The delegation of Spain presents for consideration by the Sub-Group "Customs Matters" the proposals contained in the following pages, with reference to document MTN/NTM/W/175 distributed at the request of a number of delegations on 17 July last.

The amendments proposed are based on the opinions expressed by this and other delegations in the course of the discussions held to date.

**Article 1**

We request the deletion of paragraph 2(b) of this Article because in our view acceptance of the transaction value, as proposed, involves certain difficulties: in the first place, for determining the extent to which "such value closely approximates", values would always be cited purporting to demonstrate that the declared value is close to one of those in the enumeration proposed.

And it is in this enumeration that we find the greatest difficulties: firstly, in sub-paragraph (ii), because the obstacles that administrations would encounter in order to make the relevant verifications would be insuperable, since it would be a case of making a verification outside the country of importation. Secondly, sub-paragraph (iv) would be appropriately placed, consonantly with its practical utilization, as a criterion to be used among those proposed in the Interpretative Note for Article 7.
Articles 2 and 3

For establishing the customs value of imported goods, where there is more than one transaction of identical or similar goods, we propose that the value used be that corresponding to the weighted average.

Article 4

We propose that the provision in Article 6(b) be added here as paragraph 3.

Its insertion would be justified, because that provision constitutes an alternative in the context of those envisaged in Article 4.

Article 5

As already emphasized on numerous occasions in the discussions of the Sub-Group, acceptance of this method presents serious difficulties. In the present wording, the method proposed is that which would be used when the producer and the importer are disposed to collaborate in determining the customs value under this procedure. Earlier comments have already pointed out the difficulties that arise in making a verification of the data furnished; this is obvious, because it is a matter of ascertaining circumstances far away from the country of importation.

An additional difficulty arises from the provision in Article 16, establishing the confidential character of information furnished in this connexion, according to which the competent authorities "shall not reveal it without specific permission of the party submitting such information". This implies one more limitation on the possibility of putting before the courts any data obtained by the administration for the operation of this system.

Article 6

We have not found any justification for the choice which this provision affords to the importer since it would only be granted for Article 5 (production cost method), because otherwise the provisions of Article 4 (deductive method) would come into operation directly.

Furthermore, there are cases in which the administration might find it justified to determine the value through the deductive method (cases where false values are declared) and if it so decided, the choice would clearly no longer be possible.
As regards sub-paragraph (b) of this same Article 6, we have proposed its inclusion in Article 4.

Article 7

In our view, paragraph 1(a) of the Interpretative Note should be deleted, because to seek to determine an equivalence of value for goods of the same general class or kind would imply opening the way to extensible interpretation of this provision that could result in the establishment of arbitrary or fictitious values.

Article 9

The phrase "any additional consideration which the buyer is obliged to discharge" in sub-paragraph (a) implies that if the importer discharges any such considerations but these are not specifically stipulated in a contract, the invoice price does not have to be increased by the amount of the costs involved. This provision would afford arguments to importers, in particular, those involved in any kind of association, who could contend to the authorities that although they discharge such considerations they do so on a voluntary basis, without having any contractual obligation to do so. In another order of ideas, we consider that the elements included in paragraph 1 do not comprise some which are essential, and which are nevertheless included in Article 7 of the draft contained in document UD-537/78.

Article 10

We propose the deletion of sub-paragraph (c) of this Article since this seems to follow on from the term "is obliged" in Article 9 1(a).

Article 14

We have stipulated that the applicable rate of exchange must be that corresponding to the material time for valuation, in terms of Article 13.

Article 15

Three conditions have been introduced, which are based on normal commercial practice and are designed, in particular the third among them, to avoid discrimination against traders with no external relationship.

Article 16

As a consequence to the proposal to delete Article 5, this provision should likewise be deleted.
Article 19

We propose that paragraph 2 should state specifically that the reference to relationships between persons must apply to both natural persons and corporate bodies.

