GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Trade in Industrial Products
Working Group 2

VALUATION

Comments by the Director of Valuation and External Relations of the Customs Co-operation Council on paragraph 15 of the Report of Working Group 2 on Non-Tariff Barriers

1. The paragraph in question purports to explain the difficulties which certain countries consider they would encounter in accepting the Brussels Definition of Value (BDV), and in applying it on an f.o.b. basis instead of the c.i.f. basis which the Definition itself requires. It is important that there should be no misunderstanding about any such difficulties.

2. Certain of the statements in the paragraph call for comment as they seem to derive from misconceptions about the BDV as it is applied by Contracting Parties of the Valuation Convention with the guidance of the Valuation Committee of the Customs Co-operation Council.

3. It is agreed that f.o.b. systems in themselves cannot be regarded as more of a non-tariff barrier than c.i.f. systems. However, none of the countries in question has such a system on its own; all of them have combined it with other methods and it is these other methods which are regarded as constituting non-tariff barriers. The BDV provides for only one method and the question is whether countries could adopt this one method on an f.o.b. basis, abandoning all other methods.

4. One suggested difficulty is that the BDV system does not always call for prices actually paid. This is so, but in fact under the BDV, with its interpretative Note 5, there is more acceptance of invoice prices than under any other system. Under the BDV different prices for identical or similar goods can be accepted provided the goods are sold in conformity with the "open market" sale envisaged in the Definition and in practice, in the great majority of cases, the Contracting Parties to the Brussels Valuation Convention use the invoice price as the basis of valuation. Other systems tend to be more strict in requiring that there should be only one value for duty at a given time and place for identical or similar goods which leads to the situation where more invoice prices are set aside than under the BDV.

5. The question of the discretion of administrations is mentioned. Certainly, in the small area of commerce in which invoice prices are set aside under the BDV system, judgment has to be exercised by officials, but the same is true, probably in a greater
degree, of other systems under which decisions have to be taken for instance, in respect of:

- the appropriateness of varying valuation criteria
- identification of "like" goods
- adjustments for differences in quantities, level, time, etc.

It would be a bold claim that these adjustments are simpler and less frequent than under the BDV.

6. There seems to be a suggestion that "up-lifts" are a peculiarity of BDV valuation, but this is not so. The BDV bases its valuations on the terms of the transactions in accordance with which the goods are imported. If the transaction is in open market conditions the invoice price is acceptable as such with a considerable time tolerance; if not, and the invoice price is different from the normal price because, for instance, the transaction is between associated houses or between exporter and sole concessionaire, adjustments have to be made to the invoice price. Likewise, under any valuation system, if goods are imported on terms which do not meet those laid down in the system, adjustments (i.e. "up-lifts") are made. In the case of the BDV these adjustments (or "up-lifts"), which apply to a limited percentage of trade, are made in regard to a single criterion, i.e., the price the goods would fetch in the open market.

7. When there is no selling price (goods on hire, for example) some other basis for valuation has to be found, but in the case of the BDV there are less difficulties for traders than in the case of other systems since there is a single concept not a variety of concepts.

8. It is thought that exporters would face greater difficulty in determining the value for duty when this is determined in the country of importation than when the value is determined on actual prices paid in the exporting country. In fact this is not so. The BDV system is widely known and well-documented. It is based on the terms on which the goods are imported. Exporters know these terms and can accordingly assess the value for duty without difficulty. Under systems which rely on prices in the exporting country, the exporter himself is in a less satisfactory position. The same goods may not be sold in the exporting country or the exporter may ship goods from a third country (quite a common practice) and have no knowledge of sale prices in that country. In any case, the exporter plays a minor rôle in valuation; it is the importer, who is in close contact with the customs, that has to make the declaration and is responsible for its accuracy. It is indisputable that under the BDV all the information necessary for valuation is available to the importer whereas under systems based on prices in the exporting country the importer does not have the necessary knowledge. This is the fundamental weakness of such systems in terms of practical customs administration. In case of understatement of the value in the exporting country the importer can claim ignorance of the facts and the exporter who has given the incorrect figure is outside the jurisdiction of the country of importation.
9. It is suggested that BDV would make appeal more difficult. This seems to relate to appeals by exporters. Again, this ignores the subsidiary role of the exporter. Regardless of this, it is not at all clear that the exporter has any more difficulty under the BDV than under any other system. He is fully aware of the facts required for BDV valuation, whereas under some other systems he does not have the facts.

10. It is claimed that the BDV system does not offer greater precision as to price, time, place, quantity and level of trade. On the contrary in the Definition these elements are clearly prescribed. There is only one definition of price (the open-market price) and only one place (the port or place of introduction into the country of importation) under the BDV. So far as time is concerned the time tolerance in the BDV permits the acceptance of contract prices encountered in normal world commerce. For quantity and level, the BDV system is precise in recognizing the quantity and the level of the actual transaction, thus respecting commercial practice and facilitating the use of the invoice for valuation purposes.

11. Some of the reasoning above relates to systems other than BDV which are not pure f.o.b. and it might be well to return to the question whether it is feasible for certain countries to adopt the BDV and apply it on an f.o.b. basis by deducting freight, insurance and other costs between the f.o.b. and c.i.f. points. It seems that difficulties are foreseen in this regard in that different values for duty would be applicable to the same product at different ports of entry even when shipped by the same exporter. This difficulty relating to freight costs, etc, would not occur where transaction prices varied according to the actual freight costs, etc, but might admittedly arise when the price was the same for various ports. This problem, which is analogous to some which have been encountered and solved by the Valuation Committee of the Customs Co-operation Council, might well also be solved after sufficient study.

12. In general, it seems that the problems involved in applying the BDV system on an f.o.b. basis have been exaggerated and might be far less formidable than has been assumed.