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 sales taxes and other tax adjustments. The Group met from 8 to June under the Chairmanship of Mr. S. 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. In view of the somewhat miscellaneous character of the Illustrative List items assigned to it for consideration, the Group concluded that it would facilitate debate to re-order the discussion in the following way:

- Prior deposits followed by discriminatory credit restrictions
- Variable levies followed by fiscal adjustments
- Restrictions on foreign wines and spirits followed by discriminatory taxes on motor cars
- Administrative and statistical duties
- Special duties on imports.

This report is also arranged in the above order.
4. The special interests of developing countries in some of these problems was taken into account by the Group and are reported in the appropriate individual sections of this report.

5. Following its examination of these items, the Group also considered some notifications which certain members wished to have added to the Illustrative List, as had been proposed in an airgram dated 27 May. A note to the Committee on the debate of these items is being issued separately.

Prior deposits

6. In its debate on prior deposits the Group reviewed briefly the recent cases of use of this method of restraining imports, including in the discussion not only the cases on the Illustrative List but some others as well.

7. The representative of Chile drew attention to recent reductions in the rate of deposit in Chile which had freed some imports from deposit in that country. It was noted that these revisions and simplification of the system had been fully explained in L/3381.

8. The representative of Japan announced that as from 18 May 1970 the Japanese prior deposit system had ceased to operate and that no deposits were now required for imports from any source.

9. As concerned the United Kingdom prior deposit scheme, it was noted that the rate of deposit had been reduced a second time on 1 May and was now at 30 per cent. It was stated that the United Kingdom Government had no intention of extending the scheme when legislative authority for it expired at the beginning of December 1970. Some countries urged, in view of the substantial improvement in the United Kingdom's balance of payments, earlier removal of the prior deposit scheme.

10. The Group welcomed these announcements. It was also noted that a number of other countries maintain prior deposit schemes and that the device had now been in use in one country or another for some fifteen years.

11. In the debate, there was general agreement that prior deposit schemes constituted a restriction on trade, the degree depending on a variety of factors, including the height of the deposit required, the time for which deposits were held, the duration of the scheme, the products and country sources to which it applied. Discriminatory effects were also possible.
12. It was also generally agreed that it would be desirable to provide for consultation under GATT as in the case of quantitative restrictions whenever prior deposits were used. Consultation with the International Monetary Fund would be included.

13. 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 upon small as compared with large exporters, in view of the greater difficulty for the latter 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. Some delegations recommended that such studies should reach a more advanced stage before GATT considered any further action.

14. Others considered that it should be possible to go somewhat beyond merely ensuring consultation, in the direction of establishing guidelines for use of this type of measure. Some guidance of this kind might help to provide somewhat greater discipline and order in the present gray area between those schemes which constituted exchange controls, 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.

15. 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

16. It was agreed that the most desirable solution to the problem of prior deposits used in addition to other restrictive measures would be elimination of these systems.

17. Most countries favoured arrangements for timely notification of prior deposit schemes to the CONTRACTING PARTIES and for consultation in such cases along the lines of the provisions of Articles XII and XVIII:B.
18. Several countries also favoured an effort to develop guidelines which would establish principles to be followed as a means of reducing the harmful effects of prior deposit schemes on international trade. These included:

(a) Prior deposits should not be used for a period longer than necessary to overcome the difficulties which caused their imposition, and should be reduced and eliminated as rapidly as possible.

(b) The rate of deposit should be no higher than necessary and should be reduced as rapidly as circumstances permit, and deposits should not be kept unreasonably long. In this connexion, it was argued that it might be preferable, from a trade point of view, to have a higher rate for a shorter period than a lower rate and a system of long duration.

(c) 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. The representatives of the developing countries did not accept the latter point, asking instead that products of developing countries be exempt.

(d) 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.

19. 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.

20. Several countries preferred to await the outcome of studies in other international organizations or in GATT before they pronounced themselves on the question of guidelines.
Credit restrictions for importers

21. 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.

22. With regard to the first question, the notifying countries stressed that this system of credit approval (standard method of settlement) subjects all imports, whether liberalized or not, to the discretionary authority of government officials. Such control over the import credit terms could result 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.

23. 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.

24. The representative of the notified country informed, in regard to the problem concerning import bills, 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.
As to the second question, he 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 whose term extends beyond four months. He also wished to know how other countries were controlling speculative capital transfers in the form of trade credits.

25. 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

26. Some countries suggested that both types of problems were impairing export interests of other countries. The desirability of resolving these problems through removal of the measures was reiterated.

