

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade in Industrial Products Working Group 2

REPORT OF WORKING GROUP 2 ON NON-TARIFF BARRIERS Examination of Items in Part 2 of the Illustrative List (Customs and Administrative Entry Procedures)

1. Working Group 2 was established by the Committee on Trade in Industrial Products in December 1969, to examine the following subjects in the Illustrative List (Annex I to document L/3298): desirability of harmonization of valuation systems, special valuation procedures, anti-dumping practices of certain countries not accepting the Anti-Dumping Code, desirability of wider acceptance of the Brussels Tariff Nomenclature classification, and certain problems of documentation, notably regarding consular fees and formalities. At the request of the Nordic countries the Group decided to examine samples requirements although this subject is not contained in the Illustrative List. The Group met from 17 to 26 March and 3, 4 and 9 December 1970 under the Chairmanship of Mr. F.A. van Alphen (Netherlands).

2. In accordance with the desire of the CONTRACTING PARTIES, as expressed in their conclusions, that as the work of the Groups proceeds, particular attention should be paid to the problems of developing countries including especially the problems of those countries dependent on a limited range of primary products, the Group examined the possibility of treating separately on a priority basis any of the problems encountered in this sector. One or more developing countries had joined in six of the notifications on the priority list and four other notifications by developing countries concern measures related to the problems identified in the Illustrative List. As will be seen below, this examination showed that there was little scope for separate action on developing countries' problems since both developing and developed countries are faced with a single set of problems caused by lack of uniformity in customs and entry procedures of different countries.

3. The Group not only had in mind the general terms of reference in regard to the exploratory nature of its work, but wished to emphasize that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products.

I. VALUATION

4. At the outset of its work, the Group noted that the first two problems with which it was called upon to deal were the desirability, in the view of notifying countries, of harmonization of valuation systems and problems created for the

notifying countries by certain countries' special valuation procedures to which recourse was had in the cases where invoice values were not acceptable. The Group agreed that the two subjects overlapped to such an extent as to make it desirable to take the two topics together. They also agreed to take into account certain closely related notifications not on the Illustrative List. These included the subject of uplifts and a consideration of the minimum value practices of Brazil and of the treatment of refunded customs duties by Canada.

5. It was noted that the great majority of countries currently follow the practices of the Brussels Convention on Valuation (BCV), which is based on c.i.f. values and that another smaller group of countries, including some important trading countries, use systems varying from one to another but based upon f.o.b. values or mixed in character. Both groups use invoice values in most cases. In cases where no invoice can be produced (for example, where there is no sale) or where the invoice price appears to be unacceptable or it is not accepted, the value for customs purposes is established by the two groups according to widely differing methods.

6. In the case of some countries using f.o.b. value, their legislation made it mandatory to accept the f.o.b. value or the current domestic value of the exporting country, whichever was higher. Some countries said that the use of a value at the point of sale in the exporting country, if necessary supported by full field investigation abroad, created many difficulties and much uncertainty for exporters. Such difficulties, they indicated, were particularly great in situations where there was no real domestic market or only a small market using smaller quantities and different qualities of goods. Representatives of developing countries said that the use of such prices worked particularly to their disadvantage where internal prices had no direct relationship with prices their goods could obtain in the international market. In that connexion it was explained that although invoice prices of export goods were higher than the cost of manufacture and reasonable margin of profit, these prices were generally less than the current domestic prices. They pointed out that the structural imbalances and the supply scarcities which often existed in developing countries, coupled with inflationary pressures inherent in their economic development process resulted in domestic prices ruling at artificially high levels. In addition, in some cases, goods which were produced in duly established export-oriented industries in developing countries were not normally sold in the domestic market and in such cases comparable current domestic values did not exist.

7. It was also pointed out that the method of determination of "fair market value" as well as methods used for fixing "reasonable margin of profit", wherever practised, created not only further difficulties but also uncertainties as well as discrimination amongst exporters in developing countries.

8. It was further pointed out that some countries' legislation provided that, where current domestic values could not be established, their authorities should determine a value for duty at their own discretion. Some delegations considered that this provision, besides being arbitrary, offered the possibility of discriminatory action.

