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Multilateral Trade Negotiations

Group "Non-Tariff Measures"  
Sub-Group "Customs Matters"

CHECKLIST OF ISSUES RAISED AND OF POSSIBLE ELEMENTS  
THAT MAY BE INCLUDED IN ANY NEW SET OF  
INTERNATIONAL RULES OR PRINCIPLES ON CUSTOMS VALUATION

Note by the Secretariat

1. At its March 1976 meeting the Sub-Group "Customs Matters" agreed that the secretariat prepare a working paper, in consultations with delegations, and for distribution in mid-June 1976 containing a checklist of issues raised and of possible elements that may be included in any new set of international rules or principles on customs valuation to be adopted in the context of the multilateral trade negotiations. The Sub-Group also agreed that this document would constitute a basis for bilateral consultations and for the further discussion in the Sub-Group (MTN/NTM/13, paragraph 18).

2. According to the Sub-Group's instructions the present note has been prepared by the secretariat in consultations with delegations and it is based on written submissions reproduced in MTN/NTM/W/20 and addenda and MTN/NTM/W/33 and addenda including additional comments submitted by delegations to the secretariat as well as the relevant GATT provisions, the draft principles and draft interpretative notes worked out by Working Group 2 of the Committee on Trade in Industrial Products.

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1. NEUTRALITY

Draft Principle No. 1

Valuation systems should be neutral in their effect and in no case be used as a disguised means of providing additional protection by artificially increasing the value to which the rate of duty is to be applied.

Austria

A valuation system for the purpose of customs valuation should be strictly neutral. Therefore, the determination of value should not be affected by protective mechanisms which increase artificially the customs value.

The Brussels definition adopted as valuation unit the "normal price" which can also apply to cases where a merchandise is not imported under fully competitive conditions. This system ascertains a uniform neutral valuation.

(MTN/NTM/W/33/Add.4, para. (d))

Canada

The valuation system should be a "neutral constant" in the commercial policy system. With few exceptions, it is inherent in the present Canadian valuation system that the valuation provisions are "neutral" in effect. They are designed neither to add to the protection of domestic producers, which function is reserved for the schedule of rates of duty, nor do they convey on an importer the right to pay a duty on less than actual value of the goods and thus to reduce the level of protection provided by the schedule of rates of duty.

(MTN/NTM/W/20/Add.2, para. 2(B))

EEC

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.

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\*See the next section.

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.

(MTN/NTM/W/33/Add.1, para. (d))

- Valuation procedures should be of general application without distinction between sources of supply.

- The determination of customs value should be neutral in its effect and should not be used as a means of providing additional protection by artificially increasing the value of the imported goods.

These principles are copies almost directly from the "GATT ad referendum solution". They set out the idea that customs valuation procedures should not constitute a protection mechanism in themselves. They are in accord with the views put forward by the United States Tariff Commission in its 1973 Report on customs valuation to the Committee on Finance and the Subcommittee on International Trade, United States Senate ("green book"); this Report stated that the customs valuation system should be so designed that "customs valuations made in accordance therewith are in effect and to the greatest practicable degree a neutral constant in the duty formula".

The concept of neutrality implies that there should not be discrimination between importers, without nevertheless suggesting that the customs valuation system be used as a means of equalizing conditions of competition between one importer and another.

(MTN/NTM/W/20/Add.9, para. 3)

#### Iran

In order to establish an entirely impartial valuation system and procedure, efforts should be made to collect useful information from whatever sources, even from purchasers and suppliers. This may greatly contribute to the purpose. Consequently, the co-operation of big industrialists in announcing, at the request of interested Customs Houses, the export prices and changes therein, and presenting agreements in cases where the goods have been imported through their sale agencies or distributors, would be quite useful in the matter. The more such co-operations are extensive the less the possibilities of illegal competition through declaration of incorrect values causing non-uniform payments of customs duties for identical goods will be.