27. 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. Decisions regarding the appropriate interest rate should be taken by the principal institutions concerned in accordance with the relevant factors such as the degree of risk.
Variable levies

28. 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. That Committee had established four Working Groups one of which, namely Group 2, had specific responsibilities for the item variable levies. It was understood that that Group would meet later in the month when the notification would presumably be taken up.

29. In the light of these events, it was agreed to defer discussion on the item until the possibility for solutions had been explored in Group 2 of the Agriculture Committee.

Sales taxes and other tax adjustments at the border

30. The Group considered whether it would be appropriate and useful to attempt to carry forward consideration of tax adjustments at the border at this time. The Chairman of the Working Party on Border Tax Adjustments referred to the report of the Working Party to the Committee on Trade in Industrial Products which had just been issued (COM.IND/W/29) and confirmed that it had not been possible to discuss solutions in all cases although the report contained comments relevant to solutions in many cases. The difficulties were of two sorts: first, not all of the matters raised in the Inventory notifications were directly relevant to the central questions before the Working Party; and secondly, for a great many of the problems raised, there was no agreement as to whether the practices notified were or were not consistent with GATT as it stands today. This second difficulty hampered consideration of an interpretative note and also, to some extent, hampered efforts to agree on appropriate procedures for use in cases in which a country shifts from one method of tax assessment to another. These circumstances implied that there would likely be considerable scope for the Committee on Trade in Industrial Products to resume study of solutions at some point in time. It was noted that the Border Tax Working Party was under instruction to complete its work by the end of 1970 and that the lines of division between the categories of notification would undoubtedly be clearer then.

31. The Group considered that it would be useful to have the final report of the Working Party on Border Tax Adjustments before they proceeded with their examination of the issue. The question was therefore set aside for later discussion.
Restrictions on foreign wines and spirits

32. Discussion centred on the four Illustrative List items regarding taxation of wines and spirits as well as a related notification regarding prohibition by one contracting party of advertising of certain spirits.

33. 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. Furthermore, the prohibition against advertising of distilled grain spirits impaired the value of tariff concessions on these products. The representative of one maintaining country made it clear that it was as part of its public health policy that advertising was prohibited, such prohibitions being in any case of a non-discriminatory nature, in respect of grain spirits and alcohol-based aperitifs in order to check undue consumption of aperitifs. No useful purpose would be served, therefore, by prohibiting advertising of all alcohol-based aperitifs while allowing it in respect of whisky. In any event, statistics of whisky imports into the country concerned had shown an increase that was considerable, continuing, and from all sources over the past four years.

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

35. 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° are 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.
36. 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.

Possible solutions

37. Some delegations suggested that all alcoholic beverages should be taxed at a single rate for all price ranges and that discriminatory restrictions on advertising be removed.

38. A number of delegations considered that the best solution lay in the maintaining 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 would be considering, inter alia, possible interpretations of Article III:2. 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.

39. 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 interpretative 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 wines and spirits which came 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.
40. Some delegations suggested the following interpretative note to Article III:

(a) "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 any other objective criterion which does not entail indirect protection for domestic products through unreasonable differentiation between industries."

(b) "The first sentence of paragraph 4 of Article III should be interpreted to include equal rights of advertising for like products."

**Discriminatory taxes on motor cars**

41. 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.

42. It was noted that the problem of discriminatory 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.

43. 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

44. 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.

45. The following interpretative note to Article III was also suggested:

"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 uniform and reasonable rate of progression."

Statistical and administrative duties

46. One representative said that his Government had already initiated action towards eliminating the administrative charges and statistical duties applied in his country. To that end a bill providing for the abolition of such charges and duties by 1 January 1971 had already been approved by one of the Houses. 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.

47. It was pointed out that, in addition to statistical and administrative duties, a number of taxes of various kinds (such as port taxes, sanitary 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.
Possible solutions

48. 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 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.

49. It was 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. It was 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.

50. Certain countries 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 these measures and, in their own interest, simplify the formalities, fees and obstacles to imports which involved costs that were ultimately borne by importers.

51. 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 4, 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 necessary to ensure that any solution related only to trade in goods and not in invisibles.
Special duties on imports

52. The Illustrative List contained notifications regarding measures adopted by some countries for formulating tariff protection which could 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.

53. The special duty on ship repairs was represented by the countries applying it as being a customs duty. The notifying countries challenged that interpretation, in view of the fact that the special duty concerned did not appear in the tariff nomenclature. 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.

54. The country maintaining the measure considered that it was a tariff rather than a non-tariff restriction as alleged by the notifying country.

55. As regards the escape clause trade measures, the maintaining countries considered that they were entirely consistent with Article XIX and, fell outside the scope of the non-tariff barrier exercise since, in their view, the measures were purely tariff protection. 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

56. 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 90 days.