The Committee on Trade in Industrial Products¹, which was created by the CONTRACTING PARTIES at their twenty-fourth session in November 1967 to explore the opportunities for making progress toward further liberalization of trade, made its first report (L/3298) to the Council in December 1969. Acting upon the recommendations of the Committee, the Council and subsequently the CONTRACTING PARTIES at their twenty-sixth session decided to move to the second stage of the work, namely to formulate conclusions on possibilities for concrete action to deal with the problems that arise in the field of industrial products. The same decision was taken with regard to the Agriculture Committee. Furthermore, the CONTRACTING PARTIES stressed the importance of the completion at the earliest possible date of the Tariff Study so that tariffs as well as non-tariff barriers could be fully taken into account in the carrying out of the work programme. The CONTRACTING PARTIES recognized in this context that the creation of a favourable point of departure for future action required that each contracting party individually refrain from aggravating the problems and obstacles to be dealt with. Finally, it was decided to organize this next stage by setting up five working groups to deal with the non-tariff barriers identified in an Illustrative List (annexed to L/3298). The decision was made on the understanding that the work was to be conducted in an exploratory manner and involved no commitment to take or join in any action under discussion.

2. The Committee herewith submits its second report to the Council covering work completed between the end of the twenty-sixth session (February 1970) and the end of its meeting of 3-4 February 1971.

I. Non-Tariff Barriers

3. The five groups on non-tariff barriers envisaged in the first report of the Committee were established and a series of meetings was held in the spring of 1970 to begin the search for solutions to the problems which had been identified in the five parts of the Illustrative List of Non-Tariff Barriers. The subject areas with which the Groups dealt were: Government Participation in Trade, Customs and Administrative Entry Procedures, Standards, Specific Limitations on Trade and Charges on Imports. The Groups examined the notifications which had been referred to them and discussed suggested solutions which in some cases attracted support and in other cases retained the character of individual delegation suggestions.

¹The composition and terms of reference of the Committee appear in document COM.IND/1/Rev.2.
4. In all of the Groups, an effort was made to identify possibilities for giving special priority to action to remove barriers of special interest for the trade of developing countries, even though few of the measures affect exclusively or mainly the developing countries. Where measures affected particular products, the interests of developing countries in some have been noted. On more general problems such as subsidies, valuation, and procedures for the administration of import restrictions, health and safety regulations, the special unfavourable incidence of such measures on developing countries and their special problems in dealing with complex regulations were noted. Also, in several instances proposals for action looking to removal of barriers have focussed on practices of developed countries in recognition of special difficulties which developing countries had with such restrictions.

5. Another enquiry of direct concern to the Committee in this preparatory work was that carried out in the Joint Working Group on Import Restrictions, which undertook a comprehensive item-by-item review of import restrictions on the basis of notifications made to GATT in different contexts, including the notifications in Part 4 of the Inventory. The meeting of the Joint Working Group obviated the need for Group 4 to review individual restrictions in detail and its report may also provide useful indications as to the possibilities of solutions.

6. The reports of the five groups on non-tariff barriers were submitted to the Industrial Committee at its meeting on 13 July 1970 (see COM.IND/W/31) and to the member governments. After the meeting of the Committee, the Chairman of the Committee made an oral report to the Council on 15 July 1970 on progress up to that point. It was agreed to follow the recommendations of the Committee and allow some time for reflection in capitals on how to proceed. The secretariat assisted in this process by summing up preliminary results.

7. In the autumn it was agreed at a meeting of the Steering Group to hold another round of meetings of the Groups in the hope that this would permit preparatory work to be completed as envisaged by the CONTRACTING PARTIES. Accordingly, a second round of meetings of the Groups was held, in an effort to refine the choices of problems offering the best prospects for solution, to carry proposed solutions a little farther, and to complete preparatory work so far as possible. A secretariat summary of the reports of the Working Groups is annexed as Appendix 1 and the reports themselves follow as Appendices 2-6.

8. At a meeting of the Committee held on 2 and 4 February 1971, recommendations to the Council on future work on non-tariff barriers were formulated. These appear in Part III of this Report.

II. Tariff Study

9. The first report (L/3298) to the CONTRACTING PARTIES at their twenty-sixth session covered the first two years of the work on the Tariff Study. In this Report, the Committee informed the Council and subsequently the CONTRACTING PARTIES that a classification of tariff and trade data by meaningful industrial groups had been established by the secretariat under the guidance of a group of technical experts.
10. At the twenty-sixth session, the CONTRACTING PARTIES stressed in their Conclusions the importance of the earliest possible completion of the Tariff Study so that tariffs, as well as non-tariff barriers, could be fully taken into account in the course of the work that would be undertaken in the terms of the work programme. The basic documentation to be prepared should cover on a priority basis certain problems of particular interest to developing countries - tariff differentials, specific duties, peak tariffs and tariffs on industrial raw materials - and indicate possible lines of future action in these and other fields.

11. By July 1970, the secretariat, under the guidance of the Expert Group, had compiled the basic documentation for the Tariff Study consisting of a summary of tariff rates and trade data for the United States, EEC, Canada, Japan, United Kingdom, Sweden, Denmark, Norway, Finland, Switzerland and Austria by BTN headings, by industrial product categories as well as by stages of processing. In a note of 2 July 1970 the secretariat suggested that the Committee might wish to establish a working group to carry out an objective analysis of the tariff situation on the basis of this documentation and proposed in this connexion an examination of variations in tariffs as between and within categories of products and as between countries, as well as the differentials according to the degree of processing. Such an analysis was also considered to be of particular value in relation to duties on exports from developing countries.

12. At the meeting of the Committee on Trade in Industrial Products in July 1970 there was a preliminary exchange of views on the Tariff Study. Among the aspects discussed were the remaining technical questions on comparability of data and the problems of nomenclature, the desirability of sector monographs, and the possible study of tariff escalation. The question of including in the analysis, where feasible, non-tariff as well as tariff barriers was also discussed. It was suggested that further action on the Tariff Study should be taken by a group to carry out the analysis, assisted as necessary by technical experts, to be set up after the matter had been studied further in capitals.

13. The Committee discussed in October and November 1970, on the basis of a proposal made by the EEC, the question of the terms of reference for a working party to carry out the analysis. In addition, the United States made a proposal for an enlarged tariff study, of which one of the most important elements was the assessment of the trade effects of tariff reductions. The Committee not being able to reach agreement on further action with regard to the Tariff Study, the matter was taken up by the Council. At its meeting on 2 and 3 December 1970, the Council agreed that the establishment of terms of reference for the Working Party was a matter to be settled by the Committee on Trade in Industrial Products.
14. At the meeting of the Council on 2 and 3 December the question was raised whether the documentation collected for the Tariff Study could be given a wider distribution; it was pointed out that the documentation could be of great use to other intergovernmental organizations and to scholars in the economic field.

15. The Committee decided at its meeting in February that the three volumes containing the summary tables could be made available, on request, to intergovernmental organizations and, against payment, to economists and other scholars who could show that they had genuine interest in the field covered by the tabulations. The secretariat would prepare a cover note to accompany the tabulations making clear that the definitions of product categories etc. were without prejudice to the positions of contracting parties. With regard to a proposal that the magnetic tapes be made available to other intergovernmental organizations, especially to UNCTAD, it was pointed out that these tapes were the property of the governments participating in the Tariff Study, and that decisions in this respect had to be made by them. Some of them indicated that they had no objections against their material being transmitted to interested intergovernmental organizations and persons. Others pointed out that they could not generally agree to a wider dissemination of the material submitted by them. Some of them were, however, prepared to examine on a case-by-case basis requests for access to their material.

III. Future Work

16. In the light of the Working Group meetings and the discussions in the Committee, it was felt that the next stage of work on non-tariff barriers, which should now begin, should be on a more selective basis. Many suggestions were made and the Committee agreed that the most fruitful results would be obtained by selecting a very few topics for further work directed toward the development of concrete action. The topics which appear to the Committee the most appropriate in this connexion are standards and their enforcement and the problems associated with existing systems of valuation for customs purposes. Further work would also be undertaken at this time within the area of problems explored by Group 4 (Specific Limitations on Trade); initially the work will focus on the operation of licensing systems. There should also be continuous exploration of the possibilities for adding other topics to this work programme, taking into account the results of work in other GATT bodies.

17. The objective of the work at this stage would be to elaborate solutions on an ad referendum basis.

18. The group in each case will be composed of those members of the relevant existing Working Groups who wish to participate. The Committee considers that it would be most useful if officials with specialized knowledge participate.
19. Each group should complete its work as soon as possible and report to the Industrial Committee.

20. At its meeting on 3 and 4 February the Committee agreed to set up a Working Party on the Tariff Study with the following terms of reference:

"On the basis of documentation that has been prepared and such other material as may be found useful, the Working Party should carry out an objective analysis of the tariff situation as it will exist when all Kennedy Round concessions have been fully implemented, with a view to providing the Committee on Trade in Industrial Products with the necessary elements for carrying out its terms of reference in the tariff field. This analysis, incorporating trade flows, will provide an objective basis for the contracting parties, at the appropriate time, to explore various possible approaches to future action in the tariff field and would include, inter alia, an examination of the variations in tariff rates as between and within categories and as between countries, and of the differentials in duties according to the degree of processing. The report of the Working Party will present the results of the various parts of the analysis, but should not make recommendations as to possible action.

"The Working Party should submit to the Committee, as soon as possible, a preliminary report on the basis of the present documentation. A final report incorporating additional trade and tariff data will follow.

"The Working Party will also examine the feasibility of analysing and developing better measures of the effects on trade of tariffs and tariff changes and should report, as soon as possible, the results of its examination to the Committee on Trade in Industrial Products."

21. The view was expressed that the Working Party should develop detailed working procedures for carrying out its terms of reference.

22. It was agreed that the Working Party would be composed of countries presently included in the analysis and countries to be included therein, as well as contracting parties which would be able and willing to participate actively in the study. Mr. H. Colliander (Sweden) was elected chairman of the Working Party.
Appendix 1

SUMMARY OF PROPOSALS
IN REPORTS OF THE FIVE WORKING GROUPS
ON NON-TARIFF BARRIERS

Note by the Secretariat

This document summarizes the various proposals contained in the reports of the five Working Groups dealing with parts of the Inventory.

Some suggestions received wider support than others; some supplement one another; elsewhere proposals are alternatives. To facilitate the use of this summary, cross references to the relevant paragraphs of the texts of the reports themselves are provided. The reports, which are reproduced in Appendices 2-6 are as follows:

<table>
<thead>
<tr>
<th>Group</th>
<th>Subject</th>
<th>Page number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Government Participation in Trade</td>
<td>21</td>
</tr>
<tr>
<td>2</td>
<td>Customs and Administrative Entry Procedures</td>
<td>32</td>
</tr>
<tr>
<td>3</td>
<td>Standards Acting as Barriers to Trade</td>
<td>53</td>
</tr>
<tr>
<td>4</td>
<td>Specific Limitations on Trade</td>
<td>64</td>
</tr>
<tr>
<td>5</td>
<td>Charges on Imports</td>
<td>83</td>
</tr>
</tbody>
</table>
Group 1 - Government participation in trade

1. Trade diverting aids (pages 2-3)

   (a) Serious prejudice to trade interests through trade diversion is the basis for GATT attention to domestic aids.

   (b) There is a question whether a clear showing has been made of enough cases of difficulty on serious trade diversion to warrant regarding domestic subsidies as a general problem for GATT; consideration of particular cases might be adequate.

   (c) Some suggested an Interpretative Note or a code of good conduct, building on the existing provisions of Article XVI:1 with a view to providing for:

      (i) improved notification procedures to cover domestic aids more widely, since investment aids, in particular, are generally not notified;

      (ii) specific provision for consultations upon request to determine whether serious prejudice to a contracting party's interests had occurred, or was likely to occur;

      (iii) in the event of such a finding by the CONTRACTING PARTIES, either (i) elimination or reduction of the aid in question, (ii) compensation or failing satisfactory adjustment, (iii) suspension of obligations by the injured party.

Although this solution would be built on the existing provisions of the GATT, the possibility of new commitments was not precluded by advocates of this course, if further discussion indicated that additional obligations would be appropriate.

2. Export subsidies (pages 3-4)

   (a) Wider acceptance of the obligations contained in Article XVI:4, especially by developed countries, was recommended.

   (b) Measures to ensure improved and continuing implementation of the obligations of Article XVI:4 including:

      (i) refinement and elaboration of a definition of measures that countries regard as constituting export subsidies presently covered by Article XVI:4;
(ii) reviving the standstill provisions of Article XVI;4;
(iii) revision of notification procedures.

(c) Inclusion within the obligations of paragraph 4 of all export subsidies having trade-diverting effects whether or not resulting in sale for export below the comparable domestic price.

(d) More comparable treatment as between subsidies on primary and non-primary products.

(e) In cases where there was an infraction of the prohibition under Article XVI;4, authorization for the importing country to take the measures necessary to offset the trade effects of the subsidy.

(f) A review of the operation of Article XVI as provided for in paragraph 5 of that Article.

3. Countervailing duties (pages 5-6)

(a) A code along the lines of the Anti-Dumping Code which would provide for:
   (i) determination of injury;
   (ii) determination of subsidy and the amount;
   (iii) determination of the trade effects for third countries;
   (iv) procedural obligations (e.g. notification to the governments and firms concerned);
   (v) definition of a subsidy.

(b) An extension of existing GATT rules to permit a contracting party suffering injury to its export industries as a result of export subsidization by another country in third country markets, to take direct action by suspending concessions on products of interest to the export subsidizing country.

(c) Deal with the problem by better provision against use of export subsidies.

4. Government procurement (page 6)

It was considered that a code or set of guidelines should include:

(i) objectives and principles;

(ii) definitions;
(iii) procurement entities;
(iv) elimination of existing discrimination;
(v) exceptions;
(vi) purchasing procedures;
(vii) publication of government procurement regulations;
(viii) reporting, review, complaint and confrontation procedures.

The Group noted that work in the OECD on the problem was reaching a fairly advanced stage.

5. **State trading in market-economy countries** (pages 7-8)

   It was considered that a strengthening of the effectiveness of Article XVII would be desirable through:

   (a) an improvement in the quality, frequency and coverage of reports under the Article;

   (b) consultations along the lines of Articles XXII and XXIII;

   (c) negotiation of concessions on State-trade products, including global purchase commitments.

6. **Other restrictive practices** (page 8)

   (a) Where restrictive practices are actually imposed by governments, the governments concerned should adopt practices generally acceptable internationally.

   (b) In cases of restrictive practices tolerated by governments, where these practices are covered by national legislation the relevant legislation should be applied; where not, appropriate action should be taken.

**Group 2 - Customs and administrative entry procedures**

I. **Valuation** (paragraphs 4-24)

1. The application of Article VII to be improved by all countries accepting the following principles: (paragraph 10)

   (a) Valuation systems should be neutral in effect and not be used as a disguised means of protection.

   (b) They should be non-discriminatory between supplying countries.

   (c) They should be simple and not use arbitrary or fictitious values.
(d) Administration of valuation systems should take into account the need for: (i) advance certainty to traders as to valuation methods, (ii) full publicity to the bases on which value is calculated, (iii) expeditiousness of the procedure, (iv) safeguarding of business secrets, (v) adequate appeals procedure (paragraph 10).

2. An overall solution along the following lines (paragraphs 15, 20):

(a) valuation systems to be harmonized so that each contracting party uses one single concept of valuation based on economic and commercial realities, on the principles of Article VII and on specific interpretative rules to that Article;

(b) these interpretative rules to be based on the Brussels Definition, but the f.o.b. system to continue to exist side by side with c.i.f. by the f.o.b. countries accepting the interpretations outlined above and reducing the resulting valuation by the amount of freight and insurance up to the point of importation (to avoid lengthy renegotiations);

(c) countries applying the Brussels Convention on Valuation but not yet signatories to it, to accede to the Convention;

(d) countries using valuation methods requiring determination of export values on the internal market of the exporting country to use invoice prices for like products for export to the major market or invoice prices generally obtained for like products.

3. Deal with the problems of valuation on a case-by-case basis. Principles to include (paragraphs 12, 13, 17):

(a) the concept that duty is based on the price actually paid rather than a notional price;

(b) facilities for appeal from a determination of value for duty;

(c) maintenance of existing competitive relationships in any modification of systems, without distortion on account of differences in distances from particular suppliers to points of importation;

(d) some resulting advantage, as compensation for any changes in systems in terms of more precision as to price, time, place, quantity, level of trade.
4. An elaboration of more precise interpretations of Article VII as the more practical manner in which to deal with existing problems of valuation; an expert group could be established for this purpose. Specific suggestions include (paragraphs 13, 18-20, 21, 23, 24):

(a) setting aside the f.o.b.-c.i.f. controversy as non-essential;

(b) elimination of the use by any country of alternative valuation systems involving either domestic prices in the country of import or domestic prices in the country of export;

(c) use in all cases of invoice prices or if necessary one of the bases outlined in 2(d) above;

(d) Interpretative Notes to Article VII:2(a) and 2(b) to deal with problems created by minimum value practices;

(e) amend Article VII:3 as originally proposed in BISD, Third Supplement, page 213.

II. Anti-dumping duties (paragraphs 25-32)

1. Harmonization of anti-dumping legislation by acceptance of the Code by developed countries which had not done so, use of the Code as a standard for application of Article VI (paragraph 25).

2. Enable developing countries to accede to the Code at an early date (paragraph 29).

III. Customs classification (paragraphs 33-43)

1. Two main countries not applying the Brussels Tariff Nomenclature should adopt it (paragraph 35).

2. Many countries need further clarity and simplification in their tariff nomenclatures (paragraph 36).

3. Governments which have not yet done so to prepare systematic explanatory notes to their nomenclatures, or at least to those sections where there is an obvious need for guidance to ensure correct classifications. Priority should be given to the more important trade items (paragraph 37).

4. Only essential information should be requested by customs authorities (paragraph 39).
5. Incontrovertible replies to requests for classification (paragraph 39).

6. Impartial body should rapidly settle classification disputes (paragraph 39).

7. Concordance between BTN and other nomenclatures should be established and kept up to date (paragraph 36).

IV. Consular and customs formalities and documentation (paragraphs 44-49)

1. Consular formalities and fees

The countries not maintaining consular formalities proposed:

(a) an Interpretative Note to Article VIII requiring the phasing out of the remaining consular formalities and fees in the next five years, and providing that during the interim the cost of the service rendered should not exceed a given maximum at a flat rate (paragraph 47(a));

(b) a study to recommend appropriate solutions on possible alternative measures to achieve the same purpose as consular formalities without unduly restraining trade, taking into account past recommendations and codes of standard practices, looking to the abolition of customs and consular invoices and limitation on the use of certificates of origin to cases where they are strictly indispensable in line with the Recommendations of the CONTRACTING PARTIES. The study to include ways of simplifying formalities and harmonizing special declarations inserted in commercial invoices (paragraph 46).

2. Customs clearance documentation

A special sub-committee of customs experts to develop standard forms meeting the import documentation requirements of all customs services throughout the world (paragraph 47(b)).

3. Certificates of origin

Where certificates of origin are required and are provided by properly recognized issuing bodies, no additional requirement for consular endorsement resulting in additional cost to exporters (paragraph 47(c)).

V. Samples requirements (paragraph 50)

The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material signed at Geneva on 7 November 1952 should be taken up for reconsideration in GATT for review and to obtain accession to it and the Customs Convention on the ATA carnet by all contracting parties.
Group 3 - Standards

I. General

1. CONTRACTING PARTIES to draw up a set of principles or ground rules on standardization (paragraph 13).

2. The technical development of standards to be left to the competent international standardization bodies (paragraph 4).

