Committee on Trade and Development

TRADE BARRIERS ARISING IN THE FIELD OF CUSTOMS VALUATION

Note on Implications for Developing Countries of ad referendum Solutions

Introduction

1. Customs duties are assessed on the basis of specific rates, ad valorem rates, or combined rates. With some exceptions most countries levy duties mainly on an ad valorem basis, while for some products specific duties or combined duties, containing both specific and ad valorem rates are prescribed. In the case of ad valorem rates, the actual incidence of duty depends as much on the dutiable value of the goods to which the rate is applied as on the rate of duty. Thus the definition adopted to determine the value of goods for customs purposes and the methods used for ascertaining such value have considerable impact on the actual incidence of duty, and thereby on the level of protection and may in some cases act as a para-tariff barrier to trade.

Characteristics of valuation standards

2. A commodity has different values at different times and places, and at different levels of marketing. Standards used for valuation of goods therefore contain

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1. The valuation standards may be based either on "positive" or "notional" concepts.

A "positive" standard defines valuation in terms of the price at which goods are sold under specified conditions. Because it bases value on actual specified conditions, it requires in ranking order, one or more additional standards to provide alternatives for valuation when the actual conditions of the primary standard are not met.

A "notional" standard, on the other hand, defines customs valuation in terms of price at which goods would be sold under specified conditions. Because notional standards base valuation on the price at which goods would be sold under specified actual conditions, it permits any of the elements at variance to be adjusted, as required to meet the standard. Thus one notional standard may constitute the entire valuation system.

To enable customs authorities to use, in the last resort, all valuation possibilities, positive valuation systems usually have residual authority to use the notional concept.

Broadly speaking the valuation standards of the United States, Australia and Canada are based on a positive concept while the Brussels Definition of Value, which is adopted by most of the countries in Western Europe, is based on a notional concept.
guidelines or principles governing various elements which influence the value of goods. Important among such elements are the merchandise to be valued; place; time; quantity and level of transaction; and competitive conditions. The principal element in any valuation system relates to whether the dutiable value is to be determined on the basis of purchase price of imported merchandise or alternatively on the price of like or similar article, or on other bases. In a large number of cases dutiable value is determined on the basis of the value of imported merchandise. Even in such cases however, valuation systems have to provide guidelines as to the basis on which value should be determined, when invoice price is not for some reasons acceptable. Some of the countries also require that in determining dutiable value, in addition to invoice price, the domestic prices for identical or like goods should be taken into account; and the duty should be levied on the basis of the higher of the two values. The other important element in the definition of value is the "place". The valuation system may provide that the value for customs purposes should be determined at the place of exportation (ex-factory, ex-port or on the basis of price in the principal markets of the exporting country), or at the place of importation (ex-port of importation or any other place in the country of importation). In the first case the valuation is on f.o.b. basis while, in the second the valuation is on the basis of c.i.f. prices. The dutiable value is also influenced by the quantity and the level of transaction. Thus a valuation system may provide that value should be determined on the basis of quantities involved in the actual transaction, or may provide that such value should be arrived at on the basis of prices prevailing for sale "in the usual wholesale quantities". The definition of value may also contain provisions for adjustments which may have to be made in the value of certain articles, on account of element of "time" - for instance changes in prices which might have occurred between the time they were ordered and the time they were delivered. The business relationship under which transactions take place vary considerably and can cause significant differences in prices; consequently valuation standards specify the competitive conditions, and also rules or general guidelines on the basis of which value should be adjusted for sales in special situations - as for instance when the importer is an agent, or when the importing firm is a subsidiary of the company in the exporting country.

GATT provisions relating to valuation procedures

3. Relevant provisions in the General Agreement relating to valuation for customs purposes are contained in Articles II and VII. Article II lays down an obligation on contracting parties not to alter their methods of determining value
or of converting currencies so as to impair the value of any tariff concessions exchanged. The basic provisions however relating to valuation are contained in Article VII, which lays down certain broad principles for valuation which each contracting party has undertaken to give effect to "in respect of products subject to duties or other charges or restrictions on importation or exportation based upon or regulated in any manner by value". These principles are the following:

1. Value for customs purposes should be based on "actual value" of the imported merchandise or of like merchandise and not on the value of merchandise of national origin (i.e. prices prevailing for comparative or like articles in the domestic market of the importing country) or on arbitrary or fictitious values. The expression "actual value" has been further defined as the price at which such or like merchandise is sold, or offered for sale in the ordinary course of trade under fully competitive conditions, at the time and place to be determined by the legislation of the country of importation.

2. In cases where it is not possible to determine "actual value" on the above basis, the value for customs purposes should be determined on the basis of "nearest equivalent of such value".

3. Any such value should not include amount of internal tax from which the goods have been exempted or relieved in the country of origin.

4. The bases and methods for determining the value should be stable and should be given sufficient publicity to enable traders to estimate within a reasonable degree of certainty the value for customs purposes.

5. The administration of customs valuation should be uniform, impartial, reasonable and subject to arbitration.

In addition, the Article and its interpretative notes lay down certain guidelines governing some of the conceptual elements which are to be found in the standards of value. Thus as regards the quantity which should be taken into account, it is stated that "to the extent to which the price of such merchandise is governed by the quantity in a particular transaction the price to be considered should be related to either (i) comparable quantities or (ii) quantities not less favourable to importers than those in which the greater volume of merchandise is
sold in the trade between the countries of exportation and importation". As regards the phrase "fully competitive conditions" used in the definition of actual value, one of the interpretative notes lays down that it excludes any transaction "wherein the buyer and seller are not independent of each other and price is not the sole consideration."

Valuation Systems of Developed Countries

4. Annex I contains a table showing at a glance the main features of the valuation systems adopted by the certain developed countries. Briefly it may be stated that a large number of countries have adopted for purposes of customs valuation the Brussels Definition of Value, which is based on c.i.f. prices. The definition lays down that value of imported goods shall be determined on the basis of the "normal price", which has been defined as the price which the imported goods would fetch on a sale in the open market between a buyer and a seller independent of each other. In determining the normal price on the above basis, it is inter alia assumed that the goods are delivered to the buyer at the port or place of introduction in the country of importation and that the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the port or place of introduction. At present twenty-six countries which include the EEC and most other countries in Western Europe are signatories to the Brussels Convention on Valuation (BOV) which contains the definition; in addition some fifty-eight countries, mostly developing, have been applying the definition on de facto basis, without being parties to the Convention. The countries which base the valuation on f.o.b. prices are relatively few in number, but they include some important trading countries like the United States, Canada, Australia and New Zealand. In the case of the United States the primary standard for determining value for customs purposes for most of the goods imported is the "export price", which is the price at which the merchandise or of similar merchandise is sold or offered for sale in the principal markets of the exporting country for exports to the United States. For a number of products however, which are included in what is known as the Final List, the United States legislation provides that duty should be on the basis of "foreign value" or "export value", whichever is higher. The term "foreign value" has been defined as the price at which at the time of exportation to the United States such or similar merchandise is freely offered for sale in the principal markets of the exporting country for consumption in that country". In addition for certain benzene chemicals the value for customs purposes is determined on the basis of prices at which domestically produced comparable articles are sold in the principal United States market for home consumption. In the case of Canada the primary

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1Japan has recently acceded to the Brussels Convention on Valuation.
standard for determination of dutiable value is the "fair market value" which is the price at the time and place from which the goods are shipped directly to Canada, of like goods for home consumption in the exporting country. In the case of Australia and New Zealand dutiable value is determined on the higher of the actual invoice f.o.b. price or current domestic value, which is the price at which the exporter is selling or would be prepared to sell for cash, at the date of exportation, the same quantity of identically similar goods, for consumption in the domestic market.

Brief Review of the Work Done in GATT Leading to Ad Referendum Solutions

5. In the context of the multilateral trade negotiations, the work in the GATT of finding solutions to the problems which arise in the field of valuation for customs purposes has reached an advanced stage and the ad referendum solutions, which have been evolved by the Working Group 2 of the Committee on Trade in Industrial Products have been referred to the governments for further consideration. As in the case of other non-tariff barriers the basis for the work in this area was provided by the specific notifications made by contracting parties of the difficulties encountered by them in particular markets. For the sake of convenience and easy reference the main points made by the notifying countries as well as the explanations given by the countries to whom the notifications related, have been summarized in the Annexes to this note, on the basis of the material contained in the Inventory of Non-Tariff Measures on Valuation Procedures (COM/IND/W/8). Annex II contains the notifications on the developed countries while notifications made on developing countries are listed in Annex III. From these notifications the Working Group selected a few items as illustrative of problems that may arise in the field of valuation and considered the various proposals made by the members for solutions. The text of the ad referendum solutions consisting of "draft principles" and "draft interpretative notes" to Article VII, which the Working Group has evolved, is contained in Annex IV.

6. In order to facilitate consideration by the developing countries of the implications of these ad referendum solutions for their trade, it is proposed firstly to describe briefly the nature and scope of the problems that arise in
the field of valuation, indicate the special problems faced by developing countries
and then explain with reference to the specific problems, the implications for
the trade of developing countries of the ad referendum solutions that have been
elaborated by Working Group 2.

General scope and character of the problems

7. The interim report of Working Group 2, (L/3496 - Appendix 3) contains
an analysis of the problems in this area and the various proposals
for solutions that were made by the members. The terms of reference of the
Working Group required it to consider inter alia the proposal
made by some countries in their notifications for harmonization of valuation
systems on the basis of one single and uniform standard, and problems which arise
in the field of valuation from practices followed by some countries to determine
values when invoice prices were not acceptable. It was however felt that the two
subjects overlapped considerably and as such it would be difficult to consider
them separately. Though in the discussion in the Group these two subjects were
considered together, it is proposed to deal with them separately in this note,
particularly as the Group, after discussing the desirability of harmonization of
valuation systems, decided not to pursue for the present further work on the
proposal.

Harmonization of valuation systems

8. In the discussion in the Working Group a number of countries had pointed out
that the main problems in the field of valuation arose because of the existence
of differences in the systems for valuation adopted. In particular
it was explained that Article VII of the General Agreement, by leaving time and
place elements to be determined by the legislation of the countries concerned,
allowed the continued existence of both c.i.f. and f.o.b. valuation systems. In
the view of these countries the overall solution to the problems that arise,
would be for all countries to harmonize their valuation systems on the basis of
a single and uniform standard. Since a large majority of the countries were
either signatories to the Brussels Convention on Valuation or used the definition
contained in that Convention, they considered that it was only appropriate that
such harmonization should take place on the basis of the Brussels definition.

9. The proposal for harmonization of valuation systems on the basis of the
Brussels definition did not find favour with non BCV countries following f.o.b.
systems. These countries did not consider that the Brussels definition offered
any more precision with regard to such elements as price, time, place, quantity
and level of trade etc. than the systems followed by them. Even under the Brussels system the value was not always determined on the basis of transaction price and extensive discretion was left to customs officials when invoice prices, for some reasons, were not acceptable. Moreover shifting from a f.o.b. to a c.i.f. basis might result in higher incidences of duties, unless simultaneous steps were taken to renegotiate concessions and bindings given by them. Changeover to c.i.f. system may also result in disruption of existing trading relationship and may adversely affect suppliers situated at a distance, who may have to bear, as compared with nearby countries, higher incidences of duties because of their high transportation costs. As regards the proposal made by some countries that they may adopt the Brussels definition on f.o.b. basis, some of these countries pointed out that the adoption of such a base may also inter alia lead to increase in the value base\textsuperscript{1}; the Brussels definition which bases value on quantities involved in the transaction under assessment, tends to increase the value as compared to the systems of valuation adopted by them under which the value in the invoice was adjusted on the basis of price for sale "in usual wholesale quantities".

