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/AIR/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 Mexico has been received and is reproduced hereunder.

3. Delegations which have not yet submitted their comments are invited to do so without delay.
(a) The Mexican Government considers that if any judicial and administrative review procedure is to be adopted this should comprise machinery that would give the importer the right to challenge any customs valuation he deems incorrect.

In Mexico, there are two general ways of challenging such a valuation. One is purely administrative and consists of showing the price administration authorities that a specified price is not consistent with the international quotations for a particular product; if the evidence adduced by the person concerned is found convincing by the authorities, they will decide in his favour; otherwise he will be informed that no adjustment is being made.

The other way is of a judicial and administrative character; in general it begins at the customs level when the person concerned indicates his disagreement with the import charges applied which are based on the price determined by the administrative authority. In such case he can at his discretion: (a) apply to the Directorate-General of Customs for the decision of the lower administrative authority to be rescinded; (b) appeal directly to the Fiscal Tribunal of the Federation for that decision to be annulled. In either case, the administrative decision adversely affecting the interests of the private party can be challenged before the Fiscal Tribunal of the Federation. Lastly, if the administrative authority proceeds arbitrarily, the person concerned can seek protection of his rights from the Federal Judiciary.

(b) As regards the publication of laws, regulations and administrative decisions, Mexico considers this essential in order that the importer may be informed of the legal provisions, regulations and administrative decisions regarding valuation. In this respect, under our domestic legislation provisions of a general character have to be made public through the Official Gazette of the Federation; in this way the public in general and the persons concerned are informed beforehand of the minimum fiscal treatment that will be applicable when they import a given product.

(c) As regards precise and fair handling of non-arm's length transactions, it should be underlined that Mexico cannot remain indifferent in view of the importance in international trade of non-arm's length transactions which are in breach of fair competition and good faith; nor can Mexico remain indifferent in regard to practices involving the sale of stocks at less than cost price and other similar practices carrying the same economic and social implications for the third world countries. We consider, therefore, that valuation rules should be adopted which would prevent not only under-invoicing but also over-invoicing, the latter being of greater economic significance than the former, and furthermore, that such rules should prevent the other business practices mentioned.

(d) As regards the neutrality of valuation system/systems, it is considered necessary that any new international principle or rule established should specify the need for genuine neutrality in valuation systems.
In this connexion, the Mexican legislation does not make provision for any kind of discrimination, inasmuch as exactly the same kind of treatment is accorded to all imports, regardless of the country or person involved.

Nor is there any discrimination so far as the merchandise is concerned; whatever the origin of the goods and irrespective of the persons involved in the transaction, the goods in question have the same price, which in no way will be altered arbitrarily at the time of its application, unless there is evidence of under-valuation or unfair business practices.

In this case, Mexico, like other countries, not only investigates but also fixes the price applicable to the goods and takes the appropriate measures and in addition, proceeds to apply, the relevant sanctions.

In Mexico the practice followed for the purpose of establishing and adjusting the official prices of imported goods is to take as a basis the wholesale price in the market of the principal exporting country shipping goods to our country. Care is taken to ensure that the wholesale price taken as a basis is the price which the goods might fetch in a free market open to any buyer independent of the sellers.

In the case of unfair business practices, the Department of Finance and Public Credit is empowered to establish official prices on bases different from those mentioned above (General Import Tariff, Article 5, Volume II).

Lastly, and for reasons clearly set out in the Brussels Definition of Value and the Interpretative Notes thereto, it is neither desirable nor advisable to take, for valuation purposes, the invoice value without inquiring whether this value corresponds to a transaction that has taken place in an open market between parties independent of each other, for otherwise there might be a risk that a value might be accepted which would be prejudicial to third parties, precisely parties who are truly independent. A non-arm's length commercial transaction gives rise to relations that normally lead to a price rebate, which is without any doubt prejudicial to third parties. The true neutrality of this system means placing all those importing a particular merchandise in a like position.