within the context of the WTO Agreement. It was not an isolated case for the WCO to learn that the mandate for effecting the change to a new system of valuation in the year 2000 had never or had yet to be assigned, not to the customs administrations, the organization with whom the WCO dealt. Nor was the impact of the change fully understood. Governments which relied heavily on customs duties as the principal source of government revenue were interested in revenue maximization from their customs authorities. A potential loss of revenue in exchange for facilitation and down-the-road increases in trade activity could be a hard sell to the official whose performance was currently being measured by revenue collection. Governments needed to give those responsible for implementation the right signals. These were important issues for which only the WTO could provide the proper incentives to ensure compliance with its rules.

6.21 He would welcome Members' views on the programme. He noted that the Committee had not taken a very active role in the past on technical assistance matters. That this matter should be raised now was a reflection of the increased membership in the Committee and the increased stake and concern of Members. In conclusion, he wished to react to some of the issues raised in the earlier discussion. He noted that the US proposal was interesting. The WCO had a thorough examination of technical assistance ways and means and was in consultation with Members; anything that could complement this could be useful. He noted, for example, the APEC programme within which the WCO had a very active role. With respect to the specific issue of a seminar to be held with the ASEAN countries, the WCO had had a long-term relationship with the ASEAN Secretariat and had planned to continue this year with a seminar in the Philippines. The APEC countries were also welcomed to attend this seminar and Japan would be participating through providing technical expertise and sponsorship. He noted that activities were planned through June 1997, listed in a section of the Technical Committee document 41.097. This was done to ensure transparency in the activities and at the same time to prevent

unnecessary duplication of efforts. He considered that neither the WCO nor the WTO could afford to spend scarce resources unproductively.

6.22 The representative of the United States understood that many Members' comments had to be preliminary given the fact that the paper was circulated at the present meeting. He wished to summarize his delegation's views, given that several delegations noted the importance of a general awareness of technical assistance programmes; of what the WCO was doing; and of what individual Members and regional groups were doing. He noted in particular Switzerland's point about transparency. With respect to this informal working group, his delegation proposed that it be a forum for Members to assess on-going activities and to discuss what they were doing under various initiatives. His delegation supported the idea of transparency in this process which was a fundamental aspect of its proposal. Secondly, the proposal was trying to enhance the role of developing countries in the process, through what he termed "empowerment". This was an effort to allow, on an informal and frank basis, those who were receiving technical assistance to tell the Committee the shortcomings of this assistance, where it was not addressing their needs, and how this specifically would relate to their ability to implement the Customs Valuation Agreement at the end of the transition period.

6.23 Finally, he appreciated the comments and the efforts of the WCO to provide technical assistance, albeit with restricted resources. His delegation was aware that it would continue to do an exemplary job in this respect. However he emphasised that implementation of the Agreement, specifically of Article 23, ultimately had to rest with the WTO and specifically with this Committee. It was not a responsibility to concede to another organization. His delegation was thus suggesting that the Committee, through an informal process, begin to give guidance to the efforts on technical assistance, to provide a framework to assist in the allocation of resources, and most importantly to do its part to help identify specific individual needs and to ensure that these individual needs were matched. His delegation considered that only the WTO could do this comprehensively.

6.24 The Chairman noted that a broad spectrum of views had been expressed on the US proposal. There were still a lot of differences in views and it would be premature to draw conclusions, especially given the newness of the document. This document and the oral proposals made were ripe for further consideration. Therefore, he saw the necessity for conducting informal consultations within the Committee on the US proposal as well as on the other orally-made proposals. He suggested that the new Chairman of the Committee carry out this task.

6.25 The Committee took note of statements and agreed that the new Chairman should conduct informal consultations on the US proposal.

7. Use of the term "entretenimiento" in the Interpretative Note to Article 1 of the Agreement

7.1 The Chairman recalled that at the last meeting of the Committee, it had been agreed to revert to this item at this meeting. The matter had been initially raised at the April 1996 meeting by the WCO representative in his report of the work of the Technical Committee. A letter had been subsequently received from the Chairman of the Technical Committee on this matter and circulated in G/VAL/W/15. The letter requested the Committee to address the concern of Spanish-speaking countries on the use of the term "entretenimiento" in the Interpretative Note to Article 1 of the Agreement. It suggested replacing the term with the term "mantenimiento" which would be the correct translation of the term "maintenance" in the Interpretative Note. He considered the simplest way to address this matter was through the rectification of the Spanish text to be made through the issuance of a Procès Verbal. He noted that a similar problem with the French text was handled in this manner in 1981. In order to proceed on this basis, he asked that the Committee review the proposed rectification contained in G/VAL/W/17. If the Committee could agree on this manner of proceeding and on the proposed rectification, then the rectification would be circulated in a WT/Let document to which Members would

have the opportunity to object during a 30-day period. If no objections were received, the Director-General would issue a Procès Verbal formally rectifying the text.

7.2 The representative of Argentina agreed with the method of proceeding. His delegation wished to make certain that, after the rectification to the text had been made, when documents would be issued by the WTO at a later stage, the rectification would also automatically be made. He requested the Secretariat to do whatever was necessary to ensure that the correct term would be used in future issues.

7.3 The Committee so agreed.

8. Other business

(a) Date for the next meeting

8.1 The Chairman proposed that the next meeting of the Committee on Customs Valuation be held on 23 October 1997 as suggested by the Secretariat in the calendar of meetings for 1997 and subject to change in the event of unforeseen developments.

8.2 The Committee so agreed.

9. Election of Officers

9.1 The Chairman stated that the Rules of Procedure for meetings of the Committee on Customs Valuation provided that the Committee elect a Chairperson at the end of the first meeting of the year. He noted that the Chairman of the Council for Trade in Goods had carried out informal consultations on a slate of names for appointment as chairpersons of standing bodies in accordance with the established Guidelines for appointment of officers. On the basis of the understanding reached, he proposed that the Committee elect M. Tullio di Pietro (Italy) as Chairperson.

9.2 The Committee so agreed.

9.3 The Chairman noted that the Rules of Procedure also allowed the possibility of electing a Vice-Chairman at this time. He asked if there were any nominations for Vice-Chairman.

9.4 The representative of the United States stated that his delegation wished to nominate Mr. Ernesto de la Guardia (Argentina) as Vice-Chairman. The representative of Hong Kong stated that his delegation seconded the nomination.

9.5 The Committee agreed to elect Mr. Ernesto de la Guardia as Vice-Chairman