1. Group 2 - Valuation met from 20 to 23 April and on 5 and 6 July to seek appropriate solutions, on an ad referendum basis, to problems in the field of valuation which had earlier been identified, in accordance with the decision of the Council (C/M/67) accepting the report of the Committee on Trade in Industrial Products.

2. In April, the various suggestions contained in the report of Group 2 (L/3496, Appendix 3) were reviewed, in particular the principles which had been generally supported (paragraphs 10 and 12), and an effort was made to draft a series of possible interpretative notes for Article VII, the whole comprising an interim working paper (Spec(71)31). At the July meeting consideration was then given to certain new proposals for principles and interpretative notes including those in Spec(71) documents 67, 68, 68 Add.1, 69 and 70.

3. As the document now stands, it contains the principles and interpretative notes which appeared to merit further consideration, in some cases with alternative texts indicated. It remains an interim working paper and classification of the points as principles, rules or interpretative notes is subject to change. The Group has not finally determined whether all problems raised by the Report on Valuation have been covered and has asked that countries to which notifications were originally addressed be specially invited to study the interim working paper and attend the next meeting in order that the Group may better determine whether its draft is responsive to the needs and possibilities of those countries whose valuation systems have caused difficulties. It is agreed that neither the Group as a whole nor any of its members necessarily accepts the text, but that it forms a basis for study by governments with a view to further discussion.

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1 Paragraphs 1-4 are a secretariat revision of paragraphs 1-5 of Spec(71)31.
4. The next meeting of the Group is scheduled for the week beginning 26 October and some members intend to circulate further proposed amendments to the text well in advance of that date, for study in capitals.
I. DRAFT PRINCIPLES

1. Valuation systems should be neutral in their effect and in no case be used as a disguised means of providing additional protection by artificially increasing the value to which the rate of duty is to be applied.

2. Valuation systems should not be used to combat dumping.

3. Valuation systems should protect trade against unfair competition arising from undervaluation.

4. Valuation systems should be of general application without distinction as between sources of supply.

5. Dutiable value should be based on equitable and simple criteria which do not conflict unduly with commercial practice.

6. Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.

7. Valuation systems should not prevent the quick clearance of goods.

8. The criteria (price, time, place quantities, level of distribution, etc.) for the determination of value should be made publicly available.

9. Valuation systems should be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.

10. Valuation systems and practices should take into account the need to safeguard business secrets.

11. Contracting parties should move towards the adoption of one common system of valuation.

12. Valuation systems should be based on one single concept.
II. DRAFT INTERPRETATIVE NOTES

1. The value for customs purposes of imported merchandise is the "actual value," which is understood to be the price at which, at a time and place determined by the legislation of the country of importation, the merchandise imported or like merchandise is sold or would be sold to that country in the ordinary course of trade under fully competitive conditions.

... for c.i.f. countries, this price is understood to be the price paid or payable for the goods when delivered at the place of introduction into the country of importation.

... for f.o.b. countries, this price is understood to be the price paid or payable for the goods at the point of shipment in the exporting country.

Explanatory Note:
In the c.i.f. case the price paid or payable will of course include insurance and freight costs in shipment to the importing country. In the f.o.b. case the price paid or payable will vary according to whether the point of shipment is ex-factory, at railhead, at the dock, or free on board ship or plane; but, whatever the point of shipment, the customs administrations would make the required adjustments to this price in order to arrive at the value required by their legislation.

2. In administering the foregoing, all countries undertake to restrict the concept "like merchandise" to exceptional cases in which the actual value of the imported goods cannot be determined on the basis of the invoice price.

2. bis The price of "like merchandise" should be used as a basis for customs valuation only in cases where the "actual value" of the goods cannot be determined on the basis of the price paid or payable or of
the price by the vendor to other purchasers in the importing country for identical merchandise or on the basis of any other documentation in respect of the imported goods.

Where a difference exists between the price paid or payable and the price of "like merchandise", the former price should not be rejected except to the extent that the difference is not attributable to reasons such as technical developments in the exporting country, the difference in distribution methods before the import stage, etc.

Alternative to preceding sub-paragraph: It follows that the fact that there is a difference between the price paid and the price of like merchandise is not a reason in itself for rejecting the former.

3. "Like merchandise" is understood to mean an identical product produced in the exporting country, i.e. similar in every respect to the product imported, or, in the absence of such a product, another product which, although not similar in every respect, has characteristics closely resembling those of the imported product (same origin, same type, same quality, etc.).

67 3. bis "Like merchandise" is understood to mean a product similar in every respect (e.g. quality, commercial level) to the product imported or, in the absence of such a product, another product, which, although not similar in every respect, has characteristics closely resembling

1There was a variety of viewpoints as to which of these alternatives was preferable, and in what form. One view was to accept paragraph 3 but not 3 bis; others could accept either paragraphs 3 or 3 bis, in one case only with the modifications described in footnote 2. Others appeared to prefer 3 bis, though some preferred it only with amendments, notably as mentioned in footnote 3. The text of paragraph 3 is taken verbatim from Article 2(b) of the Anti-Dumping Code. The authors of paragraph 3 bis reserve the privilege of making further amendments in the proposed definition of "like merchandise" and have under consideration changing the location of the thought in the second indented sub-paragraph.
those of the imported product (in particular the condition, type, quality, terms of sale, etc.). In addition, the "like merchandise" to be taken into consideration must be available\(^2\) at the same time on the importing market and:

... must be imported from the country of export of the goods to be valued, or

... failing such merchandise, must be imported from a country\(^3\) having a comparable level of prices and wages.

