

ARTICLE VII
VALUATION FOR CUSTOMS PURPOSES

I.	TEXT OF ARTICLE VII AND INTERPRETATIVE NOTE AD ARTICLE VII	257
II.	INTERPRETATION AND APPLICATION OF ARTICLE VII	259
A.	SCOPE AND APPLICATION OF ARTICLE VII	259
1.	Paragraph 1	259
	(1) <i>"to give effect"</i>	259
	(2) <i>"or other charges"</i>	259
	(3) <i>"laws or regulations"</i>	259
2.	Paragraph 2	262
	(1) <i>Par values and conversion rates of exchange</i>	262
	(2) <i>"date of this Agreement"</i>	263
5.	Paragraph 5	263
	(1) <i>"The bases and methods ... should be stable"</i>	263
	(2) <i>"sufficient publicity"</i>	263
B.	R.....	266
	DOCUMENTS 266

I. TEXT OF ARTICLE VII AND INTERPRETATIVE NOTE AD ARTICLE VII

Article VII

Valuation for Customs Purposes

1. The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges* or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.

2. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or like merchandise, and should not be based on the value of merchandise of national origin or arbitrary or fictitious values.*

(b) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be

(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.*

3. The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

4. (a) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

ARTICLE VII - VALUATION FOR

2. Paragraph 2

(1) "actual value" versus "arbitrary or fictitious values"

See Interpretative Notes 1 and Ad Paragraph 2.

The Report of the Working Party on the "Accession of El Salvador" discusses customs valuation as follows:

"Some members noted that Article VII of the General Agreement which set a basic GATT obligation prohibited the use of indicative, normal or official prices for the valuation of imports and requested that El Salvador commit to apply, in practice, and from the date of accession, the provisions of Articles VII and X in its customs practices and procedures, including customs valuation. In the view of these members, if this was not the case, El Salvador's request for accession might be premature. These members added that ... El Salvador should also state clearly that its customs officials will give

(b) Valuation according to fixed values

During discussions at the Havana Conference on Article 35 of the Charter (corresponding to GATT Article VII), "it was revealed that in certain countries it had been the practice to apply ad valorem tariffs to established values of goods which remain fixed for various periods of time. It was agreed that, in such cases, the ad valorem rates are, in practical result, the equivalent of specific duties so long as the established values of goods are not changed. It was agreed that a note recognizing this fact should be appended to paragraph 3 [corresponding to Article VII:2]. However, it was agreed.. that it would not, and should not, be compatible with the letter or spirit of the Article to accept the principle of variable schedules of 'fixed values' for products subject to ad valorem rates of duty".⁹ The text of the note added was as follows:

"If on the date of this Charter a Member has in force a system under which ad valorem duties are levied on the basis of fixed values the provisions of paragraph 3 of Article 35 shall not apply:

- "1. in the case of values not subject to periodical revision in regard to a particular product, as long as the value established for that product remains unchanged;
- "2. in the case of values subject to periodical revision, on condition that the revision is based on the average 'actual value' established by reference to an immediately preceding period of not more than twelve months and that such revision is made at any time at the request of the parties concerned or of Members. The revision shall apply to the importation or importations in respect of which the specific request for revision was made, and the revised value so established shall remain in force pending further revision¹⁰.

This note was not brought into the General Agreement. It was also noted in the summary record of the discussions at Havana that the system of tariff valuation in force in India "for non-ordinary products was in order insofar as the actual value could not be really

Protocol”), done on 1 November 1979, provided that upon entry into force of the Agreement the provisions of the Protocol would be deemed to be part of the Agreement.

The Agreement sets out five valuation methods, which are ranked in a hierarchical order to be followed by customs administrations of parties to the Agreement. The primary basis for customs value under the Agreement is “transaction value” as defined in Article 1: “the price actually paid or payable for the goods when sold for export to the country of importation”, subject to certain specified adjustments. When 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 the importer with a view to arriving at a basis of value under Article 2 (transaction value of identical goods) or Article 3 (transaction value of similar goods). When the customs value cannot be determined on this basis, resort may be made to deductive value (Article 5) or computed value (Article 6). Article 7 provides a fall-back method:

“1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement and on the basis of data available in the country of importation.

“2. No customs value shall be determined under the provisions of this Article on the basis of:

- “(a) the selling price in the country of importation of goods produced in such country;
- “(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- “(c) the price of goods on the domestic market of the country of exportation;
- “(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
- “(e) the price of the goods for export to a country other than the country of importation;
- “(f) minimum customs values; or
- “(g) arbitrary or fictitious values”.

Annex I to the Agreement provided extensive interpretative notes to its provisions. The Protocol to the Agreement provides for the possibility of reservations by developing countries to certain provisions of the Agreement; a number of acceptances have been granted by such reservations. Article 21 of the Agreement permitted a developing country party to the Agreement to delay application of its provisions for five years from the date of entry into force of the Agreement with respect to it; the Protocol provided for the possibility of further extension of this period of delay. Article 21 also permitted developing country parties a further delay of three years in application of certain provisions of the Agreement. A list of acceptances of the Agreement appears in the Appendix at the end of this book, and indicates those acceptances accompanied by reservations.

Article 18 of the Agreement established two committees: a Committee on Customs Valuation composed of representatives of the parties, and serviced by the GATT Secretariat, and a Technical Committee on Customs Valuation under the auspices of the Customs Co-operation Council. The Committee has discussed the implementation and application of the Agreement by parties, including difficulties encountered by developing countries in implementation, the use of pre-shipment inspection companies in customs valuation, and the shifting of the burden of proof in cases where customs administrations have reasons to doubt the truth or accuracy of the declared value.²³ The Committee has made a number of decisions regarding its working procedures and the administration of the Agreement.²⁴

²³On pre-shipment inspection, see VAL/W/41-44, VAL/M/17, VAL/

The Committee adopted two decisions in 1984 regarding the interpretation of the Agreement: decisions in 1984 on "Treatment of Interest Charges in the Customs Value of Imported Goods"²⁵ and on "Valuation of Carrier Media Bearing Software for Data Processing Equipment"²⁶. The Committee has also adopted agreed interpretations of the word "undertaken" used

III. PREPARATORY WORK

Provisions corresponding to Article V appear in Chapter III-4 of the US-UK Proposal in Article 12 of the US Draft Charter, in Article 18 of the New York Draft Charter, and in Article 34 of the Geneva Draft Charter.