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Harmonized Tariff Schedule of the United States (2007)  
Annotated for Statistical Reporting Purposes

Heading/ Subheading	Stat. Sub- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
2201		Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow.				
2201.10.00	00	Mineral waters and aerated waters.....	liters.....	0.25 liter	Free (A, AU, BH, CA, CL, E, IL, MX, P, S)	2.5 c/liter
2201.50.00	00	Other.....	l.....	Free		Free
2202		Waters, including mineral water and aerated waters, containing added sugar or other sweetening matter or flavoured and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2003.				
2202.10.00		Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured.....		0.3 liter	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, P, SG)	4 c/liter
	20	Carbonated soft drinks: Containing high-intensity sweeteners (e.g., aspartame and/or saccharin.....	1 liters			
	40	Other.....	1 liters			
	60	Other.....	1 liters			
2202.50		Other:				
2202.50.10	00	Milk-based drinks: Chocolate milk drink.....	liters.....	17%	Free (A+, CA, D, E, IL, J, JO, MX, P, CL) 8.5% (BG) 13.6% (MA) 13.6% (BH) 14.1% (AU)	20%

Ad Valorem Duty Rate

Figure 1 US harmonized tariff schedule: ad valorem and specific rates

Today, the rules for valuing imports for purposes of assessing customs duties are well settled. They are defined in the WTO Customs Valuation Agreement (the formal name of which is the Agreement on Implementation of Article VII of the GATT ), a system that is designed to promote fairness, neutrality and uniformity in customs duty assessment, and which is used by more than 150 WTO Member countries worldwide.

... T

In 1947 ... before the GATT ... the average tariff rate applied by industrial countries was between 20 and 30 percent. Fifty years and eight GATT rounds of tariff negotiations later, the average tariff rate applied by industrial countries on non-agricultural goods is about 5.5 percent. With implementation of the 1994 Uruguay Round, for example, the US average tariff on non-agricultural goods is just 3.2 percent, and nearly half the tariff lines applicable to such goods are duty free. Given these diminishing tariffs, one might ask how important is customs valuation? If import duties are reduced to trivial levels or

3 WTO, World Trade Report 2007 at 207.

4 WTO, World Trade Report 2007 (simple average of applied MFN rates).

5 Ibid.

disappear altogether, what use will remain for the rules that are used for their calculation?



Apart from tax and duty assessment, customs valuation rules are used by customs authorities in their administration of non-revenue measures, such as:

- € Import quotas based on customs value.
- € Rules of origin. For example, a country may allow goods from a specific foreign country to enter free of duty if 50 percent of the customs value of the import is contributed by operations carried out in that foreign country.
- € Collection of trade statistics.

C	GATT
	<p data-bbox="171 526 1038 607">GATT Article II:3 states "no contracting party shall alter its method of determining dutiable value so as to impair the value of any [tariff] concessions negotiated among GATT parties.</p> <p data-bbox="171 611 1061 720">Under this prohibition, a country may not change its method of determining dutiable value to avoid tariff bindings. But this does not prevent a country from maintaining a valuation method that itself allows arbitrary assessments. In the absence of common rules, valuation could thus be (mis)used for trade protection purposes.</p> <p data-bbox="171 723 1061 864">It seems inequitable that while certain countries apply a liberal [valuation] system, others continue to apply systems which may raise the actual incidence of the duties shown in the tariff and carry many uncertainties because of elements which are arbitrary from the point of view of interested exporters in third countries. If the global reciprocity achieved in tariff reductions might be gravely jeopardized</p> <p data-bbox="171 868 1053 1085">To illustrate the point, consider the following scenario: if the invoice value of an imported product is \$100, and the bound tariff rate agreed by the country is 10%, then traders might expect a tariff barrier equivalent to \$10 (<math>\\$100 \times 10\% = \\$10</math>). However, customs officials, applying a method of valuation that allows arbitrary uplifts, assign a value to the product of twice that amount. In that case, the actual tariff barrier is \$20 (<math>\\$200 \times 10\% = \\$20</math>). In practical effect, the importing country has raised its tariff rate from the 10% tariff ceiling agreed in GATT tariff negotiations to 20%.</p> <p data-bbox="171 1088 1038 1142">Benefits to trade that the exporting country expects from negotiated tariff binding are considerably diminished by such uncertain or arbitrary valuation methods.</p> <p data-bbox="171 1173 981 1197">* TN.64/NTB/26 (July 7, 1964) (Statement of the European Community) (emphasis added).</p>

