

AGREEMENT ON IMPLEMENTATION
OF ARTICLE VII
OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 to 7, inclusive, provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Articles 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under Article 5.1 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if he so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain

- **(iv)* the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

- (c)* The tests set forth in paragraph 2 *(b)* are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2 *(b)*.

Article 2

1. *(a)* If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

*The provision of Article 1.2 *(b)(iv)* of the Agreement is deleted by paragraph 1:1 of the Protocol of the Agreement.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3 the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based

on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually

(g) arbitrary or fictitious values.

3. If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods Tj Tj 21.75 -24, are

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Party.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the General Agreement by the country of

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2. (a) In this Agreement "identical goods" means goods which are the same in all respects, including physical characteristics quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.
- (b) In this Agreement "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.
- (c) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1 (b)(iv) because such elements were undertaken in the country of importation.
- (d) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.
- (e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
4. For the purposes of this Agreement, persons shall be deemed to be related only if:
 - (a) they are officers or directors of one another's businesses;
 - (b) they are legally recognized partners in business;
 - (c) they are employer and employee;
 - (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - (e) one of them directly or indirectly controls the other;
 - (f) both of them are directly or indirectly controlled by a third person;
 - (g) together they directly or indirectly control a third person; or
 - (h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATION
AND DISPUTE SETTLEMENT

Institutions

Article 18

There shall be established under this Agreement:

1. A Committee on Customs Valuation (hereinafter referred to as the Committee) composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Parties the opportunity to consult on matters relating to the administration of the customs valuation system by any Party as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Parties. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Customs Valuation (hereinafter referred to as the Technical Committee) under the auspices of the Customs Cooperation Council, which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultation

Article 19

1. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Party or of other Parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations.

2. The Parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to Parties engaged in consultations.

Dispute settlement

Article 20

1. If no mutually satisfactory solution has been reached between the Parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues

8. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend the application to any other Party or Parties of such obligations under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 21

1. Developing country Parties may delay application of its provisions for a period not exceeding five years from the date of entry into force of this Agreement for such countries. Developing country Parties who choose to delay application of this Agreement shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.

2. In addition to paragraph 1 above, developing country Parties may delay application of Article 1.2 (b)(iii) and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Parties that choose to delay application of the provisions specified in this paragraph shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.

3. Developed country Parties shall furnish, on mutually agreed terms, technical assistance to developing country Parties that so request. On this basis developed country Parties shall draw up 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.

PART IV

FINAL PROVISIONS

Acceptance and accession

Article 22

1. This Agreement shall be open for acceptance by signature or otherwise by governments contracting parties to the GATT and by the European Economic Community.
2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.
3. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
4. In regard to acceptance, the provisions of Article XXVI:5 (a) and (b) of the General Agreement would be applicable.

Reservations

Article 23

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

Article 24

This Agreement shall enter into force on 1 January 1981 for the governments¹ which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

National legislation

concluded in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

Article 28

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may, upon the receipt of such notice, request an immediate meeting of the Committee.

Secretariat

ANNEX I

INTERPRETATIVE NOTES

*General Note**Sequential application of valuation methods*

1. Articles 1 to 7, inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.
2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.
3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.
4. Where the customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

Use of generally accepted accounting principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.
2. For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing

determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8.1 (b)(ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1 (a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1 (b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

(c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the sellers' price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

| <i>Sale quantity</i> | <i>Unit price</i> | <i>Total quantity Number of sales price</i> | <i>sold at each</i> |
|----------------------|---------------------------|---|---------------------|
| 1-10 units | 100 5 sales of 3 units | 10 sales of 5 units | 65 |
| 11-25 units | 95 | 5 sales of 11 units | 55 |
| over 25 units | 90 1 sale of 50 units | 1 sale of 30 units | 80 |

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) *Sales*

| <i>Sale quantity</i> | <i>Unit price</i> |
|----------------------|-------------------|
| 40 units | 100 |
| 30 units | 90 |
| 15 units | 100 |
| 50 units | 95 |
| 25 units | 105 |
| 35 units | 90 |
| 5 units | 100 |

(b) *Totals*

| <i>Total quantity sold</i> | <i>Unit price</i> |
|----------------------------|-------------------|
| 65 | 90 |
| 50 | 95 |
| 60 | 100 |
| 25 | 105 |

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 8.1 (b), should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in Article 5.1 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

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4. The "amount for profit and general expenses" referred to in Article 6.1 (*b*) is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1 (b)(iv)

1. Additions for the elements specified in Article 8.1 (b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1 (c)

1. The royalties and licence fees referred to in Article 8.1 (c)

Note to Article 15

Paragraph 4

For the purposes of this Article, the term "persons" includes legal persons, where appropriate.

Paragraph 4 (e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the Customs Co-operation Council with a view, at the technical level, towards uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

- (a) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Parties and to give advisory opinions on appropriate solutions based upon the facts presented;
- (b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
- (c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
- (d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Party or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
- (e) to facilitate, as requested, technical assistance to Parties with a view to furthering the international acceptance of this Agreement; and
- (f) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Parties or the Committee, in a reasonably short period of time.

4. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Co-operation Council.

Representation

5. Each Party shall have the right to be represented on the Technical Committee. Each Party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Party so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers. The GATT secretariat may also attend such meetings with observer status.

6. Members of the Customs Co-operation Council who are not Parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as "the Secretary-General") may invite representatives of governments which are neither Parties nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the

Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and conduct of business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. A Chairman or Vice-Chairman who ceases to represent a member of the Technical Committee shall automatically lose his mandate.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside.

languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the Customs Co-operation Council.

ANNEX III

AD HOC PANELS

1. *Ad hoc* panels established by the Committee under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee;
- (b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and
- (c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may

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PROTOCOL 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 thereto 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 in so far 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 co-operation of importers in these enquiries;

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 in the English, French and Spanish languages, each text being authentic.