3. The distinction was clearly made between compulsory regulations, issued by central governmental authorities, and standards set by local governments or by private organizations (paragraph 5).

II. Development and harmonization of standards

1. An effective contribution should be made to the work of international organizations in order to develop truly international standards; their recommendations should be implemented (paragraph 18(i) (ii)).

2. Encourage international standardization bodies to take into account the need to avoid creating trade barriers (paragraph 18(iii)).

3. Multilateral harmonization schemes to be open for accession to all contracting parties (paragraph 18(v)).

4. Local authorities and private standardization organizations should be prompted to apply international standards and to resolve trade difficulties resulting from disparities in standards and regulations (paragraph 18(vi)).

5. In so far as possible, standards and regulations should be based on performance rather than design (paragraph 18(viii)).

6. New or revised standards should be given adequate publicity prior to implementation so as to ensure ample opportunity for interested parties to comment thereon if necessary (paragraph 18(viii)).

7. With regard to technical regulations, the contracting parties could encourage:
   (a) the development of uniform regulations;
   (b) the optional approach - a choice between a national regulation or an international standard;
   (c) the "reference to standard" approach (paragraph 19).
III. Enforcement of Standards

1. Contracting parties should further efforts to harmonize testing methods and quality assurance procedures on a multilateral basis (paragraph 20(i)).

2. Testing procedures for imported products should be expeditious, and results thereof made available in writing (paragraph 20(ii)).

3. Product inspection and testing requirements should be formulated so as to ensure that imported products are not prevented from gaining effective access to domestic markets (paragraph 20(iii)).

4. Multilateral quality assurance and certification schemes should be open to foreign participation (paragraph 20(iv)).

5. Account should be taken of measures adopted by developing countries to ensure adequate quality standards for their exports (paragraph 20(v)).

6. The following practical methods of application could be encouraged, inter alia:

   (a) adequate publicity of countries' testing requirements;

   (b) delegation of testing and control operations to the exporting country on the basis of the importing country's specifications;

   (c) facilities for testing products at designated importation points;

   (d) inspection of foreign manufacturing facilities, where necessary;

   (e) acceptance of foreign governments or recognized foreign institutions that products meet the requirements of the importing country;

   (f) the reciprocal recognition of tests, in part or in whole, when these are similar;

   (g) the reciprocal recognition of tests, on the basis of reliability guarantees, when the tests are not identical (paragraph 21(i)).

7. Multilateral quality assurance and certification schemes could provide for the testing and acceptance of products from non-participating countries. This could be accomplished by:

   (a) testing and certifying products from non-participants;
(b) accepting certifications granted by other participants to products from non-participants; or

(c) accepting the certification of competent organizations in non-participating countries where this can be demonstrated to be equivalent to the requirements of the scheme (paragraph 21(ii)).

IV. Consultation

1. A GATT Committee might provide the facilities for consultation and complaints concerning trade effects resulting from standardization, and problems arising from packaging, labelling and marking requirements (paragraphs 22, 23). Such machinery should not be a negotiating body nor provide for retaliatory action (paragraph 25).

2. A notification procedure, similar to that provided for in Article XVI:1, could be envisaged and include prior notification of new regulations likely to have trade effects (paragraph 27).

V. Packaging, labelling and marking regulations


2. The Recommendation would need elaboration and further precision on certain points (paragraph 31). Article IX and further elaboration of the 1958 Recommendation should provide the basis for solving the problems arising from marking requirements (paragraph 32).

3. The Recommendation could be placed on a contractual basis (paragraph 32).

Group 4 - Specific limitations on trade

1. Quantitative restrictions (paragraphs 9-14)

   (a) An overall programme for elimination of quantitative restrictions of all types maintained by developed countries, whether or not consistent with the GATT, and a target date for removal with the following elements: (paragraph 11)

      (i) Special attention to be given to discriminatory restrictions, restrictions inconsistent with GATT, and restrictions of special importance to developing countries.

      (ii) A standstill on quantitative restrictions.
(iii) A plan and schedule for removal of a maximum proportion of restrictions maintained by countries not invoking Article XII or XVIII:B.

(iv) For restrictions included in the programme, progressive quota increases, and introduction of imports for embargoed products.

(v) Limited extensions of time for maintenance of restrictions justified on social considerations.

(vi) Restrictions not scheduled for removal under the programme to be examined for consistency with GATT and to be subject, if not consistent, to appropriate action under the General Agreement.

(b) An overall gradual liberalization and elimination of quantitative restrictions by developed countries in step with progress of the CONTRACTING PARTIES in their general programme of trade expansion; contributions by an individual contracting party would be proportionate to the scope of its quantitative restrictions of all types (paragraph 12).

(c) A solution, similar to that in (a) above but directed exclusively to illegal import restrictions. Elimination of legal restrictions to be dealt with in negotiations (paragraphs 6 and 10).

(d) A sectoral or commodity approach, focussing on obtaining concerted action in sensitive sectors.

2. Discriminatory bilateral agreements (paragraphs 16-21)

(a) Elimination of restrictions imposed pursuant to bilateral agreements (or at least agreements by developed countries) in conjunction with general action on quantitative restrictions (paragraph 21).

(b) Interpretative Note or declaration prohibiting restrictive or discriminatory bilateral agreements, with a target time-limit of three years for termination of existing agreements. Consultations with the CONTRACTING PARTIES concerning agreements maintained (paragraph 16). Notification of all bilateral agreements of a discriminatory nature by an early date (paragraph 16), avoiding duplication with existing notification requirements (paragraph 20).
3. **Export restraints** (paragraphs 22-26)
   
   (a) Include removal of export restraints in general solution adopted for quantitative restrictions (paragraph 26).

   (b) Notifications to GATT and multilateral consultation procedures to include such restraints (paragraph 26).

4. **Minimum price regulations** (paragraphs 27-29)
   
   (a) Relationship of the problem to anti-dumping suggests solution by wider acceptance of Anti-Dumping Code (paragraph 29).

   (b) Possible modification of individual country regulations (paragraph 28).

5. **Licensing** (paragraphs 30-42)
   
   (a) Clarification of the extent to which licensing should be regarded as a restriction on imports within the meaning of Article XI, paragraph 1 (paragraphs 30-32).

   (b) Licensing as such, or those forms agreed to constitute a restriction, to be eliminated within whatever solution is adopted for other quantitative restrictions (paragraphs 34 and 42).

   (c) A code of procedures to be followed in operation of any licensing requirement, or possibly a more comprehensive code on import procedures (paragraph 35).

   (d) Review of licensing systems on the basis of a questionnaire, followed by examination by a GATT body.

6. **Motion picture restrictions** (paragraphs 43-53)
   
   (a) Standstill on motion picture restrictions, including not only restrictions on distribution, but discriminatory taxes, printing, sub-titling and dubbing requirements and export subsidies; elimination of existing restrictions by negotiations. Target date for removal and requirement of waiver or compensation thereafter (paragraphs 43, 45, 46).

   (b) Interpretation of the meaning of "mixing regulations" in Article III in reference to screen-time and television-time quotas. Applicability of Article IV (paragraph 48).
(c) Notification of film subsidies in the form prescribed by the 1960 Panel. Consultation, on request, under Articles XXII and XXIII (paragraph 49).

(d) Agreement on criteria to avoid trade-distorting effects of film subsidies (paragraph 50).

Group 5 - Charges on imports

1. Prior deposits (paragraphs 13-15)
   (a) Elimination of prior deposits (paragraph 13), or if not possible
   (b) Notification and consultation in GATT for cases of prior deposits, whether along the lines of Articles XII and XVIII:B in the Balance-of-Payments Committee itself, or on a case-by-case basis (paragraph 14)
   (c) Not prejudging the appropriateness of prior deposits, guidelines including the following:
      (i) limitation of use to cases of balance-of-payments difficulty;
      (ii) prior deposits should be of temporary nature;
      (iii) the rate of deposit should be as low as possible; deposits should not be kept for an unreasonably long period;
      (iv) prior deposits should be applied without discrimination as to category or origin of goods;
      (v) products of interest to developing countries should be exempt;
      (vi) prior deposit schemes should be designed so as to minimize inflationary effects (paragraph 15)
   (d) Await the finalization of studies in progress, before deciding upon the question of guidelines.

2. Credit restrictions for importers (paragraphs 42 and 43)
   (a) Removal or modification of credit restrictions.
   (b) An Interpretative Note indicating that Article III:4 requires that importers get similar access to credit as domestic producers (paragraphs 27 and 28).
3. **Variable levies** (paragraph 17)

Group 5 recommended that action await the outcome of discussions in the Agriculture Committee.

4. **Fiscal adjustments either at the border or otherwise**

Notification and consultation procedure as agreed by Working Party on Border Tax Adjustments.

5. **Restrictions on foreign wines and spirits**

   (i) **Taxation**

   (a) Maintaining countries to eliminate discriminatory aspects in their taxation systems on a unilateral basis.

   (b) All alcoholic beverages with approximately the same alcoholic content to be regarded as "like domestic products" within the meaning of Article III:2 regardless of price (paragraph 29).

   (c) An Interpretative Note defining the expression "like domestic products" (paragraph 27).

   (ii) **Advertising**

   (d) An Interpretative Note to the first sentence of Article III:4 providing for equal rights of advertising, as well as a clear definition of the terms "offering for sale" and "afford protection to domestic production" (paragraph 24).

   (e) Creation of standard; in co-operation with other organizations (paragraph 25).

6. **Discriminatory taxes on motor-cars**

   (a) Taxation of motor-cars on the basis of value, with a single tax rate for a particular price range and a reasonable spread between upper and lower tax rates; an Interpretative Note to Article III:2, to implement this solution (paragraph 35).

   (b) Maintaining countries favoured harmonization based on fiscal horsepower or cylinder capacity (paragraph 33).
7. **Statistical and administrative duties**

As first steps to obtain strict application of Article VIII,

(a) countries to supply data annually of fees levied and services rendered (paragraph 51)

(b) prescribe a maximum upper limit for all fees (paragraph 52)

(c) refer the suggestions to the Committee on Trade and Development (paragraph 54).

8. **Special duties on imports**

Guidelines or an Interpretative Note defining some of the criteria in Article XIX (paragraph 58), or overall review of that Article (paragraph 59).
REPORT OF WORKING GROUP 1 ON NON-TARIFF BARRIERS

Examination of Items in Part I of the Illustrative List
(Government Participation in Trade)

1. Working Group 1 was established by the Committee on Trade in Industrial Products in December 1969 to examine the following subjects in the Illustrative List (Annex 1 to document L/3298): trade-diverting investment, export subsidies, countervailing duties, government procurement and State-trading enterprises in market economy countries. The task of the Group was to explore, on the basis of the information in the Inventory and any information that might be subsequently furnished, possibilities for concrete action, both with regard to reducing or removing notified barriers within its competence, and to developing possible rules of conduct. The work was to be conducted on the understanding that it was exploratory and preparatory in nature, and involved no commitment on the part of any member of the Working Group to take or join in any action under discussion. Special attention was to be given to the interests of the developing countries, which had submitted a number of notifications on subjects within the competence of the Group.

2. The Working Group met from 12 to 21 January and from 2 to 9 November 1970 under the chairmanship of Mr. R.E. Latimer (Canada). In formulating views on suitable solutions the Group took into account the question whether particular problems appeared to be pervasive in their occurrence or whether, even if difficulty arose only in a few instances, the effects were yet of concern to many countries. A third possibility was that both the causes and the effects were confined to a few countries only. It was considered that these characteristics could have a bearing on the type of solution.

3. An effort was made to define in each case the main headings or topics to be covered, especially if some form of multilateral arrangement appeared to some or most members to be indicated. The Group not only had in mind the general terms of reference in regard to the exploratory nature of its work, but wished to emphasize in this connexion that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products.

4. The Group also discussed the notifications included in the Inventory under the section "restrictive practices tolerated by governments" and certain proposals were made which are recorded in Section VI of this document.
I. Trade-diverting aids other than export subsidies

5. Type of solution: Most members of the Group tended to favour, as explained below, a wider concept for consideration of the Illustrative List item "Trade-diverting investment" as reflected in the heading above. Some felt that the problem of serious trade-diverting effects of government aids to production and investment was general both in occurrence and in effects on other countries as most countries grant some sort of assistance or other aid to economic development of a general or regional character. Others, basing their information on the Inventory, doubted at this stage whether the present and prospective cases of difficulty arising out of such aids were so important or numerous. One member doubted, moreover, that incentives had been shown in any case as decisive in creating a problem of serious trade diversion.

6. There was, however, rather general agreement that the essential element which would justify GATT attention to domestic aids was serious prejudice to trade interests through trade diversion. Some delegations felt that particular situations such as research and development requirements, the need for assistance to depressed regions, reconversion of an industry or possibly other considerations were elements which could be taken into account by the contracting parties in the consideration of a particular case. Some of these delegations considered that the existing notification procedures might be completed by including information on aids granted by local and regional authorities, and that provision for specific notification on request would be useful. Some other delegations emphasized the desirability of specific procedures for consultation, as well as notification, at the request of interested governments. However, a number of other delegations took the view that the existing provisions of Article XXII were sufficient to meet the case.

7. Those members which considered trade-diverting aids to be a problem of general concern favoured a set of rules, whether in the form of an Interpretative Note to Article XVI, or a code of good conduct. Among those which doubted the need for such an approach, the question was raised whether a code would contribute to solution of the specific problem notified, to which it was after all the first obligation of the Group to address itself. Inquiry into reasons why existing consultation procedures on subsidies had not been used might, for example, offer a more useful approach.

8. Main headings: As a working hypothesis it was proposed by some delegations that a set of rules might contain the following main headings:

   (i) The Note would build on the existing provisions of the GATT. It would not envisage new GATT commitments although this possibility should not be precluded if further discussion among the contracting parties indicated that additional obligations would be appropriate.
(ii) Improved notification of domestic aids having trade-diversionary effects was considered to be desirable, since relatively few contracting parties report, and most of those reporting do so less frequently than required and tend to omit domestic production and investment aids. To deal with the situation where a country applying certain measures does not itself consider that such measures fall within the notification requirements of Article XVI:1, it was further suggested that opening the way to requests by interested countries, through the secretariat, for prompt special reports by countries giving domestic aids would improve the coverage of aids of real international concern.

(iii) Specific provision for consultations upon request, either among interested parties or with the CONTRACTING PARTIES as a whole, along the lines of Article XXII or, if no satisfactory solution is found, as provided for in Article XXIII, to determine whether serious prejudice to a contracting party's trade interests had occurred or was likely to occur through trade diversion caused by such aids.

(iv) Adjustment, in the event of a decision by the CONTRACTING PARTIES finding such serious prejudice

(a) preferably by elimination or reduction of the aid to the point where prejudicial effects were eliminated;

(b) failing that, the grant of compensatory new concessions to the injured party or parties; and

(c) if neither solution proved feasible, authorization by the CONTRACTING PARTIES for the suspension of the application of concessions or other obligations by the injured party or parties toward that party.

II. Export subsidies

9. Type of solution: Most members of the Group considered that the problem of export subsidies was general in nature, in that many countries appeared to maintain aids of various kinds which had been mentioned in one context or another as export subsidies, whereas only the major developed countries had agreed in paragraph 4 of Article XVI to limitations on use of export subsidies in regard to non-primary products. Others, considering the information contained in the Inventory, were not in a position to conclude therefrom that the problem was of a general nature. Some felt that the major element should be an effort to strengthen existing obligations through clarification of obligations and supplementary procedures. In the opinion of most members of the Group it was important that more countries, particularly those developed countries which have not accepted the prohibition of export subsidies on non-primary products, should accept it so as to ensure proper balance in the legal commitments in this field, all the more so because, for countries which had not accepted the Declaration, the standstill provisions of Article XVI:4 were no longer in effect. Some favoured consideration
of certain new obligations as well. Attention was drawn to paragraph 5 of Article XVI which calls for a review of the operation of the provisions of Article XVI.

10. The following proposals, which met with broad approval, were put forward as the main elements of an approach which might lead to a solution to the problem of export subsidies.

(i) An important step would be for those contracting parties, particularly developed countries, not having accepted the Declaration Giving Effect to the provisions of Article XVI:4 to do so.

(ii) It was recognized that there was a need for measures to ensure improved and continuing implementation of obligations of Article XVI:4. It was proposed that consideration be given to the following suggestions:

(a) A refinement and elaboration of a definition of measures that countries regard as constituting export subsidies which are forbidden by Article XVI:4.

(b) Reviving the standstill provisions of Article XVI:4.

(c) In relation to the above suggestions, revisions, where appropriate, of notification procedures, to ensure improved and continuing implementation of the obligations of paragraph 4.

11. In addition, a number of other suggestions were the following:

(i) There may be need to include in the obligations of paragraph 4 all export subsidies even though they do not result in sale for export below the comparable domestic price.

(ii) The same, or more comparable, treatment should be given to primary and non-primary products under Article XVI.

(iii) It might be possible to provide that in case of infraction of the prohibition under Article XVI:4 the importing country be authorized to take all measures deemed necessary under the provisions of the General Agreement to offset the trade effects of that subsidy.

12. Some delegations recommended that all of the proposals included under paragraphs 10 and 11 above be considered in the context of an overall review of the operation of Article XVI, as provided for in paragraph 5.

13. The view was expressed by several delegations that the distinction between primary and non-primary products was a fundamental one in that it had been a part of Article XVI from the outset and had been confirmed during the Review Session in 1955. Some others maintained that since that time there had been developments in international trade in agricultural products that called for a re-examination of such a distinction. It was also suggested by others that a more precise definition of what constituted a primary product might be useful.
III. Countervailing duties

14. **Type of solution**: The predominant view was that the injury question was the main problem where the solution was to be sought in action by particular countries. It was suggested that the root of this problem lay in the fact that the Protocol of Provisional Application had been in force for over twenty years, thus permitting some contracting parties to be legally exempt in certain circumstances from obligations arising out of Part II of the General Agreement. The problem was aggravated in a particular case by the fact that prior existing mandatory requirements removed all discretion as to the imposition of countervailing duties.

15. As regards the general question of the application of countervailing duties, several representatives suggested that there was need for a code along the lines of the Anti-Dumping Code, although the adoption of such a code would be difficult until all contracting parties had accepted the same obligations. Any code might include, inter alia, determination of the subsidy and its amount, determination of injury and the trade effect for third countries. However, it was pointed out that countervailing duties, unlike anti-dumping action, were in some cases a response to measures that are prohibited under Article XVI:4.

16. The view was expressed that there should be a measure of consistency between any new code on countervailing duties and the Anti-Dumping Code since they would both be interpretations of Article VI. One delegation presented a note (Annex) which outlined those elements of the Anti-Dumping Code which would appear to be applicable to a code on countervailing duties. Some other delegations supported the approach outlined in this note. Other delegations, even though they gave support to the idea of preparing a code on countervailing duties, expressed the view that such a code should take into account the special position of developing countries, and they recalled the problems that their countries had raised in connexion with the preparation of the Anti-Dumping Code.

17. Some delegations suggested that a code on countervailing duties would presumably have to contain a definition of what constituted a subsidy and, hence, would involve Article XVI. With regard to the proposed code on countervailing duties, it was suggested by some delegations that more experience should be gained on the operation of the Anti-Dumping Code, which in their opinion had not to date been entirely satisfactory, before embarking upon the elaboration of a second code.