10. Some other countries, which included developing countries, considered that not too much emphasis should be placed on harmonization of valuation systems. In their opinion, though harmonization may be a desirable goal, it was necessary not to overlook the practical difficulties involved. In particular it was necessary to ensure that harmonization of valuation systems did not result in a higher incidence of duties, as was likely to be the case if all countries changed over to a c.i.f. basis of valuation. These countries considered that it would be desirable to deal with the notified problems on a case by case basis, and efforts should be directed to finding pragmatic solutions to specific problems.

11. In view of the differing positions taken by countries on the proposal for harmonization of valuation systems, the Group considered it desirable not to proceed with the consideration of the proposal for harmonization but to continue with its search for solutions to the problems which, while permitting valuation systems to be based on c.i.f. or f.o.b. prices, would lead to greater uniformity and certainty in their implementation.

\textsuperscript{1}It may be noted in this connexion that the Customs Co-operation Council at its 41st/42nd session held from 16 to 23 May 1973 decided to set up a Working Party to consider the question of the position of countries that may wish to operate Brussels Definition on f.o.b. basis rather than on a c.i.f. basis as required by the valuation convention.
Problems arising from special valuation procedures and other practices

12. The main problems that arise in the field of valuation are described in the following paragraphs.¹

(a) Problems resulting from difference in practices relating to determination of value, where invoice prices were not acceptable

13. In the view of a number of countries, the problem in the field of valuation arose because of the lack of uniformity among countries in practices used for determining value, in cases where for one reason or the other, invoice prices were not acceptable. The difficulties arose, as the language used in Article VII, which laid down the main principles, was either vague or not precise enough. For instance the Article states that the actual value should be determined on the basis of the price of the imported merchandise, or like merchandise, but does not contain any definition of what constitutes "like merchandise". Similarly the Article lays down that when value cannot be determined on the above basis, value for customs purposes should be determined on the basis of "nearest equivalent of such value" but does not elaborate the methods by which in such cases value could be ascertained.

(b) Determination of dutiable value on the basis of domestic prices in the exporting countries

14. In addition in view of the notifying countries, problems in the field of valuation arise because of the practices followed by some countries, basing their valuation systems on f.o.b. basis, to take into account in determining the dutiable value the domestic prices prevailing in the exporting country. It has been mentioned earlier that legislations of some of the countries made it mandatory for their customs authorities to take the current domestic value in the exporting country as a basis for valuation, if it was higher than the invoice price. It was pointed out that determination of value at the point of sale in the exporting country created many difficulties and uncertainty for exporters, inasmuch as it was not possible for them to estimate in advance

¹Though the summary is based on the points made by notifying and other countries during the discussions in the Working Group, it should be noted that it may not fully reflect the viewpoints expressed and the emphasis and nuances attached to various points by different delegations. For a more detailed account, reference should be made to the basic documentation, particularly to Appendix 3 of document L/3496.
the amount of duty that may have to be ultimately paid. Determination of value on such basis presented special problems in cases where there was no real market or where there was only a small market using smaller quantities and different qualities of goods. Under these systems enquiries or investigations had often to be carried out in exporting countries to determine current prices for home consumption which, according to notifying countries, sometimes required exporters to divulge confidential information and business secrets.

(c) Determination of dutiable value on the basis of domestic prices in the importing country

15. It was explained that another factor responsible for problems in this area is the existence of practices in some countries for value of certain specified goods to be determined on the basis of domestic prices for comparable articles prevailing in their own markets. Such practices resulted in the virtual denial of competitive advantage to foreign suppliers, as irrespective of the invoice price, duty was levied on the basis of higher prices of domestic producers. This resulted not only in a high incidence of duties, but also a higher level of protection to domestic industries, than was apparent from the nominal rates of tariff. These practices were also contrary to the provisions of Article VII which required that value for customs purposes should in no case be fixed on the basis of "value of goods of national origin".

(d) Systems of fixing minimum value

16. Some of the countries, whether adopting c.i.f. or f.o.b. systems of valuation, have systems of fixing 'minimum' or predetermined values for certain specified products. Such minimum prices were fixed in some cases on the basis of prices of domestic production.

(e) Other problems

17. From a practical point of view problems in this area sometimes arise because of the lack of availability of detailed information on the procedures and methods followed for determining value or inadequate facilities for appeal against decisions by customs authorities.

18. As has been stated earlier, some of the practices adopted are considered to be not fully consistent with the provisions of Article VII of the General Agreement. This is mainly because the Article falls in Part II of the General Agreement which is being applied by most countries on a provisional basis, and as such, there is no binding obligation on countries to modify legislations existing prior to their accession to GATT, even though these may
be inconsistent with the principles of that Article. It was however expected that contracting parties having valuation systems which did not fully conform to such principles, would modify them, and to this end Article VII provides for periodic reviews and "reports on the steps taken" in pursuance of the provisions of that Article. The last major review in accordance with the provisions of this Article was made by the CONTRACTING PARTIES as far back as 1955, but resulted only in their taking note of valuation systems prevalent in different countries. Some further consideration to the problems that arise in the field of valuation was subsequently given in the Kennedy Round of trade negotiations and a separate "Agreement Relating Principally to Chemicals" was signed between some European countries and the United States. Under this Agreement, in return for the abolition of the "American Selling Price System" of customs valuation for chemical products and additional tariff cuts on chemical items by the United States, the European countries had agreed to make further concessions beyond those agreed in the Kennedy Round on their chemical products and other non-tariff barriers. The United States Administration was to obtain the necessary congressional authority required for this purpose before the beginning of 1969. To enable the Administration to obtain the necessary legislative authority, the parties to the Agreement had renewed from time to time its period of acceptance, the last such extension being valid up to 1st January 1973. The Agreement has not since then, however, been extended.

19. The draft "principles" and "interpretative notes" to Article VII which have been elaborated by the Working Group, and have been referred to the governments for further consideration, is thus a comprehensive attempt by the contracting parties to deal, on an overall basis, with the problems that arise in the field of valuation. The Working Group has not so far given detailed consideration as to whether the solutions it has elaborated should take the form of a Code, or some other legal form. It is however evident that the acceptance of the ad referendum solutions would require contracting parties to modify their valuation systems if considered inconsistent with the provisions of Article VII and the interpretative notes now elaborated, even though such practices may be covered by their Protocols of Accession.

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2 Belgium, France, Italy, Switzerland, the United Kingdom and the European Economic Community.
Ad referendum solutions

20. In drafting the texts of the solutions to the problems in the field of valuation, the objective of the Working Group was to elaborate further the principles and rules in Article VII in such a way as to provide for greater uniformity and certainty in their application. The "draft principles" adopted by the Group, which are self-explanatory are the following:

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 value to which the rate of duty is to be applied.

2. Valuation systems should not be used to combat dumping.

3. Valuation systems should protect trade against unfair competition arising from undervaluation.

4. Valuation systems should be of general application without distinction as between sources of supply.

5. Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

6. Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.

7. Valuation systems should not prevent the quick clearance of goods.

8. The legal and administrative provisions concerning customs valuation should be accessible to the general public and be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.

9. Valuation systems and practices should take into account the need to safeguard business secrets.

21. The following interpretative notes 1 to 6 provide guidelines for calculation of value in the case of c.i.f. and f.o.b. countries and lay down an important principle namely, that value for customs purposes should be determined to the maximum extent possible on the basis of the price of merchandise under transaction.
They also contain definition of "like merchandise" and indicate other acceptable methods of valuation to calculate "nearest ascertainable equivalent value" when value cannot be determined on the basis of prices of imported merchandise or like merchandise.

1. The value for customs purposes of imported merchandise is the "actual value", which is understood to be the price at which, at a time and place determined by the legislation of the country of importation, the merchandise imported or like merchandise is sold or is offered for sale, or would be sold to the country in the ordinary course of trade under fully competitive conditions.

For countries which base their valuation on a c.i.f. price, that price includes the costs of delivery to the place of introduction into the country of importation.

For countries which do not base their valuation on a c.i.f. price, the price to be taken into consideration includes the costs of delivery of the merchandise to the place defined in the legislation of the country of importation (e.g. ex factory, at railhead, at the dock, free on board ship or delivered to aircraft).

2. For the purpose of Article VII paragraph 2(b), "like merchandise" is understood to mean a product of the same origin and similar in all respects to the product imported or, in the absence of such a product, another product of the same origin as the product imported, whose characteristics closely resemble those of the product imported (in particular as regards condition, type, quality, etc.).

3. The price of "like merchandise" should be used as a basis for customs valuation only in cases where the "actual value" of the merchandise cannot be determined on the basis of the price paid or payable or of the price made by the vendor to other purchasers in the importing country for identical merchandise.

4. Value should be determined in accordance with the foregoing Interpretative Notes. However, in cases where actual value cannot be ascertained in this fashion, Article VII paragraph 2(c) is applicable.
The "nearest ascertainable equivalent" within the meaning of that sub-
paragraph should be based on information available on the
importing market, such as:

- the price of merchandise conforming to the definition of "like
merchandise" given in Interpretative Note 2 above in all respects but
which originates in a country other than the country of origin of the
merchandise to be valued, provided that in that other country the
conditions of production (including wage rates) are comparable to
those in the country of origin of the merchandise to be valued, and
prices are established in fully competitive conditions;

- if the imported merchandise is sold or resold, the price made on the
first sale or resale in fully competitive conditions, such price being
adjusted to take account of the various elements that should not be
included in the customs value as defined in Interpretative Note 1;
or

- any other element that can constitute a valid basis for determining
the value for customs purposes (for example, rental during the normal
lifetime of the merchandise, value shown in the balance sheet as an
asset and information provided by the exporter).

5. If there is a difference between the price paid or payable for the
imported merchandise and a value obtained by other methods, that should
not in itself constitute a reason for rejecting the price paid or
payable. There may be acceptable reasons for the difference; e.g.
technical developments in the exporting country, different dis-
tribution methods, etc.

6. With regard to the elements of level, quantity, and time, contracting
parties should respect economic reality and commercial practice and,
inter alia

- accept the usual quantity rebates even in the case of fulfilment of
contract in successive consignments;

- take into account the time required for executing the contract in the
branch of trade in question.

1 Most countries could accept this text only with the word "normally" omitted
and with the bracketed addition to the third indented paragraph included. One
country could only accept the text with the word "normally" included.
22. Interpretative Note 7 is intended to bring about modifications in practices followed by some countries to base values either on the basis of domestic prices prevailing in the importing country or domestic prices prevailing in the exporting country. It states:

"The value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin, nor on the price of goods in the domestic market of the exporting country, nor, in accordance with Article VII, paragraph 2(a) on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value."