9. Article VII contains certain principles on three main aspects of valuation: definition of value, calculation of value, and procedures. However, the Article does not establish how these standards should be applied, nor does it interpret them precisely; further work done in 1955-56 likewise failed to clarify some central questions. In particular, Article VII does not furnish any definition of value but simply lays down the principle that value should be based on the "actual value" of the imported merchandise, that is to say the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions, or the nearest ascertainable equivalent of such value - and not an arbitrary or fictitious value, nor a value based on the price of national goods in the importing country. On the calculation of value, it is simply stated that when imported goods have been relieved of internal taxes applicable within the country of origin or export, such taxes should not be included in dutiable value. There was no specification of the procedures to be used other than that they should be stable and sufficiently clear for traders. Because of the vagueness of Article VII and the use of procedures of exception, no country considered that its system was inconsistent with the terms of that Article.

10. The Group was of the opinion that the application of Article VII would be improved if it were possible for all countries to accept the following principles in applying the Article:

- (a) An acceptable valuation system should be neutral in its effect and in no case be used as a disguised means of offering additional protection over and above that provided by rates of customs duties either regularly, with respect to all shipments of particular kinds of goods, or in special cases when dumping was suspected, or to penalize imports from competitive sources.
- (b) An acceptable system should be non-discriminatory as between different countries of supply.
- (c) Valuation systems should be simple and in no case use arbitrary or fictitious values.
- (d) Administration of valuation systems should take into account:
 - (i) the need for advance certainty to traders as to which method of valuation would apply to particular classes of goods and types of shipment;

- (ii) full publicity to the bases on which value would be calculated under the method applicable (covering factors such as time, place, quantities, level of distribution to be considered);
- (iii) expeditiousness of the procedure;
- (iv) the safeguarding of business secrets;
- (v) an adequate appeals procedure, carried out by agents independent of those making initial decision.

11. It was pointed out that these principles corresponded to a large degree to the Brussels Principles of Valuation and in any case did not go much farther than the Brussels principles and the principles contained in Article VII. Some representatives of non-BCV countries pointed out that their valuation systems also corresponded to a large degree to these principles. The problems encountered resulted not only from the fact that principles on valuation were not explicit enough, but also from the fact that they were not being observed.

12. The Group was of the opinion that the valuation problems notified resulted primarily from the application of different methods of valuation where invoice values were not acceptable. They said such problems could be alleviated by:

- (a) More precise fall-back bases of valuation when invoice values are not acceptable, particularly in transactions between related parties although there were adjustments to be made in other transactions. In this connexion, it was proposed that all countries agree that their customs officials explain on request how they arrived at uplifts and give importers an opportunity to comment thereon. Customs officers should specify the nature of the relationship between the importer and the exporter and the justification for the amount of the uplift. Such a requirement could take the form of an interpretative note to Article VII along the following lines.

In cases where the price paid or to be paid for imported goods was not acceptable as a basis for valuation, the difference between that price and the accepted value for duty must be explained if the importer and the exporter so requested it.

- (b) Impartial appeal procedures by all contracting parties carried out by authorities independent of those making the original decision. Again, this could be accomplished through an interpretative note to Article VII or Article X along the following lines:

"All contracting parties agree to provide an impartial and independent appeal procedure to permit interested parties to appeal valuation decision of customs authorities."

13. The countries which apply the principles of the Brussels Definition and the interpretative notes thereto were of the opinion that the problems in this area called for an overall solution. Other countries were of the opinion that the system of valuation used, whether BGV or any other, was not the problem but rather how the particular system was applied by individual countries. They considered therefore that the problems of valuation which had been notified could best be dealt with on a case-by-case basis and that the harmonization of value systems would not necessarily help. A third group of countries, including the developing countries, while not ruling out an overall solution, were inclined to the view that elaboration of more precise interpretations of Article VII appeared to be more practicable. They emphasized that in seeking any overall solution a major consideration should be to avoid an increase in tariff protection which might be involved if too much emphasis were placed on bringing about complete harmonization between the different practices.

14. This report outlines the various proposals and then takes up the problems posed by them. As will be seen, the various solutions discussed are not mutually exclusive but could in some cases be combined. The principal problems that are the subject of notifications already made are set forth in Annex I.

15. Most countries felt that the harmonization of valuation systems could contribute substantially to the development of international trade in a climate of stability and certainty. They believed that Article VII is too vague and should be made more explicit, and they propose:

- that each contracting party should use one single concept of valuation;
- that this concept should in all cases be based:
 - on economic and commercial realities;
 - on the principles of Article VII which should be accepted in full by all contracting parties, who would renounce any procedures of exception with respect to valuation;
 - on interpretative rules for Article VII, specifying in particular the constituent elements of any definition of value for customs purposes, i.e. price, time, place, quantity and trade level.