18. Some delegations expressed the view that export subsidies rather than countervailing duties were the real problem because it was the export subsidies themselves in the first instance, and not the countervailing duties, which resulted in uneconomic trade distortion. If there were no export subsidies there would be no need for countries to resort to countervailing duties, thus the elimination of export subsidies should be the first objective. It was further suggested by these delegations that any solution to the problem of countervailing duties could be considered only in the context of export subsidies such as the general review suggested in paragraph 12 above.
19. As for the suggestion that the problem was really one of export subsidies, 
the opinion was expressed that this argument would be valid only after all 
contracting parties had signed the Declaration giving effect to Article XVI:4, 
which itself covered only part of the field, a step which seemed unlikely in the 
case of some countries. Furthermore, certain differences of opinion exist, and 
will most likely continue to persist, as to what constitutes an export subsidy if 
no adjustment and development of the definition of a subsidy is undertaken.

20. It was further pointed out by some delegations that the present GATT rules 
relating to countervailing duties are unsatisfactory since third countries are not 
obliged to impose countervailing duties to offset export subsidization that causes 
or threatens injury to an export industry of another contracting party. It was 
suggested that the GATT be amended to permit the injured party, in such cases, 
specifically to suspend concessions on products of interest to the export-subsidizing country. One delegation said that this matter could appropriately be 
discussed in the work on the code it had suggested.

IV. Government procurement

21. Type of solution: Government procurement was a problem of a general nature 
and both the legal and practical aspects of the problem would have to be considered 
together. It was felt that the solution lay in the formulation of a code or set 
of guidelines that would apply to the contracting parties’ government procurement 
operations. The Group agreed that in determining guidelines, the following elements 
should, inter alia, be considered.

22. Main headings:

(i) Objectives and principles
(ii) Definitions
(iii) Procurement entities
(iv) Elimination of existing discrimination
(v) Exceptions
(vi) Purchasing procedures
(vii) Publication of government procurement regulations
(viii) Reporting, review, complaint and confrontation procedures.

Note was taken of the fact that the OECD is addressing itself to this problem and 
that all the suggested main headings were covered by the guidelines which are under 
preparation in OECD. The Group was informed of the status of the work in OECD and 
of the main contents of the envisaged guidelines. It was noted that the work in 
OECD would be pursued at a meeting in February 1971 and that the work there was in 
a fairly advanced stage. It was not considered useful to elaborate further at this 
stage on the main headings in the Group and it was agreed that the best way to 
proceed would be for the Group to follow developments in OECD.
V. State trading in market economy countries

23. Type of solution: It was generally agreed that the existing rules of Articles XVII and II:4, as well as the Interpretative Note to Articles XI to XV, regarding non-discrimination and limitation of protection, seemed reasonably adequate as far as basic principles were concerned, and that the problems appeared to lie in the area of implementation, where some elaboration of procedures might be considered. Some countries suggested that specific solutions might be worked out, and the view was expressed that this might be on a case-by-case basis. In the opinion of certain delegations the procedures for consultations under Articles XXII and XXIII seemed, however, to be adequate. It was noted that the notifications named in this section of the Illustrative List related to State-trading enterprises in developed market economy countries and on that basis the developing countries had participated on their understanding that the Group would base its discussions on State-trading practices of developed market economy countries.

24. Main headings: The following ideas were expressed, inter alia, with regard to the principal elements towards a solution:

(i) With a view to strengthening the effectiveness of Article XVII, consideration should be given to improving the quality, frequency and coverage of reports by contracting parties on State-trading enterprises. (It was noted that only a handful of contracting parties report with anything like the prescribed regularity and that reports were in some cases incomplete as to coverage or failed to respond in the detail envisaged by the questionnaire.) A possible device, which might be applicable here, would be to invite countries who consider their trade interest affected to obtain, through the secretariat, notifications on subjects not covered by regular notifications. The view was expressed that lack of information regarding the margin by which prices are increased (mark-ups) in State trading, including failure to state whether a country is meeting full demands for imported products in accordance with the Interpretative Note to Article II:4, made it difficult for foreign firms and trade partners to determine the extent of discrimination.

(ii) Inclusion of specific reference to the possibility of bilateral and multilateral consultation along the lines of Articles XXII and XXIII might be useful on the understanding that, if no satisfaction were obtained through such consultation, the injured country could be granted compensatory concessions or, failing that, be authorized to suspend the application of equivalent concessions or obligations.

(iii) The view was expressed that the effectiveness of the provisions on State trading might be enhanced if countries sought to negotiate to a greater extent than heretofore, concessions - including possible global purchase commitments - on State-traded products in which they have a trade interest.
25. It was suggested that the secretariat should make a review of the effectiveness of procedures in Article XVII:4 and make recommendations for improving them. Where concessions were in operation, the review might cover the question whether countries had observed the rules of Article II:4. Further light might be shed on the notifications by a study to determine to what degree the problems involved in the notifications had been caused by governmental restriction of quantity purchased rather than by the nature of State trading as such. This would narrow the problem somewhat by showing separately the degree to which, and ways in which, State trading as such created problems, as distinct from the effects of other objectives which might also be involved, such as the protection of particular sources of supply, revenue considerations or social policy.

VI. Other restrictive practices

26. It was agreed that the original title "restrictive practices tolerated by governments" should be changed to "other restrictive practices" because it was found that this section not only included practices tolerated by governments but, in addition, those imposed by governments. Notifications under this heading include miscellaneous items, some of which are in fact under direct governmental control (e.g. restrictions on advertising of certain spirits, or control of activities of branches of foreign companies) while others fall outside governments' direct responsibilities (e.g. import-restricting activities of trade unions). In the former case it was suggested by some delegations that solutions might lie in the acceptance by the governments concerned of the same practices as were found to be generally acceptable internationally.

27. As regards practices outside government control, it was pointed out that no provisions of the General Agreement were specifically applicable although such barriers could have damaging effects on imports and run counter to GATT's intentions. It was suggested that in cases where such practices were contrary to national legislation, that legislation should be applied and that in the case of practices not covered by legislation, governments should take appropriate action to solve the problems.

28. It was noted that the question of prohibitions on advertising of spirits (item 48.2) should continue to be discussed by Group 5 together with certain other non-tariff barriers on trade in alcoholic beverages.
ELEMENTS OF A CODE ON COUNTERVAILING MEASURES

Proposal by One Delegation

Because of the close relationship between anti-dumping and countervailing measures and the fact that Article VI of GATT deals with both, it seems desirable to introduce a measure of consistency between any new Code on countervailing duties and the existing Anti-Dumping Code. From the note it can be seen that a large part of the existing Code would be equally applicable to a new Code so that major problems in drawing up a new text might be minimized. Although, for the same reason, the adoption of such a Code would not be a major step forward, it would make the contractual position on countervailing duties somewhat clearer and would remove certain anomalies which exist at present.

1. The Anti-Dumping Code interprets Article VI of the GATT and elaborates rules for its application in respect of anti-dumping duties. It would be useful to consider whether a similar Code could be applied to countervailing duties.

2. In so far as it interprets concepts such as material injury which are quoted in Article VI as applying to both countervailing and anti-dumping action it would seem reasonable to hold that the interpretation given in the Anti-Dumping Code should apply equally to countervailing action.

3. In relation to procedures laid down in the Anti-Dumping Code which are not specified in Article VI (e.g. on notifying the countries and firms concerned; what is an "industry"; the public announcement of decisions reached) signatories are formally committed to apply them in relation to anti-dumping duties only. Although many countries no doubt already apply these procedures in countervailing duty cases also, it would be useful to make this a formal obligation.
The following Articles in the Code would be relevant also in relation to subsidization, the only changes necessary being, in general, the substitution of the words subsidy, subsidies or subsidization for dumping:

Article 1 - All countervailing action to be subject to Article VI.

Article 3 - Determination of injury.

Article 4 - Definition of industry for the purpose of an investigation (including the possibility of action on behalf of regional industries in certain circumstances).

Article 5(a) - Initiation of cases on application only (normally).
  (b) - Subsidization and injury to be considered simultaneously.
  (c) - Application to be rejected, or the investigation stopped, if the effect of subsidization is found to be negligible.
  (d) - Normal customs clearance of goods to continue.

Article 6(h) - Notification of decisions to the countries and firms concerned.
  (i) - If facts are withheld decisions may be taken on the information available.

Article 8(a) - Action to be permissive. A countervailing duty less than the margin of subsidization to be imposed, if this would suffice to remove the material injury.
  (c) - Duty not to exceed the subsidy element.

Article 9(a) - Countervailing duties to remain in force only so long as is necessary to counter materially injurious subsidization.
  (b) - Authorities to review cases at intervals and on request.

Article 15 - Any changes in legislation, regulations etc. to be notified to the contracting parties.

Article 16 - Annual Report to be made to the contracting parties on action taken.

It would be for consideration whether the Code provisions on provisional and retroactive duties (Articles 10 and 11) should be applied also in the case of countervailing duties. The question of machinery to review implementation would also arise.
6. Articles 2, 6(a) to (g), 7, 8(b), 8(d) and 8(e) of the Code could not be applied directly to countervailing action. But the following points might arise in this connexion:

(a) The accused government to be given a proper opportunity to comment on the charges.

(b) The investigating government to be given all reasonable information including the opportunity of personal discussions with the authorities directly concerned with the alleged subsidy.

(c) How any necessary enquiries of firms as well as governments should be conducted.

(d) The accused government to be given the opportunity of making suitable administrative changes as an alternative to countervailing duties, if the verdict goes against it.
Appendix 3

REPORT OF WORKING GROUP 2 ON NON-TARIFF BARRIERS

Examination of Items in Part 2 of the Illustrative List
(Customs and Administrative Entry Procedures)

1. Working Group 2 was established by the Committee on Trade in Industrial Products in December 1969, to examine the following subjects in the Illustrative List (Annex I to document L/3298): desirability of harmonization of valuation systems, special valuation procedures, anti-dumping practices of certain countries not accepting the Anti-Dumping Code, desirability of wider acceptance of the Brussels Tariff Nomenclature classification, and certain problems of documentation, notably regarding consular fees and formalities. At the request of the Nordic countries the Group decided to examine samples requirements although this subject is not contained in the Illustrative List. The Group met from 17 to 26 March and 3, 4 and 9 December 1970 under the Chairmanship of Mr. F.A. van Alphen (Netherlands).

2. In accordance with the desire of the CONTRACTING PARTIES, as expressed in their conclusions, that as the work of the Groups proceeds, particular attention should be paid to the problems of developing countries including especially the problems of those countries dependent on a limited range of primary products, the Group examined the possibility of treating separately on a priority basis any of the problems encountered in this sector. One or more developing countries had joined in six of the notifications on the priority list and four other notifications by developing countries concern measures related to the problems identified in the Illustrative List. As will be seen below, this examination showed that there was little scope for separate action on developing countries' problems since both developing and developed countries are faced with a single set of problems caused by lack of uniformity in customs and entry procedures of different countries.

3. The Group not only had in mind the general terms of reference in regard to the exploratory nature of its work, but wished to emphasize that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products.

I. VALUATION

4. At the outset of its work, the Group noted that the first two problems with which it was called upon to deal were the desirability, in the view of notifying countries, of harmonization of valuation systems and problems created for the
notifying countries by certain countries' special valuation procedures to which recourse was had in the cases where invoice values were not acceptable. The Group agreed that the two subjects overlapped to such an extent as to make it desirable to take the two topics together. They also agreed to take into account certain closely related notifications not on the Illustrative List. These included the subject of uplifts and a consideration of the minimum value practices of Brazil and of the treatment of refunded customs duties by Canada.

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

6. In the case of some countries using f.o.b. value, their legislation made it mandatory to accept the f.o.b. value or the current domestic value of the exporting country, whichever was higher. Some countries said that the use of a value at the point of sale in the exporting country, if necessary supported by full field investigation abroad, created many difficulties and much uncertainty for exporters. Such difficulties, they indicated, were particularly great in situations where there was no real domestic market or only a small market using smaller quantities and different qualities of goods. Representatives of developing countries said that the use of such prices worked particularly to their disadvantage where internal prices had no direct relationship with prices their goods could obtain in the international market. In that connexion it was explained that although invoice prices of export goods were higher than the cost of manufacture and reasonable margin of profit, these prices were generally less than the current domestic prices. They pointed out that the structural imbalances and the supply scarcities which often existed in developing countries, coupled with inflationary pressures inherent in their economic development process resulted in domestic prices ruling at artificially high levels. In addition, in some cases, goods which were produced in 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.

7. It was also pointed out that the method of determination of "fair market value" as well as methods used for fixing "reasonable margin of profit", wherever practised, created not only further difficulties but also uncertainties as well as discrimination amongst exporters in developing countries.
8. It was further pointed out that some countries' legislation provided that, where current domestic values could not be established, their authorities should determine a value for duty at their own discretion. Some delegations considered that this provision, besides being arbitrary, offered the possibility of discriminatory action.

9. Article VII contains certain principles on three main aspects of valuation: definition of value, calculation of value, and procedures. However, the Article does not establish how these standards should be applied, nor does it interpret them precisely; further work done in 1955-56 likewise failed to clarify some central questions. In particular, Article VII does not furnish any definition of value but simply lays down the principle that value should be based on the "actual value" of the imported merchandise, that is to say the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions, or the nearest ascertainable equivalent of such value - and not an arbitrary or fictitious value, nor a value based on the price of national goods in the importing country. On the calculation of value, it is simply stated that when imported goods have been relieved of internal taxes applicable within the country of origin or export, such taxes should not be included in dutiable value. There was no specification of the procedures to be used other than that they should be stable and sufficiently clear for traders. Because of the vagueness of Article VII and the use of procedures of exception, no country considered that its system was inconsistent with the terms of that Article.

10. The Group was of the opinion that the application of Article VII would be improved if it were possible for all countries to accept the following principles in applying the Article:

(a) An acceptable valuation system should be neutral in its effect and in no case be used as a disguised means of offering additional protection over and above that provided by rates of customs duties either regularly, with respect to all shipments of particular kinds of goods, or in special cases when dumping was suspected, or to penalize imports from competitive sources.

(b) An acceptable system should be non-discriminatory as between different countries of supply.

(c) Valuation systems should be simple and in no case use arbitrary or fictitious values.

(d) Administration of valuation systems should take into account:

(i) the need for advance certainty to traders as to which method of valuation would apply to particular classes of goods and types of shipment;
(ii) full publicity to the bases on which value would be calculated under the method applicable (covering factors such as time, place, quantities, level of distribution to be considered);

(iii) expeditiousness of the procedure;

(iv) the safeguarding of business secrets;

(v) an adequate appeals procedure, carried out by agents independent of those making initial decision.

11. It was pointed out that these principles corresponded to a large degree to the Brussels Principles of Valuation and in any case did not go much farther than the Brussels principles and the principles contained in Article VII. Some representatives of non-BCV countries pointed out that their valuation systems also corresponded to a large degree to these principles. The problems encountered resulted not only from the fact that principles on valuation were not explicit enough, but also from the fact that they were not being observed.

12. The Group was of the opinion that the valuation problems notified resulted primarily from the application of different methods of valuation where invoice values were not acceptable. They said such problems could be alleviated by:

(a) More precise fall-back bases of valuation when invoice values are not acceptable, particularly in transactions between related parties although there were adjustments to be made in other transactions. In this connexion, it was proposed that all countries agree that their customs officials explain on request how they arrived at uplifts and give importers an opportunity to comment thereon. Customs officers should specify the nature of the relationship between the importer and the exporter and the justification for the amount of the uplift. Such a requirement could take the form of an interpretative note to Article VII along the following lines.

In cases where the price paid or to be paid for imported goods was not acceptable as a basis for valuation, the difference between that price and the accepted value for duty must be explained if the importer and the exporter so requested it.

(b) Impartial appeal procedures by all contracting parties carried out by authorities independent of those making the original decision. Again, this could be accomplished through an interpretative note to Article VII or Article X along the following lines:
"All contracting parties agree to provide an impartial and independent appeal procedure to permit interested parties to appeal valuation decision of customs authorities."

13. The countries which apply the principles of the Brussels Definition and the interpretative notes thereto were of the opinion that the problems in this area called for an overall solution. Other countries were of the opinion that the system of valuation used, whether BCV or any other, was not the problem but rather how the particular system was applied by individual countries. They considered therefore that the problems of valuation which had been notified could best be dealt with on a case-by-case basis and that the harmonization of value systems would not necessarily help. A third group of countries, including the developing countries, while not ruling out an overall solution, were inclined to the view that elaboration of more precise interpretations of Article VII appeared to be more practicable. They emphasized that in seeking any overall solution a major consideration should be to avoid an increase in tariff protection which might be involved if too much emphasis were placed on bringing about complete harmonization between the different practices.

14. This report outlines the various proposals and then takes up the problems posed by them. As will be seen, the various solutions discussed are not mutually exclusive but could in some cases be combined. The principal problems that are the subject of notifications already made are set forth in Annex I.

15. Most countries felt that the harmonization of valuation systems could contribute substantially to the development of international trade in a climate of stability and certainty. They believed that Article VII is too vague and should be made more explicit, and they propose:

- that each contracting party should use one single concept of valuation;

- that this concept should in all cases be based:

  - on economic and commercial realities;

  - on the principles of Article VII which should be accepted in full by all contracting parties, who would renounce any procedures of exception with respect to valuation;

  - on interpretative rules for Article VII, specifying in particular the constituent elements of any definition of value for customs purposes, i.e. price, time, place, quantity and trade level.
Taking into account the fact that the great majority of countries already use the Brussels Definition, which lays down precise rules with respect to these elements, these same countries were of the opinion that the Definition constitutes the most appropriate basis for formulation of such rules. Aware of the difficulties involved for some countries in shifting from f.o.b. valuation to c.i.f. valuation, they were however of the opinion that the two systems could exist side by side and that a renegotiation of the tariff concessions provided for under Article II of the General Agreement could be avoided if those countries, while accepting the above-mentioned rules, reduced the calculated value for customs purposes by the cost of freight and insurance up to the place of introduction in the importing country. In addition, the signatories of the BCV felt that countries already applying the BCV but not yet signatories ought to be able to accede to the Convention.

16. In support of their proposals these countries maintained that such interpretative rules would guarantee a simple concept in international trade, as follows:

- to be applied in uniform manner to all categories of goods (including those that are not sold);
- to reflect as faithfully as possible commercial practices followed in conditions of full competition and, to that end, to permit the use in most cases, as the basis for valuation, of the prices agreed on in sales contracts, while leaving to national administrations the possibility of intervening in cases where the price of goods has not been fixed in normal conditions;
- to give importers the opportunity to calculate ahead of time the customs valuation and charges;
- to make the importer fully responsible for all information furnished by him concerning the valuation of imported goods, and to avoid the need for the exporter to draw up special documents;
- it appeared that with regard to the five constituent elements of value for customs purposes, only the place element, that is to say, the difference between the c.i.f. price and the f.o.b. price, could constitute a real problem for the adoption by certain countries of the Brussels Definition. The set of rules proposed seemed to offer a solution to that difficulty. So far as the price element was concerned, the adjustments to be made did not present any difference that would be impossible to settle. With respect to the quantity and level elements there were no very appreciable divergencies and as regards the time element the very extensive allowances permitted by the Brussels Definition removed any insuperable difficulties of acceptance.

17. Non-BCV countries having f.o.b. systems said that they did not regard their system as more of a non-tariff barrier than any other system and, inter alia, made the following points:

1. They believe that difficulties would be created for them in adopting these proposals since the BCV system did not always call for prices actually paid, thereby permitting extensive discretion to administrators.
in finding the notional price. This was essentially their problem with uplifts or with any determination of value when invoice values were not accepted.