(MTN/NTM/W/33, para. (d))

Japan

Both Article VII of the General Agreement and "draft Principles" Nos. 1, 3 and 4 are formulated with a view to ensuring the neutrality of valuation system/systems.

(MTN/NTM/W/20, Add.10)

Korea

The determination of customs value should be neutral in its effect and should not be used as a means of providing additional protection by artificially increasing the values of the imported merchandise.

(MTN/NTM/W/20/Add.7, para. 1)

Mexico

Paragraph 1 of "draft Principles" could not be accepted because it is in contradiction with Mexico's legislation and does not correspond to the Brussels valuation principles.

(MTN/NTM/W/120/Add.3, para. 2)

New Zealand

The current domestic value system compares favourably with the Brussels valuation system in being neutral in its effect and meets the GATT requirement that duty not be assessed on arbitrary or fictitious values. The current domestic value in the exporting country is transparent and not subject to influences within the importing country.

(MTN/NTM/W/33/Add.2, para. (d))

Nordic countries

The system of valuation should be neutral in its effect and in no case be used as a disguised means of providing additional protection by artificially increasing the value to which the rate of duty is to be applied.

(MTN/NTM/W/20/Add.12)

United States

Customs valuation should, to the greatest practicable degree, be a "neutral constant" in the duty formula, as applied to all classes of traders thereby permitting the rate of duty to be the sole expression of the protection intended.

(MTN/NTM/W/20, page 4)

2. NON-DISCRIMINATORY APPLICATION

Draft Principle No. 4

Valuation systems should be of general application without distinction as between sources of supply.

EEC

Valuation procedures should be of general application without distinction between sources of supply.\*

(MTN/NTM/W/20/Add.9, para. 2)

Japan

Drawing up a common rule on the basis of paragraph 4. of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Mexico

As regards the non-discrimination of valuation system/systems, it is considered necessary that any new international principle or rule established should specify the need for genuine non-discrimination in valuation systems.

(MTN/NTM/W/33/Add.5, para. (d))

Nordic countries

The system of valuation should be of general application without distinction as between sources of supply.

(MTN/NTM/W/20/Add.12)

United States

The United States favours a customs valuation system that does not discriminate between classes of traders.

(MTN/NTM/W/20, page 4)

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\* See section 1 above. Communication by the EEC.

### 3. RELATION WITH ANTI-DUMPING

#### Draft Principle No. 2

Valuation systems should not be used to combat dumping.

#### Canada

The Canadian delegation recognizes that valuation systems should not be used to combat dumping; that is the function of anti-dumping systems. However, as noted in MTN/NTM/W/20/Add.2, it is the view of this delegation that a valuation system should not "convey on an importer the right to pay a duty on less than actual value of the goods and thus to reduce the level of protection provided by the schedule of rates of duty". This consideration is often, incorrectly, confused with the question of whether or not an anti-dumping duty should be levied. It is, however, a separate consideration to which the Canadian delegation attaches importance.

(MTN/NTM/W/20/Add.11)

#### EEC

Valuation procedures should not be used to combat dumping.

(MTN/NTM/W/20/Add.9)

#### Japan

Drawing up a common rule on the basis of paragraph 2 of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

#### Korea

Valuation procedures should not be used to combat dumping.

(MTN/NTM/W/20/Add.7)

#### Mexico

Paragraph of "Draft Principles" could not be accepted because it is not consistent with our legislation. For Mexico, the system of official prices contains safeguard mechanisms against dumping practices.

(MTN/NTM/W/20/Add.5, para. 3)

#### Nordic countries

The system of valuation should not be used to combat dumping.

(MTN/NTM/W/20/Add.12)

#### 4. UNDERVALUATION

##### Draft Principle No. 3

Valuation systems should protect trade against unfair competition arising from undervaluation.

##### Canada

The main objective of the rules of a customs valuation system should be to ensure that ad valorem rates of duty are levied on actual values. A valuation system should neither add to the protection of domestic producers nor, of equal importance, permit the payment of duties on less than the actual value. This is of particular importance in dealing with trade between affiliated companies.