## 1.2 HISTORY

The WTO Customs Valuation Agreement is a result of the 1986...1994 Uruguay Round negotiations, but its terms largely repeat the 1979 GATT Valuation Code. Therefore, to understand the intent underlying the terms of the Agreement, it is useful to recall the conditions of the pre-1979 trading environment (see Figure 3). As will be apparent from the retelling, this history also demonstrates that many of the difficulties of customs valuation that are discussed

today ... valuation of used goods, questionable invoices, (mis)use of alternative valuation methods, etc. ... are by no means new or unique.

.. B

GATT Article VII establishes general principles for national customs valuation systems. However, it does not mandate a special valuation method, but allows countries to develop their own system, subject to these principles.

GATT A VII P

- € Customs values shall be based on actual value, which is the price of the imported merchandise, or like merchandise, in sales in the ordinary course of trade under fully competitive conditions
- € If actual value cannot be determined, Customs shall use the nearest ascertainable equivalent
- € Customs values shall not be based on value of merchandise of national origin, or arbitrary or fictitious values
- € Customs values shall not include internal taxes on a product that the country of origin or export refunds or exempts
- € Currency conversions shall reflect effectively current

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In fact, there was a large diversity and inconsistency when it came to customs valuation practices among countries before 1979. Customs valuation systems generally followed one of two conceptually different approaches: those based on a •notionalŽ concept of value, and those based on a •positiveŽ concept.

(a) Brussels Definition of Value

The •notionalŽ concept is represented by the 1950 Convention on the Valuation of Goods for Customs Purposes, commonly known as the Brussels Definition of Value (BDV).<sup>10</sup> The BDV was drafted by customs experts of the European Customs Union Study Group, and was given to the Customs Co-operation Council ... now known as the World Customs Organization (WCO) ... to administer.<sup>11</sup> The BDV had more adherents than any other valuation system. At its peak, it was applied by as many as one hundred countries, including members of the (then) European Economic Community (EEC) and most other countries in Western Europe, as well as Japan and a number of developing countries.

Under the BDV, goods are valued on the basis of their •normal priceŽ:

that is to say, the price which [the imported goods] would fetch at the time when the duty becomes payable on a sale in the open market between buyer and seller independent of each other.

Customs officials would consider the buyer's actual invoice price paid for the goods, but were free to reject it in favor of the notional •open marketŽ price for goods of the same kind.

(b) Positive value systems

A positive system of value was used by the United States and Australia, among other countries. Under these systems, customs value was generally based on the actual price paid for the goods, rather than an abstract or notional price that might be paid under perfect competitive conditions. Typically, these systems provided for use of secondary valuation methods, in a ranking order, where the

<sup>10</sup> December 15, 1950, 171 U.N.T.S. 307 (entered into force on July 28, 1953).

<sup>11</sup> Convention Establishing a Customs Co-operation Council, December 12, 1950, 157 U.N.T.S. 130; GATT Working Party I on the International Chamber of Commerce Resolution Statement by Mr. F. Redmond-Smith, Representative of the European Customs Union Study Group (October 7, 1952). The CCC Convention was also drafted by the European Union Customs Union Study Group, a body established in 1947 to consider freer intra-European movement of goods and services in the context of European recovery from the Second World War. GATT Contracting Parties Work Undertaken by the European Customs Union Study Group on Customs Nomenclature and Questions of Customs Regulations: Statement Made by the French Representative (GATT/CP.4/45 (April 20, 1950)).

<sup>12</sup> Annex I, Convention on the Valuation of Goods for Customs Purposes, note 10, above.

actual invoice price could not be found or used (such as where the goods were imported under a lease, and therefore a sale price did not exist).