23. Similarly Interpretative Note 8 elaborates on the principle embodied in Article VII and clarifies that "customs duties" is one among the "internal taxes" paid in the exporting country, which should be excluded in determining dutiable value.

"The value for customs purposes of any imported product should not include the amount of any customs duty 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."

24. Notes 9 to 12 reproduced below supplement further the draft principles and are expected to provide for solutions to the practical problems which traders face because of the lack of adequate or readily available information on the methods used by the importing country in assessing dutiable value or because of the absence of adequate procedures for appeal against decisions by customs authorities.

9. The importer should be made responsible for the accuracy of his customs valuation declaration.

10. On the request of an importer or an exporter the customs administration shall explain in advance the general principles and practices for the calculation of value for customs purposes so that traders can estimate with a reasonable degree of certainty the value of their goods for customs purposes.

11. The customs administration shall explain to the importer or exporter, on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded.

11 bis. On the request of the person declaring the goods the customs administration shall explain how the value for customs purposes has been calculated for his goods.

The representative of Argentina could not accept this formulation which appeared to classify a system based on minimum values, alone among all named systems, as using "arbitrary or fictitious values".
12. Consistent with Article X:3(b), each contracting party shall provide a procedure for appeal to an independent and impartial administrative and/or judicial body against valuation decisions of its customs authorities.

25. It is relevant to note in this context that the draft principles and interpretative notes have not been fully agreed in the Group, and members have elaborated these solutions on the clear understanding that neither the Group nor any of its members necessarily accept the text. It may be also noted that in addition to the points which have been made in the discussions in the Working Group, some members have expressed specific views on the ad referendum solutions, which are contained in Annex IV.

Implications for Developing Countries of the Ad Referendum Solutions

A. Solutions to the special problems of developing countries

26. Generally speaking, unlike other non-tariff measures which in most cases apply to certain products, barriers arising in the field of valuation affect the entire range of imported products, which are subject to duties on ad valorem basis. The only exception would appear to be cases where a particular valuation system provides for valuation of certain specified products, on a different basis which, by its very nature, constitutes a barrier to trade. The notifications made by developing countries show that barriers arising in this area are considered to have adverse effects on their trade with certain developed countries. In particular these countries have pointed out that the practices followed by countries to determine value on the basis of domestic prices in the exporting country or on the basis of domestic prices in the importing country posed special problems to their trade. The practice of levying duty on the basis of current domestic value in the exporting country worked particularly to their disadvantage, as for a large number of products because of the supply scarcities, transport bottlenecks and structural imbalances, the domestic prices in these countries ruled at artificially high levels. There was thus no direct relationship between higher domestic prices and the prices at which goods could be sold by them in the international markets, even though the export prices were always higher than the cost of production, plus reasonable margin of profit. In addition, goods which were produced by duly established export-oriented industries in developing countries, were not normally sold in the domestic market and in such cases comparable current domestic values did not exist. Some of these countries have also pointed out that they have a significant interest in trade in products which in the United States are subject to the American Selling Price System, under which duties are assessed on the basis of domestic prices of comparable articles in that country. One of them has also referred to some of the specific methods adopted by importing countries in determining dutiable value, which pose problems to its
trade. In particular it has been stated that the practice of including in the dutiable value customs duties paid on raw materials, components etc. of which the goods have been relieved by the exporting country, results in a higher base for valuation; this is particularly so in the case of imports from developing countries, where the general level of customs duties is comparatively higher than in the developed countries.

27. In evolving ad referendum solutions the Working Group has given considerable attention to the specific problems of developing countries, and it is expected that acceptance and implementation by all contracting parties of these solutions would constitute progress towards elimination of barriers that affect the trade of exporting countries, including that of developing countries. It is relevant to note, in this context, that the Group has examined the possibility of a separate action with respect to problems of developing countries, but has come to the conclusion that since both developed and developing countries are faced with a single set of problems and the barriers affect the entire range of imported products, there may not be any scope for special action in favour of developing countries.

28. Some developing countries have, however, suggested that special action in this area might take the form of advance action, and have suggested "interim solutions" to the problems which arise as a result of practices followed by some countries to determine values on the basis of domestic prices in the exporting countries. In particular it was proposed that pending modification of their valuation systems, to bring them in conformity with the principles of the interpretative notes, especially Note 7, countries which take into account current domestic value in the exporting country, should instead take into account (a) invoice prices of the exporting country of like merchandise to its major exporting market, or (b) invoice prices generally obtained by the exporting country for like merchandise to other third country markets. It may be mentioned in this connexion that some developing countries have in the Working Party on Acceptance of Anti-Dumping Code by Developing Countries made suggestions which are, in many respects, similar to the above proposals. More specifically they have asked for the acceptance of the following understanding or an explanatory note to the Agreement on the Implementation of Article VI (Anti-Dumping Code). "The application of Article II(a) would not be appropriate for the exports from developing countries in the cases where sales in domestic markets of such exporting countries do not permit proper comparison for the purpose of the Article. For the purpose of price comparison in such cases it would be therefore appropriate to use the "particular market situation" provisions of Article II(d) [and determine normal value on the basis of comparable price of the product when exported to any third country market]." A number of
developed countries have not been able to accept the portion in the square bracket, and have inter alia pointed out that in practice it would be difficult for an importing country to determine the value on such a basis.

29. The proposal for interim solution should be viewed against the background of the view held by at least some delegations that the texts drawn up on various non-tariff measures should be taken into account in the context of the multilateral trade negotiations, so as to make up with other elements of solutions, a meaningful and well-balanced package. It is envisaged that the multilateral trade negotiations would be launched in September 1973 and concluded by the end of 1975.

B. Acceptance of the Code by developing countries

30. A related question is the acceptance of the draft solutions by developing countries. The notifications relating to valuation practices of developing countries are contained in Annex III. It would appear from these notifications that some of these countries, whether basing their valuation system on the Brussels Definition or not, have practices for fixing values not based on invoice prices, like systems for determining "official values" and "minimum values". In regard to "official values", while some fix such values for the entire range or a significantly large number of imported products, a few others fix such values for a limited number of products only. The 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 "under-invoicing" of goods or similar unfair practices. In this context, a point which is generally made is that, because of the restrictions on free availability of foreign exchange which developing countries have to impose on account of their balance-of-payments difficulties, there is a greater tendency on the part of importers in these countries to resort to fraudulent practices like under-invoicing of goods. Apart from such cases, fixing official values on the basis of "average prices of imports" may be necessary in cases of commodities which are subject to wide fluctuations in prices. It is relevant to note in this connexion that the systems of fixing average values for some "non-ordinary" products by some developing countries were examined in the past by GATT and
were found to be in accordance with the principles of Article VII. In regard to "minimum values", countries fixing such values have explained that such values were being fixed for a limited number of products, in order inter alia to protect their nascent industries from competition from well-established industries in other countries. A question which has been raised in this connexion is whether it would not be possible for these countries to give the same level of protection by abolishing minimum values and by making appropriate changes in the rates of tariff.

1In this context the following extracts from the Analytical Index to the General Agreement may be of interest. The first paragraph refers to the Summary Records of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment (1947).

It was noted in the summary record 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 readily ascertained under paragraph 3(b) [GATT 2(c)] met the problem of India in respect of those particular products for which they found it necessary periodically to fix a value".

This passage was referred to in a "Comparative Study of Methods of Valuation for Customs Purposes" (adopted by the CONTRACTING PARTIES on 2 March 1955):

"This question was also discussed in the Working Party on Valuation at the eighth session of the CONTRACTING PARTIES in October 1953. The discussion in that Working Party showed that the system of fixed values as operated by India and Pakistan was not inconsistent with the principles of paragraph 2(c) of Article VII."

During the ninth session, the idea of inserting an interpretative note similar to that annexed to the Havana Charter (see above) was revived. The suggestion was rejected because of the difficulties of drafting a suitable provision and because contracting parties currently operating fixed values had not suffered any disability from the absence of such an interpretative note. It was added: "... the systems practised in Chile, India and Pakistan have been closely examined on a number of occasions and ... it is recognized that they are not inconsistent with the General Agreement".
31. It would appear that considerable attention to the problems that arise as a result of differences in practices in valuation systems of developing countries is being given by these countries themselves in the context of the work being done by them for removal of barriers affecting their intra-regional trade, particularly by countries belonging to the Latin American Free Trade Area, and by those in the ECAFE region. As shown in Annex V, which sets out the fundamental concepts in the valuation systems of developing countries, almost all countries in Africa either have adopted or are using the Brussels Definition of Value. In the case of Latin America, considerable attention to the problems in this field is being paid by LAFTA. For instance, the Action Plan for the period 1970-1980 adopted at the ninth LAFTA Negotiating Conference calls, inter alia, for studies being made on measures to facilitate change-over to ad valorem system based on Brussels Definition, by countries which have not so far adopted it. In the case of ECAFE, some detailed work on the examination of the valuation systems of countries in the region has been made by the Working Party on Customs Administration, and the Commission has in 1970 endorsed its

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1 The progress made in adoption of a single system of ad valorem tariffs and the Brussels Definition of Value was reviewed by the Expert Group on Valuation of LAFTA at its meeting in Montevideo from 15 to 20 May 1972. The meeting noted that the customs tariffs of Argentina, Brazil and Colombia are basically ad valorem while Chile and Mexico's efforts in that direction have been substantial. In regard to Brussels Definition of Value, it was noted that Mexico, Peru, Uruguay and Venezuela are in the process of adopting it, while Argentina, Colombia, Chile and Ecuador have already adopted it.

recommendation that adoption of a single international concept of valuation by the countries in the region was desirable in the interest of facilitating international trade.¹

32. It is, therefore, to be expected that the practices which have been notified as barriers to trade would be altered when progress is made in the further examination of these problems by the developing countries themselves on a regional basis. Consideration at this stage of the acceptance of the ad referendum solution elaborated in GATT may therefore supplement further work that is being done on a regional basis, and prepare conditions that would facilitate their ultimate adoption and implementation. It has, however, been suggested that not all developing countries would be able to implement the solutions within the time-limit that may be set for their acceptance, and that some flexibility, especially in regard to the time-limit for acceptance may be necessary, as at least in the case of a few developing countries, modifications of some of the existing practices might result in an overall decline in the revenue collected from customs duties. Customs duties are an important source of revenue.

¹ At its twenty-sixth session held in April 1970 the Economic Commission for Asia and the Far East endorsed the recommendation of the Working Party on Customs Administration and the Committee on Trade "that the ultimate adoption of a single international concept of valuation would facilitate international trade, and that it should be open to member countries of the region to adopt either the Brussels Definition as it stood, or the Brussels Definition with Article 1(l) as amended, as suggested by the Working Party". It requested the ECAFE Secretariat to urge the Customs Co-operation Council to consider the possibility of revising Article 1(l) of the Brussels Definition as suggested by the Working Party. The amendment, according to its sponsors, is intended to give countries of the region adopting the definition a specific legal basis for accepting general contract prices, without regard to the price changes between the date of contract and when the duty becomes payable, provided the lapse of time between the dates of contract and of importation was what would normally occur in the ordinary course of trade.