The Canadian system of valuation, which bases the value for duty on the price of like goods when sold freely by the exporter in his home market, is designed to deal with these particular trading practices. The use of sales of like goods by the exporter in his home market offers an objective and easily-applied method of appraising the imported goods, whether or not these goods are sold by an exporter to an affiliated company. It is difficult to understand how a system which accepts the actual transaction price of the imported goods as the basis for the value for duty, subject to adjustment through a series of arbitrary decisions (e.g. uplifts) can be made to work equitably and fairly in regard to the import trade of countries whose trade is largely between affiliated companies.

(MTN/NTM/W/20/Add.11)

##### EEC

The determination of customs value should protect trade against unfair competition arising from undervaluation.

(MTN/NTM/W/20/Add.9, para. 4)

##### Japan

Drawing up a common rule on the basis of paragraph 3 of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

##### Nordic countries

The system of valuation should protect trade against unfair competition arising from undervaluation.

(MTN/NTM/W/20/Add.12)

5. CONSISTENCY WITH COMMERCIAL PRACTICES

Draft Principle No. 5

Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

Canada

As a practical matter, the value for duty should, to the extent possible, be consistent with commercial practice but not, of course, when this would permit inequities to be tolerated. This, in the Canadian view, means that valuation systems should have as their primary standard the actual monetary worth or value of a product when sold at arm's length and in the ordinary course of trade under fully competitive conditions (i.e. open market sales).

(MTN/NTM/W/20/Add.11)

EEC

It is established practice in regard to all taxation to adapt - as far as possible - the taxation system to the existing business procedures and not to impose on traders the necessity of setting up an additional procedure merely for the implementation of the taxation law. Customs procedures should follow commercial practice as closely as possible. Also the valuation system should be simple and equitable and should take account of the commercial realities in any given situation.

(MTN/NTM/W/20/Add.9, para. 1)

Japan

Drawing up a common rule on the basis of paragraph 5 of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

United States

A valuation standard should be consistent with commercial practice and should not be arbitrary or artificial and, therefore, should be based upon the transaction price under fully competitive conditions.

(MTN/NTM/W/20, page 6)

6. DOCUMENTS AVAILABLE IN COUNTRY OF IMPORTATION

Draft Principle No. 6

Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents.

EEC

The determination of customs value should be based to the greatest possible degree on commercial documents which are available in the country of importation and relate to the imported goods.

The requirement to base valuation on commercial documents repeats what is already in the "Brussels Principles" and in the "GATT ad referendum solution". It implies that there should be no obligation to produce parallel documents for purely customs purposes.

The second requirement, i.e. that the documents used should be those which are available in the country of importation and which related to the imported goods, springs from the practical need to be able to check statements in the country in which the duty is paid. Checks which can only be made outside the country of importation can be inconclusive and vesatious.

(MTN/NTM/W/20/Add.9, para. 5)

Japan

Valuation systems should keep formalities to a minimum and valuation should be based to the greatest possible degree on commercial documents which are available in the country of importation and relate to the imported goods.

(MTN/NTM/W/20/Add.10)

Nordic countries

The determination of customs value should be based to the greatest possible degree on commercial documents which are available in the country of importation and relate to the imported goods.

(MTN/NTM/W/20/Add.12)

7. SIMPLICITY

Draft Principle No. 5

Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

Canada

It is the view of the Canadian delegation that it is not realistic to attempt to devise a system which is both simple, and precise and predictable. Canadian experience has been that if a valuation system is to be precise it must be relatively complex. If it is to be simple, it will be imprecise. An imprecise system will require more discretionary action, more arbitrariness. This cannot yield any significant measure of predictability. The question therefore, is which of these objectives should take priority.

(MTN/NTM/W/20/Add.11)

EEC

Dutiable value should be based on simple and equitable criteria.