2. They believe that exporters would face greater difficulty in determining the value for duty when value is determined in the importing country, as with the BCV system, than when value is determined on actual prices paid in the exporting country; and also in their view the BCV system made appeal more difficult.

3. Very extensive distortion of existing competitive relationships among trading partners would be involved in a shift from f.o.b. to c.i.f.

4. The Brussels system of valuation would cause particular difficulties for countries which geographically have large overland distances between ports of entry and between market centres. The adoption of c.i.f. values would distort both trading and transportation patterns. The suggestion that the adoption of the Brussels system using f.o.b. value redefined as c.i.f. value minus freight and insurances does not alleviate these difficulties associated with the c.i.f. system itself. Such a procedure could result in different values for duty being applied for the same product at the same port of entry even when shipped by the same exporter.

5. The suggested system offers no greater precision as to price, time, place, quantity, and level of trade.

6. In response to the proposal that countries now using f.o.b. valuation adopt the Brussels Definition but retain f.o.b. valuation and thereby not increase duties, it was pointed out that Brussels valuation on an f.o.b. basis could often be higher than present f.o.b. valuation. The Brussels system, under which valuation varies according to the quantities involved and the commercial stage or level (wholesale, retail, etc.) of the actual transaction, tends to increase the value base as compared with valuation based on usual wholesale quantities. Furthermore, Brussels valuation on an f.o.b. basis would include commissions, inland charges, and loading and unloading charges, which in many instances are not included under f.o.b. valuation not based on the Brussels system. Thus, in more than half the cases the dutiable base for imported goods would be higher under a Brussels f.o.b. system.

18. The countries that use the principles of the Brussels Definition could not share the point of view expressed in paragraph 17. They were aware that in certain cases the shift from f.o.b. valuation to the Brussels Definition (while maintaining the f.o.b. or ex-works concept) could result in an increase in value for duty; they considered, however, that the number of such cases would be less than that indicated in paragraph 17, sub-paragraph 5, if account was taken not only of the f.o.b. or ex-works system, but also of the various fall-back systems which could be used at the time of valuation. They considered that such an increase could be avoided to a great extent if the "place" element was sufficiently well-defined.
Furthermore, they were of the opinion that the real problem lay not so much in the f.o.b.-c.i.f. controversy as in the existence, in certain "f.o.b." countries, of alternative systems such as the price in the domestic market of the importing country and the price in the domestic market of the exporting country. This latter method involved the presence of foreign officials in the country of export, carrying out inquiries, which could present the characteristics of an anti-dumping investigation, into elements that were often highly confidential to be supplied by the exporter, if he did not wish to be charged automatically. Certain other delegations agreed that these inquiries were objectionable.

19. Some countries applying the f.o.b. system noted that in the great majority of cases invoice values were accepted as the basis for duty valuation. However, in those cases where there was some reason to question invoice values, investigation was carried out by correspondence or if necessary by the visit of a representative. These investigations were conducted on a different basis and were quite separate from those initiated in accordance with the Anti-Dumping Code.

20. It was proposed that countries which used methods necessitating determination of value of exports on the internal market of the exporting country should instead use for the purposes of valuation:

(a) invoice prices for like products for export to the major export market or,

(b) invoice prices generally obtained for like products for exports to other third country markets.

This would obviate the need for making elaborate enquiries in exporting countries for ascertaining domestic prices of the same or similar products. Representatives of developing countries were of the view that the adoption of the proposal would also resolve some of the difficulties experienced by those countries, for example those noted in paragraph 6.

21. It was further suggested that paragraph 3 of Article VII be amended in the manner originally proposed by Review Working Party II, in 1955, namely: that the words "customs duties or" be inserted before the words "any internal tax" (see BISD, Third Supplement, page 213). The purpose of the proposed amendment would be to prevent the inclusion of refunded or exempted customs duties on imported raw materials in the valuation for customs purposes, as is already the case with refunded internal taxes.

22. The representative of the United States said that if appropriate concessions were offered his Government was prepared to consider the elimination of the final list system of valuation which will require legislation. Elimination of the final list would in his view remove most of the difficulties described in paragraphs 6 and 21. He also noted that the repeal of ASP was now pending before the Congress. He wondered what specific problems would remain if these two valuation practices were eliminated.
23. Some members suggested that consideration be given to interpretative notes to Articles VII:2(a) and 2(b), to deal particularly with the problems created by minimum value practices. In the context of Article VII:2 it was pointed out that while these minimum values might not be "fictitious" they could be described as "arbitrary".

24. A large number of the members of the Group agreed to recommend to the Committee on Trade in Industrial Products, that, in the event of a decision to continue work on valuation, an expert group be established to examine the possibility of a further interpretation of the provisions of Article VII. This expert group would use the agreed principles in paragraph 10 of this report as a point of departure and would take into account the various proposals contained in the above paragraphs, the Brussels Principles on Valuation (which are contained in Annex VI), as well as any additional suggestions that might be advanced during the course of its work.

II. ANTI-DUMPING DUTIES

Nature and scope of the problems

25. Members of the Group which are parties to the Anti-Dumping Code stressed the importance of certainty and uniformity in the application of anti-dumping measures and requested contracting parties to GATT which had not yet adhered to the Code to do so at an early date.

26. A member of the Group, while stressing the importance of a wide acceptance of the Code, underlined that there were three kinds of incompatibility of a country's anti-dumping legislation with the provisions of the GATT. The first, and most serious case, was when a contracting party had legislation that was clearly incompatible with its GATT obligations. The second case was when a contracting party applied measures which were permitted only because the country applied GATT under the Protocol of Provisional Application. The third was when a contracting party had legislation which was on the whole in conformity with Article VI but which did not conform to the provisions of the Code.

27. The Group noted that the developing countries had, at the time the Code was negotiated in the Kennedy Round, expressed reservations on the Code because it had not been possible to reach agreement on the inclusion of special provisions to meet some of the specific problems of the developing countries. It was explained that some of the points then raised by developing countries were: (i) an undertaking by developed countries that they would take into account Part IV of GATT in the application of the Code to imports from developing countries; (ii) the definition of normal value as the home market price in the exporting country (Article 2(a) of the Code); (iii) the lack of recognition that a "particular market situation" often existed in developing countries (Article 2(d) of the Code); (iv) the determination of injury in the way it was provided in Article 3; and, (v) anti-dumping action on behalf of a third country as provided in Article 12. Developing countries members of the Group recalled that the CONTRACTING PARTIES, at their twenty-sixth session, had directed the Council to make arrangements for a wide and early acceptance of the Code and expressed the hope that a solution would be found to the special problems of the developing countries, either through an amendment to the Code or through an understanding regarding its application to exports from developing countries.
Possible solutions

28. The Group generally agreed that harmonization of anti-dumping legislation on the basis of the Code would facilitate world trade and invited developed countries which had not yet done so to accede to the Code and to use, in the meantime, the Code as a standard for their application of Article VI.

29. It was noted that the Council had established a Working Party to examine the special problems of developing countries in connexion with the Anti-Dumping Code and to propose solutions to these problems. The Group expressed the hope that solutions would be found which would permit developing countries to accede at an early date.

30. A member of the Group said that the difficulties for some countries in accepting the Code seemed to be of a procedural, rather than a fundamental, nature. He suggested that the Committee on Trade in Industrial Products should invite the Anti-Dumping Committee to make arrangements for discussions with such countries in order to facilitate their adherence to the Code. Others pointed out that the function of the Anti-Dumping Committee was to provide for consultations on matters relating to the administration of anti-dumping systems in the participating countries.

31. At the December meeting it was noted that the members of the Committee on Anti-Dumping Practices had noted the above suggestion and had invited those countries facing procedural difficulties in accepting the Code to consult informally with them at the date of the next meeting of the Committee with a view to finding a solution that would enable these countries to accede to the Code. Certain members were of the opinion, however, that all developed countries should accept the Code as soon as possible.

32. The discussion on particular notifications, not directly related to the acceptance of the Code, is reproduced in Annex II.

III. CUSTOMS CLASSIFICATION

Nature and scope of the problems

33. The notifying countries noted that practically all the contracting parties had adopted the Brussels Tariff Nomenclature (BTN) as the basis for their customs tariffs, except for a few countries including such important trading countries as Canada and the United States. In the view of several delegations, the customs schedules of these two countries were too complicated and at times lacked precision because of the absence of a definition for certain criteria for classification. In the view of these delegations this lack of precision, often aggravated by the lack of systematic explanatory notes, caused uncertainty for exporters.
34. The representatives of Canada and the United States did not agree that their national tariff nomenclatures were barriers to trade. They maintained that their nomenclatures were no more complex than the BTN and they pointed out that exporters could obtain binding advance tariff classification rulings. In addition they mentioned published decisions on tariff classifications in customs bulletins and "Summaries of Trade and Tariff Information" in the case of the United States and "Explanatory Memoranda" in the case of Canada which had the same purpose as the Explanatory Notes to the Brussels Nomenclature.

Possible solutions

35. The notifying countries noted the position of the two main countries not applying the BTN but felt that the best solution would be their adoption of the BTN.

36. The great majority of the members of the Group agreed that there was in many countries a need for further clarity and simplification in their tariff nomenclatures. They invited countries to give sympathetic consideration to requests for action in that direction.

37. The great majority of the members of the Group noted that explanatory notes were often an essential complement to tariff nomenclatures. They invited governments, which had not yet done so, to prepare systematic explanatory notes to their tariff nomenclatures, or at least to the sections of their tariffs where there was an obvious need for further guidance in order to ensure a correct classification. Moreover, it was suggested that since the work involved would be long, these governments should give priority to the more important trade items.

38. The great majority of the members of the Group agreed that it was essential to establish and keep up-to-date concordances between the BTN and other nomenclatures. They noted with satisfaction that concordances between the BTN and the nomenclatures of Canada and the United States were being prepared in multilateral consultations and would be available shortly.

39. The great majority of the members of the Group considered:

- that requests for information addressed by the customs authorities to exporters of declared goods should be limited to what was essential;

- that the formalities to be complied with by exporters wishing to obtain information from customs authorities should be reduced to a minimum, and that replies to requests for classification of goods before they were imported should be rapid and incontrovertible;

- that any disputes regarding classification should be settled rapidly by an impartial and independent body.

40. The representative of the United States said that his Government recognized that adoption of the same tariff nomenclature would have some advantages both for the United States and other countries, particularly in comparing tariffs for purposes of trade negotiations and for statistical purposes. However, he pointed out that conversion to the BTN would cause problems and that it would be a long time before the technical work involved in such a conversion could be completed and negotiations concluded with other countries. Nonetheless, the United States was prepared to study the question of adopting the BTN.
41. The representative of Canada said that the problems raised with regard to the complexity of the Canadian nomenclature were to a great extent not related to the nomenclature itself but to the existence of the "end-use" and "not made in Canada" clauses, which provided lower duties and would remain even if the BTN were adopted. Canada pointed out that conversion to the BTN would be a long and difficult task which Canada believed would not go as far as notifying countries expected in solving the problems they believed exist. Canada suggested that the most useful approach would be to look at any of the particular proposals for simplification within the present system. Both for exporters and for tariff negotiations the problems would be alleviated through the establishment in the very near future of a concordance between the Canadian nomenclature and the BTN. It was also noted that Canada had a series of published memoranda which provided tariff guidance to interested parties.

42. The representative of India referred to the problem facing his country while preparing for the adoption of the BTN. It had been found that because of the technical complexities involved, it was not possible to ensure in all cases that the margins of preference bound under paragraph 2(a) of Article I of GATT would remain unaffected. In fact in some cases in the transposed new tariff it was unavoidable that the margins of preference would be slightly increased. Introduction of BTN by India, and presumably by other countries in similar position, would be facilitated if the CONTRACTING PARTIES could reaffirm in a general way the decision taken in 1955 in the case of the adoption of new Customs Tariff by the Federation of Rhodesia and Nyasaland that in considering modifications in the bound margins of preference, account should be taken of the overall position in respect of preferences rather than of each separate margin.

43. The discussion on a particular notification, not directly related to the adoption of the BTN, is reproduced in Annex III.

IV. CONSULAR AND CUSTOMS FORMALITIES AND DOCUMENTATION

Nature and scope of the problem

44. The Group noted that the CONTRACTING PARTIES at their twenty-sixth session had requested the Committee on Trade in Industrial Products to deal with the consular formalities that were generally maintained by eight contracting parties. It was noted that various notifications contained in this section of Part 2 of the Inventory of Non-Tariff Barriers related to specific cases of consular formalities and that consular formalities as such were also concerned with Article VIII. Attention was given to the recommendation passed by the CONTRACTING PARTIES in 1952, 1957 and 1962 dealing with consular formalities.

45. The Group noted further that the Illustrative List of the section on consular formalities and documentation contained some items that, although varying from case to case, related to the complexity of customs formalities and documentation requirements of some countries. Most of the other notifications in this section of the Inventory were of the same general type. There was a short discussion on specific items of the Illustrative List which was enlarged by the inclusion of items 134 and 148. New information, specifically concerning individual items in the List, will be introduced as amendments to the texts of the notifications. In
this connexion the representative of Brazil informed the Group that as of 7 March 1970 his country had abolished all consular formalities.

46. The members of the Group which had submitted notifications considered that consular formalities and documentation requirements were substantial restraints to trade and that considerable progress in line with Article VIII could be made by simplifying such requirements and charging fees that would correspond to the services rendered. In this context it was suggested that fees based upon a flat rate charge per shipment would be preferable, in principle, to ad valorem charges related to the value of the goods. On the other hand, members maintaining consular formalities were of the opinion that excessive importance was being given to the remaining consular formalities and fees that were applied by only a few countries. Substantial progress had been made and was being made towards the abolition of consular formalities and fees. For example, members of the Latin American Free Trade Association were taking steps to harmonize and simplify customs formalities. Moreover, it was pointed out that such requirements were generally non-discriminatory while other measures applied by other countries were definitely discriminatory and constituted real obstacles to trade.

Possible solutions

47. The following specific suggestions were made by some delegations:

(a) Consular formalities and fees. It was suggested that an interpretative note to Article VIII should be drawn up, or that the CONTRACTING PARTIES should take a decision, which would require the phasing-out of remaining consular formalities and fees in the course of five years, and during the interim period the CONTRACTING PARTIES should agree that the cost of the service rendered should not exceed a given maximum, for example, $10 per shipment. Another delegation suggested that a possible solution would be to agree that the amount of fees charged would not exceed a given percentage of the value of the merchandise, for example, 1 per cent. During the phasing-out period, countries still regularly maintaining consular formalities would continue to report annually on progress achieved towards the abolition of such formalities.

(b) Customs clearance documentation. It was suggested that a way in dealing with complaints about import documentation requirements of particular countries would be to establish a special sub-committee of customs experts to develop standard forms that would meet the import documentation requirements of all customs services throughout the world. This sub-committee would take into account the work being done in other international organizations so as not to duplicate it. The representative of the United States presented a list of common requirements for a customs invoice and a list of common requirements for an all-purpose (consumption, warehouse, appraisement) entry document, both of which are attached hereto as Annexes IV and V. Some delegations had doubts as to the feasibility of drawing up a common list of customs requirements so long as fundamental differences remained as between customs legislations. They were, however, in favour of the proposal that the sub-committee mentioned above should be appointed. Other delegations, having noted that the Customs Co-operation Council was already engaged in the elaboration of standard forms, considered that the establishment of such a sub-committee was not desirable, because its work would duplicate that of the Customs Co-operation Council.
(c) 

Certificates of origin. It was suggested that where certificates of origin are required and are provided by properly recognized issuing bodies in due form, there should be no additional requirement for consular endorsement resulting in additional cost to exporters.

48. Suggestions were also put forward looking toward carrying out a study on specific questions under this section, with a view to recommending appropriate solutions. This study should take into consideration in the views of those favouring the proposal, inter alia, the following elements:

- Given that consular formalities and fees were maintained for definite purposes, such as revenue, guarantee against fraud, determination of origin, services rendered, etc., the study should consider possible alternative measures to achieve the same purposes without unduly restraining trade.

- In the interests of improving administrative efficiency, the study should try to identify ways of simplifying formalities and making them less cumbersome. At a later stage, on the basis of the findings, assistance might be given to developing countries in implementing recommended measures.

- The study should take into account the following points upon which agreement had already been reached in past recommendations and codes of standard practices:

  - Customs invoices should be abolished. If, exceptionally, they were necessary for valuation purposes they should be simplified in accordance with the model of the Economic Commission for Europe.

  - Consular invoices should be abolished since they constituted a significant obstacle to trade.

  - Certificates of origin should be required only in cases where they were strictly indispensable in line with the Recommendations of the CONTRACTING PARTIES of 23 October 1953 (BISD, Second Supplement, page 57) and of 17 November 1956 (BISD, Fifth Supplement, page 23).

  - Many countries require exporters to sign a special declaration that is inserted in the commercial invoice. Such declarations are in excess of other requirements and though they generally all have the same content they differ from country to country and constitute a burden for exporters. These declarations should be abolished. If considered strictly indispensable they should be harmonized. For the latter cases the study should consider the possibility that all requiring countries adopt a uniform declaration reading, "We certify this invoice to be true and correct", and if necessary including a short statement reading "and that the goods are of .... origin".

  - It was important that recommendations be concrete and practicable, and to this effect they should be based on factual examination of the practices actually in force.
- The proponents of this suggestion reserved their view as to whether at a later stage it might be desirable to establish a group of experts to prepare concrete proposals on the basis of the study.

**Views of the countries maintaining consular formalities**

49. The countries maintaining consular formalities and represented at the meetings expressed the view that too much emphasis was being given to this particular subject, which in their view dealt with measures which could hardly be regarded as non-tariff barriers, at least in the case of the countries which they represented. Certainly it was their view that any formality involved was far less an obstacle to trade than those constituted by many other non-tariff barriers, including those listed in Article VIII:4(b)-(h). In addition, they considered that the material contained in the Inventory already represented a very complete assembly of relevant factual information so that no study was needed.

V. **SAMPLES REQUIREMENTS**

**Possible solutions**

50. The great majority of the members of the Group agreed to recommend to the Committee on Trade in Industrial Products that the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, signed at Geneva on 7 November 1952, should be taken up for reconsideration in GATT with a view to obtaining accession to it by all contracting parties to GATT. At the same time the Convention should be reviewed with the aim of examining the possibility of relaxing its provisions with regard, for instance, to certain weight and value limits. It was also agreed by the great majority of members that to facilitate the implementation of the Convention, contracting parties should be urged to accede to the Customs Convention on the ATA carnet, established by the Customs Co-operation Council which provides a documentary procedure for the temporary admission of goods.
ANNEX I

MAJOR MATTERS COVERED BY THE NOTIFICATIONS ON VALUATION
CONSIDERED BY THE WORKING GROUP

Australia  
- determination of value (Item 88)
- support values (Item 89)

Brazil  
- minimum values (Item 91)

Canada  
- determination of value (Item 92)
- use of charges (Item 93 - this item was deferred for further consideration in Group 5)
- inclusion of refunded duties in value (Item 94)

South Africa  
- determination of value (Item 104)

United States  
- use of ASP (Item 108)
- special valuation procedures of "final list" (Item 109)
ANNEX II

PARTICULAR NOTIFICATIONS RELATING TO ANTI-DUMPING DUTIES

Item 81: Austria - market disruption legislation

The representative of Hong Kong pointed out that the Austrian anti-dumping legislation did not conform with the provisions of Article VI of GATT or with the Anti-Dumping Code. It based action on prices for similar products of Austrian origin and did not provide for an injury requirement. In addition action under its provisions was discriminatory and could thus not be justified under Article XIX. He expressed the hope that Austria would soon ratify its signature to the Code and abide by its requirements. The representative of Austria, with regard to the particular problem raised by Hong Kong, recalled that bilateral discussions had been held and that it had been agreed to resume them if necessary.