The proposal for amendment is being considered by the Valuation Committee of the Customs Co-operation Council. In the preliminary examination of the proposal, however, most of the members considered that no change in the Definition was necessary to achieve the ECAFE Working Party's objective. The Valuation Committee is expected to examine the proposal for amendment further, on the basis of any additional information that may be made available by the ECAFE Secretariat.
for a number of developing countries, and if the adoption of the solutions by a particular country was likely to result in lower revenue collection, more time may have to be allowed to enable such a country to make changes in the taxation policy so as to raise revenue from other sources.

33. In the light of this general position, it would be necessary for individual developing countries to examine how, and on what basis, they could accept the draft solutions. The acceptance of certain internationally-accepted principles and rules in the field of valuation by all countries would of course be a matter of interest not only in the trade of developing countries with the developed countries, but also in trade among developing countries themselves. A point has also been made that acceptance of ad referendum solutions by developing countries would be one of the ways by which they could make a contribution in the multilateral trade negotiations, though it is possible that some of them may need more time in implementing the solutions.
ANNEX I

Valuation Systems of Developed Countries

The table contains a brief summary of the fundamental concepts in the valuation systems of certain developed countries.

AUSTRALIA

Section 35 of the Customs Act (1970-1971) states that value for duty of any goods shall be the sum of the following:
(a) the actual money price paid or to be paid for the goods by the Australian Importer, plus any special deduction, or
(b) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

The "current domestic value" has been defined as the amount for which the seller of goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of those goods, the same quality of identically similar goods to any and every purchaser in the country of export for consumption in that country.

Section 160 further states that whenever it is difficult to determine the value for duty of any goods, either because the goods are not sold for use or consumption in the country of production or because the goods are exported or the right of using the same is sold or given but not the property therein, or because the goods have been sold or disposed of in such a manner so that their true value is uncertain or if a reliable means of estimating the value of goods or because the goods are usually or exclusively sold by or to agents or by subscription or are sold or imported in a or under other unusual or peculiar manner, or condition, the Minister may determine the value for duty of the goods.

SECTION 36 of the Customs Act (1970)

Section 36 of the Customs Act (1970) states that the value for duty shall, notwithstanding any invoice or affidavit to the contrary, be the "fair market value" at the time and place from which goods were sold to Canada, of like goods when sold:
(a) to purchasers located at the place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as importer, and
(b) in the same or substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions.

Section 37 (b) states that where like goods were not sold for home consumption but similar goods were so sold, the value for duty shall, not withstanding any invoice or affidavit to the contrary, be the aggregate of:
(a) the cost of production of the goods imported; and
(b) the amount that is the same percentage of the cost of production of the goods imported as the gross profit on the similar goods is of the cost of production of the similar goods.

Section 39 of the Act deals with special cases and states that where in any case or class of cases

CANADA

The value for customs purposes in the United States for the majority of the products is determined in accordance with the provisions of Section 402 of the Tariff Act. For certain specified products included in what is known as Final List, the dutiable value is determined in accordance with the provisions of Section 402(a). In addition for certain benzene chemicals which are subject to American selling price system, the dutiable value is determined according to Section 402(a) if product is included in the Final List and according to Section 402, if not so included.

Section 402

The Tariff Act lays down that except as otherwise provided the value of imported merchandise shall be
(1) the export value, or
(2) if the export value cannot be determined satisfactorily, then the United States value, or
(3) if neither the export value nor the United States value can be determined satisfactorily, then the constructed value.

Except that, in the case of imported article subject to a rate of duty based on the American Selling Price of a domestic article, such value shall be,
(4) the American Selling Price of such domestic article.

UNITED STATES

The value of imported articles designated by the Secretary of the Treasury as provided for in Section 402(a) of the Customs Simplification Act 1956 (Final List) shall be
(1) the foreign value or export value, whichever is higher;
(2) if the appraiser determines that the goods are delivered to the buyer at the port or place of introduction into the country of importation;
(3) if the appraiser determines that the goods are delivered to the buyer at the port or place of introduction, which are hence not included in the normal price.

EUROPEAN ECONOMIC COMMUNITIES, JAPAN

ARTICLE I

(1) For the purposes of levying ad valorem duties of customs, the value of any goods imported for home use shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable on a sale in the open market between a buyer and a seller independent of each other.

(2) The normal price of any imported goods shall be determined on the following assumption:

(a) that the goods are delivered to the buyer at the port or place of introduction into the country of importation;
(b) that the seller bears all costs, charges and expenses incidental to the sale to the delivery of the goods at the port or place of introduction, which are hence included in the normal price;
(c) that the buyer bears any duties or taxes applicable in the country of importation, which are hence not included in the normal price.

(4) In the case of an article with respect to which there is in effect under Section 356 a rate of duty based upon the American Selling Price of a domestic article, then the American Selling Price of such article.
(a) the value for duty cannot be determined under Sections 36 or 37 for the reason that like or similar goods are not sold in the country of export or are not sold in such country in the circumstances described in those sections.

(b) the goods imported, are inter alia intended to be assembled or further manufactured in Canada; are used or obsolete goods; are not prime quality goods as known in the trade; constitute a job lot.

c) like goods are leased in the country of export.

d) the Minister is of the opinion that by reason of unusual circumstances the application of Sections 36 and 37 are impracticable; the value for duty shall be determined in such manner as the Minister prescribes.

Abbreviated definitions of the different standards for valuation enumerated above are given below.

**Foreign value**

The price, at the time of exportation to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the usual wholesale quantities in the principal markets of the exporting country for consumption in that country, plus the cost of packing the merchandise for shipment to the United States.

**Export value**

The price, at the time of exportation to the United States, at which such or similar merchandise, packed ready for shipment to the United States, is freely sold or offered for sale in the usual wholesale quantities in the principal markets of the exporting country for export to the United States.

**United States value**

The price, at the time of exportation of the merchandise being valued, at which such or similar imported merchandise, packed ready for delivery, is freely sold or offered for sale in the usual wholesale quantities in the principal United States market for domestic consumption, less (a) the usual commission or usual profit and general expenses, (b) transportation, insurance, and other necessary expenses from the place of shipment to the place of delivery, and (c) all customs duties and other Federal taxes payable by reason of importation.

**European Economic Community, Japan and Other Countries Adopting the Brussels Definition of Value**

ARTICLE II

1. A sale in the open market between a buyer and a seller independent of each other presupposes:

   (a) that the price is the sole consideration;

   (b) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him, other than the relationship created by the sale itself;

   (c) that no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him.

2. Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them.
Constructed value: The sum of (a) the cost of producing such or similar merchandise at a time before the date of exportation which would permit production, (b) the usual general expenses and profit made by producers in the exporting country on sales of such or similar merchandise in the usual wholesale quantities for export to the United States, and (c) the cost of packing the merchandise for shipment to the United States.

American selling price: The price at the time of exportation of the imported article, at which a competitive article, produced in the United States and packed ready for delivery, is freely sold or offered for sale in the usual wholesale quantities in the principal United States market for domestic consumption, or the price which the owner would have received or was willing to receive for such article when sold for domestic consumption in the usual wholesale quantities.

Cost of production: The sum of (a) the cost of producing such or similar merchandise at a time before the date of exportation which would permit production, (b) the usual general expenses (but not less than 10 per cent of the cost of production) and the usual profit (but not less than 8 per cent of the sum of the cost of production and the allowance for general expenses) made by producers in the country of manufacture on sales of such or similar merchandise, and (c) the cost of packing the merchandise for shipment to the United States.

American selling price: The price, at the time of exportation of the imported article, at which a competitive article, produced in the United States and packed ready for delivery, is freely offered for sale to all purchasers in the usual wholesale quantities in the principal United States market for domestic consumption, or the price which the owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the usual wholesale quantities.

ARTICLE III

When the goods to be valued (a) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied; or (b) are imported under a foreign trade mark; or (c) are imported for sale, other disposal or use under a foreign trade mark,

the normal price shall be determined on the assumption that it includes the value of the right to use the patent, design or trade mark in respect of the goods.
### ANNEX II

**Notifications Relating to Customs Valuation Practices of Developed Countries**

**Summary of the Measures Notified and Explanations given**

Note: It should be noted that the summary may not fully reflect the nuances contained in the notifications and explanations given by the different countries. For full details of the measures notified and comments made, reference should be made to the basic documentation.

<table>
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<tr>
<th>Notification Number</th>
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<tr>
<td>AUSTRALIA</td>
<td></td>
<td><strong>Arbitrary Valuation</strong></td>
<td><strong>Reply by Australia:</strong> Normally the value for customs purposes was the price actually paid by the importer or the current domestic value, whichever was the higher plus f.o.b. charges. The current domestic value was defined as the amount for which the seller of the goods to the purchaser in Australia was selling or would be prepared to sell for cash, at the date of exportation of those goods, the same quantity of identically similar goods to any or every purchaser in the country of export for consumption in that country. The Minister only exceptionally exercised his right to fix a different value; this was mostly done in cases where it had not been possible to obtain sufficient documentary evidence regarding other values. In reply to the concerns expressed with regard to price investigations carried out by customs representatives, it should be remembered that although thousands of such investigations had been carried out, there had not been a single case recorded where confidential information had been disclosed. There was a tendency in such cases to use the highest domestic price; quite often the investigations had resulted in the fixing of a lower value.</td>
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<td>88</td>
<td>EEC, Hong Kong, India, Japan, Yugoslavia</td>
<td>Imports into Australia must be accompanied by customs invoices showing the f.o.b. price and the current domestic values of the goods imported. The dutiable value is determined on the basis of (i) the import value which Australian importer actually pays or (ii) the current domestic value in the exporting country, whichever is higher. Where the current domestic value is not available or where the Minister for Customs deems fit, the Minister may arbitrarily determine a value for duty. The Communities stated that the Australian system caused uncertainty and the investigations carried out sometimes caused considerable difficulties for the exporters concerned. The representative of Hong Kong said that because of the circumstances in Hong Kong for many items exported there was no domestic market, and this practice introduced an element of uncertainty into the conduct of trade.</td>
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<td>The representative of India stated that the systems of valuation practised by Australia introduced an element of uncertainty as to the amount of duty which the importer had to pay and had an inhibiting effect on the development of trade. Further, the system of levying duty on the basis of &quot;current domestic values&quot; in the exporting country worked more to the disadvantage of developing countries, as in many cases the prevailing domestic prices in these countries had no direct relationship with the prices at which they could sell their goods in the international markets. Although the invoice prices of export goods were higher than the cost of manufacture and reasonable margin of profit, those were in the case of some products comparatively less than the current domestic prices. The structural imbalances and the supply scarcities which often existed in developing countries, coupled with inflationary pressures to which their economies were often subject, resulted in the domestic prices ruling at artificially high levels.</td>
<td>The Australian representative said that his Government did not agree that the Australian valuation system was incompatible with the provisions of Article VII of GATT. He recalled that a study of methods of valuation for customs purposes had been carried out in GATT in 1955 (BISD, Third Supplement, pages 103-125). The Australian system had been carefully examined but no complaints had been made. It had also appeared that several other contracting parties used similar valuation systems.</td>
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The representative of Japan shared the view that the Australian system could create uncertainty, and it might often be the case that a current domestic value was determined at a level departing from that of the actual value. Further, a direct investigation into firms concerned was conducted by customs representatives to determine the current domestic value, which might result in disclosing business secrets and imposing burdensome work on those firms.
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<td>89</td>
<td>Canada, Japan</td>
<td>&quot;Support values&quot; are fixed for a number of industrial chemicals, <em>inter alia</em>, synthetic resins, synthetic rubber, ethylene glycol, triethanolamine. The support values are used on representative duty-paid prices of the product in question. In the case of synthetic rubber, the support value was set at a slightly higher value than the going domestic price. If the duty-paid price of an imported product is less than the support value, an extra customs duty is collected equal to 90 per cent of the difference between the two prices. The notifying countries considered that the fixing of support values eliminated the competitive advantages of low cost producers and had a seriously restraining effect on trade.</td>
<td>The representative of Australia maintained that support values were purely tariff measures and should not be included in non-tariff barrier examination.</td>
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It was recalled that pursuant to Section 35-38 of the Customs Act the value for duty was either - (a) the fair market value, being the domestic selling price for consumption in the exporting country (there were also provisions to cover variations in time, quantity and quality between domestic and export sales); or, where like goods were not sold for home consumption but similar goods were - (b) the cost of production of the goods imported plus a percentage for profit based on the profit earned by the similar goods; or, where like or similar goods were not sold in the country of export - (c) as the Minister prescribed.

