Committee on Trade in Industrial Products
Working Group 2

I. VALUATION

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.

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 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.
8. 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.

9. 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 1.

10. In a climate of stability and certainty, most countries felt that the harmonization of valuation systems could contribute substantially to the development of international trade. 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.

11. 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.

12. 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 different ports 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.

13. 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 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. He also noted that the repeal of ASP was now pending before the Congress.
14. Certain countries that use the principles of the Brussels Definition could not share the point of view expressed in paragraph 12. 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. The latter method involved the 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.
Annex 1

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)