Taking into account the fact that the great majority of countries already use the Brussels Definition, which lays down precise rules with respect to these elements, these same countries were of the opinion that the Definition constitutes the most appropriate basis for formulation of such rules. Aware of the difficulties involved for some countries in shifting from f.o.b. valuation to c.i.f. valuation, they were however of the opinion that the two systems could exist side by side and that a renegotiation of the tariff concessions provided for under Article II of the General Agreement could be avoided if those countries, while accepting the above-mentioned rules, reduced the calculated value for customs purposes by the cost of freight and insurance up to the place of introduction in the importing country. In addition, the signatories of the BCV felt that countries already applying the BCV but not yet signatories ought to be able to accede to the Convention.

16. In support of their proposals these countries maintained that such interpretative rules would guarantee a simple concept in international trade, as follows:

- to be applied in uniform manner to all categories of goods (including those that are not sold);
- to reflect as faithfully as possible commercial practices followed in conditions of full competition and, to that end, to permit the use in most cases, as the basis for valuation, of the prices agreed on in sales contracts, while leaving to national administrations the possibility of intervening in cases where the price of goods has not been fixed in normal conditions;
- to give importers the opportunity to calculate ahead of time the customs valuation and charges;
- to make the importer fully responsible for all information furnished by him concerning the valuation of imported goods, and to avoid the need for the exporter to draw up special documents;
- it appeared that with regard to the five constituent elements of value for customs purposes, only the place element, that is to say, the difference between the c.i.f. price and the f.o.b. price, could constitute a real problem for the adoption by certain countries of the Brussels Definition. The set of rules proposed seemed to offer a solution to that difficulty. So far as the price element was concerned, the adjustments to be made did not present any difference that would be impossible to settle. With respect to the quantity and level elements there were no very appreciable divergencies and as regards the time element the very extensive allowances permitted by the Brussels Definition removed any insuperable difficulties of acceptance.

17. Non-BCV countries having f.o.b. systems said that they did not regard their system as more of a non-tariff barrier than any other system and, inter alia, made the following points:

1. They believe that difficulties would be created for them in adopting these proposals since the BCV system did not always call for prices actually paid, thereby permitting extensive discretion to administrators

in finding the notional price. This was essentially their problem with uplifts or with any determination of value when invoice values were not accepted.

2. They believe that exporters would face greater difficulty in determining the value for duty when value is determined in the importing country, as with the BCV system, than when value is determined on actual prices paid in the exporting country; and also in their view the BCV system made appeal more difficult.

3. Very extensive distortion of existing competitive relationships among trading partners would be involved in a shift from f.o.b. to c.i.f.

4. The Brussels system of valuation would cause particular difficulties for countries which geographically have large overland distances between ports of entry and between market centres. The adoption of c.i.f. values would distort both trading and transportation patterns. The suggestion that the adoption of the Brussels system using f.o.b. value redefined as c.i.f. value minus freight and insurances does not alleviate these difficulties associated with the c.i.f. system itself. Such a procedure could result in different values for duty being applied for the same product at the same port of entry even when shipped by the same exporter.

5. The suggested system offers no greater precision as to price, time, place, quantity, and level of trade.

6. In response to the proposal that countries now using f.o.b. valuation adopt the Brussels Definition but retain f.o.b. valuation and thereby not increase duties, it was pointed out that Brussels valuation on an f.o.b. basis could often be higher than present f.o.b. valuation. The Brussels system, under which valuation varies according to the quantities involved and the commercial stage or level (wholesale, retail, etc.) of the actual transaction, tends to increase the value base as compared with valuation based on usual wholesale quantities. Furthermore, Brussels valuation on an f.o.b. basis would include commissions, inland charges, and loading and unloading charges, which in many instances are not included under f.o.b. valuation not based on the Brussels system. Thus, in more than half the cases the dutiable base for imported goods would be higher under a Brussels f.o.b. system.

18. The countries that use the principles of the Brussels Definition could not share the point of view expressed in paragraph 17. They were aware that in certain cases the shift from f.o.b. valuation to the Brussels Definition (while maintaining the f.o.b. or ex-works concept) could result in an increase in value for duty; they considered, however, that the number of such cases would be less than that indicated in paragraph 17, sub-paragraph 6, if account was taken not only of the f.o.b. or ex-works system, but also of the various fall-back systems which could be used at the time of valuation. They considered that such an increase could be avoided to a great extent if the "place" element was sufficiently well-defined.