Item 83: South Africa - calculation of anti-dumping duties

The representative of Hong Kong said that the problem in this case was really the same as the one raised in the Valuation Section regarding current domestic values in the case of Hong Kong (Item 104). Anti-dumping action was taken against Hong Kong on products which his delegation considered were not dumped by Hong Kong in the South African market. In the absence of adequate evidence of current domestic values in Hong Kong, arbitrary values were charged on the difference between these and invoice prices. There was also no adequate injury provision in the legislation. In his view the question of dumping should be assessed against Hong Kong prices for similar products in its major export markets as provided for in paragraph 1(b)(i) of Article VI. The representative of South Africa said that South Africa experienced problems in the determination of current domestic values in the case of Hong Kong because of the particular market situation in that country. The South African anti-dumping legislation did not follow the wording of Article VI on the question of injury, but the underlying principle was the same. He undertook to refer the proposals made by Hong Kong to the authorities in South Africa.

Item 85: Spain - "abnormal price" system

In view of the nature of the measures which could be taken under this system, the Group agreed to refer the item to Part 4 of the Non-Tariff Barrier Inventory. The representative of Spain underlined that the Order of 7 July 1967 was closely related to the anti-dumping legislation of Spain. If Spain adhered to the Code, the Order would automatically be abolished.
ANNEX III

PARTICULAR NOTIFICATIONS RELATING TO CUSTOMS CLASSIFICATION

Item 113: Australia - substitute notice system concerning textiles and chemicals

Apart from the problems related to the desirability of a wide acceptance of the BTN, one member referred to notification No. 113 and there was a short discussion on this matter.
ANNEX IV

COMMON INVOICE REQUIREMENTS FOR CUSTOMS PURPOSES

1. Whether or not the merchandise is consigned or purchased.
2. Name and address of the seller/exporter.
3. Name of the purchaser.
4. Date of purchase.
5. Date of shipment.
6. Marks and numbers of shipping packages.
7. Manufacturers' or sellers' numbers.
8. Description of goods.
9. Unit value or price in the currency of purchase and terms of sale.
10. Total invoice value plus all other costs, charges and expenses.
14. Any rebates, drawbacks, bounties or other grants allowed upon exportation of the goods, separately itemized.
15. Information as to assistance given by the importer to the manufacturer of the imported items and not included in the unit price.
ANNEX V

COMMON REQUIREMENT FOR AN ALL-PURPOSE (CONSUMPTION, WAREHOUSE, APPRAISAL) ENTRY DOCUMENT

1. Foreign port of lading.
2. Port of unlading.
5. Importing vessel or carrier.
6. Importer of record (name and address).
7. Party for whose account the merchandise was imported (name and address).
8. Date of export.
9. Date of import.
10. Dock or terminal location of merchandise.
11. Bond number.
12. Bill of lading number.
13. Type of invoice supplied with entry document, i.e., pro forma, commercial, or special customs invoice and number of pages.
14. Description of merchandise, tariff identification number and total quantities expressed in units listed in the tariff schedules.
15. Entered rate of duty.
16. Total entered value.
17. Currency conversion rate if other than official rate.
18. A signed declaration by the party presenting the entry document stating that all listed information is true and correct. If contrary or supplemental information is received by declarant after entry document is filed with customs, such information will be immediately reported to the chief customs officer at the port of entry.
ANNEX VI

THE BRUSSELS PRINCIPLES OF VALUATION

Principle I - Dutiable value should be based on equitable and simple principles which do not cut across commercial practice.

Principle II - The concept of dutiable value should be readily comprehensible to the importer as well as to the customs.

Principle III - The system of valuation should not prevent the quick clearance of goods.

Principle IV - The system of valuation should enable traders to estimate, in advance, with a reasonable degree of certainty, the value for customs purposes.

Principle V - The system of valuation should protect the honest importer against unfair competition arising from undervaluation, fraudulent or otherwise.

Principle VI - When the customs consider that the declared value may be incorrect, the verification of essential facts for the determination of dutiable value should be speedy and accurate.

Principle VII - Valuation should be based to the greatest possible degree on commercial documents.

Principle VIII - The system of valuation should reduce formalities to a minimum.

Principle IX - The procedure for dealing with lawsuits between importers and the customs should be simple, speedy, equitable and impartial.
Appendix 4

REPORT OF WORKING GROUP 3 ON NON-TARIFF BARRIERS

Examination of Items in Part 3 of the Illustrative List
(Standards Acting as Barriers to Trade)

1. Working Group 3 was established by the Committee on Trade in Industrial Products in December 1969, to examine the following subjects in the Illustrative List (Annex I of document L/3298): disparities in existing legislation or regulations, disparities in future legislation or regulations, lack of mutual recognition of testing, unreasonable application of standards, packaging, labelling and marking regulations. The task of the Group was to explore, on the basis of the information in the inventory and any information that might be subsequently furnished, possibilities for concrete action. The work was to be conducted on the understanding that it was exploratory and preparatory in nature, and involved no commitment on the part of any member of the Working Group to take or join in any action under discussion. The Group emphasized that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products. The Group met from 27 May to 3 June and from 5 to 10 November 1970 under the chairmanship of Mr. S. Kadota (Japan). A separate Note on the November meeting is annexed.

2. The following organizations were invited to send experts to attend the meeting as observers: ECE, EFTA, IMF, OECD, UNCTAD and WHO.

3. The following Articles of the General Agreement were referred to as being relevant to the subject: III, VIII, IX, X, XI:2(b), XIII (with reference to Article XI), XX, and more generally, Articles XXII and XXIII.

I. Standards, regulations and their enforcement

Nature and scope of the problems

4. It was generally recognized that the increasing number of standards and regulations resulted in barriers to trade when harmonization is not effected on an international basis, and that new ones were likely to develop. This called for international co-operation to minimize adverse trade effects, where it was agreed that the CONTRACTING PARTIES could make a useful contribution. The technical development of standards should be left to the competent international standardization bodies. The suggestion was made that further discussions of the rôle of GATT in this field would benefit from a more detailed study of the relevant provisions of the General Agreement in order to ascertain the degree of their applicability.
5. At the outset of its work the Group noted the important difference to be drawn between compulsory regulations and voluntary standards. Compulsory regulations are issued by governmental authorities while voluntary standards are usually issued by private organizations on a regional, national or international basis. The distinction is not always clear cut; in some cases, government authorities can exercise a certain influence on the development or enforcement of voluntary standards; or, for example, support them indirectly through specifications set out in government procurement contracts. The distinction between compulsory regulations and voluntary standards was important to draw because of the different possibilities and limits it entailed for government action.

6. It was pointed out that the rôle of governments in the field of standardization differed greatly from one country to another. In some countries, there were more government compulsory regulations, while in other countries there were more voluntary standards developed by private organizations, over which governments had little or no influence. Furthermore, in certain countries regulations were generally issued by the government while in other countries they were in many cases instituted by regional or local authorities. This great difference in government responsibility in the field of standardization was an important fact to bear in mind when seeking solutions to the problems of non-tariff barriers caused by standards. Some delegations pointed out, however, that the area of voluntary standards was largely confined to industrial products. Safety and health regulations were usually compulsory.

7. The Group noted that the development and enforcement of standards and regulations can have trade barrier effects in different ways. For instance when they are based on characteristics peculiar to national production, when they are modified too frequently (although adaptation to technological progress is a necessity) and thus create additional expenses and some degree of uncertainty; and when periods laid down for adapting to modifications of standards are too brief.

8. Certain trade effects can also result from the type of standardization bodies' membership: producers, consumers, local authorities, government, or mixed membership.

9. Although in most cases regulations or standards apply equally to national products and imported products, disparities between countries in standards and regulations can place products from third countries at a disadvantage. This disadvantage can, in particular become apparent in the case of methods of enforcing standards such as testing or production inspection and certification, which at best involve expenses and delays and at worst make it practically impossible for foreign products to fulfil or obtain the necessary approval. It was also pointed out that some of the difficulties arising from the enforcement of standards — through control, inspection testing and certification — resulted from disparities in standards. To the extent that standards and regulations could be harmonized such difficulties would be reduced and solutions to cases of unreasonable application of standards would be facilitated.

10. Members of the Group were aware of the inherent difficulties of harmonizing regulations or standards at an international level.
11. Some delegations were of the opinion that future work would be facilitated if contracting parties had at their disposal a comprehensive survey of the work of international organizations in the field of standardization.

12. There was a short discussion on specific items of the Illustrative List. New information, specifically concerning individual items in the List, will be introduced as amendments to the texts of the notifications.

**Possible solutions**

13. It was felt desirable that the contracting parties draw up a set of principles or ground rules on standardization. The form to be given to such principles, whether a code or guidelines, and whether they should be put on a contractual or voluntary basis, was left open.

14. In this respect, it was pointed out that, within GATT guidelines would have possible constraining effects only if they applied to regulations imposed by public authorities at national level. Such guidelines would have little significance with respect to regulations issued by local public authorities or as regards the numerous private standards and private control or testing procedures. These guidelines might not offer an effective solution for problems arising from such regulations, standards and control procedures. Also they would not constitute a comparable commitment on the part of all contracting parties.

15. On the other hand it was pointed out that a code or guidelines would materially assist governments who did not have direct responsibilities in the field of standardization to influence local authorities and private standardization bodies to align their practices and bring them into conformity with these guidelines. Additionally such a code or guidelines would have influence on the work of international standardization bodies.

16. It was suggested by one delegation that the code or guidelines might also deal with those areas where there was difficulty in reconciling the objective of maintaining adequate standards with the most-favoured-nation principle. It was also suggested that such a code or guidelines should supplement rather than replace existing GATT provisions such as those in Article XX.

17. Various members of the Group made suggestions on general principles and on practical methods which would make it possible to solve or reduce the difficulties. These suggestions concern on the one hand the development and harmonization of standards and regulations, and on the other hand their enforcement through control, inspection, testing, certification, etc.

**A. Development and harmonization of standards and regulations**

18. **General principles**

(1) Contracting parties should ensure that an effective contribution is made to the work of international standards organizations, in order to develop truly international standards.
(ii) Contracting parties should take all appropriate measures to implement where applicable the uniform standards and recommendations adopted by specialized bodies.

(ii)bis Contracting parties should take all appropriate measures to implement the uniform standards and recommendations adopted by specialized bodies.

(iii) Contracting parties should ensure, through the appropriate national bodies participating in the work of international organizations concerned with standardization, that due account is taken of the need to avoid the creation of trade barriers and to eliminate existing barriers.

(iv) Contracting parties should seek to ensure that standards and regulations are not formulated or implemented with a view to afford protection to domestic production.

(v) All international schemes to harmonize standards should be open to all contracting parties, at the stage of formulation. If for practical reasons the formulation of such schemes started out with limited participation, it is important that universal participation remain possible, and that third parties not originally participating be invited to do so.

(v)bis Contracting parties which are not members of existing multilateral harmonization systems should be able to accede thereto to the extent that they so desire and to the extent that they are in a position to fulfill all the conditions in an appropriate manner.

(vi) Contracting parties should make use of the possibilities at their disposal for action to prompt local authorities and private standardization organizations to apply international standards and regulations. In cases where trade difficulties resulting from discrepancies in the regulations issued by local authorities or in standards cannot be resolved otherwise, contracting parties should take the necessary measures to deal with such problems.

(vi)bis Consistent with the principle of Article XXIV:12 contracting parties should take such reasonable measures as may be available to them, on the one hand to prompt local authorities and private standards organizations to apply international standards and regulations, and on the other hand, to resolve trade difficulties resulting from disparities in standards and regulations.

(vii) Where applicable, standards and regulations should be based on performances rather than design.
(viii) Contracting parties should take all reasonable action to ensure that any proposed regulation or standard, whether new or revised, receives sufficient publicity well in advance of its implementation so that all interested parties in fact have an opportunity to take cognizance thereof and comment thereon.

Practical methods

19. (i) It was suggested that in the case of technical regulations the practical methods which the contracting parties could encourage would include:

(a) The development of uniform regulations.

(b) The so-called "optional" solution which gives producers a choice between national regulations or an international standard.

(c) The so-called "reference to standards" solution which consists in defining basic requirements accompanied by decisions that compliance with such requirements shall be ensured through equivalence to previously established and internationally harmonized standards. Such standards could be international standards (e.g. ISO, IEC), national standards or standards which have been harmonized between a number of countries.

(ii) Each contracting party should establish a central point to maintain complete information on existing governmental standards and related regulations as well as those developed by nationally recognized private organizations and to answer reasonable enquiries concerning such standards or otherwise make information available to interested parties.

20. General principles

(i) Contracting parties should endeavour to further efforts to harmonize testing methods and quality assurance procedures on a multilateral basis. It was desirable that the solution to these problems should be sought on an international basis except where technical problems required solutions which could operate only on a bilateral or limited basis.

(ii) The testing procedures for imported products should be as expeditious as possible. The results of such testings should be made available in writing to the exporter so that corrective action may be taken by the exporter if necessary.

(iii) Product inspection and testing requirements should be formulated in such a way that imported products are not prevented from gaining effective access to domestic markets.
(iv) Multilateral quality assurance and certifications schemes should be open to foreign participation where the participants are willing and able to meet the obligations of the schemes. Such participation should begin with the stage of formulating the rules for the scheme.

(iv)bis Multilateral quality assurance and certifications schemes should be open to foreign participation where the participants are willing and able to meet in an adequate manner the obligations of the schemes.

(v) Contracting parties should take into account measures adopted by developing countries to ensure adequate quality standards for their exports. The rigours of testing and inspection procedures which work in some cases as a barrier, could be greatly reduced if the authorities responsible for administration of health and sanitary regulations relied on the measures adopted by the exporting countries for ensuring minimum quality standards, through such means as standardization, quality control, pre-shipment inspection of export products, etc.

21. Practical methods

(i) In order to provide effective access for imported products, contracting parties could employ, individually or pursuant to reciprocal arrangements, *inter alia*, the following methods:

(a) Define testing requirements clearly and publicize them so as to enable foreign suppliers to ascertain whether their own testing requirements and products meet foreign testing requirements.

(b) Delegate control and testing operations in exporting countries to designated laboratories which would perform their task on the basis of the prescriptions and standards required by the importing country.

(c) Make facilities available at designated points of importation to test products manufactured abroad to determine their equivalence to domestic standards.

(d) Where necessary, inspect foreign manufacturing facilities.

(e) Accept certificates of foreign governments or recognized foreign institutions that products meet the requirements of the importing country.

(f) Where forms of control are similar, recognize the validity of certain tests carried out in the exporting country and limit testing of the imported product to those additional or different specifications which have not been tested in the exporting country.

(g) Accept another country's method of testing or controlling even if it is not identical to the national method, provided the other country's methods provide equivalent reliability guarantees.
(ii) Multilateral quality assurance and certification schemes could make provision for the testing and acceptance of products from countries which, for lack of technical capacity or on financial grounds, cannot participate in the schemes. This could be accomplished by:

(a) testing and certifying products from non-participants;

(b) accepting certifications granted by other participants to products from non-participants; or

(c) accepting the certification of competent organizations in non-participating countries where this can be demonstrated to be equivalent to the certification requirements of the scheme.

(ii)bis Multilateral quality assurance and certification schemes could make provision for the testing and acceptance of products from countries which for one reason or another are not participating in the schemes.

This could be accomplished by:

(a) testing and certifying products from non-participants;

(b) accepting certifications granted by other participants to products from non-participants; or

(c) accepting the certification of competent organizations in non-participating countries where this can be demonstrated to be equivalent to the certification requirements of the scheme.

C. Consultation machinery

22. Some members of the Group thought it desirable to have consultation procedures to deal with cases of trade difficulties resulting from the application of compulsory regulations or voluntary standards. To this end it was also proposed that a GATT committee be established to consult on complaints by contracting parties concerning the trade effects of:

(a) proposed or existing standards and regulations;

(b) the implementation of standards and regulations;

(c) testing and certification requirements as to compliance with standards and regulations;

(d) multilateral harmonization programmes for standards and regulations;

(e) multilateral quality assurance and certification programmes.
This committee would examine the trade effects of the measures complained of and make appropriate recommendations. It should meet on an ad hoc basis as determined by the Chairman in consultation with interested contracting parties. Where necessary the committee could call on the representatives of other international organizations for technical advice.

23. Some of these members, while in favour of special consultation machinery, were of the view that any procedures set up should be along the lines of Article XXII and limited to complaints concerning cases of adverse trade effects or of unreasonably burdensome administrative procedures resulting from the application of standards or regulations. Such a body should also be prepared to deal with problems arising from packaging, labelling and marking requirements. It was pointed out that while marks of origin requirements were related to customs procedures and were already covered by Article IX, some aspects would be relevant to a consultation body on standards.

24. Generally, the establishment of consultation machinery should not prevent contracting parties from seeking solutions to particular problems outside the GATT, on a bilateral or multilateral basis.

25. Such machinery should not be a negotiating body nor should it provide for retaliatory action.

26. Other members of the Group held the view that Articles of the GATT, such as Articles VIII, XXII and XXIII provided sufficient basis for consultation and that Article XXIII already provided for a complaints procedure. These Articles were applicable should any contracting party feel that its rights under the General Agreement were being impaired. They were therefore opposed to setting up special machinery for consultation on standards, which would constitute an important precedent in regard to other fields.

27. (i) Some members of the Group suggested that a notification procedure, similar to that provided for in Article XVI, paragraph 1, be introduced and include notification of significant changes or new regulations. It was felt that this procedure would provide an opportunity to all interested parties to be informed in time of the development of new regulations and to consult if necessary.

27. (ii) However, most members were not in favour of a notification procedure. They pointed out that the administrative difficulties involved would not be commensurate with the results.

II. Packaging, labelling and marking regulations

28. It was recognized that packaging, labelling and marking requirements, many of which were designed to protect consumers, could also have adverse trade effects. Efforts to tackle these problems are presently under way in the OECD.
29. It was pointed out that the question of difference of government responsibility in the field of packaging, labelling and marking requirements may in some cases present the same intrinsic difficulties in this field as it does in the field of standards. Consequently, governments' possibilities for action may also differ in some cases and this should be borne in mind in considering possible solutions.

30. It was proposed that packaging and labelling be covered by the provisions relevant to standards and that the question of marks of origin required by customs authorities be referred to Working Group 2. However, it was generally recognized that some aspects of marking requirements remained relevant to the question of standardization.

31. It was noted that the CONTRACTING PARTIES' Recommendation of 21 November 1958 on Marks of Origin (Seventh Supplement, page 30) was relevant to the problems encountered under this heading. It was felt that close observance of this Recommendation would be desirable. For this purpose it was considered useful to ask the secretariat to examine, as a first step, to what extent the Recommendation on Marks of Origin was effectively implemented by the contracting parties. It was pointed out, however, that the Recommendation would need elaboration and further precision on certain points, such as its paragraph 2, which provides that marks of origin "should not be applied in a way which leads to a general application to all imported goods, but should be limited to cases where such marking is considered necessary". The concept of "necessary marking" needed closer definition. There was also need to define the clauses concerning penalties.

