1. At its meeting of October 1975 the Sub-Group "Customs Matters" dealing with questions of customs valuation invited participants to transmit to the secretariat in writing by 31 January 1976 specific comments on the following points (MTN/NTM/7, paragraphs 2 and 3 and GATT/LIR/1226, paragraph 1):

(a) judicial and administrative review procedures;
(b) publication of laws, regulations and administrative decisions;
(c) precise and fair handling of non-arm's length transactions;
(d) neutrality of valuation system/systems.

2. A communication from the European Communities has been received and is reproduced hereunder.

3. Delegations who have not yet submitted their comments are invited to do so without delay.

(a) Judicial and administrative review procedures should be open to all interested parties. It is obvious that these procedures may differ from one country to another because of national legislation, but their final aim should always lead to a decision taken by an independent and impartial body.

(b) Publication of law, regulations and administrative decisions is covered by Principle 7 presented by the European Communities. This Principle stresses that both legal provisions (i.e. laws and regulations) and administrative decisions should be made accessible to those affected by them.
Laws, regulations and administrative decisions in the European Communities are already published on a national or Community basis.

The Commission of the European Communities is about to publish a Compendium on valuation which contains the relative International Conventions, and the complete codified Community legal provisions together with Commentaries and Conclusions of the EEC Customs Valuation Committee concerning practical cases, and Judgements of the Court of Justice of the European Communities.

(c) Precise and fair handling of non-arm's length transactions is of growing importance in international trade. Where the imported merchandise is not sold under fully competitive conditions it is necessary to determine the price which the goods in question would have fetched under such conditions.

Because the variety of cases in non-arm's length transactions is infinite - they may differ according to the nature of the goods, the commercial patterns, the existence or non-existence in the same branch of trade of sales under fully competitive conditions - it is impossible to formulate detailed legal rules for each individual case.

Whenever payment of the invoice price for the goods by the buyer is not the sole consideration (for example, when royalties are paid for trade marks, patents, etc.) adjustments to the invoice price are necessary on that account. When, although the importer and supplier are associated in business, the price is the sole consideration, it may be found that that price represents an acceptable basis of value; if not, depending on the circumstances of each particular case a suitable value may be determined from the actual commercial facts. No method of assessment should ever lead to a value corresponding to a price which would not be economically viable for the imported goods in the market conditions obtaining in the country of importation.

(d) The neutrality of customs valuation systems consists of two complementary aspects as is indicated in Principles 2 and 3 and the Commentary thereon.

The first aspect of neutrality implies that a valuation system should remain a neutral constant in the calculation of customs duty. Neutrality cannot therefore be regarded as achieved if the determination of value is established as a protective mechanism used as such in the application of the tariff, particularly when this leads to the artificial increase of the value of certain imported goods.

The second aspect implies that the valuation system does not involve differences of treatment as between sources of supply and between importers, whatever the conditions of sale or even in the absence of a sale.