Furthermore, they were of the opinion that the real problem lay not so much in the f.o.b.-c.i.f. controversy as in the existence, in certain "f.o.b." countries, of alternative systems such as the price in the domestic market of the importing country and the price in the domestic market of the exporting country. This latter method involved the presence of foreign officials in the country of export, carrying out inquiries, which could present the characteristics of an anti-dumping investigation, into elements that were often highly confidential to be supplied by the exporter, if he did not wish to be charged automatically. Certain other delegations agreed that these inquiries were objectionable.

19. Some countries applying the f.o.b. system noted that in the great majority of cases invoice values were accepted as the basis for duty valuation. However, in those cases where there was some reason to question invoice values, investigation was carried out by correspondence or if necessary by the visit of a representative. These investigations were conducted on a different basis and were quite separate from those initiated in accordance with the Anti-Dumping Code.

20. It was proposed that countries which used methods necessitating determination of value of exports on the internal market of the exporting country should instead use for the purposes of valuation:

- (a) invoice prices for like products for export to the major export market or,
- (b) invoice prices generally obtained for like products for exports to other third country markets.

This would obviate the need for making elaborate enquiries in exporting countries for ascertaining domestic prices of the same or similar products. Representatives of developing countries were of the view that the adoption of the proposal would also resolve some of the difficulties experienced by those countries, for example those noted in paragraph 6.

21. It was further suggested that paragraph 3 of Article VII be amended in the manner originally proposed by Review Working Party II, in 1955, namely: that the words "customs duties or" be inserted before the words "any internal tax" (see BISD, Third Supplement, page 213). The purpose of the proposed amendment would be to prevent the inclusion of refunded or exempted customs duties on imported raw materials in the valuation for customs purposes, as is already the case with refunded internal taxes.

22. The representative of the United States said that if appropriate concessions were offered his Government was prepared to consider the elimination of the final list system of valuation which will require legislation. Elimination of the final list would in his view remove most of the difficulties described in paragraphs 6 and 21. He also noted that the repeal of ASP was now pending before the Congress. He wondered what specific problems would remain if these two valuation practices were eliminated.

23. Some members suggested that consideration be given to interpretative notes to Articles VII:2(a) and 2(b), to deal particularly with the problems created by minimum value practices. In the context of Article VII:2 it was pointed out that while these minimum values might not be "fictitious" they could be described as "arbitrary".

24. A large number of the members of the Group agreed to recommend to the Committee on Trade in Industrial Products, that, in the event of a decision to continue work on valuation, an expert group be established to examine the possibility of a further interpretation of the provisions of Article VII. This expert group would use the agreed principles in paragraph 10 of this report as a point of departure and would take into account the various proposals contained in the above paragraphs, the Brussels Principles on Valuation (which are contained in Annex VI), as well as any additional suggestions that might be advanced during the course of its work.

II. ANTI-DUMPING DUTIES

Nature and scope of the problems

25. Members of the Group which are parties to the Anti-Dumping Code stressed the importance of certainty and uniformity in the application of anti-dumping measures and requested contracting parties to GATT which had not yet adhered to the Code to do so at an early date.

26. A member of the Group, while stressing the importance of a wide acceptance of the Code, underlined that there were three kinds of incompatibility of a country's anti-dumping legislation with the provisions of the GATT. The first, and most serious case, was when a contracting party had legislation that was clearly incompatible with its GATT obligations. The second case was when a contracting party applied measures which were permitted only because the country applied GATT under the Protocol of Provisional Application. The third was when a contracting party had legislation which was on the whole in conformity with Article VI but which did not conform to the provisions of the Code.

27. The Group noted that the developing countries had, at the time the Code was negotiated in the Kennedy Round, expressed reservations on the Code because it had not been possible to reach agreement on the inclusion of special provisions to meet some of the specific problems of the developing countries. It was explained that some of the points then raised by developing countries were: (i) an undertaking by developed countries that they would take into account Part IV of GATT in the application of the Code to imports from developing countries; (ii) the definition of normal value as the home market price in the exporting country (Article 2(a) of the Code); (iii) the lack of recognition that a "particular market situation" often existed in developing countries (Article 2(d) of the Code); (iv) the determination of injury in the way it was provided in Article 3; and (v) anti-dumping action on behalf of a third country as provided in Article 12. Developing countries members of the Group recalled that the CONTRACTING PARTIES, at their twenty-sixth session, had directed the Council to make arrangements for a wide and early acceptance of the Code and expressed the hope that a solution would be found to the special problems of the developing countries, either through an amendment to the Code or through an understanding regarding its application to exports from developing countries.

