A draft customs valuation code, which is reproduced hereunder, has been submitted by the Commission of the European Communities for consideration by the Sub-Group "Customs Matters" at its forthcoming meeting.
VALUE OF GOODS FOR THE PURPOSES OF LEVYING AD VALOREM DUTIES OF CUSTOMS

GATT - MTN - DRAFT VALUATION CODE

Agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade

PREAMBLE

The parties to this Agreement:

Considering that Ministers on 14 September 1973 agreed to enter into comprehensive multilateral trade negotiations within the framework of the GATT aimed at expanding and liberalizing world trade through a reduction in tariffs and a dismantling of obstacles to trade;

Considering that Ministers decided that the negotiations should aim, inter alia, to reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

Recognizing that the majority of customs tariffs are 'ad valorem' and that customs valuation procedures are important non-tariff measures which can have a restricting effect on world trade;

Recognizing that there are significant divergencies in international practices relating to the valuation of goods for customs purposes and that such divergencies can affect the value of any tariff cuts which may be agreed in the negotiations;

Considering that, as a consequence, it is necessary to reduce these divergencies to the greatest possible extent;
Recognizing the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules in order to provide greater uniformity and certainty in their implementation;

Recognizing that dutiable value should be based on simple and equitable criteria which do not cut across commercial practices;

Recognizing that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that the determination of customs value should be neutral in its effect and should not be used as a means of providing additional protection by artificially increasing the customs value of the imported goods;

Recognizing that valuation procedures should protect traders against unfair competition arising from the under-declaration of the value of imported goods without, however, affecting normal conditions of competition between one importer and another;

Recognizing that anti-dumping measures are the subject of specific rules under the GATT and that valuation procedures should not, therefore, be used to combat dumping;

Recognizing that the determination of customs value should be based to the greatest possible degree on commercial documents which relate to the imported goods and are available in the country of importation;

Recognizing that valuation procedures should keep formalities to a minimum and should not prevent the quick clearance of goods;
Recognizing that valuation procedures should take into account the need to safeguard business secrets;

Recognizing that the legal and administrative provisions concerning customs valuation should be accessible to the general public and 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;

Recognizing that importers should be able to appeal to an independent and impartial body against the valuation decisions.

Recognizing that the establishment of uniform, simple and precise rules on customs valuation will benefit the developing countries and will facilitate the granting to them of differential treatment by way of technical assistance;

Considering, in the light of the above principles, that the customs value of imported goods should to the greatest extent possible be based upon the price paid or payable for them;

Hereby agree to base their legislation on the valuation of imported goods upon the following Rules.
Article I

Subject to the general provisions of these Rules, the price paid or payable for imported goods shall be accepted as the basis for determining the customs value of goods provided —

(a) that the buyer and seller are not related or, if they are related, that such relationship did not give rise to a price reduction not covered by Article 6 hereof or to a price significantly lower than that available to any other buyer operating at the same commercial level or purchasing such goods in the same quantity as the buyer in question;

(b) that the buyer is established in the country of importation;

(c) that the use and disposition of the goods is entirely at the option of the buyer as a result of the sale; and

(d) that the date of the contract of sale does not precede the date referred to in Article 11 by more than \( X \) months.
Article 2

(1)  (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1 or if there is no price paid or payable in respect of a sale for the imported goods, then the price paid or payable for identical goods (*) sold by the same seller at or about the same time as the imported goods to another buyer established in the same country of importation as the buyer of the imported goods shall, provided that such identical goods are intended for the same market in the country of importation and subject otherwise to the provisions of Article 1, be accepted as the basis for determining such value.

(b) If the two buyers concerned do not operate at the same commercial level or if they habitually purchase in different quantities, due account shall be taken, when determining customs value under the provisions of paragraph (1) (a) of this Article, of any differences in the unit price of the goods in question attributable to such factors.

(2) If, in applying paragraph (1) (a) above, it is established that the goods are sold by the same seller to more than one other buyer, then the customs value of the imported goods shall be based on the average of the prices to such other buyers.

(3) For the purposes of this Article, the fact that goods were grown, produced or manufactured in different countries shall preclude them from being regarded as identical.

