11. Proposed amendment to the Interpretative Notes to paragraph 2(b)

"The prescribed standard of 'fully competitive conditions' permits contracting parties to exclude from consideration special prices to sole concessionnaires, exclusive agents, distributors, etc., which generally involve special discount on normal competitive prices." (Italy, W.9/61, page 4).

The Italian proposal was intended to clarify the term "distributor".

The discussion revealed that in addition to the unsatisfactory nature of the term (which may have different meanings in different countries) there were disparities between the French text of this interpretative note in the General Agreement and in the Havana Charter and between those texts and the English version of the explanatory note.

In the light of the discussion, the Technical Group recommends the adoption of the following text, which, in its French version, corresponds with the wording used in the Havana Charter interpretative note, and in its English text is a better translation of that text.

"...The standard of 'full competitive conditions' permits contracting parties to exclude from consideration prices involving special discounts limited to exclusive agents."

No change of substance is involved but the text has much greater clarity than the present GATT text.

12. Proposed amendment to the Interpretative Notes to paragraph 2(b)

"The wording of sub-paragraphs (a) and (b) permits contracting parties to determine valuation for customs purposes uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise." (Italy, W.9/61, page 4).

This proposal seeks merely to improve the drafting.

It was unanimously adopted, subject to the alteration of "valuation" to read "the value" in the English text.

13. Proposed amendment to paragraph 3

"The value for customs purposes of any imported products should not include the amount of customs duties or any indirect [internal] taxes actually borne by the finished product or actually borne by the material going into the manufacturing of such product, applicable within the country of origin or export from which the imported product has been exempted or has been or will be relieved by means of refund." (Denmark, Norway, Sweden, L/273, page 3).

Spec/22/55/Add.2
This amendment contains two points of substance, which were discussed separately:

A. The first proposal seeks to provide that customs duties remitted or refunded in the country of origin, as well as internal taxes, should be excluded from the value for duty purposes in the country of importation.

A majority of members of the Technical Group were in favour of this proposal, which was considered to be logically concomitant with the principle of excluding the amount of refunded internal tax. The principle case which arises is the refund or remission of import rates paid on raw materials and intermediate products when the finished product is exported. In the case of those countries which establish the value for duty purposes on the landed price the actual price paid for the goods does of course reflect the refund of such customs duties and if the amount of the refund did not fall to be excluded from the dutiable value, it would be necessary to add it back to the invoice price, which would run counter to the widely expressed desire that the commercial price should be accepted as the basis upon which duty should be paid.

On the other hand some of the countries which based their value for duty on the current domestic value in the country of exportation were unable to accept the proposal, on the grounds that it would be a substantial departure from their present method of valuation. Legislative changes have been necessary to provide for the exclusion of exempted or refunded internal taxes, and it was not possible to contemplate a further change.

In view of the importance of the proposal, the Technical Group can only report the nature of the problem to Working Party II for further consideration.

B. The second proposal seeks to limit the term "internal taxes" so as to cover only taxes levied on the product itself, or on the material going into the product, to the exclusion of "direct" taxes such as income tax, social taxes etc.

The intention behind this proposal is to exclude from the provisions of this proposal those taxes of a kind which are considered by some countries to constitute unfair subventions to exports, and a number of members of the Technical Group supported the purpose for this reason, or because it was in line with the current domestic value method of establishing the value for duty purposes.

It was, however, pointed out that the present paragraph can be read as applying only to internal taxes of the kind which are levied directly on goods of the kind exported, but in that case there was nothing to prevent countries from giving imported goods the benefit of more liberal provisions. In the case of countries which take landed value as the basis of value, that value would reflect the remission of direct taxes, where such remission enabled the exporter to reduce his prices. In such cases it would be contrary to the principles of the valuation system to require something to be added back to the landed value, even apart from the impracticability of relating the amount of the remission of direct taxes to the value of a particular quantity of goods.
It was also borne in mind that the problems of dumping and export subsidies are dealt with elsewhere in the Agreement, and that it was not appropriate to seek solutions in Article VII.

The majority of members of the Technical Group were therefore opposed to this amendment.

In view of the division of opinion on the basic point of principle it was not necessary to discuss separately the following proposals, which seek to deal with the same matter, by means of interpretative notes,

"The term 'internal tax' within the meaning of paragraph 3 shall only apply to such taxes as are directly borne by the merchandise itself, to the exclusion of taxes applicable to the producer or trader personally and of contributions to the social insurance system".
(Germany, L/261/Add.1, page 9),

"The term 'internal tax' should be taken to include taxes directly applicable to the imported merchandise itself and to exclude all fiscal or social charges borne by the producer or trader. The expressions 'has normally been exempted' and 'a normal refund' preclude any form of exemption or refund not usually granted in connection with the export of the merchandise in question".
(Italy, W.9/61, page 4).

14. Proposed amendment to paragraph 3

"The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has normally been exempted, or has been or will be relieved by means of normal refund"  
(Italy, W.9/61, page 3).

The Italian representative explained that the insertion of the word "normal" is intended to lead to the exclusion of refunds of taxes other than those of the kind which most countries have in common, such as sales taxes and turnover taxes.

The Technical Group, however, considered that the word "normal" is in itself not a clear definition and would lead, therefore, only to difficulties of interpretation, and therefore rejected this proposal.