Possible solutions

28. The Group generally agreed that harmonization of anti-dumping legislation on the basis of the Code would facilitate world trade and invited developed countries which had not yet done so to accede to the Code and to use, in the meantime, the Code as a standard for their application of Article VI.

29. It was noted that the Council had established a Working Party to examine the special problems of developing countries in connexion with the Anti-Dumping Code and to propose solutions to those problems. The Group expressed the hope that solutions would be found which would permit developing countries to accede at an early date.

30. A member of the Group said that the difficulties for some countries in accepting the Code seemed to be of a procedural, rather than a fundamental, nature. He suggested that the Committee on Trade in Industrial Products should invite the Anti-Dumping Committee to make arrangements for discussions with such countries in order to facilitate their adherence to the Code. Others pointed out that the function of the Anti-Dumping Committee was to provide for consultations on matters relating to the administration of anti-dumping systems in the participating countries.

31. At the December meeting it was noted that the members of the Committee on Anti-Dumping Practices had noted the above suggestion and had invited those countries facing procedural difficulties in accepting the Code to consult informally with them at the date of the next meeting of the Committee with a view to finding a solution that would enable these countries to accede to the Code. Certain members were of the opinion, however, that all developed countries should accept the Code as soon as possible.

32. The discussion on particular notifications, not directly related to the acceptance of the Code, is reproduced in Annex II.

III. CUSTOMS CLASSIFICATION

Nature and scope of the problems

33. The notifying countries noted that practically all the contracting parties had adopted the Brussels Tariff Nomenclature (BTN) as the basis for their customs tariffs, except for a few countries including such important trading countries as Canada and the United States. In the view of several delegations, the customs schedules of these two countries were too complicated and at times lacked precision because of the absence of a definition for certain criteria for classification. In the view of these delegations this lack of precision, often aggravated by the lack of systematic explanatory notes, caused uncertainty for exporters.

34. The representatives of Canada and the United States did not agree that their national tariff nomenclatures were barriers to trade. They maintained that their nomenclatures were no more complex than the BTN and they pointed out that exporters could obtain binding advance tariff classification rulings. In addition they mentioned published decisions on tariff classifications in customs bulletins and "Summaries of Trade and Tariff Information" in the case of the United States and "Explanatory Memoranda" in the case of Canada which had the same purpose as the Explanatory Notes to the Brussels Nomenclature.

Possible solutions

35. The notifying countries noted the position of the two main countries not applying the BTN but felt that the best solution would be their adoption of the BTN.

36. The great majority of the members of the Group agreed that there was in many countries a need for further clarity and simplification in their tariff nomenclatures. They invited countries to give sympathetic consideration to requests for action in that direction.

37. The great majority of the members of the Group noted that explanatory notes were often an essential complement to tariff nomenclatures. They invited governments, which had not yet done so, to prepare systematic explanatory notes to their tariff nomenclatures, or at least to the sections of their tariffs where there was an obvious need for further guidance in order to ensure a correct classification. Moreover, it was suggested that since the work involved would be long, these governments should give priority to the more important trade items.

38. The great majority of the members of the Group agreed that it was essential to establish and keep up-to-date concordances between the BTN and other nomenclatures. They noted with satisfaction that concordances between the BTN and the nomenclatures of Canada and the United States were being prepared in multilateral consultations and would be available shortly.

39. The great majority of the members of the Group considered:

- that requests for information addressed by the customs authorities to exporters of declared goods should be limited to what was essential;
- that the formalities to be complied with by exporters wishing to obtain information from customs authorities should be reduced to a minimum, and that replies to requests for classification of goods before they were imported should be rapid and incontrovertible;
- that any disputes regarding classification should be settled rapidly by an impartial and independent body.

40. The representative of the United States said that his Government recognized that adoption of the same tariff nomenclature would have some advantages both for the United States and other countries, particularly in comparing tariffs for purposes of trade negotiations and for statistical purposes. However, he pointed out that conversion to the BTN would cause problems and that it would be a long time before the technical work involved in such a conversion could be completed and negotiations concluded with other countries. Nonetheless, the United States was prepared to study the question of adopting the BTN.

41. The representative of Canada said that the problems raised with regard to the complexity of the Canadian nomenclature were to a great extent not related to the nomenclature itself but to the existence of the "end-use" and "not made in Canada" clauses, which provided lower duties and would remain even if the BTN were adopted. Canada pointed out that conversion to the BTN would be a long and difficult task which Canada believed would not go as far as notifying countries expected in solving the problems they believed exist. Canada suggested that the most useful approach would be to look at any of the particular proposals for simplification within the present system. Both for exporters and for tariff negotiations the problems would be alleviated through the establishment in the very near future of a concordance between the Canadian nomenclature and the BTN.