For example, the US system, which strongly influenced the structure of the WTO Valuation Agreement, generally required customs to appraise goods on the basis of the •export valueŽ or price at which the goods were sold or offered for sale for export to the United States or, second, on the basis of the •United States valueŽ, which was the selling price of imported goods in the US market; and finally, if the preceding methods failed, on the basis of a •constructed valueŽ or cost of production of the imported goods.

There was also diversity in the application of both of these systems. The BDV was subject to varying interpretations in different countries. Positive systems were equally diverse: for example, the US primary valuation method was based on the export value (the price of the goods at the time of exportation to the United States), whereas Australia used the price paid by the importer or the price at which the same goods are sold in the export country market, whichever was higher. Moreover, as noted in the discussion below of the American Selling Price valuation method, some of the •secondaryŽ valuation methods employed by these countries were at best complex and at worst explicitly protectionist.

### (c) Early GATT initiatives on common valuation rules

In the early GATT years, a few attempts were made toward creation of a common valuation system. Although ultimately inconclusive, these initiatives triggered the GATT contracting parties to begin to assess the conformity of the different valuation systems then in use with Article VII principles. The results of this early work on valuation led to and informed the GATT's later valuation initiatives. There is also a direct link in the present WTO Valuation Agreement to this early history: the •prohibited methodsŽ listed in Article 7 of the Agreement (the •fall backŽ method of valuation) references one or another of these older valuation systems. (More on the prohibited methods of valuation under the WTO Valuation Agreement at section 3.4.)

The earliest attempt at a harmonized valuation system within the GATT came in 1951, when the International Chamber of Commerce (ICC) proposed that the GATT contracting parties develop standard worldwide valuation rules. This ICC proposal was a reaction to the BDV which, at that time, had just been completed and opened for signature. The ICC ... as the representative of business ... had opposed the BDV, because it was based on the use of a •normalŽ

<sup>13</sup> See GATT Committee on Trade and Development, Trade Barriers Arising in the Field of Customs Valuation: Note on Implications for Developing Countries of Ad Referendum Subjunctive, TD/W/195 (August 2, 1973).

<sup>14</sup> Because the GATT was a treaty and not a legally established organization (in contrast to the World Trade Organization), GATT signatories were called •contracting partiesŽ. See Understanding the WTO (2007), at 3.

price as determined by customs administrations. Instead, the ICC favored a simpler rule-of-thumb method, whereby customs would be required to use the invoice price for the goods presented by the trader, absent a reason to suspect fraud.<sup>5</sup>

This ICC proposal was rejected as premature. With only limited information about the valuation methods used by governments, the GATT contracting parties were, apparently, unwilling to upset the status quo. Moreover, it was felt that the GATT should not pass judgment on the BDV by developing an alternative international system along the lines suggested by the ICC before the BDV had been given a reasonable time to operate.

However, the ICC proposals did have one positive result. They inspired the GATT contracting parties to obtain detailed information concerning the methods governments used to determine value and the extent to which these methods conformed to Article VII principles.<sup>7</sup> The results of this study, published three years later, suggested that there was a significant amount of diversity in valuation practices among GATT contracting parties. In particular, it was found that governments generally used one of three different criterion to assess value:

- (1) the price at which goods comparable with the exported goods are sold in the internal markets of the exporting country (current domestic value);
- (2) the price at which the imported goods are sold from the exporting country to the importing country (transaction value);
- (3) the price at which goods comparable with the imported goods are sold in the markets of the importing country (import market value).<sup>8</sup>

<sup>15</sup> GATT Executive Secretary, Resolutions Submitted by the International Chamber of Commerce on Valuation, Nationality of Manufactured Goods and Formalities Connected with Quantitative Restrictions (GATT/CP/123G/22 (August 29, 1952)). In addition to international valuation rules, the ICC proposed that the GATT contracting parties issue general recommendations to governments based on the following four principles: (i) systems of valuation should not be used as a method of increasing protection; (ii) primary consideration should be given to the price shown on commercial invoices when determining the dutiable value of goods; (iii) regulations should state clearly and fully the basis of dutiable value, with adequate publicity; and (iv) internal duties or taxes from which exported goods were exempted should not be included in the dutiable value. GATT contracting parties did not accept this proposal, largely on grounds that these ICC principles were largely incorporated in GATT Article VII. GATT Report of Working Party I on the International Chamber of Commerce Resolution 6/28 (November 1, 1952).

