REPORT OF WORKING GROUP 5 ON NON-TARIFF BARRIERS

Examination of Items in Part 5 of the Illustrative List
(Charges on Imports)

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 fiscal adjustments, either at the border or otherwise. The Group met from 9 to 11 June 1970 under the Chairmanship of Mr. S.R. 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 discuss the items and to arrange its report in the following order: prior deposits; credit restrictions for importers; variable levies; fiscal adjustments either at the border or otherwise; restrictions on foreign wines and spirits; discriminatory taxes on motor cars; administrative and statistical duties; special duties on imports.

4. The special interests of developing countries in some of these problems were taken into account by the Group and are reported in the appropriate individual sections of this report.

5. Following its examination of the items before it, 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.
I. 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 simplifications of the system had been fully explained in L/3381.

8. The representative of Japan announced that as from 13 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 now stood 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, early removal of the prior deposit scheme.

10. The Group welcomed these announcements. It was also noted that a number of other countries maintained 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 of restriction depended, as stated by the representative of the International Monetary Fund, on a variety of factors, including the amount of the deposit required, the cost of financing, the time for which deposits were held, the duration of the scheme, the products and country sources to which it applied. Complex prior deposit systems could give rise to discriminatory practices.

12. It was also generally agreed that there should be appropriate consultation under GATT 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 they could have upon small as compared with large exporters in view of the greater difficulty for the former 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 therefore considered it necessary that such studies should reach a more advanced stage before GATT could usefully consider solutions in this field.
14. 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.

15. Without prejudging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, some delegations considered that it should be possible to go somewhat beyond ensuring consultation, in the direction of establishing guidelines for use of this type of measure with a view to limiting its incidence and harmful effects. Some guidance of this kind might help to provide somewhat greater discipline and order in the present grey area between those schemes which constituted exchange control practices, and thus came within the purview of the International Monetary Fund, and the more conventional types of restrictions for which provision was clearly made by GATT provisions.

16. Several countries preferred to await the outcome of studies in progress in other international organizations or in GATT as to the restrictive effect on trade before they pronounced themselves on the question of guidelines.

17. 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**

18. It was agreed that the most desirable solution to the problem of prior deposits would be their elimination as soon as possible.

19. Some delegations favoured arrangements for timely notification of prior deposit schemes to the CONTRACTING PARTIES and for appropriate consultation in such cases along the lines of the provisions of Articles XII and XVIII:B. Other delegations considered that import deposit schemes should be notified and dealt with on a case-by-case basis. Still other delegations believed that countries invoking balance-of-payments justification for import deposits should consult in the GATT Balance-of-Payments Committee.

20. Without prejudging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, several countries also considered it useful to examine the possibility of developing guidelines which might establish principles to be followed as a means of reducing the harmful effects of prior deposit schemes on international trade. These included:

(a) Whether or not regarded as an additional charge on imports inconsistent with Article II as regards bound items, or as a form of quantitative restriction generally inconsistent with Article I, prior deposit schemes should be used only in the case of balance-of-payments difficulties, and only in circumstances where these measures avoided the use of more burdensome measures.
(b) Prior deposits should be limited in time and should not in any event be continued beyond the period required to overcome the difficulties which caused their imposition.

(c) The rate of deposit should be as low as possible and should be reduced as rapidly as circumstances permit; in addition, deposits should not be kept for an unreasonably long period. In this connexion, it was argued that it might be preferable, from a trade point of view, to have a higher rate of deposit for a shorter period than a lower rate and a system of long duration.

(d) 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.

(e) In order, however, to avoid adverse effects which the introduction of any such scheme might have on the trade of developing countries, products of interest to them should be exempt from the product coverage.

(f) 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.

II. 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) subjected all imports, whether liberalized or not, to the discretionary authority of government officials. Such control over the import credit terms resulted 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. As to the first question, the representative of the maintaining country 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 the term of which extended beyond four months. He also wished to know how other countries were controlling speculative capital transfers in the form of trade credits.

25. In regard to the problem concerning import bills, he said 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.

26. 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 transfers in the form of trade credits and difference of interest rates between countries.

Possible solutions

27. Some countries maintained that both types of problems were impairing export interests of other countries. The desirability of resolving these problems through removal or modification of the measures was reiterated.

28. 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, with the financial institutions concerned deciding the appropriate rate of interest in accordance with relevant factors such as the degree of risk.

III. VARIABLE LEVIES

29. 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 responsibility 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.

30. In this light it was agreed to defer discussion on the item until the possibility for solutions had been explored in Group 2 of the Agriculture Committee.
IV. FISCAL ADJUSTMENTS EITHER AT THE BORDER OR OTHERWISE

31. 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.

32. The Group considered that it would be useful to have further consideration of this matter in the Working Party on Border Tax Adjustments before proceeding with examination of the issue. The question was therefore set aside for later discussion.

V. RESTRICTIONS ON FOREIGN WINES AND SPIRITS

33. Discussion centred on the four Illustrative List items regarding taxation of spirits.

34. 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.

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

36. 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° were 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. The system also has the
effect of affording protection to the bottling industry of the country applying it.

37. 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.

38. A related notification regarding the prohibition of one contracting party of
the advertising of certain spirits was also discussed by the Group. The notifying
countries considered that such discriminatory restrictions on advertising impaired
the value of tariff concessions and should be removed.

39. The representative of the 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.

40. In the opinion of the notifying countries, it would be desirable to consider
an interpretative note to the first sentence of paragraph 4 of Article III to make
it clear that the regulations and requirements mentioned in that paragraph should
include equal rights of advertising. Some countries believed that the suggestion
for a clear definition of "like domestic products" contained in paragraph 42 below
would also be helpful.

Possible solutions

41. Some delegations suggested that all alcoholic beverages should be taxed at a
single rate for all price ranges.

42. A number of delegations considered that the best solution lay in the maintain­
ing 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.
43. 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 spirits which may come 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.

44. Some delegations suggested consideration of an interpretative note to Article III along the following lines:

"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, thereby ensuring a reasonable rate of progression, or on any other objective criterion which does not entail indirect protection for domestic industries through unreasonable differentiation between products."

VI. DISCRIMINATORY TAXES ON MOTOR CARS

45. 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.

46. It was noted that the problem of 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.

47. 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

48. 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.

49. The following interpretative note to Article III was also suggested by some delegations:

"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 reasonable rate of progression."

VII. STATISTICAL AND ADMINISTRATIVE DUTIES

50. 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.

51. It was pointed out that, in addition to statistical and administrative duties, a number of taxes of various kinds (such as port 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. It was also noted that these provisions stressed the need to reduce the number and diversity of fees and charges.

Possible solutions

52. 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 be adopted 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.

53. Certain countries 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. Other countries 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.
54. Certain delegations 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 those measures and, in their own interest, simplify the formalities, fees and obstacles to imports which involved costs that were ultimately borne by importers.

55. 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 52, 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 also necessary to ensure that any solution that might be evolved related only to trade in goods and not to invisibles.

VIII. SPECIAL DUTIES ON IMPORTS

56. The Illustrative List contained notifications regarding measures adopted by some countries providing for temporary emergency tariff relief which it was claimed 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.

57. The special duty on ship repairs was considered by the country applying it as being a customs duty rather than a non-tariff restriction as alleged by the notifying countries. The notifying countries challenged that interpretation, in view of the fact that the special duty concerned did not appear in the tariff schedules. 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.

58. As regards the escape clause trade measures and tariff-formulating measures, the maintaining countries considered that they were entirely consistent with GATT and fell outside the scope of the non-tariff barrier exercise. 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

59. 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 ninety days.