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The Work undertaken by the European Customs Union  
Study Group on customs nomenclature and questions  
of customs regulations

Statement made by the French representative

I first want to thank you for giving the Chairman of the Customs Committee of the European Customs Union Study Group the opportunity to inform the Contracting Parties to the General Agreement on Tariffs and Trade of the work accomplished by the Brussels Study Group in customs matters.

I must apologize for not responding to your invitation before, as I was detained in Brussels and Paris. However, this delay will enable me to make you familiar with the latest progress of our work.

The European Customs Union Study Group was set up in Paris, subsequent to the joint declaration made on 12 September 1947 by 30 countries represented on the Committee of European Economic Cooperation.

Indeed among the problems which confronted the Committee of European Economic Cooperation which met in Paris in July 1947 with a view to drawing up a European Recovery Programme through the individual and joint effort of participating countries in the economic and financial domain, the question of the economic inter-relationship of those countries was particularly stressed together with the need for a strong production effort and the creation and maintenance of internal economic, financial and monetary stability.

Recovery in these domains requires a freer intra-european movement of goods and services for which the participating countries concluded that it was necessary:

1. to abolish as soon as possible the restrictions which at present hamper their mutual trade;
2. to aim, as between themselves and the rest of the world, at a sound and balanced multilateral trading system based on the principles which have guided the framers of the Draft Charter for an International Trade Organisation;
3. to achieve a world-wide reduction of tariffs;
4. to form customs unions between groups of countries.

As regards this last point, which is more particularly relevant to this exposé, the Paris Committee had elaborated its views which can be summarized as follows:

A. The Committee has considered the question of Customs Unions as a means of achieving the speedier reduction and eventual elimination of tariffs between a group of countries. The advantages which the United States has enjoyed through the existence of a large domestic market with no internal trade barriers are manifest. Under different circumstances and on a smaller scale the decision of Belgium, Luxemburg and the Netherlands to form a Customs Union is an instructive example of mutual cooperation in this field.

B. The formation of a larger free trade area in Europe could be expected to lead to greater efficiency in many sectors of production, and this would not only increase the wealth of the countries concerned, but would also be of assistance in solving the fundamental problem of the European balance of payments. It cannot, however, be regarded as a solution of this problem, for this is a world problem and cannot be solved without the closest possible economic association with countries outside Europe from which the participating countries derive the bulk of their essential imports. The development of trade with the American continent and with the rest of the world, including Eastern Europe, is of crucial importance for the participating countries.

C. No Customs Union can be brought into full and effective operation by a stroke of the pen. A Customs Union, particularly between several large and highly industrialised countries, involves complex technical negotiations and adjustments which can only be achieved by progressive stages over a period of years. Special problems also arise for countries with a high proportion of their trade outside any proposed Customs Union, or as between countries at widely differing stages of economic development.

D. Nevertheless, the idea of a Customs Union including as many European countries as possible is one which contains important possibilities for the economic future of Europe, and it is in the general interest that the problems involved should receive careful and detailed study by governments. Several steps have already been taken in this connection.

The declaration had therefore envisaged the possible setting up of one or several customs unions in accordance with the basic principles of the Havana Charter which was then being drawn up.

The Governments of the countries which signed the declaration, namely: Austria, Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxemburg, Netherlands, Portugal, Turkey and the United Kingdom, accordingly decided to create a Study Group for the purpose of examining the problems involved and the steps to be taken in the formation of a customs union or customs unions between any or all of the participating governments.

The Governments of Belgium, Luxemburg and the Netherlands agreed to act as sponsoring powers.

At the first session of the Study Group, held at Brussels in November 1947, Switzerland joined the 13 countries which had made the declaration of 12 September 1947.

Subsequently Sweden and Norway also joined the Study Group and took an active part in its work.

Furthermore, the following governments also sent observers: Australia, Canada, India, New Zealand, Pakistan, Union of South Africa and, more recently, the United States of America. The occupation authorities of the trizone of Germany were also invited to participate and their representatives took part in the work of the Study Group. Today the representatives of the Federal Republic of Germany also participate directly in the work of the Study Group. Lastly, the Organization for **European Economic Cooperation** (OEEC) also sent observers to the sessions of the Study Group.

The Study Group has held 5 sessions under the Chairmanship of Mr. van Spierenburg which have been devoted to the examination and discussion of the reports submitted by the economic and technical bodies set up within the Study Group.