In late 1954 and early 1955, governments submitted a number of proposals to amend Article VII in connection with a general review of the operation of the GATT Treaty. Most of these Article VII proposals were technical in nature or narrowly targeted to overcome specific valuation problems.

One proposal did have a broader reach. The Scandinavian countries proposed that the GATT work toward the standardization as far as practicable, of definitions of value and of procedures for determining the value of products.<sup>19</sup> Under the proposal, this work would have been based upon studies and recommendations of a new Organization for Trade Co-operation ... which was then being discussed as the permanent body to administer the GATT. However, as that new trade body never came into being, neither did the Scandinavian proposal for a unified valuation system.<sup>20</sup>

The last major GATT initiative on valuation in these early years came in the Kennedy Round of 1964...1967. In that round, for the first time, non-tariff barriers were included in negotiations. One such non-tariff barrier nominated for negotiation by a number of countries was customs valuation including use of arbitrary or excessive values.<sup>21</sup> The arbitrary valuation practice that attracted most criticism was the use by the United States of its American Selling Price (ASP) method of valuation.<sup>22</sup> The ASP, explicitly protectionist

<sup>19</sup> Members shall work toward the standardization, as far as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any matter by value. With a view to furthering co-operation to this end, the Organization may study and recommend to Members such bases and methods for determining value for customs purposes as would appear best suited to the needs of commerce and most capable of general adoption. GATT Contracting Parties 9th Session, Review Working Party II on Tariffs, Schedules and Customs Administration, Proposals Affecting Customs Administration, WT/9/46 (November 29, 1954).

<sup>20</sup> The Scandinavian proposals were referred to the working party responsible for developing the agreement on the Organization for Trade Co-operation (OTC). GATT Contracting Parties 9th Session, Review Working Party IV on Organizational and Functional Questions, Scope of the Agreement: Proposals Referred from Working Party II to Working Party, WT/9/98 (December 14, 1954). The draft agreement on the OTC included a provision authorizing the OTC to undertake a study of international trade and commercial policy and where appropriate make recommendations thereon. This provision was explicitly intended to cover the valuation studies foreseen by the Scandinavian proposal. GATT Contracting Parties 9th Session, Report of Review Working Party IV on Organizational and Functional Questions, L/327 Rev. 1 (April 4, 1955). However, the Agreement on the Organization for Trade Co-operation, done at Geneva on March 10, 1955, never entered into force.

<sup>21</sup> GATT Meeting of Ministers, May 16...21, 1963, Agreements for the Reduction or Elimination of Tariffs or Other Barriers to Trade and Related Matters and Measures for Access to Markets for Agricultural and Other Primary Products: Resolution Adopted 21 May 1963, L/63(9) May 22, 1963.

<sup>22</sup> GATT Sub-Committee on Non-Tariff Barriers, Non-Tariff Measures to be Brought within the Scope of the Negotiations: Note by the Secretariat, TN.64/NTB/8 (November 15, 1963).

<sup>23</sup> GATT Sub-Committee on Non-Tariff Barriers, The Use of Arbitrary or Excessive Values in Levying



One outcome of that review was a recognition that more focus should be given to the use of non-tariff, trade-restrictive measures, as these had the potential to offset the gains that had been made over the years by the GATT tariff reductions. The contracting parties thus ordered the GATT Secretariat to establish an inventory of non-tariff barriers affecting international trade, based on information supplied by governments. Once the inventory was compiled and analyzed, working groups under the GATT Committee on Trade in Industrial Products were appointed to explore the possibilities for concrete action both with regard to reducing or removing such barriers and to developing possible rules of conduct.