(MTN/NTM/W/20/Add.9, para. 1)

Japan

For further development of the international trade, it is desirable that the customs valuation systems of various countries should be as simple and stable as possible based on the same principle and the same criteria. From this viewpoint, paragraph 5 of the "Draft Principles" could be the possible solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

Dutiable value should be based on equitable and simple principles which do not cut across commercial practice.

(MTN/NTM/W/20/Add.12)

United States

To facilitate understanding and administration, a valuation standard should be as simple as possible.

(MTN/NTM/W/20, page 6, para.3)

8. FAIRNESS AND EQUITY

Draft Principle No. 5

Dutiable value should be based on equitable and simple criteria which do not conflict with commercial practice.

Canada

One of the key problems in the field of customs valuation is how to provide for fairness and equity as between the valuation of goods imported by an importer from an exporter to which he is not related, and the valuation of goods imported by an importer related to the exporter: i.e. the problem of equity and fairness in valuing goods imported in arm's length transactions and in non-arm's length transactions.

(MTN/NTM/W/20/Add.2, para. 2A)

It is our view that a system that provides one set of valuation rules on one group of products and a different set of rules on another group of products cannot be considered to be one which operates fairly or equitably. When separate and different rules for a specified group of products are unavoidable, the country imposing them should ensure that the products involved can be easily identified.

(MTN/NTM/W/20/Add.11)

EEC

Dutiable value should be based on simple and equitable criteria which do not cut across commercial practices and reflect a price obtainable on a sale to the market in the country of importation.

(MTN/NTM/W/20/Add.9, para. 1)

Japan

Drawing up a common rule on the basis of paragraph 5 of the "Draft Principles" would be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

Dutiable value should be based on equitable and simple principles which do not cut across commercial practice.

(MTN/NTM/W/20/Add.12)

United States

The United States favours a customs valuation system that does not discriminate between classes of traders. Customs valuation should, to the greatest practicable degree, be a "neutral constant" in the duty formula, as applied to all classes of traders, thereby permitting the rate of duty to be the sole expression of the protection intended.

(MTN/NTM/W/20 page 6 para. 1)

9. QUICK CLEARANCE OF GOODS

Draft Principle No. 7

Valuation systems should not prevent the quick clearance of goods.

EEC

The procedure of the determination of customs value should keep formalities to a minimum and should not prevent quick clearance of goods. 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.

(MTN/NTM/W/20/Add.9 para. 6)

Japan

Drawing up a common rule on the basis of paragraph 7 of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

The system of valuation should reduce formalities to a minimum. The procedure of customs valuation should be as speedy as possible and not prevent the quick clearance of goods.

(MTN/NTM/W/20/Add.12)

10. PRECISION AND PREDICTABILITY

GATT Article VII:5

The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

Draft Principle No. 8

The legal and administrative provisions concerning customs valuation should be accessible to the general public and be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.

EEC

The legal and administrative provisions concerning customs valuation should be accessible to the general public and should be sufficiently clear and precise to enable traders to estimate, in advance, with a reasonable degree of certainty, the value of their goods for customs purposes.

(MTN/NTM/W/20/Add.9 para. 7)

Japan

Drawing up a common rule on the basis of paragraph 8 of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

To minimize differences in interpretation and to enable traders to estimate in advance, the value of their goods for customs purposes, the legal and administrative provisions concerning customs valuation should be sufficiently clear and precise.

(MTN/NTM/W/20/Add.12)

United States

**Precision:** To minimize differences in interpretation and resulting delays in making final determinations, the elements of a valuation standard should be precise. A precise standard would lessen the need for administrative and judicial review.

**Predictability of results:** Valuation standards should allow exporters and importers alike to reasonably predict dutiable values, in order to avoid unnecessary disagreement and delay in the assessment of duties.

(MPN/NTM/W/20, page 6)

11. BUSINESS SECRETS

GATT Article X:1

... "The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

Draft Principle No. 9

Valuation systems and practices should take into account the need to safeguard business secrets.