32. There was general support for the idea that Article IX and further elaboration of the Recommendation of 1958 would provide the basis for solving the problems arising from marks of origin. One delegation suggested that this Recommendation be put on a contractual basis.
Annex

NOTE BY THE SECRETARIAT
ON THE 5-10 NOVEMBER MEETING OF WORKING GROUP 3

1. The Working Group had before it the following documents: Spec(70)62 - report of the Group's May-June 1970 meeting; Spec(70)122 - a proposal by the United States containing elements of a possible GATT code on standardization, and Spec(70)116 - a note by the United Kingdom delegation introducing a paper originally prepared for the ECE (STAND/Working Paper 8) on the problems connected with standards.

2. At the outset of the meeting, the Group was informed of recent developments in the United States and Canada regarding the steps being taken in each case to enlarge the role of the central government in the formulation and enforcement of standards beyond the fields of health and safety. Recalling the points made at the previous meeting on the differences in government responsibility in the field of standards and more specifically, the apparent inability of the United States and some other countries to comply with requirements of multilateral quality assurance and certification schemes, the representative of the United States reported that the American National Standards Institute (ANSI) which represented virtually all of United States industry concerned with standards had recently established an Ad Hoc Committee on Government-Industry Relations. This Committee had met in New York in November to define the relationship of government and private industry in the standards area. The objective was establishment of a quasi-public standards institute in the United States. The function of the ANSI Group was the result of endorsement in September 1970 by the ANSI Board of Directors of a recommendation that it is both necessary and desirable that the Federal Government participate more actively in standards and particularly at the policy level in ANSI. Included in the ad hoc group membership were: Electronic Industries Association (EIA), National Electrical Manufacturers Association (NEMA), Automobile Manufacturers Association (AMA), Business Equipment Manufacturers Association (BEMA), American Petroleum Institute (APT), American Society of Testing Materials (ASTM), American Society of Mechanical Engineers (ASME), Society of Automotive Engineers (SAE). In the electronics field, the Electronics Industries Association (EIA) had recommended that United States electronic industries participate in an international certification plan and that a national body composed of government and industry be designated as the mechanism to implement United States participation. On the Federal Government side, the matter of the role of the Government in the field of standardization was being discussed in the Inter-Agency Committee on Standards Policy, which represented all federal agencies concerned with standards. (The full text of the opening statement made by the United States representative is reproduced in Spec(70)124.)

3. The Working Group was informed that legislation creating a Standards Council of Canada had recently been enacted by the Canadian Parliament. The object of the Council was, inter alia, to promote voluntary standardization in relation to construction, manufacture, production, quality, performance, safety of building, structures, manufactured products and other goods, as well as to facilitate domestic and international trade and to further international co-operation in the field of standards.
4. The representative of the EEC, after having again underlined the fundamental distinction to be made between standards and regulations, stated that harmonization schemes developed within the framework of the Community were to be considered as internal schemes and not multilateral schemes, such harmonization being the logical consequence of the establishment of an integrated common market. In addition, he explained some of the methods employed within the Community and the advantages in terms of keeping the legislative complications down to a minimum. He promised to circulate a document specifying in more detail the methods he was referring to.

5. The Working Group examined in detail the elements evolved at the May-June meeting on principles and practical methods for harmonization and enforcement of standards, and on consultation machinery (paragraphs 18-31 of Spec(70)62). The Group also examined the elements contained in the proposal by the United States (Spec(70)122). The revised text arrived at appears in paragraphs 18-32 of the present report.

6. The Working Group did not discuss paragraphs 1-17 of its May-June report (Spec(70)62), but decided to include them in the present report, unaltered and with the same numbering.

7. The Working Group agreed that further work on standardization should be done by the contracting parties; there was wide support for an effort to develop a code on this subject, but the question of the character of such an instrument was left open. Others felt that for several reasons paragraph 13 of Spec(70)62 reflected the present situation sufficiently at this stage. One member of the Group was of the view that an instrument drawn up by GATT should not, at this stage, include pharmaceutical products which were in a category of their own due to the special health problems involved.

8. It was emphasized that care should be taken to co-ordinate work with the work of other intergovernmental organizations, such as the ECE and EFTA, so as to avoid duplication in the areas of work which it seemed desirable for contracting parties to pursue. It was pointed out that this question was covered in paragraph 23 of the Note submitted by the United Kingdom (Spec(70)116) where it was suggested that the GATT was the appropriate body to consider a code or set of obligations.

9. It was suggested by some members of the Working Group that further work on standardization could be facilitated by asking the secretariat, at the appropriate time, to assemble the elements of a draft code on standardization.
Appendix 5

REPORT OF WORKING GROUP 4

NON-TARIFF BARRIERS

Examination of Items in Part 4 of the Illustrative List
(Specific Limitations on Trade)

1. Working Group 4 was established by the Committee on Trade in Industrial Products in December 1969, to examine the following subjects in the Illustrative List (Annex I to document L/3298): licensing arrangements, quantitative restrictions including embargoes, bilateral agreements, voluntary restraints, motion picture restrictions including tax matters and screen-time quotas and minimum prices on textile imports. The Group met from 4-8 May, 3 and 8 June, and 7-11 December under the Chairmanship of Mr. H. Collander (Sweden).

2. The Group not only had in mind the general terms of reference in regard to the exploratory nature of its work, but wished to emphasize that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products.

3. The Group noted that its task was, as in the case of other Groups, to seek possible solutions, and that it was well placed to concentrate on possibilities for reducing and removing restrictions since the Joint Working Group had recently reviewed most of the individual notifications in the Inventory. The fact that the Council will examine the question of procedures for keeping notifications of restrictions up to date and the provision of adequate surveillance of restrictions also facilitated concentration on reduction and removal of barriers.

4. In accordance with the desire of the CONTRACTING PARTIES, as expressed in their conclusions, that as the work of the Groups proceeds particular attention should be paid to the problems of developing countries, the Group recalled that the Joint Working Group had identified restrictions with respect to which developing countries indicated specific interest in the course of the meeting of that Group as well as the twenty-five items selected by the Group on Residual Restrictions for priority attention. At that meeting some delegations had suggested that the prompt removal, on a most-favoured-nation basis, of illegal restrictions which bore particularly on the trade of developing countries should receive the highest priority and that, where feasible, time-tables for the elimination or for the enlargement of legal quotas should be set, possibly in relation to the growth of the market, without full reciprocity being required. It was also suggested that when any legal quantitative restriction significantly affected both developing and developed countries' exports, special consideration should be given to its removal on a most-favoured-nation basis in the light of the interest of the developing countries themselves.
5. The Group noted a divergence of view as to the meaning and scope of certain essential concepts in the GATT, in particular the scope of the restrictions covered by Article XI, paragraph 1 and the scope of some of the exceptions to that Article, especially Articles XX and XXI. It was noted that the terms "legal" and "illegal" have been used variously to distinguish sometimes between measures which do or do not fall within substantive provisions of GATT on use of restrictions and on some occasions to distinguish what measures are subject to legal cover permitting deviation from GATT's rules.

6. Some delegations urged prompt and positive action to eliminate all import restrictions applied contrary to the GATT. These restrictions nullified or impaired the value of concessions that in some cases had been negotiated more than twenty years ago. In most cases, the original conditions justifying these restrictions no longer applied. Their continuance undermined the legal basis of the General Agreement. Furthermore these restrictions made it extremely difficult to resist protectionist pressures since pressure groups could cite existing violations of GATT. The following proposal was made by one delegation:

   (1) The prompt elimination of all illegal trade measures.

   (2) Where the prompt removal of illegal measures is not possible, the gradual relaxation of these measures according to a schedule so that they are completely eliminated by 1 January 1972.

   (3) Countries maintaining illegal restrictions after 1 January 1972 would be required to:

   (a) seek waivers of their GATT obligations, or

   (b) pay appropriate compensation.

   (4) Countries obtaining waivers would nevertheless be subject, as is customary, to the provisions of Article XXIII.

This proposal received the support of some delegations.

7. Some delegations noted that this proposal was substantially the same as that made earlier by New Zealand. The debate on the earlier proposal had shown that for a variety of reasons a proposal to remove illegal restrictions as a priority matter was somewhat unrealistic and even inequitable. Whether a restriction was or was not "legal" in GATT terms was to some extent merely a historical accident. Furthermore, if that approach was adopted it was beyond doubt that the contracting parties would exercise much ingenuity to produce legal justifications for more and more of the restrictions in force, with resulting impairment of the force of
GATT's provisions and increasing uncertainty as to which restrictions would be included in such a proposal. There would also be a tendency to shift to restrictions of other kinds, including export restraints and unbinding of tariff rates, which might be at least as harmful to trade. Several delegations also pointed to the large number of discriminatory export restraints which they regarded as disguised import restrictions at least as illegal as any others and maintained that such restrictions should be included in the possible solution.

8. Most delegations expressed a preference for a more overall approach towards liberalization which would cover all quantitative restrictions, whatever their form, both legal and illegal.

Quantitative restrictions including embargoes

9. All countries agreed in principle that quantitative restrictions should be eliminated.

10. The delegations which favoured the proposal outlined in paragraph 6, covering both illegal quantitative restrictions and other illegal trade measures, regarded this approach as the best one for dealing with the problem of quantitative restrictions. These members indicated that while in their view illegal restrictions should be removed unilaterally, the elimination of restrictions covered by the protocols of provisional application should be considered in the context of negotiations.

11. In considering possible solutions which might appropriately be adopted to relax and remove quantitative restrictions and to remove embargoes, the Group's debate focussed on the search for an overall solution in which countries would take action on the restrictions which they presently maintain. During the discussion, a proposal representing a synthesis of various comments made, for a programme to relax and remove restrictions, emerged. This proposal was supported by a large number of delegations. Under this proposal, all developed countries would adopt a programme to phase out their restrictions on industrial products along the following lines:

(1) The programme should include all types of quantitative restriction, whether imposed unilaterally or pursuant to international agreements, whether applicable to goods of all or only specified countries, and whether applied through quotas, export restraints or licensing. Special attention should be given to priority elimination of discriminatory restrictions, restrictions clearly inconsistent with GATT and to the removal of restrictions on industrial products, raw or processed, of which developing countries are important suppliers to world markets.

(2) Effective at latest from the time when the programme was decided upon, new quantitative restrictions or intensification of existing restrictions should not be introduced.

(3) A plan and schedule for removal of restrictions on industrial products should be agreed among the contracting parties not invoking Article XII or XVIII:B, envisaging the elimination by a target date of a maximum proportion

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1 One developing country whose trade is adversely affected by what it regards as an illegal embargo imposed by a developed contracting party expressed a reservation on the ground that the Working Group had not sufficiently dealt with the question of embargoes.
of restrictions of trade significance maintained by each, and taking into account possibilities of arriving at agreements on particular products or sectors. Such agreement might be subject to conditions as to its entry into effect such as progress in other aspects of the general programme of the CONTRACTING PARTIES or the extent of acceptance by contracting parties.

(4) The programme would envisage:

(a) Quota increases effective in stages, keyed either to domestic production of restricted goods or to amounts of the restricted products imported in past years, or tied to development of the internal market, culminating in liberalization by the target date.

(b) At least token quantities of imports of goods heretofore embargoed, with increases in quantities permitted to be imported up to the date of final liberalization.

(c) For difficult cases, including those involving significant domestic social conditions, a limited extension of time beyond the general target date for completion of the liberalization process subject to a satisfactory justification, in yearly consultations beyond the target date, of progress towards removal of restrictions, including a showing of adequate efforts to assist a domestic reallocation of resources which would obviate the need for the restriction.

(d) An examination of "social" reasons for maintaining restrictions which may be common to a number of countries as a means of hastening their final liberalization.

(5) Any restrictions not included in the programme outlined above would be examined by the CONTRACTING PARTIES within a year of the start of the programme to determine whether they were agreed to be consistent with a strict interpretation of one of the substantive provisions of GATT authorizing maintenance of quantitative restrictions (e.g. Articles XIX, XX, XXI).

(6) Thereafter, any restrictions not included in the programme of relaxation and elimination and not found to be consistent with GATT, whether or not now enjoying some form of legal cover, would be the subject of consultation with the CONTRACTING PARTIES at yearly intervals on the understanding that such restrictions remained subject to proceedings under Article XXIII.

12. Some delegations favoured another general approach covering all quantitative restrictions, legal and illegal alike, including those covered by waivers or by the special provisions of protocols of accession, such as the provisional application clause, or by recourse to Article XXXV or to other similar circumstantial provisions. This approach would cover not only import restrictions but also other
quantitative restrictions, whether applied by direct or indirect methods, such as self-restraint. This general approach would be directed towards the gradual liberalization and the progressive elimination of all restrictions as possibilities arose within the framework of the general programme of the CONTRACTING PARTIES. Each developed country would contribute to this programme of liberalization proportionately with the scope of its quantitative restrictions of all types. These delegations considered that this solution was more realistic and had the merit of not excluding numerous restrictions which would remain outside the scope of other proposals; it seemed to them more consistent with the spirit of the general programme of the CONTRACTING PARTIES in the field of non-tariff barriers.

13. Various special aspects which some delegations felt should be taken into account in any overall solution are set out below:

(1) Attention was drawn to the proposal concerning developing countries, contained in paragraph 4, previously made in the Joint Working Group. Some developing countries emphasized that any programme for removal of quantitative restrictions of interest to them would have to take into account the time targets for the Second Development Decade. The removal of restrictions on such products should not also be made to depend on the possibility of agreements among countries maintaining restrictions or on the progress of work in the GATT on other fields.

(2) Developing countries having import restrictions not formally authorized by the CONTRACTING PARTIES but which could be justified under Article XVIII:B were urged to invoke the Article and consult as one contribution to the general effort to remove quantitative restrictions. Other countries with import restrictions not now formally authorized by the CONTRACTING PARTIES should also agree to consult under procedures similar to those applicable in the case of invocation of Article XII or XVIII:B.

(3) Some delegations expressed their serious concern about the discriminatory aspect of the restrictions maintained by some countries, and urged that such features which are inconsistent with the most-favoured-nation provisions of the General Agreement be eliminated as soon as possible.

(4) Some countries suggested that it would contribute to liberalization to draw up a note interpreting Article XXIV in the sense that the Article did not authorize discrimination by any member country, member of a regional grouping in the operation of quantitative restrictions to favour other members of a free-trade area or customs union.
(5) It was suggested that in order to avoid abuse, recourse to Articles XX and XXI should be strictly confined to cases which were clearly and demonstrably consistent with the limited purposes set out in these Articles.

(6) Some delegations pointed out that a considerable reduction of the trade restrictive effects of quantitative restrictions could be obtained if a more objective basis for establishment of quotas were used instead of the practice of allocating quotas on the basis of trade during one preceding year for goods where exports are fluctuating.

(7) One delegation drew attention to the possibility which had been mentioned in the Director-General's proposal on import restrictions (L/3260) that there might be dismantling of restrictions either on a unilateral basis or by negotiations or agreements among pairs or groups of countries. Such dismantling might in some cases be staged. The contracting parties should however be kept informed about the progress achieved in such negotiations.

14. The possibility of an approach by products or sectors within the framework of a general programme was also explored. Such an approach would have a certain bearing on achieving freer trade as countries might find it easier to relax restrictions in sensitive areas if such action were taken concurrently with similar action in several other import markets, since the pressure of increased imports could be spread in this way rather than concentrated on a single country. There was a feeling, borne out to some extent by the preliminary findings of the secretariat, that there might be relatively few areas of the kind. Some delegations pointed out that tariff action might comprise an important addition since some countries still had substantial tariff protection which could well be reduced. Other delegations thought that the scope for tariff action in the framework of a general programme on quantitative restrictions was extremely limited since most such restrictions were illegal and should therefore be removed unilaterally.

15. The Group also discussed the possibility that the chances of success might be improved by a broader and possibly separate sectoral approach in which tariffs and other non-tariff barriers as well as quantitative restrictions might be included.
Discriminatory bilateral agreements

16. Some countries maintained that discriminatory bilateral agreements were against the spirit and the letter of the General Agreement. They proposed, as a first step, that all bilateral agreements of a discriminatory nature, whether based on a clearing arrangement or providing for settlement in convertible currency, should be notified. Since the General Agreement had no provisions dealing with bilateral agreements an interpretative note or declaration should be drawn up prohibiting bilateral agreements where they have a restrictive or discriminatory effect on trade. They further proposed that all discriminatory bilateral agreements should be eliminated over a period of three years and in the meantime no such agreement should be renewed. Any contracting party maintaining bilateral agreements should consult with the CONTRACTING PARTIES as those operating under Article XII or XVIII:B consult at present in the Balance-of-Payments Committee.

17. Some countries stated that the proposal for elimination and surveillance of bilateral agreements should only be applied to developed countries. They claimed that in the case of developing countries bilateral agreements were a means to maximize trade. These agreements had provided a basis for trading with centrally-planned economies and countries having similar trading systems, had stimulated export efforts and led to diversification of exports of the developing countries concerned. In some cases, they relate to the establishment of mutually beneficial co-operation in the industrial and other economic fields. It was therefore impractical to consider elimination of these bilateral agreements. These countries asked the notifying countries to take these facts into account. Some other countries pointed out that, while bilateral agreements may bring short-term benefits to the parties concerned, they usually result in a misallocation of resources and a distortion of trade to the disadvantage of all contracting parties.

18. The question of bilateral agreements with State-trading countries was discussed. On the part of the notifying countries, it was claimed that bilateral trade agreements with countries with centrally-planned economies were maintained in order to get a more favourable trading position than that of other countries. They should, consequently, be terminated at an early date. A member of the Group representing a centrally-planned economy described the different types of trading relationships of his country. Bilateral agreements between centrally-planned countries and developing countries had proved to be beneficial to both parties and should continue to exist. Bilateral agreements with developed countries should, in his view, be eliminated. In his opinion these bilateral agreements could be abolished if most-favoured-nation treatment were granted completely to his country, which was a full contracting party to GATT.

19. Other countries pointed out that while quantitative restrictions could indeed, within a system of clearing arrangements, be used in a way as an instrument for negotiation, such a possibility no longer existed within a system of multilateral payments where the maintaining of agreements was not prompted by the desire to increase the bargaining position of the party concerned.
20. Another member of the Group stated that it would be inappropriate to pursue further the discussion in relation to bilateral agreements of this kind pending the outcome of work in other GATT bodies; and in view of the notifications on some such agreements already being provided it would be necessary to avoid duplication arising from the first proposal in paragraph 16.

21. Since quotas allocated under bilateral agreements for the purpose mainly of protecting sensitive sectors of production could, in most cases, be administered only through quantitative restrictions or on the basis of export restraints bilateral agreements should, in the opinion of some countries, be dealt with in conjunction with quantitative restrictions.

**Export restraints**

22. It was agreed to change the title in the Illustrative List from "Voluntary Restraints" to "Export Restraints" since it was claimed by some countries that the notifying countries restrain their exports because of the threat of imposition of unilateral restrictive measures by importing countries.

23. Countries against which notifications were made stated that in their view export restraints were more favourable to exporting countries than alternative trade restrictive measures which would otherwise be applied. They pointed out that levels of restrictions were known in contrast to import quotas which were not always published and that imports were generally higher under these arrangements than under unilaterally imposed quotas. The regular consultations inherent in export restraint arrangements tended to speed up the process of liberalization as compared with the liberalization of import quotas. In some cases, the exporting countries had imposed export restraints of their own accord in order to maintain quality control or to regulate competition between their exporters.

24. In reply to the point regarding consultations, countries operating export restraints maintained that in their opinion the so-called consultations were not necessarily carried out on a mutually advantageous basis and often the suggested quotas were presented to exporting countries on a "take it or leave it" basis.