Likewise, we propose the inclusion of a new sub-paragraph (f) supplementing the various types of relationships of any kind that can affect the transaction price of goods.

FINAL PROVISIONS

In conclusion, we should like to underline two matters that have continually been underlined in the Sub-Group. One of them concerns the requests that have been made regarding intervention by the Brussels Customs Co-operation Council; while there is no need to underline the relevance of what has been requested, we would recall that the requests came from many quarters. The other matter we wish to mention is the request made in a similar way by delegations that have called for specific provisions regarding adequate technical assistance for the application of the Code.

In our view, these two requests could be properly dealt with together, and we propose, therefore, that the Sub-Group entrust the further elaboration and technical development of the Code, to the fullest possible extent, on the basis of the opinions of all delegations present, to the Brussels Customs Co-operation Council, which would also be given the task of furnishing technical assistance, with the necessary support, to all countries so requesting.

PROPOSAL FOR AMENDMENT OF ARTICLES 1 TO 19

(The changes are indicated by underlining or by a line in the margin)

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods in a sale for export to the country of importation adjusted in accordance with the provisions of this Code, provided:

   (d) Delete at the end of the paragraph: "in accordance with Article 9".

2. Delete all of sub-paragraphs (b) and (c).
Article 2

4. If, in applying this Article, more than one transaction of identical goods is found, the weighted average of all those found shall be used as transaction value to establish the customs value of the imported goods.

Article 3

4. If, in applying this Article, more than one transaction of similar goods is found, the weighted average of all those found shall be used as transaction value to establish the customs value of the imported goods.

Article 4

Add the following paragraph, which corresponds to sub-paragraph (b) of Article 6:

3. If the imported goods are not re-sold in the country of importation in the condition as imported, the customs value shall be based on the unit price in the greatest aggregate quantity at which the imported goods are sold after further processing to unrelated buyers in the country of importation, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 of this Article.

Article 5

Delete the entire article.

Article 6

Delete the entire article.

Article 7

Interpretative note.

1. Delete sub-paragraph (a)

Article 9

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 discharged by the importer in favour of the seller, whether or not in compliance with any contractual obligation;

(b) selling and buying commissions;

(c) brokerage;

(d) duties and charges 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 the cost of packing whether for labour, materials or other costs;

(f) the raw materials, parts and components and likewise the tools, moulds, matrices and similar articles, furnished free of charge or at reduced prices to the seller or manufacturer of the goods being imported, and which have been used for the production of the said goods;

(g) costs incurred prior to manufacture of the goods being imported, such as costs of research, engineering, studies, plans, models and the like, whatever the country and the person having performed them;

(h) the value of the right of use in respect of patents, protected designs, copyright and manufacturers or trade marks.

(i) any other cost incurred outside the country of importation in connexion with the entry of the goods into that country;

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;

(c) the cost of insurance.
Article 10

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

(a) duties and charges 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) the costs of assembly, installation and putting into operation in the country of importation;

(d) interest for deferred payment;

(e) banking and financing costs.

Article 14

Rates of exchange to be used when determining the customs value of goods shall be those corresponding to the material time for valuation in accordance with Article 13, and shall be duly published by the competent authorities of the country of importation concerned, reflecting 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 15

When the quantity of goods being cleared for home use on a particular customs declaration represents only part 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, provided that such reduction is freely available under similar conditions to any other buyer, and that the total quantity of the goods purchased enters the country of importation within a period consonant with usual practice in the trade sector concerned.

Furthermore, in order to be acceptable, price reductions by reference to quantity shall not be of a restrictive character and the total quantity in respect of which any reduction is granted shall be effectively consigned to the country of importation.

Article 16

Delete the entire article.
Article 19

2. For the purposes of these rules, natural persons or corporate bodies shall be deemed to be related if:

(f) In general, one of them has any interest in the business of the other, or if they both have common interests in any business, or if a third person has an interest in the business of each of them, whether the said interests be direct or indirect.