Customs valuation practices figured prominently in that inventory of non-tariff barriers: more than thirty valuation complaints were registered against over twenty countries.<sup>28</sup> According to the working group that analyzed the inventory, the valuation problems noted were primarily the result of the different special valuation or secondary valuation methods that countries applied where valuation could not be taken from the invoice price:

the great majority of countries currently follow the practice of the Brussels Convention on Valuation (BCV), which is based on c.i.f. values [that is, costs of international transport are included in customs value] and that another smaller group of countries, including some important trading countries, use systems varying from one to another but based upon f.o.b. values of mixed in character [international transport costs not included in customs value]. Both groups use invoice values in most cases. In cases where no invoice can be produced (for example, where there is no sale) or where the invoice price appears to be unacceptable or it is not accepted, the value for custom purposes is established by the two groups according to widely differing methods.<sup>29</sup>

Some of the important special valuation problems listed in the GATT inventory were the following:

1. Use of domestic prices in the country of export as a basis for valuation.

Certain countries valued imported goods on the basis of invoice price or the price of similar goods in the export country market, whichever was higher. This system made it difficult for traders to estimate in advance their duty liability; it presented particular problems where

<sup>28</sup> GATT, Review of the Work of the Contracting Parties through the Last Two Decades and Conclusions on their Future Work Programme



the goods were not sold in the exporting country market; and it was said to require exporters to divulge confidential business information in course of customs price investigations.

It also, apparently, worked to the disadvantage of exporters in developing countries where, it was claimed, prices could be higher than in international markets due to structural imbalances and the supply scarcities and inflationary pressures to which their economies were often subject.

2. Use of arbitrary values determined at the discretion of customs authorities.

Under certain valuation systems which used the invoice price or price in the export country market, whichever was higher, customs or other governmental authorities were authorized to determine the value where the current price in the exporting country market could not be ascertained. The claim was made that these determinations of value were arbitrary or, at the least, not transparent.

3. Valuation based on prices for similar domestic-origin goods in the country of import.

The US ASP valuation method, discussed previously, was identified as the main example of this problem.

4. Use of official or minimum values.

Certain countries established, by decree or regulation, minimum prices for specified products or range of products. For example, a number of countries were said to set a minimum value for imports of used clothing, based on weight. The justification of these practices, which were more commonly found in developing countries than developed, has been explained as follows:

The developing countries maintaining official indicative values for a limited number of products have stated that they have found it necessary to adopt such a system to curb underinvoicing of goods or similar unfair practices. It has been stated that apart from such official values on the basis of average prices of imports may be necessary for commodities which are subject to wide fluctuations in prices. In regard to minimum values, developing countries



C T I P

Draft Valuation Principles

1. Valuation systems should be neutral in their effect and in no case be used as a disguised means of providing additional protection by ~~artificially~~ increasing the

The final result was the GATT Valuation Code, which is substantially identical in its terms to the present WTO Customs Valuation Agreement. Like other codes negotiated in the 1979 Tokyo Round, the GATT Valuation Code bound only those GATT Members that elected to accept its terms. As it turned out, while all developed countries signed the GATT Valuation Code, the large majority of developing countries chose not to do so.

Differences between developed and developing countries were apparent during the negotiations. For example, there was reportedly strong opposition from developing countries to the treatment of transactions between related companies under the proposed GATT Valuation Code which, they argued, favored firms and enterprises from the developed countries. Developing countries wanted customs authorities to have greater authority to reject related-party prices where they found the prices to differ substantially from values in transactions involving like goods and for reasons that could not be justified. Also, difficulties were foreseen in the use of the deductive and computed value methods, and there was outright opposition to the idea that an importer, rather than the customs authorities, could choose whether to apply the deductive or computed value method.

These differences could not be resolved by the end of the negotiations in April 1979. Two competing versions of a valuation code were thus presented to the GATT contracting parties for consideration ... one favored by developed country delegations, and a modified version proposed by developing countries containing special provisions to meet [their] trade, financial and development needs.