(*) It is necessary to provide for tolerances in regard to certain features which, whilst constituting actual differences, should not be regarded as destroying the concept of identicality for the purposes of this Article.
Article 3

(1) (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, then the price paid or payable for similar goods sold in the same market and at or about the same time as the imported goods, either to the buyer whose goods are being imported or to another buyer established in the same country of importation shall, provided that such similar goods are intended for the same market in the country of importation and subject otherwise to the provisions of Article 1, be accepted as the basis for determining such customs value.

(b) If the two buyers concerned do not operate at the same commercial level or if they habitually purchase in different quantities, due account shall be taken, when determining customs value under the provisions of paragraph (1) (a) of this Article, of any differences in the unit price of the goods in question attributable to such factors.

(2) If, in applying paragraph (1) (a), above, it is established that the goods are sold to more than two buyers, then the customs value of the imported goods shall be based on the average of the prices to all such buyers.

(3) For the purposes of this Article, "similar goods" means goods that closely resemble the imported goods, are made of the same material as, commercially interchangeable with, and adapted to the same uses as the goods being valued, and were grown, produced or manufactured in the same country at or about the same time as the goods being valued.
Article 4

(1) If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the goods shall then be valued on the basis of the price at which they are sold or offered for sale by the buyer to persons in the country of importation who are not related to the buyer, due allowance being made for -

   (a) either the commissions usually paid or agreed to be paid, or the additions for profit and general expenses usually made, in connection with sales in such country of goods of the same class or kind;

   (b) the usual costs of transport and insurance and other usual costs incurred within the country of importation;

   (c) where appropriate, the costs, charges and expenses referred to in Article 7 (2) hereof;

   (d) customs duty and any other taxes chargeable at importation or by reason of the sale of the goods within the country of importation; and

   (e) differences in prices resulting from differences between the individual quantities so sold or offered for sale and the quantity being imported.

(2) For the purposes of this Article, a sale shall take precedence over an offer for sale.
Article 5

(1) If, in any case or class of case, the customs value of imported goods cannot be determined under the provisions of Articles 1, 2, 3, and 4, then the customs value shall be determined in such manner as may be prescribed by legal instrument.

(2) No legal instrument made in accordance with this Article shall provide for the determination of customs value on the basis of—

(a) the cost of production of goods;

(b) the selling price in the country of importation of identical, similar or comparable goods grown, produced or manufactured in such country;

(c) the price of identical, similar or comparable goods on the domestic market of the country of exportation; or

(d) the price of identical, similar or comparable goods for export to a country other than the country of importation.

(3) Prescriptions made by legal instrument under the provisions of this Article shall be reasoned and based upon objective criteria relevant to the circumstances of the particular sale or other transaction in question and shall have due regard to the principles and general provisions of this Code.
In determining the customs value of imported goods, due allowance shall be made for any reduction in price granted by the seller to the buyer to the extent that it has not been allowed for in the price paid or payable provided —

(a) that the reduction was granted at the date of the contract of sale;

(b) that the reduction related to the goods being imported; and

(c) that such a reduction was freely available at the date of the contract of sale to any other buyer operating at the same commercial level or purchasing such goods in the same quantity as the buyer in question.
Article 7

(1) In determining customs value, the following shall be added to the price paid or payable to the extent that they have not been included in such price:

(a) the value of any additional consideration which the buyer is obliged to discharge himself or to require others to discharge as a condition of the sale;

(b) selling commissions;

(c) brokerage borne by the seller;

(d) duties and taxes applicable outside the country of importation from which the goods are not relieved because of exportation;

(e) the cost of containers which are treated as being one for customs purposes with the goods in question; and

(f) the cost of packing whether for labour or materials.