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#### I. Scope and Organization of Work

The formation of a customs union raises complex and varied problems.

The participating governments must examine the conditions in which in their mutual trade they can eliminate all types of restrictions, of a quantitative monetary, customs, or fiscal nature, which hamper the free movement of goods. They must consider whether it would be practical to envisage forthwith the full abolition of such restrictions or whether it would be preferable to work towards their gradual elimination.

The general incidence of the measures proposed must be seriously examined. Any country contemplating entry into a customs union must necessarily pause to consider whether there are certain sectors of its economy which will be so vitally affected in an adverse way by competition from corresponding sectors of the economy of other prospective members of the proposed union, as to inflict grave injury on its industrial, agricultural, commercial and even social pattern. Any prospective adverse consequence should be weighed as against the benefits that could be expected to result from any future increase of the volume of trade within the future union and from the integration of a given economy to a wider economic group. Every country must further consider how the implementation of a common tariff would affect its traditional pattern of trade.

With these considerations in mind, the Study Group set up an economic committee whose task was "to examine the probable effects on the economies of member countries of the elimination of trade barriers between them in the event of a customs union".

It would not be relevant for the purpose of this exposé to review the survey conducted by the Economic Committee. In fact, the Study Group agreed that no satisfactory conclusion could be reached until a nomenclature had been developed and a specimen common tariff had been drawn up. Moreover, such economic problems are related to the work undertaken by the Organisation for European Economic Cooperation concerning the coordination of long-term programmes and the liberalization of intra-european trade. Therefore the Study Group felt at its fourth plenary session that the Economic Committee should not engage any further work for the time being.

But the formation of a customs union also raises technical customs problems and implies the examination of a number of measures designed to establish a common tariff wall around the periphery of the union which would be administered in a uniform manner, and gradually to eliminate existing tariffs between member countries of the union.

The Study Group, therefore, set up a panel of experts called the Customs Committee to examine these problems and more particularly to study a form of common tariff and to investigate the harmonization of customs formalities and regulations with a view to ensuring their uniform administration in the proposed union.

From its inception the Customs Committee thought it essential first to establish a common nomenclature. In fact, the types of nomenclature now existing in the various countries represented in the Study Group are markedly dissimilar; for instance, some countries group together products of the same kind; others list commodities in alphabetical order, others again have no logical nomenclature but merely a series of tariff laws classified in chronological order.

It must be pointed out that in 1931 the League of Nations drew up a draft international customs nomenclature which was slightly amended in 1937. But this nomenclature had not been accepted by all countries and in many respects it no longer conforms to technical progress and technical developments.

It was therefore necessary to re-examine the problem.

The nomenclature which it was proposed to design could be more or less extensive dependent upon the basis of taxation adopted.

Tariffs consisting of specific duties generally include more items and sub-items than tariffs with ad valorem duties because description of the goods is more highly specialised.

It is very difficult to conceive of a customs union in which some countries would have specific duties while others used ad valorem duties. The choice between the two methods of taxation will depend on the particular economic conditions in the whole of the area under consideration. It has been said and maintained that in periods of economic and monetary instability ad valorem duties seem preferable to specific duties, because they ensure better adjustment of tariff protection to price and exchange rate fluctuations. But one can chiefly recognize without raising much controversy, that

the adoption of ad valorem duties would facilitate the unification of tariffs, because many specialized items, which would have to be maintained in a tariff with specific duties, could be eliminated even though in some countries a certain number of specific duties could be maintained to serve as a minimum charge side by side with an ad valorem tariff.

As was to be foreseen, the majority of the participating countries considered that it would be preferable to establish as a general rule a tariff with ad valorem duties while recognising that in exceptional cases specific duties could be retained for technical, economic and fiscal reasons. However, Switzerland and Portugal indicated that they did not intend to abandon their tariffs with specific duties.

In any case it was essential to draw up a common definition of value for duty that would be both practical and in accordance with the principles laid down in Article 35 of the Havana Charter.

Furthermore, the abolition of customs barriers between member countries, which is the essential aim of a union, must obviously be accompanied by the working out of unified customs laws.

Now the unification of customs regulations and procedures relating to relief from customs duties, conditional free admission, settlement of disputes, etc. is extremely delicate because it is closely connected with the economic, financial, juridical and even political internal organisation of the various countries.

It was necessary, however, to examine the problem.