Certain of the developing countries' proposed special provisions were accepted in the Protocol, at least in some form. The Protocol thus allowed developing countries the possibility to delay the application of the Code beyond five years (to ease their transition to the new valuation rules); it gave developing country customs administrations some flexibility in use of the deductive and computed value methods; and it permitted developing countries to continue use of minimum value systems on a limited and transitional basis.

Other special provisions, which were not made part of the Protocol compromise, would have given developing countries greater leeway to reject declared transaction values in various circumstances where under-invoicing is suspected. These included, for example, provisions to put the burden of proving

Technical Committee in the early 1980s, GATT contracting parties and observers were consulted, special meetings were held, and surveys were produced on the obstacles<sup>5</sup> developing countries foresaw in adopting the Valuation Code<sup>45</sup>

Broadly speaking, three main factors were said to influence the decision of countries not yet signatories to the Valuation Code:

1. the need to take the decision collectively or in a coordinated fashion in the framework of a regional grouping
2. concern that the Agreement might not give customs adequate possibilities to deal with false invoicing and to maintain government revenue and
3. the legal and administrative requirements to be met by signatories, for example the need to adapt national legislation and procedures and to train staff<sup>6</sup>

That second point (false invoicing and government revenue) became the main focus of the discussions in the Uruguay Round negotiating group on valuation.

meeting, open to non-signatories, and to report the results to a working group specially created to carry out an overall review. GATT,

The negotiations on valuation were very much driven by developing-country concerns. It was made clear at the outset by some members within the negotiating group that a new customs valuation agreement or complete overhaul of the existing Tokyo Round Code was not on the table. Rather, countries were asked to identify their particular difficulties with the existing agreement

E

V

•[T]he price involved may be fictitious. What is known as •double-invoicing• for Customs purposes is a common example. Such a price, if it were declared to be the actual price under [the transaction value method], would not be rejected by the Customs unless they were in a position to prove its falsity by establishing the true actual sale price. No Customs Administration could accept the onus of such proof.

Customs Co-operation Council, Different Systems of Valuation and their Comparative Advantages and Disadvantages 18 (1963).

The general concern was that the GATT Valuation Code placed too great a burden on customs to prove that a declared price was false before it could reject the transaction value, particularly in cases where importers and their suppliers acted in collusion to hide the fraud. This problem was particularly acute for developing countries, it was said, because they did not have access to comparative price information, the automated processes and databases, or the technical expertise needed to detect false declarations. Therefore India proposed that customs administrations be given more flexibility under the Valuation Agreement to reject suspect declared values.

The India proposal and the subsequent negotiation in the Uruguay Round are covered in greater detail in section 4.3, which deals with customs variations under the Agreement. In short, however, while India's proposal did not result in any alteration of the terms of the Agreement itself, it did produce the important WTO Ministerial Decision clarifying the burden of proof issue, namely the Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value

#### (b) Sole agents and minimum values

The main concern of the African PTA countries was the impact that use of the Agreement would have on their government revenue, more than half of which, it was said, was derived from customs duties. The BDV concept of value ... some form of which all of these countries then used ... was considered more protective of this revenue than the GATT Agreement because it allowed customs officers greater flexibility to establish or •uplift• customs values when they found that the importer's declared transaction price was not consistent with open market prices.

The PTA countries thus proposed that developing countries should be permitted to include in customs value those discounts that foreign sellers allow to •sole agents, distributors and concessionaires• or other parties in special trading relationships, as they were under the BDV.



The PTA countries also proposed to extend the right of developing countries under the GATT Valuation Agreement to continue to apply minimum values, such as official lists of minimum prices for specific goods. The GATT Valuation Code protocol allowed developing countries the possibility to continue such practices, but on a limited and transitional basis only, and subject to terms and conditions agreed by the other Code signatories in negotiations. To ensure the utility of this concession to developing countries, the PTA proposed that minimum value reservations should not be limited in scope nor subject to the imposition of restrictive terms and conditions.