25. Some countries operating export restraints considered that, particularly since such restraints were applied on a discriminatory basis, they might in certain cases have more harmful aspects than quantitative restrictions applied on a global basis. There were also cases where residual quantitative restrictions instead of being eliminated were sought to be continued by converting them into export restraints.

26. It was proposed by many delegations, including the notifying countries, that the solutions suggested for the relaxation of quantitative import restrictions should apply also for export restraints, for they were of the same character and had the same effect as quantitative import restrictions. In this context, some countries proposed that the CONTRACTING PARTIES should work out a notification and consultation procedure in order to secure proper surveillance under GATT; reference was made to the relevant suggestions put forward in the Joint Working Group.
Minimum price regulations

27. The Illustrative List included the problem of minimum prices as a condition to importation. One affected country emphasized that the practice of excluding goods priced below levels fixed in relation to prices in the importing country was unacceptable if only because of its discriminatory character. Further, the same country claimed that the system of minimum prices was inconsistent with the provisions of the General Agreement and urged its abolition at the earliest opportunity.

28. The representative of the maintaining country explained that this was a measure chosen amongst several because it was the least detrimental to trade. It was the intention to reconsider the system and, in due course, if necessary the government of his country would establish direct contact with the notifying government.

29. Another delegation supported by a group of countries, referred to a somewhat similar system applied by another contracting party to textiles and certain other goods. This so-called abnormal pricing practice had been considered in Group 2 but because it resembled a quantitative restriction had been transferred to Group 4. Imports from a particular country can be suspended pending investigation and during the interval other higher-priced goods are free to enter. This appeared to the notifying country to be a quantitative restriction not justified under GATT as it was not a regulation operated in conformity with provisions concerning anti-dumping. The representative of the maintaining country stated that a change in regulations to bring his country's law into conformity with the Anti-Dumping Code was under consideration and that meantime no use was being made of the measure in question. He hoped to supply a text of the new decree as soon as possible. It was agreed that this problem might be reverted to in Group 2 but would be retained in Group 4 for the time being.

Licensing

30. The debate of the Group on Licensing covered two issues: the extent to which and manner in which licensing operates as an import restriction and possible solutions to the barrier effects of licensing.

31. Some delegations considered that any system of import licensing constituted a barrier, either potentially or in fact, and emphasized their view that the cost, delay and uncertainty to traders which was involved in any licensing system operated as a deterrent to trade, in particular to long-term planning for promotion of exports since a threat of restrictive action continued to overhang and influence planning of manufacturers and traders. They pointed out that these uncertainties reflected actual experiences of traders who had found that licensing had been used to restrict imports, even under so-called automatic licensing systems. In their view such measures should be abolished except where necessary to implement restrictions consistent with GATT. These delegations considered that the OECD standard import procedure, developed in 1966 (see Annex 2), supported their view that licensing was a form of import restriction which should be eliminated, since that code was based on the principle that goods not subject to quantitative restriction should likewise not be subject to any licensing procedure.
32. Some other delegations were of the view that the requirement of licensing was in itself a formality no different in kind from other formalities which were in force in all GATT countries and which were generally admitted in GATT not to be restrictions. In this view, licensing could only come within the meaning of Article XI, paragraph 1, if it were shown that the effect was to restrict imports. That licensing as such was not intended to be forbidden was indicated by language in Article VIII recognizing the need to minimize the incidence and complexity of import formalities and to decrease and simplify import documentation requirements. They pointed out that the OECD procedures specifically provided in paragraph 6 that in special cases, justified by the need to carry out certain controls which could not be made in a more appropriate way, a system of automatic licences or of import certificates might be applied. In such cases the licences, visas or other equivalent documents should be issued upon request and within a maximum of five days from the deposit of the request. These provisions confirmed their view that automatic licensing was a legitimate formality permitting the attainment of various special objectives such as obtaining very expeditiously needed statistical data not otherwise available or facilitating collection of taxes or levies. Where such licences were granted without delay and sometimes in circumstances giving the administration no discretion to refuse, the requirements did not in their view constitute a restriction or barrier.

33. Countries which regarded licensing per se as a barrier to trade could not accept that licensing was necessary or desirable to accomplish such objectives and considered that other methods not harmful to trade could be found. In their view customs data, including invoice values, offered a more reliable basis for gathering statistics since traders tended to apply for licences for more goods than were currently needed in the belief that governments tended to restrict imports through licensing. Moreover, it was noted that in many countries licensing systems applied only to selected types of imported products, so that licensing could not be justified on statistical grounds.

Possible solutions with regard to licensing

34. Those delegations which regard licensing per se as an import restriction proposed, at the outset, that licensing requirements be eliminated by 1 January 1972 except where required to implement import restrictions consistent with GATT.

35. Most countries considered that a licensing requirement in itself could not be said in all cases to constitute a barrier. The following criteria received wide support for defining licensing requirements not justified by reference to a provision of GATT but acceptable as non-restrictive:

1. the arrangement for the receipt of applications should be published;
2. applications should be accepted from and licences granted to all applicants without discrimination;
3. licences should be granted upon presentation of the application by the importer;
4. no conditions should be attached to the issue of licences.

It was agreed that these suggestions merited further study.
36. Upon reflection the countries which had taken the stricter view of licensing considered that they could agree to these criteria for definition of licences which would be regarded as non-restrictive. However, they believed there was a need for a review of the systems of licensing actually in use among contracting parties. Such a review would begin with a questionnaire and replies by governments describing the working of licensing systems actually in use, time lapses and formalities involved, and the objectives sought to be obtained through licensing procedures. (An illustrative questionnaire is attached as Annex 1.) If some licensing systems were found by the maintaining countries, in the process of replying to the questionnaire, to have outlived their usefulness, this would be a first benefit from the examination. After notifications of licensing systems had been made to the secretariat an appropriate GATT body would review the notified procedures and make recommendations for their elimination or modification.

37. The proposed review was supported by a majority of delegations. Some qualified their support by doubt as to whether an inquiry need go beyond the so-called "automatic" licensing systems, since there had been wide agreement that restrictive licensing should in any event be treated within whatever overall solution was adopted for dealing with quantitative restrictions, and since a broader review might well become a very considerable undertaking of long duration. Other delegations supporting the proposal felt that the breadth of the examination would be an advantage, especially to developing countries, since restrictions are often aggravated by the way in which licensing procedures operate, and the methods of operation were little known and difficult to ascertain. It was suggested that the term "licensing" should be broadly interpreted to include technical visa requirements, surveillance systems, minimum price arrangements, and possibly exchange requirements, all of which involved administrative review of proposed imports as a condition to entry. Some considered that the factual examination would be most useful whilst reserving their view on what should be done with the results.

38. Some countries considered that the range of inquiry proposed would require highly differentiated replies, since a given country might have regimes of different kinds applicable to different categories of case. These countries also felt that the proposed questionnaire required further study before a position could be taken upon it, and in this connexion they considered that the work done by the OECD some years ago should first be examined to see whether there were reasonable prospects of improving upon it. In this regard, the representative of the OECD, upon invitation, indicated that the standard procedure reproduced in an annex to this report represented the end result of work undertaken in 1962. A detailed questionnaire had been circulated on procedures for according licences and quantitative restrictions along the lines of the questions proposed by the United States draft questionnaire. It had originally been envisaged to revise and update replies to the questionnaires but this had not been done, doubtless because of the pressure of other work.

39. The country proposing this approach agreed that OECD work should be taken into account, but noted that the questionnaire sent out in that connexion in 1962 had of course not gone to the many GATT contracting parties not members of OECD. In its
view a new GATT questionnaire could be answered within three months. It defended
the broad scope of the proposed review on the ground that there would be many
differences of view as to what was and what was not automatic, not to mention the
advantage to developing countries, connected with their difficulties in making use
of the trade possibilities open to them, because of intricate licensing requirements.

40. One member of the Group, supporting the proposal, noted in particular that
licensing lent itself to use as a disguised barrier to trade, since it was easy
to slow the processing of certain applications for licences, to curb imports from
particular sources by hints to importers, or to restrict imports at prices which
might be considered undesirably low.

41. Other proposals for dealing with the subject of licensing, which might be
envisaged either concurrently with the questionnaire and review described above
or as possible later stages, dealt with the possibility of elaborating codes
designed to reduce the barriers resulting from licensing. One suggestion was that
the CONTRACTING PARTIES might consider adoption of a code along the lines of
Articles 7 to 14 of the OECD standard procedure, the text of which is reproduced
as Annex 2. One delegation felt that special attention should be given in any
code to reducing complex licensing requirements which often frustrated limited
trading opportunities open to developing countries, as suggested in Annex 3 to this
report.

42. Most delegations considered that, whatever was done regarding licensing as an
adjunct to permitted quantitative restrictions, restrictive licensing should in
any event be included in a general programme for removal of quantitative
restrictions.

Motion picture restrictions

43. The notifying countries pointed out that a variety of measures were used to
limit trade in motion pictures. They were concerned that any of these measures can
be substituted one for the other to restrict trade and proposed a standstill with
regard to all of them.

44. Most of the countries against which notifications had been made underlined
the special character of motion pictures, which represented a medium of
information and dissemination of culture to which governments attached great
importance. In their view, the measures notified were designed not to limit trade,
but to permit the maintenance and development of an activity which in general
encountered economic, structural and trade difficulties, due in particular to the
disproportions existing between the film industry of different countries.

45. The notifying countries regarded certain restrictions as inconsistent with the
General Agreement, namely quantitative restrictions on the internal distribution
of films, discriminatory taxes, local printing, sub-titling and dubbing require-ments, and export subsidies. They proposed that all illegal restrictions be
removed promptly or, if this was not possible, by 1 January 1972. Countries
maintaining illegal restrictions after that date should be required to seek
waivers of their GATT obligations or pay appropriate compensation.
46. Some countries suggested that although motion picture screen-time quotas are permitted under Article IV, a standstill should be agreed and ultimately screen quotas should be eliminated. They also noted that Article IV envisaged negotiations in this field.

47. Other countries pointed out that screen-time quotas were designed to ensure a certain minimum distribution and showing of domestic films, and not to prevent the showing of foreign films, which in general filled a large part of overall screen time. In addition, the measure seemed essential in order to avoid oligopolistic practices which might result from increasing concentration in the distribution sector.

48. One delegation pointed out that the practice of setting screen-time quotas for recorded television programmes contravened Article III, paragraphs 5 and 7, which prohibit the use of "mixing regulations". Other delegations referring to paragraph 10 of Article III expressed the view that Article IV, in their interpretation, was also applicable to television quotas.

49. One notifying country expressed the view that subsidies tended to distort trade in films. A solution was envisaged along the lines of that proposed in Working Group 1 of the Industrial Committee for domestic aids:

(a) All contracting parties should notify their subsidies in the form prescribed in the annex to the report by the Panel of 1960.

(b) On request, notifications should be followed by consultations among interested parties or with the CONTRACTING PARTIES in cases where subsidies are determined to be causing or threatening serious prejudice to the interests of other contracting parties in accordance with Article XXII or, if no satisfactory solution were found, as provided for in Article XXIII.

The Group agreed that there should be a notification procedure in accordance with Article XVI.

50. Moreover, it was suggested that criteria along the following lines should be developed to ensure that film subsidies have no trade-distorting effects:

(a) No subsidies could be paid which would result in production of an entertainment film which would not otherwise have been made.

(b) Any government aids should be limited to those designed to raise the competence of film makers and increase the quality of films.

(c) Governments should not subsidize exports.

(d) There should be no discrimination in internal tax treatment in favour of domestic or of certain foreign films.
(e) Any subsidies paid should be extended to foreign producers and other film interests.

(f) Production subsidies should not be paid that cause the transfer of film production from one country to another.

Some of the criteria received the support of some delegations.

51. A large number of delegations were not in favour of listing criteria on the question of motion pictures. Furthermore, they expressed doubts concerning the trade effects of aids at present granted to national film industries. They underlined that in certain cases aids could be beneficial to foreign films, in particular aids to cinemas and to film co-productions. In addition, some of them pointed out that they did not grant any export subsidies.

52. It was noted that the OECD was also addressing itself to the question of films for both cinema and television and that an expert group had prepared a series of proposals concerning changes to the code of liberalization of current invisible transactions. Some delegations preferred to await further progress on the work in OECD before deciding on any criteria with respect to film subsidies.

53. Some delegations, while agreeing with the principle of freedom of trade in films, said that a case could be made for subsidization of the film industry in developing countries, at least during a transitional period.
Annex 1

DRAFT QUESTIONNAIRE ON IMPORT LICENSING

1. Conditions for eligibility to apply for a licence.

2. Information required in applying for a licence (origin, supplier, quantity, price and terms of sale); documentation, if any, required with application.

3. Description of different procedures applied for different groups of products.

4. Trade or administrative bodies, other than those which actually issue licences, to which licences may be referred.

5. How far in advance of importation application must be made.

6. Maximum and minimum amount of time which elapses between receipt of application and issuance of licence.

7. Period of validity of licence and means by which licence may be extended.

8. Administrative procedures, other than licensing, required prior to importation.

9. Purposes served by licensing of liberalized imports; reasons these purposes cannot be achieved by other means.

10. Reasons for denial (if ever) of applications for licences to import liberalized goods.

11. Correspondence of licensing practices for imports not subject to quantitative restrictions to criteria set forth in paragraph 35 of the Working Group 4 report.
A. General provisions

1. The present procedure applies to all imports other than those carried out by State-trading enterprises, monopolies and other government enterprises or departments, as specified in Article XVII of the GATT. It does not affect measures which may be taken in conformity with Articles XX and XXI of the GATT, or the provisions relating to quality standards, or marking regulations which importers may have to comply with under national procedures.

2. To be entitled to import, persons, firms or other bodies should not be tied to any conditions other than those which apply generally to the trade in the products in question in the country of importation: these conditions, however, should not be required of persons who import goods for their own use.

3. In the case of goods not subject to quantitative restrictions, the foreign exchange necessary for the payment of imports should be made automatically available to importers. In the case of merchandise imported under quota, the foreign exchange needed for the payment of imports should be made available to the importer on presentation of the licence or the document authorizing the import, without further formality.

4. In cases where the importing country deems necessary to be informed of the origin of the merchandise, a note of the origin on the invoice or customs declaration, or where appropriate on the import declaration, and if necessary on the application for a licence, should be considered as adequate. There should be no further systematic verification of origin, but in cases of doubt the competent authorities should accept certificates of origin made out by chambers of commerce or other organizations previously approved by the government concerned, while maintaining the right to verify the validity and accuracy of such certificates.

5. The importers should not be required to provide any other documents than the customs declaration, accompanied by a bill of lading or carriers certificate, and the invoice, together, where appropriate, with an import declaration approved by the responsible authorities. Moreover, for imports subject to licence, the production of the licence may be required. The provisions of this paragraph would not affect the power of customs authorities to proceed to supplementary verifications in cases where it is necessary to do so.
B. Products not subject to quantitative restrictions

6. No licence or any other document or formality of the same character should be required for the importation of goods which are not subject to quantitative restrictions. However, in special cases, justified by the need to carry out certain controls which could not be made in a more appropriate way, a system of automatic licences or of import certificates may be applied. In such cases, the licences, visas or other equivalent documents should be issued upon request and within a maximum of five days from the deposit of the request.

C. Products imported under global, bilateral or unilateral quotas

7. All useful information concerning quotas and formalities of filing applications for licences should be brought to the attention of possible importers in good time, notably by notices in official or private press organs (general or specialized) or by communications to trade associations concerned.

8. Importers should be given at least fifteen days in which to apply for an import licence in the case of standard commercial articles, and at least one month in the case of non-standard commercial articles. A shorter period may, however, be prescribed in special cases.

9. Applications for licences should be made on a simple and standard form to the licensing authority. Normally a single authority should be responsible in each country, but in the case of certain categories of products, these functions may also be assigned to separate authorities for the purpose of securing a more rational administration of quotas, taking account of needs of both the authorities and the importers.

10. The licensing authority may seek the advice of other government departments or technical and trade bodies regarding allocations. Where it decides to consult national economic interests for this purpose it should not limit itself to consulting trade associations of producers.

11. The authorities of the importing countries should take the necessary steps, when allocating quotas, to ensure that licences can be issued and importation effected within the periods prescribed for this purpose and to facilitate the full utilization of the quotas. Furthermore, where the size of quotas permits new importers should have the right to request a fair share of quotas.

12. If applications are examined simultaneously, not more than three weeks should lapse between the closing date for applications and the issue or refusal of the licence. If applications are examined on receipt, not more than three weeks should elapse between the receipt of the applications and the issue or refusal of the licence.
13. Licences should be valid for at least three months from their date of issue. However, a longer period of validity should be accorded when the distance of transport and communications makes this a legitimate requirement. Licences should also be easily renewable. Validity may nonetheless be for a shorter, but reasonable, period in special cases.

14. All applicants should have the right to appeal against a refusal to issue a licence, under national legislation and/or procedure of the importing country.
Licensing procedures should provide for the following:

1. **Bilateral quotas**
   (a) Imports under bilateral quotas should be allotted without import licences, on the basis of export permits to be issued by the exporting countries.
   (b) In exceptional cases where issue of import licences was considered necessary by the importing countries, these should be issued automatically on production of export permits.

2. **Global quotas**
   (a) Quotas should not be fragmented in small quantities and allotted to a number of parties, as this makes imports uneconomical.
   (b) The practice of allotting import licences for certain goods only to domestic producers of like goods should be discontinued and licences should be issued to all persons interested in importing.
   (c) The practice of issuing licences on condition that goods should be exported and not sold in domestic market should be discontinued.
   (d) The period of validity of the licences should not be short and should be fixed in the case of countries situated at a distance, taking into account distances of transport and difficulties of communication.
   (e) Notices for allocation of quotas should be given due publicity in official and private press organs and brought to the attention of the trade associations as well as of the governments of exporting countries, particularly of their trade representatives.
   (f) Trade representatives or export promotion bodies of the exporting countries should be kept informed about licences issued and the names of the importers to whom licences were issued.
1. Working Group 5 was established by the Committee on Trade in Industrial Products in December 1969 to explore possibilities for concrete action in reducing or removing non-tariff barriers on the following subjects in the Illustrative List (Annex I to L/3298): prior deposits, administrative and statistical duties, restrictions on foreign wines and spirits, special duties on imports, discriminatory taxes on motor cars, credit restrictions for importers, variable levies and fiscal adjustments, either at the border or otherwise. The Group met from 9 to 11 June and 10-11 December 1970 under the Chairmanship of Mr. S.R. Pasin (Turkey).

2. As with other Groups, this Group had in mind the general terms of reference in regard to the exploratory nature of its work on possible solutions. It wished to emphasize that in many cases the views recorded were only tentative at this stage and that all delegations reserved fully their right to supplement and clarify their positions when the report was presented for discussion in the Committee on Trade in Industrial Products.

3. The special interests of developing countries in some of these problems were taken into account by the Group and are reported in the individual sections of this report, especially Sections I and VII.

I. PRIOR DEPOSITS

4. It was noted that a number of countries maintained prior deposit schemes and that the device had now been in use in one country or another for some fifteen years. In the course of 1970, however, some countries had eliminated their prior deposit systems while others had relaxed their schemes to some extent.

5. There was general agreement that prior deposit schemes constituted a restriction on trade. The degree of restriction depended, as stated by the representative of the International Monetary Fund, on a variety of factors, including the amount of the deposit required, the cost of financing, the time for which deposits were held, the duration of the scheme, the products and country sources to which it applied. Complex prior deposit systems could give rise to discriminatory practices.
6. It was also generally agreed that there should be appropriate consultation under GATT whenever prior deposits were used. Consultation with the International Monetary Fund would be included.