EEC

Valuation practices should take into account the need to safeguard business secrets.

(MTN/NTM/W/20/Add.9, para. 8)

Japan

Drawing up a common rule on the basis of paragraph 9 of the "Draft Principles" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Mexico

Paragraph 9 of the "Draft Principles" could not be accepted because it is not relevant to customs valuation but to general trade legislation.

(MTN/NTM/W/20/Add.5, para. 4)

Nordic countries

The system of valuation and its practical application should take into account the need to safeguard business secrets.

(MTN/NTM/W/20/Add.12)

12. PUBLICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE DECISIONS

GATT Article VII:5

The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty the value of customs purposes.

GATT Article X

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them ...

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published.

Draft Principle No. 8

The legal and administrative provisions concerning customs valuation should be accessible to the general public and be sufficiently clear and precise to enable traders to estimate, with a reasonable degree of certainty the value of their goods for customs purposes.

Austria

All laws and regulations should be duly published in order to provide the importer with the knowledge necessary to carry out the importation in accordance with these laws and regulations.

(MTN/NTM/W/33/Add.4, para. (b))

EEC

Publication of law, regulations and administrative decisions are covered by Principle 7<sup>k</sup> 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.

(MTN/NTM/W/33/Add.1, para. (b))

Iran

Publication and promulgation of rules and regulations as well as administrative decisions should be carried out in such a way that while disseminating information to the interested persons, they may preclude possibilities of any misunderstandings and misinterpretations.

..... Where no specific procedure has been envisaged in the law concerning publication of such documents, promulgation thereof through special publications i.e. administrative publications, Chambers of Commerce bulletins and other specialized publications would be appropriate.

(MTN/NTM/W/33, para. B)

Japan

..... Drawing up a common rule on the basis of paragraph 5 of Article 7 and Article 10 of the General Agreement and paragraph 8 of the "Draft Principle" could be the possible solution.

(MTN/NTM/W/33/Add.3, para. 2(2)(b))

Mexico

..... The publication of laws, regulations and administrative decisions, is 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.

(MTN/NTM/W/33/Add.5, para. (b))

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\*See MTN/NTM/W/20/Add.9, paragraph 7.

New Zealand

The Customs Act 1966 and regulations made pursuant to the Act are public documents available to all persons.

"While general administrative rules relating to the criteria to be used in the valuation of goods are made public, administrative decisions relating to individual cases are not disclosed except to the parties directly involved."

(MTN/NTM/W/33/Add.2 and Corr.1)

Nordic countries

The legal and administrative provisions concerning customs valuation as well as principles emerging from appeal cases shall be published.

(MTN/NTM/W/20/Add.12)

Spain

The fundamental provision regarding valuation is contained in Appendix VII of the General Ordinances governing customs receipts, approved by Decree 2.092/1971 dated 13 August.

Both this Decree and subsequent provisions relating to its application are published in the Official Gazette of the State, for the information of all interested persons.

(MTN/NTM/W/33/Add.6, para. (b))

United States

.....The legal and regulatory provisions and administrative decisions concerning valuation should be readily accessible to the general public. Not all countries publish their laws, regulations, and administrative decisions for easy use by traders. This should be corrected by enforcing publication requirements in any international rules on customs valuation that would support GATT Article X:1.

(MTN/NTM/W/20, page 8)

12a. INCORPORATION OF VALUATION SYSTEM IN A PUBLIC LAW

Canada

Customs valuation provisions should be set out in public law: Given the wide range of commercial practices and the related difficulty of stating precisely in legal terminology the legal rules to be followed in relation to every class of transaction, there is bound to be need for the exercise of administrative discretion in the application of valuation provisions. This is provided for in Article VII, specifically in sub-paragraph 2(c). However, to the extent practicable, a customs valuation system, like other instruments of commercial policy, should avoid undue administrative discretion and arbitrariness. To that end, the measurement of each element or allowance necessary to calculate an "actual value" should be by reference to an actual element of price in an actual transaction, or transactions. This consideration makes a valuation system relatively complex, because the system of law has to reflect the wide variety of commercial practices. The elements of administrative discretion and arbitrariness can and should nevertheless be minimized by enacting as law all the general rules. This would permit importers and exporters to predict dutiable value.