4. Although contracting parties undertake to determine value in accordance with the foregoing paragraphs wherever possible, there may be a few cases where actual value is not thus ascertainable and where like merchandise as defined above is not available. In such cases it is recognized that no single method of calculating the nearest ascertainable equivalent, within the meaning of Article VII, paragraph 2(c), is fully acceptable. Contracting parties agree therefore when determining value in such cases to give full consideration to such information as may be provided by the exporter or the importer with a view to making a fair and equitable valuation.

4. bis When the actual value is not ascertainable on the basis of the price paid or payable or the price of "like merchandise" as defined in paragraph 3 bis above, the imported goods should be valued on the basis

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\(^2\)One delegation could accept paragraph 3 bis if it ended at this point, inserting "currently" before "available". As a second choice, it could accept the inclusion of the subsequent material up to and including the first indented sub-paragraph if the last sentence before the colon were modified to read: "In addition, the 'like merchandise' to be taken into consideration must be currently available on the importing market or on the exporting market for export to the importing country, and:"

\(^3\)The final clause beginning with the word "having" will be reconsidered. One delegation preferred "having similar economic conditions and structure"; although this is not acceptable to the authors, they believe a mutually agreeable text can be found.
of other elements available on the importing market in respect of the imported goods, i.e. 4

... if the imported goods are resold, the price of sale to the independent purchaser situated nearest to the importer, such price being adjusted to take account of the various elements that should not be included in the customs value (usual trading margin, commercial mark-up, duties and charges, transport and insurance costs, etc.);

... failing any such price, any other element that can constitute a valid basis for determining the value for customs purposes within the meaning of Article VII:2 (for example, rental during the normal use of the goods, value declared to the tax authorities for depreciation).

4 Paragraph 4 bis up to the colon reproduces the beginning of a text for paragraph 4 originally submitted in Spec(71)67, without important change. There was discussion of the possibility of omitting this passage and of combining the remainder of paragraph 4 bis (from the colon to the end) with the text in 4 above, but citing such further material (i.e. the sub-paragraphs) as examples of elements to be considered in these exceptional valuation cases. The authors are also considering adding the notion now contained in the final clause of paragraph 3 bis as a third example. Some delegations felt that no examples were needed and it was suggested that if some are cited, it may appear necessary to add others to the list.
5. With regard to the elements of level, quantity and time, contracting parties should respect economic reality and commercial practice and, inter alia
-- accept the usual quantity rebates even in the case of, fulfilment of a contract in successive consignments;
-- take into account the time required for executing the contract in the branch of trade in question.

6. The value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin, nor on the price of goods in the domestic market of the exporting country, nor on any other arbitrary or fictitious value.

6. bis The value of imported merchandise for customs purposes should in no case be based on arbitrary or fictitious values. Any values which are not based on the price obtained or obtainable under fully competitive conditions for the imported merchandise or like merchandise for the market of the importing country but, for example, on the value of the same or like merchandise in the domestic market of the country of export shall be deemed to be arbitrary or fictitious.

5 Some delegations preferred the first of these texts as shorter and avoiding an attempt to define "arbitrary or fictitious" which seemed doomed to add little to the examples one could cite of such practices. The authors of the second text felt that their text was not inconsistent with the short version.

6 It was suggested that it would be necessary to list additional "arbitrary or fictitious values", and the Group intends to consider some of the items in the second part of a Swedish proposal, especially minimum values (Spec(71)69).

7 Two representatives stated that they could accept this version only if the word "other" were deleted.
7. The value for customs purposes of any imported product should not include the amount of any customs duty applicable within the country of origin or export from which the imported product has been exempted or has been or will be relieved by means of refund.8

8. The importer should be made responsible for the accuracy of his customs valuation declaration.

9. On the request of the importer or exporter the customs administration shall explain how the customs value has been calculated for the imported goods, provided the confidentiality of business secrets is safeguarded.

8This paragraph was originally placed in brackets because it is doubtful whether it can properly be described as an interpretative note to Article VII.

9Some countries consider it essential that the exporter be able to find out how customs value was calculated on particular past shipments of goods sold by him. Others consider that this inevitably raises insoluble problems of confidentiality of business secrets (e.g. profit margins of the importer) and of administrative procedure and point out that the customs administration should not and cannot assume responsibility for deciding what is confidential. They felt that it would be adequate for exporters to be able to obtain information through their importers or that, if this were unsatisfactory, the exporter could obtain all the information he needed by seeking advance information concerning a second similar shipment. The following additional text was proposed in this connexion:

"On the request of a trader the customs administration shall explain in advance the general principles and practices for the calculation of value for customs purposes."

Some delegations noted that such a procedure was unlikely to offer much practical help to distant potential exporters, partly because of communication difficulties and partly because a realistic calculation could only be made when all the information concerning a real transaction was available including the goods themselves. The high cost of administering such a requirement was also mentioned.
9. bis On the request of the importer or his authorized assign, the customs administration shall explain how the value for customs purposes has been calculated for his goods.

10. Consistent with Article X:3(b), each contracting party shall provide a procedure for appeal to an independent and impartial administrative and/or judicial body against valuation decisions of its customs authorities.

The following additional proposals were made:

Contracting parties having valuation systems which require them to take into account prices of the same or like product in the markets of exporting countries, undertake to modify them to bring them in conformity with paragraph 6. In cases however where for some compelling reasons any contracting party considers it desirable to take into account in addition to actual value as defined in paragraph 1

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other values, it should instead of current domestic value, take into account:

(a) invoice prices of the exporting country of like merchandise to its major export country; or

(b) invoice prices generally obtained by the exporting country for like merchandise for exports to other third country markets.

Spec(71)69

- Minimum value systems should be abolished.
- Valuation systems based on domestic values should be abolished.
- Different practices as regards the use of so-called "up-lifts" should be harmonized.
- Contracting parties applying the BCV but not yet signatories should be encouraged to accede to the Convention.