The representative of the EEC said that if the product sold in Canada was not regarded as identical with similar products sold on the market of the country of origin and the determination of the fair market value was based on the reconstituted cost, plus the same percentage for profit as in the case of similar goods on the market of the country of origin, the investigations thus undertaken did not always appear to be compatible with the principle of "business secrets" and were likely to hamper exports.

Reply by Canada: As regards the observations of the Community representative on the Canadian valuation system for duty purposes, we would point out that Canadian Customs Officers who make investigations are bound by oath to respect the confidential nature of the information which they obtain in the course of their investigations. Terms of rulings under Section 37 of the Customs Act are revealed only to exporters directly concerned. Accordingly these investigations cannot reveal business secrets and cannot therefore be considered in any way a barrier to trade.
### CANADA (Contd.)

When goods were not sold in the same conditions on the Canadian market and that of the country of origin of the goods, the Canadian Customs administration considered the commercial category (wholesaler or retailer) of the purchaser on both markets, and the commercial charges payable by each of the two categories. Owing to the complexity of the problems relating to the distribution of a product, the procedure adopted by the Canadian Customs seemed at times to be distinctly unfavourable to the exporter, especially where the producers themselves bore the marketing costs in the country of origin.

When like or similar articles, but of different quality, were enclosed in the same package and were taxed or invoiced at an average rate, the appraisers must take as the mean value of the whole consignment for duty purposes the value of the most expensive article in the package.

When the price of imported manufactured articles fell to an abnormally low level for end-of-season or other reasons, the Canadian Minister of National Revenue could decide to value the articles on the basis of the weighted mean price of similar articles in the exporting country over a reasonable period beforehand, not exceeding six months.

Section 36(3) of the Customs Act is intended to implement in an equitable manner paragraph 2(B) of Article VII of the GATT when the trade level of domestic sales in the exporting country is different from the trade level of Canadian importers. Where application of this sub-section is considered to result in discrimination as between exporters of the same class of goods in different countries, exporters may seek relief under Section 37A of the Customs Act which permits the Governor in Council to reduce the value for duty of goods subject to such discrimination within certain limits.

Section 40A(5) of the Customs Act is intended to prevent actual duty collected on a shipment containing similar articles invoiced at an average price from being less than the duty which would apply if each article in a shipment containing similar articles of different quality were priced separately as, for example, when articles are subject to different rates of duty. In practice, the Canadian Customs authorities attempt to value each item separately wherever possible, so that this provision is not considered an obstacle to trade.
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<td>92 (Contd.)</td>
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<td>CANADA (Contd.)</td>
<td>It would be helpful in considering the allegation that the complexity of the Canadian valuation system creates uncertainty, if specific examples could be cited of the complexity as a barrier to trade. Concerning appeals, Sections 43, 44 and 45 of the Customs Act provide for five levels of appeal from appraisal of value for duty by Canadian Customs Officials. Section 43 provides for an appeal to a Dominion Customs Appraiser and to the Deputy Minister of National Revenue, Section 44 for further appeal to the Tariff Board and Section 45 for further appeal to the Exchequer Court of Canada and the Supreme Court of Canada.</td>
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<td>The complexity of the Canadian valuation system was likely to cause uncertainty. In many instances it involved factors of which the importer could not possibly be aware; and there appeared to be no possibility of appeal.</td>
<td>It was notified by Japan that in determining the fair market value, due consideration was not always given to different commercial practices in the exporting country such as quantity discount and the fair market value was often determined without sufficient foundation, thus constituting a significant trade barrier.</td>
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<td>It was claimed by Switzerland that the application of &quot;fair market value&quot; criterion which sought to place dutiable value of lower than wholesale prices in the exporting country constituted an obstacle to Swiss trade.</td>
<td>In reply to the notifications by Japan and by Switzerland the representative of Canada pointed out that there was no stipulation in the Canadian law that dutiable value must be no lower than the wholesale price in the exporting country. The relevant section of the Customs Act (Section 36(1)) provided in part as follows: &quot;The value for duty shall ... be the fair market value, at the time when and place from which the goods were shipped directly to Canada, of like goods when sold &quot;(A) to purchasers located at that place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as importer, and &quot;(B) in the same or substantially the same quantities for home consumption in ordinary course of trade under competitive conditions.&quot;</td>
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<td>92 (Contd.)</td>
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<td>The representative of India said that the Canadian system of valuation introduced an element of uncertainty as to the amount of duty which the importer had to pay and had an inhibiting effect on the development of trade. Further, the system of levying duty on the basis of fair market values in the exporting country worked more to the disadvantage of developing countries, as in many cases the prevailing domestic prices in these countries had no direct relationship with the prices at which they could sell these goods in the international markets. Although the invoice prices of export goods were higher than the cost of production plus reasonable margin of profits, these were in the case of some products less than the prevailing domestic prices. The structural imbalances and the supply scarcities which often existed in developing countries, coupled with inflationary conditions, resulted in the domestic price ruling at artificially high levels. In addition, in some cases, goods which were products of newly-established export-oriented industries in developing countries were not at all sold in the domestic markets. In such cases comparable domestic prices did not exist.</td>
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<td>In reply to the point made by the representative of Canada, the representative of India stated that while Canadian rules might not be intended to discriminate against imports from developing countries, they posed special problems to these countries because of the particular market situation prevailing in these countries.</td>
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<td>The representative of Canada said that the rules regarding the fixing of the fair market value were consistent with GATT and applied without discrimination to imports from all sources.</td>
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<td>CANADA (Contd.)</td>
<td>It was notified by Pakistan that the Canadian authorities had fixed their market values on Pakistan's cotton textiles in a very arbitrary manner. In the case of Pakistan, the fair market value was taken to mean the cost of production in the home market plus 12 per cent gross profit on production cost. In the case of another country, for similar products, the gross profit rate had been fixed at 7.5 per cent. The formula for the fixation of fair market value in respect of textiles shipped to Canada was clearly discriminatory as between Pakistan and the other country as it had been worked out on a purely arbitrary basis; this made Pakistan's prices higher compared to prices of similar products coming from the other country to the Canadian market. This discrimination needed therefore to be removed.</td>
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<td>Section 37 of the Customs Act provides that when circumstances do not permit determination of &quot;fair market value&quot; by procedures defined in Section 36 (cf. extracts quoted above), value for duty may be calculated by adding to production costs a gross profit margin equal to gross profit margins earned on sales of similar goods in the country of export in circumstances described in Section 36. Accordingly, gross profit margin may vary from product to product for a single exporting country and may also vary for a given product as between exporting countries. Such variations, which result from non-discriminatory application of the law to exporters in different commercial circumstances, cannot in Canada's view be considered in any way as discrimination.</td>
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<td>The representative of Hong Kong said that the Canadian provisions posed a potential threat to trade. For most Hong Kong exports it was difficult to establish domestic selling prices for consumption in the home market. There were in most cases no wholesalers in Hong Kong; the manufacturers sold their products chiefly to the retailers which made price comparisons difficult.</td>
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<td>With reference to market conditions in Hong Kong, the representative of Canada stated that it should be noted that many Canadian importers of Hong Kong products are in fact Canadian retail stores rather than wholesalers. The major proportion of Canadian soft goods consumption is purchased direct by retailers from both Canadian manufacturers and foreign exporters.</td>
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<td>92</td>
<td>Hong Kong, Japan, United States</td>
<td><strong>Arbitrary Valuation and Surtax</strong></td>
<td>The representative of Canada explained that the Section 40A(7)(c), whereby the Minister was authorized to determine values in market disruption cases, had been repealed. The authority to which reference was made in the Valuation Study was a special clause which could be used in cases of imports from countries where there was a monopoly or a State-trading system. <strong>GATT relevance</strong> In reply to observations by several representatives that various aspects of the Canadian valuation system were contrary to the letter or to the spirit of Article VII of GATT, the representative of Canada said that his Government considered that the Canadian valuation provisions and practices were in conformity with Article VII.</td>
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The representative of the United States said that on gasoline-type fuels there was applied a tax equal to the difference between the export price and an arbitrary value of 10.5 or 12.5 cents per imperial gallon. Thus, the new tax had the same effect as the minimum value for duty authorized by the now repealed Section 40A(7) of the Customs Act. It was a variable levy related to the import price. The most recent authority for the surtax measure was Order in Council P.O. 1969-31, dated 14 January 1969.

The representative of the United States asked how Canada reconciled this valuation system with its obligations under Articles VI and VII of GATT and under the Anti-Dumping Code and the Canadian Anti-Dumping Act of 1969.

The reply of the Canadian representative was that Canada considered that the GATT Article which was relevant to the application of the surtax was Article XIX. Unlike many other countries Canada had no general quantitative restriction legislation for taking emergency action.
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<tr>
<td>93</td>
<td><strong>CANADA</strong> (Contd.)</td>
<td>The representative of Japan and Hong Kong asked whether the surtax was imposed in accordance with the provisions of Article XIX; in particular they wished to know whether it was imposed on imports from all sources in accordance with the most-favoured-nation clause of Article I of GATT.</td>
<td>The Canadian representative confirmed that the surtax on gasoline-type fuels applied to imports from all sources.</td>
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<tr>
<td>(Contd.)</td>
<td></td>
<td><strong>Exemption or refund of Customs Duties</strong></td>
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<td>94</td>
<td>Israel</td>
<td>The representative of Israel pointed out that paragraph 3 of Article VII of GATT stipulated that the value for customs purposes of a product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product had been exempted or had been or would be relieved by means of refund. Customs duties were not mentioned in this connexion, but some countries treated them in the same manner as internal taxes. Under Section 40-b of the Canadian Customs Act the amount of customs refunded by the exporting country on imported raw materials contained in the finished export product was added to the export price of that commodity for the purposes of valuation. This could result in increases of up to 100 per cent in the effective duty rate, thus acting as a barrier to trade.</td>
<td>The representative of Canada replied that Section 40A(3) of the Canadian Customs Act stipulated that customs duties might be deducted when determining the value for customs purposes; this possibility was, however, rarely used. He stressed that the main principle of Article VII was that the value for customs purposes should be the &quot;actual value&quot; as defined in paragraph 2(b) of the Article.</td>
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</table>
Notification Number | Notifying Countries and Countries Showing Interest | Description and type of the measures and comments made by the notifying countries | Comments by the countries to which notifications related
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95.2 | Poland | The notifying country stated that the Italian customs administration determines dutiable value in an arbitrary fashion, often at a level higher than the invoice price. Polish firms have no way of knowing what regulations apply or what is the precise interpretation to be given to them. Consequently, they cannot defend themselves against decisions of the customs administration, often inequitable in their view. | The Italian representative stated that the dutiable value of imported goods was determined by the customs administration in accordance with the criteria set forth in Articles 18 and 19 of the Preliminary Provisions of the import tariff of the Italian Republic, and those in Regulation 803/68 of the European Economic Community. The criteria were strictly based on the provisions of the Brussels Convention on valuation for customs purposes which had been adopted by Italy. The Italian representative explained that the undertakings concerned could appeal to the Ministry of Finance on any decision concerning a valuation by the customs authorities. They could also, if necessary, bring the matter before the Council of State which would consider the case of each party.