42. The representative of India referred to the problem facing his country while preparing for the adoption of the BTN. It had been found that because of the technical complexities involved, it was not possible to ensure in all cases that the margins of preference bound under paragraph 2(a) of Article I of GATT would remain unaffected. In fact in some cases in the transposed new tariff it was unavoidable that the margins of preference would be slightly increased. Introduction of BTN by India, and presumably by other countries in similar position, would be facilitated if the CONTRACTING PARTIES could reaffirm in a general way the decision taken in 1955 in the case of the adoption of new Customs Tariff by the Federation of Rhodesia and Nyasaland that in considering modifications in the bound margins of preference, account should be taken of the overall position in respect of preferences rather than of each separate margin. It was also noted that Canada had a series of published memoranda which provided tariff guidance to interested parties.

43. The discussion on a particular notification, not directly related to the adoption of the BTN, is reproduced in Annex III.

IV. CONSULAR AND CUSTOMS FORMALITIES AND DOCUMENTATION

Nature and scope of the problem

44. The Group noted that the CONTRACTING PARTIES at their twenty-sixth session had requested the Committee on Trade in Industrial Products to deal with the consular formalities that were generally maintained by eight contracting parties. It was noted that various notifications contained in this section of Part 2 of the Inventory of Non-Tariff Barriers related to specific cases of consular formalities and that consular formalities as such were also concerned with Article VIII. Attention was given to the recommendation passed by the CONTRACTING PARTIES in 1952, 1957 and 1962 dealing with consular formalities.

45. The Group noted further that the Illustrative List of the section on consular formalities and documentation contained some items that, although varying from case to case, related to the complexity of customs formalities and documentation requirements of some countries. Most of the other notifications in this section of the Inventory were of the same general type. There was a short discussion on specific items of the Illustrative List which was enlarged by the inclusion of items 134 and 148. New information, specifically concerning individual items in the List, will be introduced as amendments to the texts of the notifications. In

this connexion the representative of Brazil informed the Group that as of 7 March 1970 his country had abolished all consular formalities.

46. The members of the Group which had submitted notifications considered that consular formalities and documentation requirements were substantial restraints to trade and that considerable progress in line with Article VIII could be made by simplifying such requirements and charging fees that would correspond to the services rendered. In this context it was suggested that fees based upon a flat rate charge per shipment would be preferable, in principle, to ad valorem charges related to the value of the goods. On the other hand, members maintaining consular formalities were of the opinion that excessive importance was being given to the remaining consular formalities and fees that were applied by only a few countries. Substantial progress had been made and was being made towards the abolition of consular formalities and fees. For example, members of the Latin American Free Trade Association were taking steps to harmonize and simplify customs formalities. Moreover, it was pointed out that such requirements were generally non-discriminatory while other measures applied by other countries were definitely discriminatory and constituted real obstacles to trade.

Possible solutions

47. The following specific suggestions were made by some delegations:

- (a) Consular formalities and fees. It was suggested that an interpretative note to Article VIII should be drawn up, or that the CONTRACTING PARTIES should take a decision, which would require the phasing-out of remaining consular formalities and fees in the course of five years, and during the interim period the CONTRACTING PARTIES should agree that the cost of the service rendered should not exceed a given maximum, for example, \$10 per shipment. Another delegation suggested that a possible solution would be to agree that the amount of fees charged would not exceed a given percentage of the value of the merchandise, for example, 1 per cent. During the phasing-out period, countries still regularly maintaining consular formalities would continue to report annually on progress achieved towards the abolition of such formalities.
- (b) Customs clearance documentation. It was suggested that a way in dealing with complaints about import documentation requirements of particular countries would be to establish a special sub-committee of customs experts to develop standard forms that would meet the import documentation requirements of all customs services throughout the world. This sub-committee would take into account the work being done in other international organizations so as not to duplicate it. The representative of the United States presented a list of common requirements for a customs invoice and a list of common requirements for an all-purpose (consumption, warehouse, appraisal) entry document, both of which are attached hereto as Annexes IV and V. Some delegations had doubts as to the feasibility of drawing up a common list of customs requirements so long as fundamental differences remained as between customs legislations. They were, however, in favour of the proposal that the sub-committee mentioned above should be appointed. Other delegations, having noted that the Customs Co-operation Council was already engaged in the elaboration of standard forms, considered that the establishment of such a sub-committee was not desirable, because its work would duplicate that of the Customs Co-operation Council.

