

# TCCV Texts Guide

## TCCV Texts Guide

**■ GENERAL**

---

The Technical Committee on Customs Valuation adopted the texts of a study on the way in which the instruments recording its information and advice should be brought into being, and a set of guidelines on the designation and use of these instruments. The texts, with the guidelines brought up to date, are as follows.

**■ STUDY**

1. Article 18 of the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994 provides :
  1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as “the Committee”) composed of representatives from each of the Members. 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 Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member 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 Members. The WTO Secretariat shall act as the secretariat to the Committee.
  2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as “the Technical Committee”) under the auspices of the Customs Co-operation Council (referred to in this Agreement as “the CCC”), 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.

2. Annex II of the Agreement sets out the responsibilities of the Technical Committee on Customs Valuation established under the auspices of the CCC which include :
  - (a) to examine specific technical problems arising in the day-to-day administration of the Customs valuation system of Members 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 Member 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 Members with a view to furthering the international acceptance of this Agreement;
  - (f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and
  - (g) to exercise such other responsibilities as the Committee may assign to it.
3. The Technical Committee may also incur tasks under the consultation and dispute settlement procedures set forth in Article 19 of the Agreement. Such responsibilities are referred to in subparagraph (d) above.
4. In addition, paragraph 23 of Annex II to the Agreement provides that the Technical Committee shall draw up a report of all its sessions and that these reports shall be given by the Chairman or his designee at each meeting of the Committee and at each meeting of the CCC.

5. The Agreement is clear in its intent with respect to the reports of the Technical Committee under the consultation and dispute settlement procedures of Article 19.
6. As a practical matter, the provisions of paragraph 23 of Annex II are sufficient with respect to the presentation of the reports of the Technical Committee to the Committee on Customs Valuation and the CCC, it being understood that either body may request reconsideration or further consideration on any matter covered in a given report.
7. Under Annex II, it is contemplated that some of the work of the Technical Committee will be formalized as advisory opinions, commentaries or explanatory notes as may be appropriate to the subject. As a matter of normal procedure, the texts of advisory opinions, commentaries or explanatory notes adopted by the Technical Committee will be annexed to and form part of the reports of the sessions.
8. In the consideration of the legal status of the Technical Committee's decisions resulting from the discharge of its responsibilities under Annex II, it is recognized that it is the intention of the Agreement that the Technical Committee will prepare instruments as a guide towards achieving uniformity in interpretation and application of the Agreement at the technical level.

Advisory opinions, commentaries, explanatory notes, studies or reports would all be instruments of this nature. These instruments, however, do not constitute international law. As distinct from the Agreement's Interpretative Notes contained in Annex I, there is nothing in the Agreement to imply that any of the Technical Committee's decisions would have the force of law within the Member countries to the extent that they are not incorporated in the national laws of the Member.

9. At the same time, however, it is clear from the language of Annex II that it is expected that the decisions of the Technical Committee are to play an important and vital role in achieving uniformity in the interpretation and application of the Agreement. It follows that this can be best achieved by the establishment of a reporting procedure whereby cognizance of the Committee's work is taken by both the Council and the Committee on Customs Valuation, each within its respective mandate, the Council under its Convention and the Committee on Customs Valuation under the Agreement.

10. Since Article 18 of the Agreement establishes the Technical Committee on Customs Valuation under the auspices of the CCC it is concluded that, as in the case of all the Council's Committees, the Committee's Report and any advisory opinions, explanatory notes or other decisions included therein, will be subject to the Council's approval from the Customs technical aspect. As noted above, the Council may direct further consideration or reconsideration of any part of the Committee's Report.
11. Like the Council, the Committee on Customs Valuation could have cause from its particular viewpoint to request the Technical Committee to consider further or to reconsider a given subject.
12. In the absence of any such request from the Committee on Customs Valuation or the Council, any formalized decisions of the Technical Committee such as advisory opinions, studies, commentaries or explanatory notes will be published by the CCC in the form of a loose-leaf compendium for the guidance of Customs administrations and trading interests.
13. As to the practical aspects of the timing of the foregoing, Annex II to the Agreement provides that the Technical Committee will meet as necessary but at least two times a year, whereas Article 18 provides that the Committee on Customs Valuation shall normally meet once a year; at this meeting it will prepare its annual report to the Members of the WTO. The Council also meets once a year. In order to avoid unnecessary delay before publication, it is envisaged that instruments adopted by the Technical Committee should be reported initially to whichever of the two bodies meets first; subsequently they should be reported at the next meeting of the other body, with a statement of the action already taken.

## ▪ GUIDELINES

14. Instruments for general publication setting out information and advice given by the Technical Committee can normally be expected to fall under one of the following headings :

- Advisory opinions
- Commentaries
- Explanatory notes
- Case studies
- Studies

This list is not necessarily exhaustive, because other responsibilities may be assigned to the Technical Committee by the Committee on Customs Valuation.

15. The question as to which of the above designations should be given to a particular instrument will depend on the type of text eventually adopted by the Technical Committee. Frequently the answer will be obvious, but there can be borderline instances where two or even more possibilities exist. As a guide to the appropriate designation there follow definitions, each illustrated by an example.
16. An advisory opinion answers a question raised on the application of the Agreement to a particular set of facts, actual or theoretical. Thus when the facts in a situation are identical to those described in the advisory opinion, a clear solution is available for the use of Customs administrations; in cases where the facts are not identical the advisory opinion would probably not be directly applicable but could nevertheless serve as a guide in resolving the problem.