The complexity inherent in these various problems did not, of course, make it possible to examine them simultaneously. The Customs Committee therefore thought it necessary to set up panels of customs or industrial experts to conduct a preliminary study.

Thus a permanent Customs Bureau was set up during the second session of the Study Group (January - February 1948) to deal, inter alia, with the best methods of arriving at a common tariff nomenclature. At a later stage the Bureau was requested to submit to the Customs Committee reports on the origin of imported goods, weight and tare, containers, and treatment applicable to mixtures and composite goods.

The establishment of a common definition of dutiable value was entrusted to a valuation sub-committee, while a customs procedure sub-committee was to investigate a number of questions relating to duty-free admission and relief from customs duties.

I wish to stress again that all this work has always been carried out within the spirit of, and in accordance with, the Havana Charter to which reference was made whenever necessary in the examination of these questions.

On the occasion of the fifth session of the Study Group (November 1949) the Customs Committee submitted a series of reports on the work done in accordance with its terms of reference. A detailed exposé of the typical aspects of the problems considered would be tedious at this stage. It does not seem superfluous, however, to give general indications on the work of the Customs Committee in order to stress the importance and usefulness that it may have, even for non-participating countries.

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## II. The Work of the Customs Committee

Tariff Nomenclature - Special mention must be made of the nomenclature constructed in Brussels.

As I said before, the idea of an international tariff nomenclature was not new. The Economic Conference held in Geneva in May 1947 had already adopted it.

The participating countries had already agreed to recommend the Geneva Nomenclature (League of Nations Publications II, Economic and Financial Questions II, B5,1) as a basis for the establishment of a common tariff.

The Geneva nomenclature contained main or basic principles, secondary items and sometimes tertiary or quaternary items. The principal items were to be compulsory. In other words, countries would not be allowed to abolish these headings which were sufficiently comprehensive to include a whole group of well-defined articles. The sub-items, on the other hand, were not, in principle, to be compulsory, but any country which desired to sub-divide the basic items would be required to accept the subdivisions provided for in the draft, though it would be at liberty to reduce their number by grouping two or more together, or to establish fresh distinctions.

In the minds of its framers, the draft nomenclature was to be made compulsory through an International Convention. By this means the tariffs of all the contracting states would have had a minimum of elaboration, but in applying this customs nomenclature a country would have been free and in a position to draw up a tariff suited to its particular economic and fiscal requirements.

Therefore, the chief aim of the Geneva nomenclature was to provide for a common framework that would facilitate the rapid consultation of the same categories and items in the various tariffs.

The common tariff nomenclature which the Study Group decided should be drawn up was intended for other purposes.

No doubt, it was to be based to some extent on the Geneva nomenclature, due account being taken, however, of the more recent tariffs now in force in various countries which might constitute an improvement of the League nomenclature.

But the object was no longer to draw up a framework within which it would be open to individual countries to expand or contract the number of items or sub-items if they considered it expedient to do so. The task which the Permanent Tariff Bureau was asked to perform was to construct a common tariff which would be equally binding on all the members of a customs union.

In constructing this nomenclature the Bureau could follow two methods.

1. Following the procedure adopted by the League experts, it could leave aside existing tariffs and prepare the best and most rational classification of goods.
2. Alternatively, as the nomenclature envisaged by the Study Group was to serve only as a framework for the common tariff of the customs union, the Bureau could make a mere synthesis of the tariffs of participating countries.

In fact, the Customs Committee had to be guided by both methods.

The Brussels nomenclature, which is in clear and simple terms, understandable by the general public as well as by technicians, constitutes a rational, scientific classification of goods. Classification is progressive from raw material to finished articles and as far as possible the content of individual chapters follows the same order of progress as the whole nomenclature.

In order to curtail discussions on relatively unimportant details, it was adopted as a general rule that the Geneva draft should be followed unless there were substantial ground for departing from it. As regards the main groupings of goods or "sections", the framework of the League nomenclature was retained with hardly any changes. Both nomenclatures include 21 sections.

However, the Brussels nomenclature was to take account of the principal headings appearing in existing tariffs. This will also, in due time, have the advantage of facilitating the calculation of average duties to appear in the common tariff. The Brussels nomenclature has been supplemented by general notes defining the scope of headings and sub-headings which should form an integral part of the common nomenclature and have identical legal force.