The Uruguay Round response to the PTA proposal was the second of two WTO Ministerial decisions on customs valuation, Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires. Essentially, this decision requires the WTO Valuation Committee to give sympathetic consideration to developing country requests to retain officially established minimum values for a limited period, and to take into account the development,



provisions that are specific to valuation dispute processing do remain part of the WTO Valuation Agreement; these mainly concern the role of the Technical Committee and its use by WTO panels in the dispute settlement process.

The WTO dispute settlement process is further discussed in section 5.3 .

### 1.3 AGREEMENT OVERVIEW

between WTO Members, and the administration and review of the Agreement by the WTO Valuation Committee and Technical Committee.

A

Articles 1...8.. Valuation methods

Article 9 ... Rules for converting currency

Article 10 ... Confidentiality of valuation information

Article 11 ... Importer's rights of appeal against customs decisions

Article 12

Agreement Annex III of the Agreement contains provisions that the rights of developing country Members to delay or make reservations against application of certain provisions of the Agreement. As noted above, this Annex III restates the Protocol to the Agreement on Implementation of Article VII that was negotiated in the Tokyo Round.

. . . P

The General Introductory Commentary to the Agreement states that the primary basis for customs value under this Agreement is transaction value as defined in Article 1. The Agreement Preamble further states that Members should recognize that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued.

In fact, many customs administrations apply the transaction value method to more than 90 percent of their imports.

. . . A

In addition to transaction value, the Agreement provides five alternative valuation methods:

- € transaction value of identical goods (Article 2)
- € transaction value of similar goods (Article 3)
- € deductive value (Article 5)
- € computed value (Article 6)
- € residual or fallback method (Article 7).

Because transaction value is primary, these methods should be used only if it is not possible to establish a customs value under Article 1.

Unlike some valuation systems of the past, the WTO Agreement's six valuation methods are to be applied strictly in sequential order rather than concurrently. That is, customs authorities must attempt to appraise imports using the transaction value method. If ... and only if ... a transaction value cannot

<sup>59</sup> See GATT Committee on Customs Valuation, First Annual Review of the Implementation and Operation of the Agreement: Background Document by the Secretariat, VAL/W/4/Rev.1 (November 17, 1981) (use of various valuation methods by seven GATT Members, including the countries of the EEC); GATT Committee on Customs Valuation, Use of Valuation Methods by Parties: Addendum (Norway), VAL/W/5/Add.8 (March 25, 1982); GATT Committee on Customs Valuation, Minutes of the Meeting Held on 10...11 November, 1983, VAL/W/5/M/8, (January 18, 1984) (paragraph 49).

be determined for reasons ~~de~~ in Article 1, then appraisal must be attempted under Article 2 ... transaction value of identical merchandise. If that is not possible, then valuation under the Article 3 method must be tried, and so on, through to Article 7.

There is one exception to this sequence: under Article 4 of the Agreement an importer may request customs to apply Article 6 (computed value) before Article 5 (deductive value). See section 3.2, below.

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Although the general principles expressed ~~GATT~~ GATT Article VII ... which the WTO Customs Valuation Agreement implements ... refer to imports and exports, the valuation methods ~~de~~ in the Agreement refer only to imported goods.

#### GATT Article VII

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 ~~importation~~ importation and exportation based upon or regulated in any manner by value.

#### WTO Customs Valuation Agreement Article 1

The customs value ~~of~~ imported goods shall be the transaction value *f*

Incidentally, what if there is a ~~coinc~~ conflict between the terms of the WTO Valuation Agreement and the terms of GATT Article VII? Which has priority? An interpretative note to the 1994 Agreement Establishing the World Trade Organization indicates that the WTO Valuation Agreement •shall prevail to the extent of the ~~con~~ <sup>ict</sup>ict.<sup>60</sup>

against dumped imports. A country should not misuse the WTO Customs Valuation Agreement (by, for example, rejecting the declared price) to deal with dumping, rather than following the detailed procedures laid out in the WTO Anti-Dumping Agreement. As strange as it may seem, for purposes of customs valuation, the price of a dumped import may be in fact an acceptable transaction value!