### Example

---

Advisory opinion No. 1 on royalties and licence fees.

17. A commentary is a treatise consisting of a series of comments on part of the text of the Agreement intended to clarify a situation where a literal reading of the text itself can usefully be supplemented by additional guidance. Commentaries would, where appropriate, include illustrative examples. Thus commentaries would usually provide Customs administrations with guidance as to the application of a particular part of the Agreement to a number of situations.

**Example** .....

Commentary on treatment of goods subject to export subsidies or bounties.

18. An explanatory note elucidates the Technical Committee's views on a question of a general nature arising from one or more provisions of the Agreement. Explanatory notes may also examine trade practices as they relate to the question and draw the necessary conclusions. Reference to an explanatory note will enable Customs administrations to apply a provision of the Agreement to a number of varying commercial situations falling within its subject coverage.

**Example** .....

Explanatory note on commissions and brokerage.

19. A case study is an exposition of a complex set of facts based on an actual commercial transaction, which can be used to demonstrate the practical application of one or more provisions of the Agreement.

**Example** .....

Case study with special reference to Article 8.1 (b) (iv).

20. A study sets out the result of an examination in some depth of any question related to the Agreement, in particular a question put to the Technical Committee under paragraph 2 (b) of Annex II to the Agreement, and which is not more suitably covered by any of the foregoing instruments.

A study may also relate to domestic matters of the Technical Committee or take the form of a report to the Committee on Customs Valuation, and may then not be intended for publication outside government circles.

**Example**

Study on the treatment of used motor vehicles.



## ■ PROCEDURE FOR THE CONSIDERATION OF A MATTER SUBMITTED TO THE COMMITTEE

---

21. The following paragraphs describe the procedures that should normally be followed in considering issues and/or developing the instruments of the Technical Committee.
22. When an issue has been raised and is on the provisional Agenda of the Technical Committee in accordance with paragraph 12 of Annex II of the Agreement, the Secretariat would place it before the Technical Committee in the form of an information document. The preparation of the document would be facilitated if the administration or the organization raising the issue were to provide as much detail as possible using the approved template at Appendix I (G7) of this Section.

This will also ensure uniformity in the treatment of such issues. The Secretariat document would reproduce the material and, as far as possible, undertake an analysis of the subject-matter and propose appropriate options for consideration by the Technical Committee. Written comments would be invited from the Members and the Observers.

23. The Technical Committee would then examine the document and the written comments. At this stage, the Technical Committee would decide what further action is necessary.
24. The following are some of the options open to the Technical Committee :
  - ( i ) drop the matter completely;
  - (ii) decide that, although it is not in a position or there is no necessity to examine the matter presently, the question could be reopened at a future date. In such a situation, the item would be placed in Part III of the “Conspectus of Technical Valuation Questions”;
  - (iii) consider that the subject could best be addressed through a report which would be annexed to the report of the meeting of the Technical Committee;
  - (iv) decide that an instrument is desirable.

25. Where the Technical Committee decides that an instrument is desirable, it shall give direction to the Secretariat on the type and content of the proposed instrument. The Secretariat will then prepare a draft instrument for circulation.
26. When an instrument has been adopted, this shall be reported to the Council and the Valuation Committee in accordance with paragraph 13 of the Study on Texts Issued by the Technical Committee on Customs Valuation.

## **■ PROCEDURE FOR RE-EXAMINING AN INSTRUMENT OF THE COMMITTEE**

---

27. If it is considered necessary by any Member that an instrument of the Technical Committee be re-examined, the procedure set out below would be followed:
  - (i) the Member concerned would send the Secretariat a duly substantiated request in writing. The request would describe fully and in detail the problems or shortcomings noticed;
  - (ii) the Secretariat would immediately inform all other Members of this request, giving them the opportunity to comment on it; and
  - (iii) the request, accompanied by all the observations received by the Secretariat and any comments by the latter would be submitted to the Technical Committee as an information document for examination under the Agenda item "Questions raised during the intersession".
28. The Technical Committee, in considering a request to re-examine an instrument may decide :
  - (a) not to re-examine the instrument;
  - (b) that, although it is not in a position or there is no necessity to re-examine the instrument presently, the question could be reopened at a future date and in such a situation, place the request to re-examine in Part III of the "Conspectus of technical valuation questions"; or
  - (c) to re-examine the instrument.

29. Where the Technical Committee decide to re-examine the instrument, some of the options open to the Technical Committee are :
- ( i ) not to modify or amend the instrument;
  - (ii) to modify or amend the instrument;
  - (iii) to adopt a new instrument; and
  - (iv) to revoke the instrument and delete it from the Compendium.

## TEMPLATE FOR SUBMISSION OF TECHNICAL ITEMS TO THE TECHNICAL COMMITTEE

TITLE:

SUBMITTED BY:

THE ISSUE: (Give facts of the case)

REFERENCES: (Article reference, Commentary, etc.)

ANALYSIS: (Including potential legal position)

MEMBER'S VIEW(S):

PROPOSED OUTCOME: (Explanatory Note, Technical Committee advice, etc.)