98 | Switzerland, United States | The notifying countries claimed that a new system for determining uplifts had been in force since October 1966. It caused certain disturbances to trade and threatened to put some results of the Kennedy Round negotiations in danger. It affected mainly sales agents and publicity costs. The products affected were inter alia, watches, pharmaceuticals, chemicals, motor-cars and air-conditioning machines. It was notified that present procedures often led to delays in customs clearance and to flat-rate increases of from 1 to 3 per cent. Japanese customs services required importers to complete "confidential" forms which must indicate: | The representative of Japan gave certain explanations regarding the valuation system in Japan and undertook to submit the relevant legal texts; the main provision was paragraph 4 of the Customs Tariff Law. He underlined that the bases for the customs valuation were prices quoted in transactions between unrelated persons. Any uplifts were fixed in a non-discriminatory manner. In the case of the watches there had been discussions and agreements with the importers before the fixing of the uplifts; with regard to the other products mentioned he was not aware of any complaints. He stressed that due regard was given to the Brussels definition. The customs classification was made in accordance with the Brussels Nomenclature.
98 (Contd.)

JAPAN

1. the amount of commission received in the exporting country by a middleman, if any. The customs authorities refused to believe that no commission had been collected and added a compulsory 5 per cent to all invoices concerned;

2. the structure of the distribution network in Japan, showing the price at each stage until the final purchaser (names of all middlemen and percentage of commission received by each).

The United States claimed that uplift valuations were often arbitrary and excessive. Classification was frequently inconsistent with accepted practice elsewhere - generally in a manner which resulted in the highest duty possible being assessed. An identical item might be classified in different tariff categories at various ports.

Generally, customs authorities put more emphasis on controlling rather than expediting the entry of imports. Japan's uplift and classification practices increased the cost of imports and were trade restrictive.

He added that he was not under the impression that the Japanese customs authorities normally put more emphasis on caution than on expeditiousness.
NEW ZEALAND

Current Domestic Value

Customs valuation is to be based on prices for home consumption in the exporting country (the current domestic value).

The representative of the European Economic Community and the representative of Japan pointed out that in determining the current domestic value, due consideration was often not given to different commercial practices in the exporting country, and the value was often determined without sufficient evidence. Further, a direct investigation was made by customs officials to determine the current domestic value, and such investigation, depending on how it was actually carried out, might result in disclosing business secrets and imposing a burdensome work on firms.

The representatives of the European Economic Community and Switzerland said that the determination of the current domestic value caused difficulties in the case of products which were not sold in the exporting country.

SOUTH AFRICA

Arbitrary Valuation

South African Customs Law provides that the value for duty of imported goods shall be the f.o.b. price or the current domestic value, whichever is the higher, and that the Secretary for Customs may determine a value for duty where the current domestic value cannot be ascertained.

The representative of New Zealand said that the valuation system of his country conformed to the requirements of Article VII. Section 142 of the Customs Act offered the right of appeal. Investigations were made from time to time in other countries to determine correct values and to advise exporters on the New Zealand system of valuation. The assessments were based on information obtained from exporters, and the information was held to be strictly confidential to the New Zealand Customs Department.
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<tr>
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<td>104 (Contd.)</td>
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<td>SOUTH AFRICA (Contd.) The representative of Hong Kong said that it was difficult to establish the current domestic value for products in the Hong Kong market as the domestic sales of most exports were negligible. The result was that an arbitrary basis for value was applied by South African customs to nearly all imports from Hong Kong. The arbitrary value for duty so determined was generally 20 per cent - 30 per cent more than the actual f.o.b. price but might be up to 100 per cent more. He was aware that South Africa was authorized by the Protocol of Provisional Application to deviate from the provisions of Article VII but he felt that some way could be found whereby the value determined by the Secretary would come closer to the &quot;nearest ascertainable equivalent&quot; of VII:2(c). Perhaps a value based on export prices to Hong Kong's main markets determined with the help of Hong Kong's export statistics could be used. Price Investigations A direct investigation into firms concerned is conducted by customs representatives to determine the current domestic value. Such investigation, depending on how it is actually carried out, may result in disclosing of business secrets, and imposing burdensome work on those firms.</td>
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<tr>
<td>105</td>
<td>EEC</td>
<td>The representative of South Africa pointed out that the Secretary's authority to determine a value was limited to cases where the actual value could not be ascertained, as foreseen in VII:2(c). The values were not determined arbitrarily by the Secretary, and the importer had the right of appeal if he was not satisfied with the value determined. He would convey the suggestions by the representative of Hong Kong to his Government. The representative of South Africa said that the investigations were carried out and the results were handled in such a way that the confidentiality with regard to business information was guaranteed.</td>
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**SOUTH AFRICA (Contd.)**

**Determination of Legal Weight**

A legal weight, which is the basis for a specific duty, is usually determined either by actually weighing the net content or by subtracting from the gross weight the average weight of packagings fixed by the competent Minister.

The representative of Japan pointed out that the former was time-consuming and costly as the actual weighing was done in a very strict way, while in case of the latter, the arbitrary decision on the average weight of packagings might be made by the competent Minister. For example, despite the fact that the legal weights of ceramic products of Japanese origin were about 75 per cent of their gross weights, legal weights were fixed at 85 per cent of the gross weights.

The representative of Japan wished to know if and how legal weights had been determined with respect to imports of ceramic products from other countries than Japan.

The representative of South Africa explained that the figures of 85 per cent had been arrived at after careful examinations carried out at Japanese request.

The representative of South Africa said that the figure of 85 per cent applied to all countries subject to the general rate of duty.
Adherence to Brussels Convention on Valuation

The Communities consider it advisable that contracting parties which have not yet acceded to the Brussels Convention on the Valuation of Goods for Customs Purposes, in particular the United States, should move towards the adoption of regulations based on the definition of dutiable value set forth in the annex to the Convention which, further to the principles of Article VII of the General Agreement, establishes specific rules for the valuation of goods for customs purposes.

In the event that as a result of these suggestions, the valuation system based on F.O.B. prices were replaced by a system of valuation based on C.I.F. prices, negotiations would obviously be necessary to the extent that there is any increase in the incidence of customs duties bound through GATT.

The other notifying countries share the opinion expressed by the European Communities.

American Selling Price

The European Communities reiterated their hope that the valuation provisions in force in the United States which, being contrary either to the letter or to the spirit of Article VII of the General Agreement, have proved most harmful to European exporters, would be eliminated as soon as possible. These remarks bore, in particular, on the "American Selling Price" system.

The representative of the United States said that he did not agree that harmonisation in the valuation field was as important as some other countries claimed. Both the F.O.B. and the C.I.F. prices had merits as a base for the valuation. Neither system could in itself be considered as a non-tariff barrier. If the United States should adopt the Brussels valuation definition, it would necessarily entail very comprehensive and time-consuming renegotiations of tariff concessions, as the base value for the calculation of the duties would increase.
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<td>108 (Contd.)</td>
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<td>United States (Contd.) Hong Kong points out that the inhibiting effects of the American Selling Price system have been well documented in the Kennedy Round, and while it cannot be accurately measured, the effect of this system on Hong Kong exports of rubber footwear has undoubtedly been considerable. The American Government has, of course, undertaken subject to Congressional approval, to remove the American Selling Price and replace the existing footwear tariff of 20 per cent ad valorem of the American Selling Price by $8.00.25 per pair or $8 per cent ad valorem whichever is the higher with effect from 1 January 1971. India stresses that the American Selling Price system has resulted in duty being levied at a substantially higher level than the official tariff rate, in the case of, particularly, rubber footwear. Japan points out that as the American Selling Price is subject to fluctuations, it is difficult for exporters to calculate the duties to be collected. This element of uncertainty along with the fact that the tariff incidence actually increases with the rise of the American Selling Price has a restrictive effect on imports. Korea maintains that the American Selling Price system has a restrictive effect on Korean exports, particularly in the case of rubber footwear.</td>
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<td>109</td>
<td>Canada, EEC, India, Japan, Switzerland</td>
<td>United Kingdom recalls that the American Selling Price system of valuation of imported goods (mainly benzoid chemicals) on the basis of domestic prices for like goods was taken up during the &quot;Kennedy Round&quot;. A &quot;package&quot; deal was negotiated under which the American Selling Price is to be abolished in exchange for further concessions in the United Kingdom and EEC tariffs on chemicals. The abolition of the American Selling Price is dependent on Congressional approval.</td>
<td>The United States recalled that the adoption of the Tariff Simplification Act of 1956 meant that 90 per cent of all entries of goods into the United States took place under Section 402 of the Act. For 90 per cent of these entries the customs value was the export value, i.e. normally the invoice price. For the remaining 10 per cent of the entries, the &quot;final list&quot; items, Congress had decided that the previous valuation system should remain in force, because the adoption of the new system would have meant a duty reduction of 5 per cent or more. The transfer of those &quot;final list&quot; items to the normal valuation procedure under Section 402 of the Act would need approval by Congress, and such approval could most likely not be obtained without negotiations with other countries for reciprocal concessions.</td>
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**Final List Valuation**

Under Section 402(A), as a general rule, dutiable value for 1,015 items in the "final list" is to be based either on the export value or the foreign value (the prices for home consumption in the exporting country) of the product concerned, whichever is higher.

The representative of Canada stressed that the continued use of Section 402(A) could result in an imposition of arbitrarily high values for duty purposes which bore little relation to actual transaction values of trade levels concerned. Amongst the products affected were biscuits, television receivers and birch plywood, where trade was practically totally stopped.