(2) In framing its national legislation each country of importation may opt for the addition, whether in whole or in part, to the price paid or payable to the extent that they have not been included in such price, of the following:

(a) loading and unloading charges;

(b) the cost of transport to the port or place of importation; and

(c) the cost of insurance if such is not required to be taken out in the country of importation.
Article 8

The following shall not be included in the customs value of goods:

(a) duties and taxes applicable outside the country of importation from which the goods are relieved because of exportation;

(b) duties and taxes applicable in the country of importation;

(c) costs, charges and expenses undertaken by the buyer which he is not obliged to discharge himself or require others to discharge as a condition of the sale;

(d) fees for the drawing up outside the country of importation of documents incidental to the introduction of the goods into that country;

(e) by way of derogation from paragraph (1) (a) of Article 7, the cost of advertising within the country of importation of the goods being imported, which the buyer is obliged to discharge or to require others to discharge as a condition of the sale; and

(f) the cost of insurance if such is required to be taken out in the country of importation.

Article 9

Where a contract of sale contains a revision clause, the price for the purposes of determining the customs value of goods shall be the price finally paid or payable.

Article 10

The price to be taken into account in determining the customs value of goods shall be the cash price as at a time laid down in the relevant legislation of the country of importation concerned.
Article 11

The material time for valuation for customs purposes shall be fixed by the legislation of the country of importation concerned but in no case shall such time be fixed at a date later than the date of acceptance by the customs authorities of the declaration for home use in respect of the imported goods.

Article 12

Rates of exchange to be used when determining the customs value of goods shall be duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the real values of the currencies concerned in terms of the currency of the country of importation.

Article 13

When the quantity of goods being cleared for home use on a particular customs declaration represents a partial delivery of a larger quantity purchased by the same buyer in the one transaction, any price reduction granted by reference to such larger quantity shall be duly allowed for when determining the customs value of goods provided that such reduction would be freely available under similar conditions to any other buyer.

Article 14

Each country of importation shall provide a procedure for appeal to an independent and impartial body against valuation decisions.

Article 15

All laws and legal instruments giving effect to these Rules shall be published in conformity with Article X of the GATT by the country of importation concerned.
Article 16

(1) In these Rules -

"customs value of goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

"country of importation" means country or customs territory of importation.

(2) For the purposes of these Rules persons shall be deemed to be related if -

(a) they are officers or directors of one another's businesses;

(b) they are partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls, or holds 25 per centum or more of the issued stock or shares of both of them; or

(e) they are directly or indirectly controlling, controlled by, or under common control with, any person.
Article 17

This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to the General Agreement and by the European Economic Community. The Agreement shall enter into force on... for each party which has accepted it by that date. For each party accepting the Agreement after that date, it shall enter into force upon acceptance.

Article 18

Each party to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of the entry into force of the Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of the customs valuation code.

Article 19

This Agreement may be amended by agreement of the signatories to it. Amendments may be proposed by any of the signatories to this Agreement; and other signatories which accept a proposed amendment shall signify their agreement in writing to the Director General to the Contracting Parties to the General Agreement who shall notify all signatories to this Agreement accordingly. An amendment shall come into force twelve months after the Director General has notified acceptances from at least one third of the signatories. However, any signatory may decide not to apply the provisions of an amendment whether temporarily or otherwise provided that it notifies the Director General of its intention before the amendment comes into force. The Director General will inform all signatories to this Agreement of such notifications.

(*) The Code would come into force only when specified key countries had formally accepted it.
Article 20

After the coming into effect of this Agreement any of the signatories may request the Director General to the Contracting Parties to convene a meeting of representatives of the parties to this Agreement for the purpose of affording them the opportunity of consulting on matters relating to the interpretation or the operation of the customs valuation code or the furtherance of its objectives. The Director General to the Contracting Parties shall convene such meeting promptly provided that he is satisfied that at least \( \frac{3}{4} \) of the parties to the Agreement consider that it is desirable so to do. Such consultations shall be without prejudice to Articles XXII and XXIII of the General Agreement.

Article 21

Each signatory shall periodically notify an appropriate body of the criteria by which decisions on the inapplicability of Articles 1, 2, 3 and 4 are reached and of the means by which importers are informed of those criteria. The notification should also set out the criteria under which decisions under Article 5 have been reached and the means by which importers are informed of those criteria.

Article 22

This Agreement shall be deposited with the Director-General to the Contracting Parties who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each contracting party to the General Agreement and to the European Economic Community.

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this................. in a single copy, in the English and French languages, both texts being authentic.