7. Many countries felt that too little was known of the way in which prior deposits worked to take a general position on the question of the use of such measures. In addition there were technical points upon which relatively little expert research had been done such as the restrictive effect they could have upon small as compared with large exporters in view of the greater difficulty for the former of obtaining needed additional capital, and the relationship between effects on exporters in countries having relatively plentiful capital and effects elsewhere. Expert studies under way in other international organizations might throw some light on these points. In this connexion it was noted that a study had been recently prepared in the OECD on the use of various import measures, including prior deposits, in cases of balance-of-payments difficulties. Some delegations therefore considered it necessary that such studies should reach a more advanced stage before GATT could usefully take any position in this field.

8. Some countries considered that a study might usefully be made of the question of defining the circumstances in which the use of prior deposits might be appropriate. The objective would be to limit recourse to such measures in circumstances other than those defined, which might, for example, be cases of balance-of-payments difficulties where use of this measure avoided the use of other and possibly more restrictive measures.

9. Some delegations considered that the precise status of prior deposit measures in relation to the General Agreement should be clarified so that their use is controlled and limited. In the absence of such clarification they believed that the provisions in the General Agreement would be undermined.

10. Without prejudging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, some delegations considered that it should be possible to go somewhat beyond ensuring consultation, in the direction of establishing guidelines for use of this type of measure with a view to limiting its incidence and harmful effects. Some guidance of this kind might help to provide somewhat greater discipline and order in the present grey area between those schemes which constituted exchange control practices, and thus came within the purview of the International Monetary Fund, and the more conventional types of restriction for which provision was clearly made by GATT provisions.

11. Most countries preferred to await the outcome of studies in progress in other international organizations or in GATT as to the restrictive effect on trade before they pronounced themselves on the question of guidelines.

12. Developing countries considered that the case for use of prior deposits by them was substantially different from that of developed countries and also urged that when developed countries used such schemes the products of interest to developing countries should be excluded in conformity with Article XXXVII.
Possible solutions

13. It was agreed that the most desirable solution to the problem of prior deposits would be their elimination as soon as possible.

14. Some delegations favoured arrangements for timely notification of prior deposit schemes to the CONTRACTING PARTIES and for appropriate consultation in such cases along the lines of the provisions of Articles XII and XVIII:B. Other delegations considered that import deposit schemes should be notified and dealt with on a case-by-case basis. Still other delegations believed that countries invoking balance-of-payments justification for import deposits should consult in the GATT Balance-of-Payments Committee. Some delegations, however, could not pronounce themselves on those questions until they know whether prior deposits should be regarded as possible legally-accepted instruments in this field.

15. Without prejudging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, several countries also considered it useful to examine the possibility of developing guidelines which might establish principles to be followed as a means of reducing the harmful effects of prior deposit schemes on international trade. These included:

(a) Whether or not regarded as an additional charge on imports inconsistent with Article II as regards bound items, or as a form of quantitative restriction generally inconsistent with Article XII, prior deposit schemes should be used only in the case of balance-of-payments difficulties, and only in circumstances where these measures avoided the use of more burdensome measures.

(b) Prior deposits should be limited in time and should not in any event be continued beyond the period required to overcome the difficulties which caused their imposition.

(c) The rate of deposit should be as low as possible and should be reduced as rapidly as circumstances permit; in addition, deposits should not be kept for an unreasonably long period. In this connexion, it was argued that it might be preferable, from a trade point of view, to have a higher rate of deposit for a shorter period than a lower rate and a system of long duration.

(d) To avoid to a maximum any discriminatory effects, prior deposits should apply without exception, and at uniform rates, to the goods of all countries and to all categories of imports.

(e) In order, however, to avoid adverse effects which the introduction of any such scheme might have on the trade of developing countries, products of interest to them should be exempt from the product coverage.

(f) Prior deposits should be used only in conjunction with internal programmes to restore external equilibrium and, to heighten their anti-inflationary effect, funds accumulated should be sterilized and steps taken, upon termination of the scheme, to avoid inflationary effects of liquidation of the accumulation.
II. VARIABLE LEVIES

16. One notification on a system of variable levies appeared in the Illustrative List. It was recalled that the item in question was among a number of items covering agricultural products which had been referred to the Committee on Agriculture. The Group noted that solutions to the problem of variable levies were under active consideration in that Committee.

17. In this light it was agreed to defer discussion on the item until the possibility for solutions had been explored in the Agriculture Committee.

III. RESTRICTIONS ON FOREIGN WINES AND SPIRITS

18. Discussion centred on the four Illustrative List items regarding taxation of spirits.

19. With respect to the notifications concerning differences in rates of taxation, some countries considered that differences in tax rates as between various alcoholic beverages amounted to a de facto discrimination against their exports and afforded protection to domestic products.

20. Some delegations suggested that progressive tax rates could be applied to alcoholic beverages, as in the case of personal income, because it was a well-established principle that tax should be imposed in accordance with the ability to pay.

21. Reference was made to a system operated by another country, which appeared to the notifying countries to be discriminatory, whereby spirits of less than 100° were taxed on a wine-gallon basis but spirits of 100° or above were taxed on a proof-gallon basis. The practical effect of this system was that spirits imported if already bottled, were taxed on the high wine-gallon basis, whereas domestic spirits as well as bulk imports in casks were taxed on the more favourable proof-gallon basis. Although it had appeared that these were like products in the sense of Article III, this distinction hampered the marketing of spirits imported already bottled and limited the value of tariff concessions. The system also has the effect of affording protection to the bottling industry of the country applying it by means of internal taxes rather than the tariff. It was pointed out, by the maintaining country, that a number of other countries differentiate in their tariff treatment of alcoholic beverages that are imported in bottles and those that are imported in bulk and in the way, in its view, afford protection to their bottling industries. It was however pointed out by other delegations that such differential tariffs as between the same product at different stages of manufacture were a normal and legitimate feature of national commercial policy.

22. Several delegations held the view that all alcoholic beverages with approximately the same alcoholic content should be regarded as "like domestic products" within the meaning of Article III:2.
23. A related notification regarding the prohibition of one contracting party of
the advertising of certain spirits was also discussed by the Group. The notifying
countries considered that such discriminatory restrictions on advertising impaired
the value of tariff concessions and should be removed. The maintaining country
pointed out that this measure had been fully explained in notification 173.2
(COM.IND/W/32).

Possible solutions

24. As regards advertising, in the opinion of the notifying countries, it would
be desirable to consider an interpretative note to the first sentence of paragraph 4
of Article III to make it clear that the regulations and requirements mentioned in
that paragraph included equal rights of advertising. It was suggested that an
explanatory note to Article III:1 should be prepared defining the expression
"offering for sale" so as to make explicit that it includes advertising, and also
clarifying the phrase "afford protection to domestic production".

25. It was also suggested that the problem could be tackled by creation of
standards in this field and in co-operation with other organizations such as the
World Health Organization though any solution on this basis required further
detailed examination.

26. As regards taxation, some delegations suggested that all alcoholic beverages
should be taxed at a single rate for all price ranges.

27. A number of delegations considered that the best solution lay in the main­
taining countries unilaterally altering their taxation systems to eliminate their
discriminatory aspects. Some of these delegations also suggested that an attempt
be made to define the term "like domestic product" by way of an interpretative note
to Article III of the General Agreement. It was noted in this connexion that some
of the items on the Illustrative List had been referred to the Working Party on
Border Tax Adjustments and had been discussed at its meeting in March. That
Working Party had held considerable discussion on the provisions of Article III.
Some delegations expressed the view, however, that the problem of drafting an
interpretative note to "like domestic products" was somewhat outside the scope of
the Working Party and should primarily be dealt with by this Group.

28. Other countries expressed the view that little was to be gained from having
a code or interpretative note since the problem did not appear to be a general
one. Moreover, in some cases, the legislation and practice complained of pre­
dated the General Agreement and so could be justified under the Protocol of
Provisional Application. This justification would be unaffected by any inter­
pretative note to Article III and thus would permit the present imbalance to
persist, unless maintaining countries undertook a firm obligation to abide by it
irrespective of the rights under the Protocol of Provisional Application. Finally, differences in fiscal treatment applied to imports of spirits which may come under the responsibility of regional governments or authorities and any solutions which might be envisaged should take into consideration the necessity for a solution to this problem.

29. Some delegations suggested consideration of an interpretative note to Article III along the following lines:

"Paragraph 2 of Article III should be interpreted, in the case of alcoholic beverages, to mean that fiscal charges should be based on their alcohol content, or on any other objective criterion which does not entail indirect protection for domestic industries through unreasonable differentiation between products."

30. Some delegations, which were not generally in favour of an interpretative note, considered that if such a note were ever adopted it should take account of individual circumstances of countries and also of their public health policy.

IV. DISCRIMINATORY TAXES ON MOTOR CARS

31. The representative of the notifying country stated that motor vehicle taxes were levied in many countries on a basis that discriminated against exports from his country by imposing a higher tax burden on such exports than domestically-produced vehicles and imported vehicles of comparable value.

32. It was noted that the problem of taxes on motor cars had, in relation to some countries, been dealt with in the Chemicals Agreement in the context of the Kennedy Round in 1967, and that implementation of this Agreement was linked to the abolition of the American Selling Price System.

33. Delegations representing maintaining countries stated that if the majority of countries at present based their taxation system on fiscal horsepower or cylinder capacity, it was generally not desirable to attempt harmonization towards other systems. These systems had existed over a long period and were maintained for fiscal and practical reasons. In several cases, even countries which lacked a domestic motor industry levied tax on the basis in question. Some considered that a higher rate of taxation on large cars could also be justified on the principle that tax should be imposed according to ability to pay. The view was nevertheless expressed by these delegations that changes in the fiscal systems concerned would represent a real concession and not just removal of any sort of discrimination.

Possible solutions

34. Some delegations considered that the solution lay in eliminating the discriminatory effects of the taxes which might be achieved, for example, by assessment of taxes on motor cars on the basis of value. There should also be a single tax rate for motor cars in the same price range with a reasonable spread between the highest and lowest tax rates so that the upper limit is not so high that it unreasonably discourages purchases.
35. The following interpretative note to Article III was also suggested by some delegations:

"Paragraph 2 of Article III should be interpreted, in the case of motor vehicles, to mean that fiscal charges should not be used to afford protection to domestic production, nor be prohibitive in level, nor have a discriminatory effect as among suppliers, and should, to the greatest extent possible, ensure a reasonable rate of progression."

V. CREDIT RESTRICTIONS FOR IMPORTERS

36. The Group considered two different types of problems under Item 511. They were firstly the system which requires government approval for credit payment terms which extend beyond four months, and secondly the non-eligibility of import bills for discount or as security for loans with the central bank.

37. With regard to the first question, the notifying countries stressed that this system of credit approval (standard method of settlement) subjected all imports, whether liberalized or not, to the discretionary authority of government officials. Such control over the import credit terms resulted in the restriction of trade normally transacted on the basis of long- and medium-term credits. Such a control was not exercised in most developed countries and should be eliminated as soon as possible.

38. As to the second question, the notifying countries suggested that, especially for countries having no balance-of-payments difficulties, such discrimination between domestic and import transactions in regard to credit availability should also be eliminated.

39. As to the first question, the representative of the maintaining country said that the purpose of the system was to screen the credit terms of import transactions in order to verify whether they conform to normal commercial practices. In this connexion, he stated that so far as individual transactions were found to be in conformity with normal commercial practices they were approved even if they were financed by credit the term of which extended beyond four months. He also wished to know how other countries were controlling speculative capital transfers in the form of trade credits.

40. In regard to the problem concerning import bills, he said that the central bank of his country had, as from 1 June 1970, made import bills eligible as security for loans to commercial banks. In this context, he pointed out that the importance of this question had been exaggerated in view of the fact that imports into his country were largely financed by foreign banks or suppliers.

41. Some countries stressed that problems concerning these measures should be studied in a broader context, and expressed doubt as to whether the measures in question could appropriately be dealt with without due regard to various aspects of the problem such as the necessity to control speculative capital transfer in the form of trade credits and difference of interest rates between countries.
Possible solutions

42. Some countries maintained that both types of problems were impairing export interests of other countries. The desirability of resolving these problems through removal or modification of the measures was reiterated.

43. Some countries suggested that a solution to the problem concerning the availability of credit to importers would be an interpretative note to Article III of the General Agreement indicating that paragraph 4 of the Article should be understood to include similar access to credit for importers as for domestic producers, with the financial institutions concerned deciding the appropriate rate of interest in accordance with relevant factors such as the degree of risk.

44. It was however pointed out by one delegation that, in view of the fact that the problem in question was not of a general character and that the subject should be studied in a broader context, the solution suggested in the preceding paragraph would not be appropriate. In this connexion reference was made to the fact that the problem was now being examined in the framework of the OECD and that the Group should await the outcome of such examination.

General Comment on Items III, IV and V

45. Since the non-tariff barrier problems referred to in Sections III, IV and V could, in the view of some countries, be solved through interpretative notes to different paragraphs of Article III, the Group briefly discussed the case for an overall review of this Article. Some delegations, however, did not support such a review. Others considered that there might be advantages in tackling the three problems in the general framework of Article III.

VI. FISCAL ADJUSTMENTS EITHER AT THE BORDER OR OTHERWISE

46. The Group considered the notifications in the Illustrative List dealing with the issue of tax adjustments applied to goods entering into international trade in the light of the report by the Working Party on Border Tax Adjustments (L/3464), which had been submitted to the Council and adopted by it. The Group noted that the examination of the notifications in the Working Party on Border Tax Adjustments (document COM.IND/W/29) had not led to any concrete suggestions for solutions to these measures because there had been divergence of views as to the relevance of these notifications to the question of tax adjustments as examined in the Working Party. The Group also noted that there had been a comprehensive discussion of the provisions of the General Agreement in the Working Party on Border Tax Adjustments. This discussion had led to certain agreed positions with regard to the interpretation of the relevant provisions of the General Agreement, which was reflected in certain paragraphs in that Working Party's report (L/3464). This report could be usefully referred to in the course of any future work in this field.

47. The Group further noted that, following the recommendations of the Working Party on Border Tax Adjustments, the Council had agreed that a notification procedure be introduced on a provisional basis whereby contracting parties will report any major changes in tax adjustment legislation and practices affecting
international trade, and in particular to bringing periodically up to date the information contained in the consolidated document on contracting parties' practices (L/3389) on tax adjustments, drawn up in the course of the Working Party's work. Furthermore, the Council had agreed that a consultation procedure, within the scope of the relevant provisions of the General Agreement, be established whereby, upon request by a contracting party, a multilateral consultation could take place on changes in tax adjustments, whether notified or not. The Council had invited the Director-General to consider, at convenient intervals, on the basis of the notifications, and in consultation with interested parties, whether a review of notified changes was called for. The Council had also invited the Director-General to consider after an adequate period of operation, and in consultation with interested parties, whether the provisional notification procedure should be continued, modified or discontinued.

48. The Group considered that the Council's Decisions went some way in the direction of finding a solution to problems connected with tax adjustments. In this way they could also to a certain extent take care of the notifications in Section F of the Inventory. The Group therefore considered that the Decisions of the Council should be seen as an integral part of the non-tariff barrier exercise.

VII. STATISTICAL AND ADMINISTRATIVE DUTIES

49. One representative said that his government had already initiated action towards eliminating the administrative charges and statistical duties applied in his country and hoped that they would be abolished by 1 January 1971. He pointed out, further, that his country's effort should not be interpreted as indirect recognition of an infringement of the GATT rules, but rather as a liberal effort that the government was intending to make in line with the objectives of the General Agreement.

50. It was pointed out that, in addition to statistical and administrative duties, a number of taxes of various kinds (such as port taxes, etc.) were applied to imports by many countries. They were considered as an unnecessary hindrance to trade and were all the more burdensome because of their complexity. Concern was expressed with the multiplicity of such measures which were generally applied for revenue purposes. It was noted that the provisions of Article VIII provided that all such fees should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a tax for fiscal purposes. It was also noted that these provisions stressed the need to reduce the number and diversity of fees and charges.

Possible solutions

51. It was agreed that a solution lay in strict application of Article VIII and also Article II but a difficulty arose in trying to assess the cost of services rendered. It was therefore suggested that, as a first step, a procedure be adopted whereby countries applying such fees should be requested to supply details of revenue from fees of this kind together with expenditure on services rendered each year. Some delegations expressed doubt as to the necessity of such an exercise in view of the fact that the measures in question did not constitute a major hindrance to world trade.
52. Certain countries proposed that wherever possible these fees should be eliminated, but that in any event their total should not exceed some maximum, such as $10 per shipment, a proposal similar to one made on consular invoices and fees in Group 2. Other countries also pointed out, however, that the establishment of such a maximum could be an incentive for governments to increase the amount of their fees up to that maximum.

53. Certain delegations considered that countries which applied charges of various kinds in addition to other protective measures such as customs duties and quantitative restrictions, should endeavour to reduce the multiplicity of those measures and, in their own interest, simplify the formalities, fees and obstacles to imports which involved costs that were ultimately borne by importers.

54. It was noted that the fees notified were applied mainly by developing countries. Representatives of developing countries pointed out that in some cases it was found necessary to resort to such taxes and duties for fiscal purposes, to raise additional revenue to finance their development expenditure. They therefore found it difficult to accept any suggestions for total elimination of such taxes or to limit them to $10 per shipment. While generally supporting the proposal in paragraph 52, they expressed some doubts as to how far in practice it would be possible to give precise information on details of revenue and the cost of services rendered each year. They emphasized that any overall solutions to the problems would have to take into account trade and development needs of these countries and as such it might be desirable to refer these suggestions to the Committee on Trade and Development. It was also necessary to ensure that any solution that might be evolved related only to trade in goods and not to invisibles.

VIII. SPECIAL DUTIES ON IMPORTS

55. The Illustrative List contained notifications regarding measures adopted by some countries providing for temporary emergency tariff relief which it was claimed create uncertainty in tariff levels, as well as an item referring to special duties charged by one contracting party with respect to repairs carried out abroad to its ships.

56. The special duty on ship repairs was considered by the country applying it as being a customs duty rather than a non-tariff restriction as alleged by the notifying countries. The notifying countries challenged that interpretation, in view of the fact that the special duty concerned did not appear in the tariff schedules. It had never been mentioned as a negotiable customs duty in tariff negotiations. The special duty, which was charged at a prohibitive rate, should be reduced.

57. As regards the escape clause trade measures and tariff-formulating measures, the maintaining countries considered that they were entirely consistent with GATT and fell outside the scope of the non-tariff barrier exercise. They stressed, furthermore, that the systems operated by their countries were of minimal significance to trade since in only a very small number of cases were restrictions actually invoked.
Possible solutions

58. In this connexion, one notifying country, supported by certain others, submitted the following general proposals with regard to Article XIX which could be implemented either through guidelines or an interpretative note:

(i) A more precise definition of the concepts "product", "like product" and "directly competitive product", accompanied by some criterion for judging injury or threat of injury.

(ii) Measures taken under Article XIX should be of as short a duration as possible and in no case should they exceed three years.

(iii) Some criteria for granting compensation for parties whose trade is affected by Article XIX action should be devised.

(iv) The time required for investigation prior to Article XIX action should be a reasonably short one, for example ninety days.

59. The question of holding a general review on the operation of Article XIX was discussed. Some countries considered it useful to have such a review, particularly in view of recent developments in world trade.