A comparison of the League and the Brussels nomenclatures shows that the latter has taken account of industrial and technical progress, particularly in the domains of chemistry, plastics and artificial textiles (rayon staple fibre, artificial silk, nylon).

Another aspect of the new nomenclature is that it has been framed with a view to ad valorem duties.

The Brussels nomenclature constitutes a remarkable achievement which has been made possible by the remarks, instructions and observations of participating countries, by the advice of industrial experts and the continuous work of the customs experts of the countries participating in the Study Group.

At its fifth session (November 1949), the Study Group adopted the Brussels nomenclature subject to possible contractions and revisions agreed to be necessary and was of opinion that this nomenclature should serve as a basis for the common tariff of a union.

Pending the establishment of such a union and with a view to bringing into line as soon as possible the tariff nomenclature of the member countries, the Study Group recommended that international organizations should base their work on the text of the 1949 Brussels nomenclature, possibly revised. The Study Group also recommended that the Governments concerned should conclude an international convention to render obligatory the adoption of the headings of the sections and chapters of this nomenclature, as well as the wording of the main headings. However, the Study Group requested that the number of the main headings be previously reduced. A special tariff committee, composed of five members, instituted under the authority of the Customs Committee, is now revising, in the light of the observations and reservations presented by the governments, the main headings of the 1949 nomenclature with a view to eliminating those headings which do not appear sufficiently important to be made obligatory.

A few weeks ago the Customs Committee further agreed in principle that provisions should be framed to provide general rules for the classification of goods and the establishment of the rates of duties.

Next June, the Customs Committee will submit its conclusions to the Study Group which will entrust a special body with the drawing up of an International Convention for the adoption of the nomenclature thus established.

After this work has been completed, the special committee will adjust the detailed nomenclature for a common union tariff and will draw up a specimen tariff.

The adoption by a number of countries of a common customs nomenclature would constitute in itself an important result, even though the European Customs Union might not be achieved.

Such a step would certainly answer the wish of international organizations which are trying to achieve the simplification of customs formalities and the expansion of trade.

It would ensure a better knowledge of foreign tariffs through the conduct of trade and make it possible to compare the relative incidence of duties in the various countries. It would also facilitate bilateral or multilateral negotiations, as negotiators would be more familiar with the meaning of the tariff items under discussion.

Lastly, consultation and comparison of foreign trade statistics and the compilation of such statistics by international organisations would be facilitated.

All this work has been closely followed by OEEC. Senior OEEC officials have asked me what possibilities it would open up for the extension of liberalization measures.



Furthermore, the United Nations have recently requested to be allowed to send a statistician to attend the current meetings of the special committee in Brussels. The Customs Committee of the Study Group was glad to accept this suggestion and the General Secretariat, in consultation with the Chairman of the Study Group, has so advised the United Nations Secretariat in Like Success.

The definition of dutiable value - One of the prerequisites for the application of a common tariff consisting mainly of ad valorem duties would be to have a clear definition of value for customs purposes. But such a definition would also be useful whenever ad valorem duties are applied in any country. The Customs Committee endeavoured to determine the basis for taxation taking into account the underlying principles of the Havana Charter, particularly those laid down in Articles 35, 36 and 38. I must confess that this task was not an easy one.

The Customs Committee came to the following conclusions: dutiable value should be based on uniform, commercial and simple principles; the system of valuation should enable importers to estimate, with a reasonable degree of certainty, the value for customs purposes; it should also protect the honest importer from any illegal competition resulting from any under-valuation, whether fraudulent or other.

The Committee therefore agreed that for the purpose of levying duties, the value of imported goods shall be taken to be the normal price, that is to say, the price which they would be deemed to fetch when the duty becomes payable on a sale in the open market between buyer and seller independent of each other for delivery of the goods at the place of entry into the importing territory.

The Committee adopted a definition of an open market transaction, and recalled that value for customs purposes included all costs, charges and expenses incidental to sale and delivery at the place considered for the determination of such value.

On other aspects of this very delicate matter the Customs Committee could only make recommendations.

Thus the Committee considered that the conversion rate of foreign currencies might conveniently be the selling rate of exchange published in the country of importation which is in force on the day duty becomes payable or, if that rate is not available at the time of valuation, the selling rate in force on the nearest previous day. However, this aspect of the problem of valuation should be studied in the light of the relations of each country with the International Monetary Fund.