- (c) Certificates of origin. It was suggested that where certificates of origin are required and are provided by properly recognized issuing bodies in due form, there should be no additional requirement for consular endorsement resulting in additional cost to exporters.

46. Suggestions were also put forward looking toward carrying out a study on specific questions under this section, with a view to recommending appropriate solutions. This study should take into consideration in the views of those favouring the proposal, inter alia, the following elements:

- Given that consular formalities and fees were maintained for definite purposes, such as revenue, guarantee against fraud, determination of origin, services rendered, etc., the study should consider possible alternative measures to achieve the same purposes without unduly restraining trade.
- In the interests of improving administrative efficiency, the study should try to identify ways of simplifying formalities and making them less cumbersome. At a later stage, on the basis of the findings, assistance might be given to developing countries in implementing recommended measures.
- The study should take into account the following points upon which agreement had already been reached in past recommendations and codes of standard practices:
 - Customs invoices should be abolished. If, exceptionally, they were necessary for valuation purposes they should be simplified in accordance with the model of the Economic Commission for Europe.
 - Consular invoices should be abolished since they constituted a significant obstacle to trade.
 - Certificates of origin should be required only in cases where they were strictly indispensable in line with the Recommendations of the CONTRACTING PARTIES of 23 October 1953 (BISD, Second Supplement, page 57) and of 17 November 1956 (BISD, Fifth Supplement, page 33).
 - Many countries require exporters to sign a special declaration that is inserted in the commercial invoice. Such declarations are in excess of other requirements and though they generally all have the same content they differ from country to country and constitute a burden for exporters. These declarations should be abolished. If considered strictly indispensable they should be harmonized. For the latter cases the study should consider the possibility that all requiring countries adopt a uniform declaration reading, "We certify this invoice to be true and correct", and if necessary including a short statement reading "and that the goods are of origin".
- It was important that recommendations be concrete and practicable, and to this effect they should be based on factual examination of the practices actually in force.

- The proponents of this suggestion reserved their view as to whether at a later stage it might be desirable to establish a group of experts to prepare concrete proposals on the basis of the study.

Views of the countries maintaining consular formalities

49. The countries maintaining consular formalities and represented at the meetings expressed the view that too much emphasis was being given to this particular subject, which in their view dealt with measures which could hardly be regarded as non-tariff barriers, at least in the case of the countries which they represented. Certainly it was their view that any formality involved was far less an obstacle to trade than those constituted by many other non-tariff barriers, including those listed in Article VIII:4(b)-(h). In addition, they considered that the material contained in the Inventory already represented a very complete assembly of relevant factual information so that no study was needed.

V. SAMPLES REQUIREMENTS

Possible solutions

50. The great majority of the members of the Group agreed to recommend to the Committee on Trade in Industrial Products that the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, signed at Geneva on 7 November 1952, should be taken up for reconsideration in GATT with a view to obtaining accession to it by all contracting parties to GATT. At the same time the Convention should be reviewed with the aim of examining the possibility of relaxing its provisions with regard, for instance, to certain weight and value limits. It was also agreed by the great majority of members that to facilitate the implementation of the Convention, contracting parties should be urged to accede to the Customs Convention on the ATA carnet, established by the Customs Co-operation Council which provides a documentary procedure for the temporary admission of goods.

ANNEX I

MAJOR MATTERS COVERED BY THE NOTIFICATIONS ON VALUATION
CONSIDERED BY THE WORKING GROUP

- Australia
 - determination of value (Item 88)
 - support values (Item 89)
- Brazil
 - minimum values (Item 91)
- Canada
 - determination of value (Item 92)
 - use of charges (Item 93 - this item was deferred for further consideration in Group 5)
 - inclusion of refunded duties in value (Item 94)
- South Africa
 - determination of value (Item 104)
- United States
 - use of ASP (Item 108)
 - special valuation procedures of "final list" (Item 109)

ANNEX II

PARTICULAR NOTIFICATIONS RELATING TO ANTI-DUMPING DUTIES

Item 81: Austria - market disruption legislation

The representative of Hong Kong pointed out that the Austrian anti-dumping legislation did not conform with the provisions of Article VI of GATT or with the Anti-Dumping Code. It based action on prices for similar products of Austrian origin and did not provide for an injury requirement. In addition action under its provisions was discriminatory and could thus not be justified under Article XIX. He expressed the hope that Austria would soon ratify its signature to the Code and abide by its requirements. The representative of Austria, with regard to the particular problem raised by Hong Kong, recalled that bilateral discussions had been held and that it had been agreed to resume them if necessary.