The representative of the European Economic Community said that the problems with regard to the "final list" valuation were less apparent than those resulting from the American Selling Price. Nevertheless, the system-caused uncertainty in the trade with some products. The investigation procedure also caused some concern.
<table>
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<td>109 (Contd.)</td>
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<td>The representative of India recalled that he had pointed out in the case of other countries using current domestic value that this valuation basis was unfavourable for developing countries where the domestic prices of export goods frequently ruled at artificially high levels. This observation applied in the case of the &quot;final list&quot; system as well.</td>
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<td>The representative of Japan said that, since the basis of valuation was uncertain and the dutiable value might be determined, depending on how the Section was interpreted and applied, at a level different from the actual price, this Section might have restrictive effects on imports of the products listed in the &quot;final list&quot;.</td>
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<td>For Japan the &quot;final list&quot; system was quite as important as the American Selling Price system. In the case of Japanese products, &quot;final list&quot; valuation had led to the fixing of value three to five times as high as they would otherwise have been. Further, investigations were made by the United States customs representatives with the exporter and/or the producer to determine the foreign value, and such investigations, depending on how they were actually carried out, might impose a heavy burden on the firms concerned and might lead to disclosure of business secrets.</td>
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<td>In the opinion of the United States Government, the &quot;final list&quot; valuation and the foreign value investigations did not constitute a major barrier to trade. With regard to the investigations, it was clear that they could cause the exporters and producers a certain amount of inconvenience. It was, however, in everybody's interest that they were carried out properly and that the facts were fully established. The customs representatives concerned were always prepared to discuss with the foreign authorities and companies the best ways to carry out their tasks. He wished to stress once more that the confidential treatment of business secrets was guaranteed.</td>
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<td>The representative of Switzerland pointed out that the application of the &quot;home market value&quot; for products included in the &quot;final list&quot; of 1958, some of which were of export interest to Switzerland (in particular...</td>
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<td>109 (Contd.)</td>
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<td>benzoid chemicals and medicaments, chocolate and other sugar confectionery, various machinery and machine tools, implied a dutiable value calculated according to internal prices in the Swiss market. Those were frequently higher than the export prices invoiced to American importers, for example because of the fact that quantities sold in the Swiss market were smaller; those products were thus penalized when entering the United States. The complexity of the American valuation system also results in a trade impediment for Swiss parent companies and their United States subsidiaries when their products being traded between &quot;related persons&quot; have to be appraised on the basis of the &quot;United States value&quot; disregarding the &quot;related persons&quot; normal profit and general expenses. The representative of the United Kingdom said that it was regrettable that the &quot;final list&quot; system, which should have been abolished eleven years ago, was still used for 1,015 items. It was a major non-tariff barrier because it increased customs duties and caused uncertainty. United States customs valuation was excessively complicated, and it was frequently impossible to foresee in which of the nine systems a customs officer would end up.</td>
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<td>110</td>
<td>Canada EEC</td>
<td>Special Valuation&lt;br&gt;The variety and complexity of the valuation methods - &quot;export value&quot;, &quot;foreign value&quot;, &quot;United States value&quot;, &quot;constructed value&quot; - and the uncertainty they create form an obstacle to trade. &lt;br&gt;Very detailed and costly analyses for cost of production and constructed value purposes are required.</td>
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ANNEX III
Notifications Relating to Customs Valuation Practices of Developing Countries
Summary of the Measures Notified and the Explanations Given

Note: It should be noted that the summary may not fully reflect the nuances contained in the notifications and explanations given by the different countries. For full details of the measures notified and comments made, reference should be made to basic documentation.

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<tr>
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| 87                  | CAN, EEC, JAP, US                                | Normal Price System
Where the actual import price is lower than the "normal price" established by the Prices Investigation Office of the Secretary of Industry and Commerce, this "normal price" is used as the basis for duty assessment. A special advisory committee to the Director of the Customs is authorized to determine the import price on which duty is to be assessed in such cases as where the actual import price is lower than the domestic price in the exporting country. Sometimes the "normal price" is ten times as high as the invoice price.

The notifying countries indicated that they would like to know how and on the basis of which criteria the "normal price" is determined.

The European Communities reiterated their hope that contracting parties still applying a valuation system contrary to the provisions of Article VII of GATT would conform to the provisions of that Article.

The representative of Argentina explained that the normal value on which customs duties have to be paid is - as was explained in connexion with Argentina's accession to GATT - calculated in conformity with the Brussels definition and its explanatory notes. As was also explained in the report by the Working Party on the Accession of Argentina (BISD, Fifteenth Supplement, page 98), in some exceptional cases "official indicative values" are used, i.e. when there is a price distortion due to, inter alia, unfair price fixing, which causes injury to the domestic industry. The factors to be taken into account for the determination of the indicative values are: the average f.o.b. prices in three exporting countries from which are deducted internal taxes but added conference freights to Argentina.
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<td>90</td>
<td>JAP, US</td>
<td>Customs duties are levied in principle on &quot;normal prices&quot; at the port of importation (c.i.f. value); prices higher than the c.i.f. values are, however, often used as the &quot;normal prices&quot;. The representative of Brazil explained that the normal price was defined in Brazilian legislation as the price which the goods in question or similar goods would fetch at the time of importation in similar conditions and in free competition. The provisions relating to the establishment of normal prices - and minimum values - were created in 1966. It had then become clear that new valuation rules were called for; under the previous valuation system under- and over-pricing had been very common in order to deprive government of custom duties and to facilitate illegal export of currency, respectively.</td>
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<tr>
<td>91</td>
<td>AUS, CAN, EEC, JAP, NORD, US</td>
<td>For over 200 products minimum values are fixed by the Bank of Brazil, commodity by commodity, without regard to differences in quality. If specified products are imported at a price lower than the &quot;minimum value&quot;, the customs duty is levied on the basis of the &quot;minimum value&quot;. Reply by Brazil: The minimum value system was introduced in 1966 as a part of the general reform of the Brazilian foreign trade régime. As a result of the liberalization process begun in 1964 imports had increased rapidly. Rather than to revert to the previous restrictive system the Government of Brazil had introduced certain new measures of which the minimum value system was one.</td>
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<td>91 (Contd.)</td>
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<td>Minimum values were established by the Customs Policy Council - or by delegation of authority by the Foreign Trade Department of Banco do Brasil - when for a product:</td>
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<td>(a) the normal price could not easily be determined; or</td>
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<td>(b) price quotations in the international markets or in the markets of certain countries were not currently available; or</td>
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<td>(c) the exports to Brazil were carried out in an irregular manner.</td>
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<td>Minimum values were always published, either in the Official Gazette (when fixed by the Customs Policy Council) or in the Weekly Bulletin of the Banco do Brasil (when fixed by the Foreign Trade Department of the Bank).</td>
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<td>With regard to special steels, minimum values had been fixed for a very limited number of products (three or four tariff items; around sixty statistical positions) in order to protect the infant steel industry of Brazil.</td>
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<td>The aim of the establishment of minimum values for, inter alia, motor cars and sewing machines was also to protect domestic industries which were in the first stages of development.</td>
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<td>The minimum values were frequently based on the wholesale prices quoted in major trading countries.</td>
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<td>91.1</td>
<td>US</td>
<td>CONGO CHAD CENTRAL AFRICAN REPUBLIC CAMEROON GABON IVORY COAST NIGER</td>
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<td>94.2</td>
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<td>Arbitrary Valuation for Used Clothing</td>
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<td>94.3</td>
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<td>These countries have fixed an arbitrary value of CFAF 300 per net kilogramme on used clothing. This value is so high that it acts virtually as prohibition on imports. The United States suggest that the value should be decreased in order that imports of used clothing be possible again.</td>
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<td>94.4</td>
<td></td>
<td>Reply by Niger: The flat-rate valuation for customs purposes on used clothing is a necessity. It is impossible to levy import duties on articles of widely differing values in a single bundle and the invoice price is most often minimized. In addition, it is necessary to remedy the practice of under-invoicing which could cause substantial loss in fiscal revenue while representing abnormal competition for imports of fabrics and new clothing. Here again, there is no discrimination as regards origin. If used clothing from the United States is particularly affected by these measures, the only reason is the magnitude of exports of used clothing from that country.</td>
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<td>96</td>
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<td>100</td>
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<tr>
<td>Notification Number</td>
<td>Notifying Countries and Countries Showing Interest</td>
<td>Description and type of the measures and comments made by the notifying countries</td>
<td>Comments by the countries to which notifications related</td>
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<td>---------------------</td>
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</tr>
<tr>
<td>101</td>
<td>JAP</td>
<td><strong>Calculation of c.i.f. value</strong> The c.i.f. value, the basis for customs valuation, is fixed at 120 per cent of the f.o.b. value.</td>
<td>Reply by Peru: It is confirmed that the information on the method of fixing c.i.f. value is correct. According to Rule II of the Peruvian Schedule of Customs Tariffs, the figure is obtained by adding to the f.o.b. value a uniform supplement of 20 per cent for freight and insurance.</td>
</tr>
<tr>
<td></td>
<td>EEC</td>
<td><strong>Minimum Valuation</strong> According to the notification by Japan, the minimum valuation system is applied to twenty-three items, including fishing nets and dry batteries. The United Kingdom has notified that the measure affects fifty items, including transport equipment, chemicals and whisky, corresponding to about half the total exports from the United Kingdom to Peru. The United States has notified that the valuation system affects approximately eighty tariff classifications. The EEC have noted that there are at present eighty-four particular methods of valuation under the minimum valuation system. The duties applicable to goods coming under this system are calculated on the estimated value or the price invoiced, whichever is the higher.</td>
<td>Reply by Peru: As regards the system of minimum valuation, Peru has a scheme for the valuation of commodities which is intended to prevent undervaluing or false declarations of value. The scheme is applied through the Commodity Valuation Department of the National Customs Inspectorate. Supreme Decree No. 137H of 5 June 1967 established a Special Permanent Commission on Customs Tariffs to examine and supervise the officially assessed value of commodities and the preparation of official lists of minimum prices. It should be noted that so far official minimum prices have been fixed only for two products which are imported at dumping prices - fishing nets and electrical dry batteries.</td>
</tr>
<tr>
<td>102</td>
<td>US</td>
<td></td>
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<tr>
<td>Notification Number</td>
<td>Notifying Countries and Countries Showing Interest</td>
<td>Description and type of the measures and comments made by the notifying countries</td>
<td>Comments by the countries to which notifications related</td>
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<td></td>
<td>SIERRA LEONE</td>
<td><strong>Discriminatory Valuation Base for Automobiles</strong></td>
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<td>In July 1966 the base for the valuation of automobiles for customs purposes was changed from price to engine size. This resulted in imports of United States automobiles being completely stopped.</td>
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<tr>
<td>Notification Number</td>
<td>Notifying Countries and Countries Showing Interest</td>
<td>Description and type of the measures and comments made by the notifying countries</td>
<td>Comments by the countries to which notifications related</td>
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<td>------------------------------------------------------</td>
</tr>
<tr>
<td>111</td>
<td>JAP, US</td>
<td>Average c.i.f. prices</td>
<td>The representative of Uruguay said that it was not clear whether the Japanese notification referred to changes in the system of consignations or in the aforos system.</td>
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<td></td>
<td>Notification by Japan: Each item has its own average c.i.f. price which is set up for customs valuation, in consideration of various factors including average import price and freight. The average c.i.f. price often differs from the actual import price. In September 1967, for example, the average c.i.f. prices of all commodities other than certain raw materials were temporarily increased by 100 per cent. This has substantially the same effect as 100 per cent increase in tariffs, import surtaxes, or prior deposits. The representative of the United States wished to know why average c.i.f. prices had been fixed for most but not for all items and how the average c.i.f. prices were arrived at.</td>
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<td></td>
<td>Global Customs Charge</td>
<td>The representative of Uruguay undertook to make available the information requested by the representative of the United States.</td>
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<td>Switzerland has notified that there is a global customs charge of 18 per cent ad valorem, calculated on a fictitious c.i.f. value or alternatively on the actual price of the goods, whichever is more advantageous from the point of view of customs revenue. The representative of Switzerland said that the rate of the &quot;impuesto a las importaciones&quot; had been increased from 15 to 18 per cent by Law No. 13637 of 31 December 1967. Certain public and semi-public bodies could be exempted from that charge, but the exemptions could be recalled if the product in question could be manufactured in Uruguay.</td>
<td>The representative of Uruguay said that the charge referred to by the representative of Switzerland was a part of a framework of measures taken, inter alia, in order to safeguard the balance-of-payments situation of Uruguay. The Uruguayan measures had been continuously examined by the Balance-of-Payments Committee, which had found that they were justified in the present situation.</td>
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ANNEX IV

