GENERAL AGREEMENT ON
TARIFFS AND TRADE

VALUATION
Nature and scope of the problem

1. (1.) 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.

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2. (2.) 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 invoice values are non-existent or unreliable, differing definitions of the value to be sought have led to widely differing practices.
Article VII contains certain principles on (5.) 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 - 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 much was left unsaid although it was stated that when exported goods were relieved of internal taxes applicable to sales for home consumption, these should not be included in dutiable value in an importing country. 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 the Article no country considered that its system was inconsistent with the terms of the Article.

3. (4.) Article VII contains standards 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 indeed interpret them precisely; further work done in 1955-56 likewise failed to clarify some central questions. There was notably no agreed definition of value beyond the statement that value should be based on actual value of the imported product (the price at which such goods or like goods are sold or offered for sale under fully competitive conditions or the nearest ascertainable equivalent) - 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 much was left unsaid although it was stated that when exported goods were relieved of internal taxes applicable to sales for home consumption, these should not be included in dutiable value in an importing country. 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 the Article no country considered that its system was inconsistent with the terms of the Article.
4. (9.) Certain delegations envisaged the interpretation of Article VII by establishing certain basic principles, as set out hereunder:

(a) An acceptable valuation system should be neutral in its effect and in no case be used as a disguised means of offering protection either regularly, with respect to all shipments of particular kinds of goods, or in special cases when dumping was suspected.

(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.
Some countries felt that the problems in this area called, preferably, for multilateral solutions. If satisfactory multilateral solutions could not be attained, action by particular countries would have to be envisaged. Other countries considered that the real problems so far identified were more readily susceptible to solution by consideration of the practices of particular countries. A third group, including the developing countries, emphasized that a major consideration was to avoid an increase in tariff protection which might be involved in too much emphasis on harmonization. These countries inclined to the view that any multilateral solution should be confined to elaboration of more precise interpretations of Article VII of GATT.

This report outlines the proposals of the countries favouring one form of multilateral action or another, then takes up the problems posed by the different proposals. As will be seen the various solutions discussed are not mutually exclusive but could in some cases be combined. A final section outlines possible individual country actions.

Taking into account the broad acceptance of the principles of the Brussels Definition and the interpretative notes thereto, most of the countries considered that the problems in this area called for an overall solution. Other countries were of the opinion that the real problems so far identified were more readily susceptible to solution on a case-by-case basis. In particular, the developing countries emphasized their desire to avoid any increase in tariff protection which might be involved in too much emphasis on harmonization. These countries inclined to the view that any overall solution should be confined to elaboration of more precise interpretations of Article VII of the General Agreement.

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 the Annex.
Possible overall solutions

7. Considering that trade should be able to develop in a climate of stability and certainty and that the harmonization of valuation systems can contribute substantially to the attainment of these objectives, the majority of countries 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.

Having regard to the general belief that Article VII is too vague to permit of any satisfactory harmonization, these same countries further proposed that the CONTRACTING PARTIES should accept a set of 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 principle of the Brussels Definition, reduced the calculated value for customs purposes by the cost of freight and insurance up to the place of introduction in the importing country.
8. The proponents of the first proposal for an overall solution (far-reaching harmonization) made the following points:

- the principles of the Brussels Definition are already used by the great majority of the contracting parties;

- the Brussels Definition provides precise rules as to the constituent elements of any definition of value for customs purposes; those rules provide for international trade a concept which is simple and readily understandable, designed:

-- 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 are concerned, namely "competition" (price), quantity, level of trade, time and place, the "competition" factor played no part because the adjustments made were the same; no appreciable difference was found for the "quantity" and "level" elements since the majority of transactions concerned wholesale trade; the "time" element was also of little importance because of the very extensive allowances made by countries applying the Brussels Convention and the slight variations in most prices between despatch and importation. The only factor which required to be taken into consideration was "place", that is to say the difference between the c.i.f. price and the f.o.b. price;
the real problem consisted above all in abolishing the incomprehensible complexity of the systems used (which could always be changed) at the governments' discretion to make them increasingly protectionist, whereas the Brussels Definition with its Explanatory Notes remained unchanging and of uniform application in its simplicity. The possibility of a choice between several methods allowed free play for the subjective appreciation of the customs authorities and allowed arbitrary decisions, all the more unforeseeable as far as the exporters were concerned since the values quite apart from the technical concept of f.o.b. price, continued to be determined either on the basis of the domestic price in the importing country, which the exporter could not know, and which fluctuated and could be determined at will in a manner contrary to the provisions of Article VII, or on the basis of the domestic price in the exporting country, a study of which, in most of the cases which had been contested, would involve the continuing presence of foreign officials in the country of export, carrying out long and detailed enquiries into elements to be supplied by the exporter and often highly confidential, failing which the assessment would be automatically imposed. Thus the formation of all world trade values would, under this procedure, depend on a perpetual enquiry of an anti-dumping nature the rules for which have however been limited by the Code. Such general investigation would be further intensified as a result of resort to certain forms with multiple headings which had been the subject of numerous notifications concerning misuse of customs formalities.
The non-BCV countries, having f.o.b. systems, made the following points:

1. Their system could not be regarded as more of a non-tariff barrier than any other system, as it made if anything more extensive use of actual values, i.e., the price actually paid, than did the BCV.

2. Because of the extensive discretion given to administrators in finding the notional price which would have been paid, where invoice values could not be used, they could not regard BCV as an improvement over their own system. This was essentially their difficulty with uplifts.

3. Determination of actual prices paid in exporting countries had the advantage for exporters that they could usually determine from their own records the value for duty which would apply. Appeal was also easier where customs valuation had taken place on published criteria.

4. Where distances between ports-of-entry in a country are great, a c.i.f. basis of valuation can lead to substantial differences in the amounts of duty collected.

5. Very extensive renegotiation of bound tariff rates and disturbance of existing competitive relationships would be involved in a shift from f.o.b. to c.i.f.

Countries favouring solutions on a case-by-case basis pointed out 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. 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.
(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.

The representative of the United States said his Government was prepared to consider the elimination of the final list system of valuation, which will require legislation.

11. (ll.) The developing countries drew attention to the difficulties caused by use of methods necessitating determination of values of export in the internal market of the exporting country where there was no real market or a small market using smaller quantities and different qualities of goods. Use of such prices worked particularly to the disadvantage of developing countries where internal prices had no direct relationship with prices their goods could obtain in the international market. The latter were generally higher than manufacturing costs plus a reasonable profit margin but lower than current domestic prices.

12. (13.) Possible actions by particular countries

For reference the major matters covered by the notifications are listed below.

Australia
- the way in which current domestic value based on internal prices in exporting country is determined, and the use of arbitrary valuation (Item 88).
- reported introduction of arbitrary, protective valuations for chemicals (New).

Brazil
- use of minimum values which have protective effects, for an increasing number of products (Item 91).

Canada
- the way in which current domestic value in exporting country or estimated costs of production augmented by a percentage for profit are determined by Canada (Item 92).
- use of charges to create de facto arbitrary minimum values (Item 93 - this matter was deferred for further consideration in Part 5).
- inclusion in value of duties which have been refunded to exporter (Item 94).  

South Africa - the way in which current domestic value is determined and the use of an arbitrarily determined value where either is higher than invoice price (Item 104).

United States - use of ASP (Item 108).

- use of special valuation procedures of "final list" (Item 109). The representative of the United States noted that elimination of the final list requires Congressional action. He stated that his Government was prepared to consider proposing the necessary legislation to Congress if appropriate concessions were offered.

1This question might call for separate national action even if a multilateral solution had been found.