The Committee also considered that declaration of dutiable value and, if necessary, of the several elements thereof should be made compulsory. Value should be evidenced by attesting documents. But with a view to simplifying customs formalities, the Committee suggested that ordinary commercial invoices in single copies should be produced instead of the consular invoices in several copies generally required by various administrations. As a general rule certificates of origin should be dispensed with in the case of non-commercial consignments.

Lastly, as regards disputes concerning dutiable value arising between the customs administration and the person making the declaration, the Committee recommended that the goods under dispute should be released immediately and that the dispute should be brought before an independent tribunal.

Such are the proposals made by the Customs Committee on questions relating to valuation for customs purposes.

They strictly conform with the General Agreement on Tariffs and Trade and the Havana Charter. The Study Group approved these various provisions at its Fifth Session (November 1949) and decided to submit them to the various Governments which should send in their comments and recommended that participating Governments should consider concluding a Convention to make these rules obligatory in the application of their own tariffs.

The Customs Committee has recently taken cognizance of the comments submitted by the various countries.

In view of the complexity of the matter and, in particular, as it is necessary to incorporate in the proposed Convention definitions of the elements of dutiable value which should have undeniable legal force for the various countries, the Customs Committee entrusted a sub-committee with the task of drafting a precise definition.

The General Secretariat will soon submit the resulting document to all participating governments requesting them to make comments. The Study Group will therefore take up the matter again in July.

I should add that in November 1949, the Study Group had thought it might be desirable to set up a consultative committee of the member countries which should advise on means for bringing about the greatest possible uniformity and harmony in the application of the proposed Conventions on a common tariff nomenclature and a common definition of value.

The Customs Committee was of the opinion that the setting up and the legal status of the Consultative Committee should be provided for in the Conventions themselves. Its structure and functions are under examination.

Other work - The Customs Committee also carried out other technical work.

Thus the Committee examined the problem of the origin of goods. While it is relatively easy to determine the origin of natural products regarded as originating in the countries where these products were cultivated, harvested, extracted or obtained in any other manner, or the origin of products manufactured in a country from raw materials of domestic origin, the case is altogether different with products which have undergone a process in a third country. In this connection, the customs provisions of the different countries vary considerably and are based on fiscal or economic considerations.

With a view to simplifying customs formalities the Committee proposed that where products have undergone a process in a third country, the country of origin be regarded as that in which the last economically justifiable industrial process was carried out. Of course, no account should be taken of processes carried out solely to escape the payment of duties at higher rates.

The Committee also suggested that consular visas should not be necessary for certificates of origin which it would seem necessary to produce if customs provisions were to be strictly enforced.

Furthermore, the Customs Committee submitted to the Study Group reports concerning customs procedures relating to warehousing, transit, temporary import for process, and drawback. The Committee is also collecting information relating to free ports. The unification of such regulations may very well raise a number of difficult problems on account of their economic implications. But the preliminary studies that have already been carried out would seem to indicate that it may be hoped that these various customs procedures can be harmonized.

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This exposé will give you an idea of the technical work carried out by the Study Group in customs matters within the last two years. And I wish to pay tribute here as I have already done in Brussels, to the officials from the various participating countries who, beyond their normal duties, went to Brussels to confront the problems that may arise from the formation of a customs union and discuss them, sometimes with vigour, but always with courtesy and clear-sightedness.

As M. van Zeeland observed in his address at the fifth session (November 1949), the work accomplished has by no means been spectacular. However, nobody can deny that efforts of this kind are a major contribution to the harmonious expansion of trade.

Some aspects of the work carried out have already yielded practical results. A number of participating countries have already informed the Study Group that they have decided to adopt for their own tariff work, the draft nomenclature constructed under the aegis of the Customs Committee. Others, like Italy and Germany, have already used it for the preparation of their new tariffs and the recent comparison between the Italian and French rates of duty was effected on the basis of the 1949 Brussels nomenclature. This, I believe, shows the great practical value of the Brussels nomenclature, and one may hope that governments will accept to sign an international Convention for the adoption of a common customs nomenclature. One may also hope that a similar convention will, in the near future, provide a definition of valuation for customs purposes.

Thus the work of the Study Group will contribute to the reduction or elimination of the barriers that hamper the free movement of goods.

Such work which aims at the economic recovery and development falls well within the scope of the United Nations Charter and is similar in many respects to the task undertaken by the Contracting Parties to the General Agreement on Tariffs and Trade.