Committee on Trade in Industrial Products

Group 2 on Valuation

Report by the Chairman

1. Pursuant to its mandate to elaborate, on an ad referendum basis, concrete solutions to the problems in the field of customs valuation which had been notified in the Inventory of Non-Tariff Barriers, Group 2 on Valuation has asked me to submit to the Committee two drafts, one on principles for valuation and one on understandings with respect to application of Article VII which is tentatively headed "Interpretative Notes". These texts are circulated to contracting parties with my present statement as a covering explanation (see Appendix 1).

2. The Group's approach has in general been to seek to interpret the provisions of Article VII of the General Agreement and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation. This approach is recognized as being only one among several possible approaches. Work has not been directed towards adoption of one common system of valuation.

3. The Group has reached a fair measure of agreement on these two texts which, if accepted and implemented, would solve the specific problems notified in the Inventory. The Group has recognized that the time has come for reflection and decisions on whether, and under what conditions, the proposed drafts are acceptable. The Group felt that these decisions might take considerably more time for some than for others as they involved changes in legislation for some.

4. The ultimate choice of an instrument or instruments to embody the material which the Group has developed has received only preliminary attention, so that not much significance should be attached to the headings "Draft Principles" and "Draft Interpretative Notes". Likewise, the eventual status of the results from the legal point of view and the relationship to existing obligations has not been considered in depth. It appeared, however, that such questions might more usefully be considered after some general consensus has been reached to proceed to acceptance.

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1 The Report has been issued as document COM.IND/W/64, dated 5 November 1971.
5. The drafts are not fully agreed within the Group, as notes to the text will show, even on the basis on which the Group has worked, that is, on the understanding that neither the Group as a whole nor any of its members necessarily accepts the text. In general the views which have earlier been expressed by members of the Group, in the report annexed to L/3496 and elsewhere, continue to be held. However, the views of some members are presented separately. (See Appendix 2)

6. The Group considered that, in view of the progress made on the two texts, it would now be appropriate to refer them to their administrations for careful examination and for consideration of changes which might be implied in accepting them.
Appendix 1

Draft Principles and Draft Interpretative Notes

I. 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 value to which the rate of duty is to be applied.

2. Valuation systems should not be used to combat dumping.

3. Valuation systems should protect trade against unfair competition arising from undervaluation.

4. Valuation systems should be of general application without distinction as between sources of supply.

5. Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

6. Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.

7. Valuation systems should not prevent the quick clearance of goods.

8. The legal and administrative provisions concerning customs valuation should be accessible to the general public and be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.

9. Valuation systems and practices should take into account the need to safeguard business secrets.

II. INTERPRETATIVE NOTES

1. The value for customs purposes of imported merchandise is the "actual value", which is understood to be the price at which, at a time and place determined by the legislation of the country of importation, the merchandise imported or like merchandise is sold or is offered for sale, or would be sold to that country in the ordinary course of trade under fully competitive conditions.
For countries which base their valuation on a c.i.f. price, that price includes the costs of delivery to the place of introduction into the country of importation.

For countries which do not base their valuation on a c.i.f. price the price to be taken into consideration includes the costs of delivery of the merchandise to the place defined in the legislation of the country of importation (e.g. ex factory, at railhead, at the dock, free on board ship or delivered to aircraft).

2. For the purpose of Article VII paragraph 2(b), "like merchandise" is understood to mean a product of the same origin and similar in all respects to the product imported or, in the absence of such a product, another product of the same origin as the product imported, whose characteristics closely resemble those of the product imported (in particular as regards condition, type, quality, etc.).

3. The price of "like merchandise" should be used as a basis for customs valuation only in cases where the "actual value" of the merchandise cannot be determined on the basis of the price paid or payable or of the price made by the vendor to other purchasers in the importing country for identical merchandise.

4. Value should be determined in accordance with the foregoing Interpretative Notes. However, in cases where actual value cannot be ascertained in this fashion, Article VII paragraph 2(c) is applicable. The "nearest ascertainable equivalent" within the meaning of that sub-paragraph should normally be based on information available on the importing market, such as:

- the price of merchandise conforming to the definition of "like merchandise" given in Interpretative Note 2 above in all respects but which originates in a country other than the country of origin of the merchandise to be valued, provided that in that other country the conditions of production (including wage rates) are comparable to those in the country of origin of the merchandise to be valued, and prices are established in fully competitive conditions;

- if the imported merchandise is sold or resold, the price made on the first sale or resale in fully competitive conditions, such price being adjusted to take account of the various elements that should not be included in the customs value as defined in Interpretative Note 1; or

Most countries could accept this text only with the word "normally" omitted and with the bracketed addition to the third indented paragraph included. One country could only accept the text with the word "normally" included.
- any other element that can constitute a valid basis for determining the value for customs purposes (for example, rental during the normal lifetime of the merchandise, value shown in the balance sheet as an asset [and information provided by the exporter]).

5. If there is a difference between the price paid or payable for the imported merchandise and a value obtained by other methods, that should not in itself constitute a reason for rejecting the price paid or payable. There may be acceptable reasons for the difference; e.g. technical developments in the exporting country, different distribution methods, etc.

6. With regard to the elements of level, quantity and time, contracting parties should respect economic reality and commercial practice and, inter alia

- accept the usual quantity rebates even in the case of fulfilment of a contract in successive consignments;

- take into account the time required for executing the contract in the branch of trade in question.

7. Notes 1-6 above, together with Article VII and its existing Interpretative Notes, describe the calculation of actual value and indicate other acceptable methods of valuation to calculate the nearest ascertainable equivalent to actual value. The value for customs purposes of any imported product should not include the amount of any customs duty 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.

8. The value for customs purposes of any imported product should not include the amount of any customs duty 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.

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1The representative of Argentina could not accept this formulation which appeared to classify a system based on minimum values, alone among all named systems, as using "arbitrary or fictitious values".
9. The importer should be made responsible for the accuracy of his customs valuation declaration.

10. On the request of an importer or an exporter the customs administration shall explain in advance the general principles and practices for the calculation of value for customs purposes /so that traders can estimate with a reasonable degree of certainty the value of their goods for customs purposes/.

11. The customs administration shall explain to the importer or exporter, on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded.

11 bis. On the request of the person declaring the goods the customs administration shall explain how the value for customs purposes has been calculated for his goods.

12. Consistent with Article X:3(b), each contracting party shall provide a procedure for appeal to an independent and impartial administrative and/or judicial body against valuation decisions of its customs authorities.
Appendix 2

Statements of Certain Delegations

The European Communities, Japan, the Nordic countries, and the United Kingdom

The great majority of countries are of the opinion that the adoption by all contracting parties of the principles and Interpretative Notes which are the subject of this document would be a major advance towards the elimination of obstacles arising out of customs valuation. They are nevertheless, convinced that only a full harmonization of valuation systems on the basis of one single concept can make a substantial contribution to the expansion of international trade in a climate of stability and certainty. Taking into account the fact that an increasing number of countries have already taken this path by acceding to the Convention on the Valuation of Goods for Customs Purposes (Brussels, 15 December 1950) or at least by acting consistently with the concepts of the Convention, the best way of achieving such harmonization would seem to be for all contracting parties to accede to one single convention, thereby applying one single customs valuation concept.

Sweden

The Swedish delegation had raised certain problems as regards the use of uplifts but the intention now was to pursue this matter further in the CCC.

Canada

The Canadian delegation does not consider the draft interpretative notes which have been discussed in the Group to be either the simplest or the most effective solution to customs valuation problems. The Canadian delegation therefore emphasizes the Group’s understanding that the work of the Group does not involve any commitment on the part of any country to accept or implement the solutions elaborated in the Group, that the results of the Group’s work do not preclude the possibility for other solutions and that no delegation is bound to accept any particular solution. It is also the Canadian view that the report should state that some countries do not consider harmonization of valuation systems to be either necessary or desirable and that these countries therefore feel that interpretative notes of the nature proposed are both inappropriate and unnecessary.

United States

Whether and under what conditions the texts elaborated by the Group are acceptable would depend, for some countries, on the prospects for obtaining some balance of advantage from the results of work of the other Groups now preparing concrete solutions on non-tariff barriers, or possibly from work yet to be undertaken on additional non-tariff barriers or on other aspects of the GATT work programme.
India

It should be understood that contracting parties having valuation systems requiring them to take into account prices of the same or like product in the markets of exporting countries would be obliged to modify them to bring them into conformity with paragraph 7 of the Interpretative Notes. It was suggested that pending modification of their valuation systems they should instead of current domestic value take into account (a) invoice prices of the exporting country of like merchandise to its major exporting country; or (b) invoice prices generally obtained by the exporting country for like merchandise for exports to other third country markets.

Pakistan

The representative of Pakistan drew attention to the fact that views along the lines of the above statement had been expressed by Pakistan at various times during the consideration of valuation by Group 2.
### ANNEX V

**Valuation Systems in Certain Developing Countries**

**Note:**
1. The table attempts to give at a glance information on the systems adopted in different developing countries for calculating customs duties. The table has been prepared on the basis of the information readily available in the documents of the Customs Co-operation Council, GATT and other published material and gives only a very brief description of the fundamental concepts in each national system.

2. It should be noted that inclusion of a country in the table does not involve any judgment on the part of the secretariat regarding the status of any country for the purpose of the classification as a developing country or for any other purpose. Since the statement has been prepared on the basis of the readily available information, it does not include information on valuation systems in all developing countries.

3. Symbol BDV stands for Brussels Definition of Value.

<table>
<thead>
<tr>
<th>AFRICA</th>
<th>LATEIN AMERICA</th>
<th>ASIA</th>
<th>EUROPE</th>
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<td><strong>Country</strong></td>
<td><strong>Description of the valuation system</strong></td>
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<td>Valuation based on C.I.F. price with minimum values in certain cases</td>
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**Symbol BDV stands for Brussels Definition of Value.**
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<td>Paraguay</td>
<td>F.o.b. value + 20% (c.i.f. from neighbouring countries and Uruguay 10%)</td>
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