Item 83: South Africa - calculation of anti-dumping duties

The representative of Hong Kong said that the problem in this case was really the same as the one raised in the Valuation section regarding current domestic values in the case of Hong Kong (Item 104). Anti-dumping action was taken against Hong Kong on products which his delegation considered were not dumped by Hong Kong in the South African market. In the absence of adequate evidence of current domestic values in Hong Kong, arbitrary values were charged on the difference between these and invoice prices. There was also no adequate injury provision in the legislation. In his view the question of dumping should be assessed against Hong Kong prices for similar products in its major export markets as provided for in paragraph 1(b)(i) of Article VI. The representative of South Africa said that South Africa experienced problems in the determination of current domestic values in the case of Hong Kong because of the particular market situation in that country. The South African anti-dumping legislation did not follow the wording of Article VI on the question of injury, but the underlying principle was the same. He undertook to refer the proposals made by Hong Kong to the authorities in South Africa.

Item 85: Spain - "abnormal price" system

In view of the nature of the measures which could be taken under this system, the Group agreed to refer the item to Part 4 of the Non-Tariff Barrier Inventory. The representative of Spain underlined that the Order of 7 July 1967 was closely related to the anti-dumping legislation of Spain. If Spain adhered to the Code, the Order would automatically be abolished.

ANNEX III

PARTICULAR NOTIFICATIONS RELATING TO CUSTOMS CLASSIFICATION

Item 113: Australia - substitute notice system concerning textiles and chemicals

Apart from the problems related to the desirability of a wide acceptance of the BTN, one member referred to notification No. 113 and there was a short discussion on this matter.

ANNEX IV

COMMON INVOICE REQUIREMENTS FOR CUSTOMS PURPOSES

1. Whether or not the merchandise is consigned or purchased.
2. Name and address of the seller/exporter.
3. Name of the purchaser.
4. Date of purchase.
5. Date of shipment.
6. Marks and numbers of shipping packages.
7. Manufacturers' or sellers' numbers.
8. Description of goods.
9. Unit value or price in the currency of purchase and terms of sale.
10. Total invoice value plus all other costs, charges and expenses.
11. Current home consumption price.
12. Current price for export.
13. Country of origin.
14. Any rebates, drawbacks, bounties or other grants allowed upon exportation of the goods, separately itemized.
15. Information as to assistance given by the importer to the manufacturer of the imported items and not included in the unit price.

ANNEX V

COMMON REQUIREMENT FOR AN ALL-PURPOSE (CONSUMPTION, WAREHOUSE,
APPRAISEMENT) ENTRY DOCUMENT

1. Foreign port of lading.
2. Port of unloading.
3. Country of export.
4. Country of origin.
5. Importing vessel or carrier.
6. Importer of record (name and address).
7. Party for whose account the merchandise was imported (name and address).
8. Date of export.
9. Date of import.
10. Dock or terminal location of merchandise.
11. Bond number.
12. Bill of lading number.
13. Type of invoice supplied with entry document, i.e., pro forma, commercial, or special customs invoice and number of pages.
14. Description of merchandise, tariff identification number and total quantities expressed in units listed in the tariff schedules.
15. Entered rate of duty.
16. Total entered value.
17. Currency conversion rate if other than official rate.
18. A signed declaration by the party presenting the entry document stating that all listed information is true and correct. If contrary or supplemental information is received by declarant after entry document is filed with customs, such information will be immediately reported to the chief customs officer at the port of entry.

ANNEX VI

THE BRUSSELS PRINCIPLES OF VALUATION

- Principle I - Dutiable value should be based on equitable and simple principles which do not cut across commercial practice.
- Principle II - The concept of dutiable value should be readily comprehensible to the importer as well as to the customs.
- Principle III - The system of valuation should not prevent the quick clearance of goods.
- Principle IV - The system of valuation should enable traders to estimate, in advance, with a reasonable degree of certainty, the value for customs purposes.
- Principle V - The system of valuation should protect the honest importer against unfair competition arising from undervaluation, fraudulent or otherwise.
- Principle VI - When the customs consider that the declared value may be incorrect, the verification of essential facts for the determination of dutiable value should be speedy and accurate.
- Principle VII - Valuation should be based to the greatest possible degree on commercial documents.
- Principle VIII - The system of valuation should reduce formalities to a minimum.
- Principle IX - The procedure for dealing with lawsuits between importers and the customs should be simple, speedy, equitable and impartial.