The Canadian delegation considers, however, that paragraph 5 of Article VII does not go far enough in requiring contracting parties to narrow the scope of administrative discretion and arbitrariness and to incorporate their valuation systems in the structure of public law. It would appear that Article X of the General Agreement imposes obligations that go a good deal beyond the provisions of paragraph 5 of Article VII.

(MTN/NTM/W/20/Add.2, para. 2(D))

13. DEFINITION OF VALUE FOR CUSTOMS PURPOSES

GATT Article VII:2(b)

"Actual value" should be 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. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

Draft Interpretative Notes Nos. 1, 2, 3 and 8

D.I.N. 1. The value for customs purposes of imported merchandise is the "actual value", which is understood to be the price at which, at a time and place determined by the legislation of the country of importation, the merchandise imported or like merchandise is sold or is offered for sale, or would be sold to that country in the ordinary course of trade under fully competitive conditions.

For countries which base their valuation on a c.i.f. price, that price includes the costs of delivery to the place of introduction into the country of importation.

For countries which do not base their valuation on a c.i.f. price, that price to be taken into consideration includes the costs of delivery of the merchandise to the place defined in the legislation of the country of importation (e.g. ex factory, at railhead, at the dock, free on board ship or delivered to aircraft).

D.I.N. 2. For the purpose of Article VII, paragraph 2(b), "like merchandise" is understood to mean a product of the same origin and similar in all respects to the product imported or, in the absence of such a product, another product of the same origin as the product imported, whose characteristics closely resemble those of the product imported (in particular as regards condition, type, quality, etc.).

D.I.N. 3. The price of "like merchandise" should be used as a basis for customs valuation only in cases where the "actual value" of the merchandise cannot be determined on the basis of the price paid or payable or of the price made by the vendor to other purchasers in the importing country for identical merchandise.

D.I.N. 8. The value for customs purposes of any imported product should not include the amount of any customs duty applicable within the country of origin or export from which the imported product has been exempted or has been or will be relieved by means of refund.

Canada

In valuing all the imports in which the invoice or transaction price has to be adjusted to arrive at "actual value" a number of price and non-price considerations must be taken into account. This is obviously the case for all prices stated c.i.f. if "actual value" is determined on an f.o.b. basis. This is also the case for all prices in transactions which fall under 2(c) of Article VII. Article VII contains provisions regarding allowances to be made for quantities and for internal taxes and for rates of exchange. It is silent on all the other price and non-price elements. It is for consideration whether in drafting a revision of Article VII or an interpretative note whether or not it would be useful to deal with these other factors.

(MTN/NTM/W/20/Add.2, para. F)

Section 2(a) of Article VII of the GATT provides that the value for duty should be based on the actual value of the imported merchandise or the actual value of like merchandise.

A system which uses the transaction price as the basis for value for duty or a system which uses sales by the exporter in his home market as the value for duty, should, as a practical matter, both result in value for duty determinations which are equal to the actual value of the imported merchandise for most transactions that take place in the open market. The former arrives at this valuations by using as a primary standard, or base to be adjusted, the stated transaction price of the imported merchandise and the latter by using the actual price of like merchandise when sold under comparable conditions by the exporter in his home market.

As regards a system which uses the transaction price, a judgement must be made by customs officers as to whether valuation can be made on the basis of the price of the imported merchandise or whether some other value should be used. Customs officers must, therefore, be provided with considerable latitude for discretionary action; this may lead to arbitrary decisions which result in uncertainty for exporters and importers alike. Even with an equitable and effective appeal procedure, it would be difficult to challenge appraisal decisions under a system which explicitly provides for numerous administrative adjustments to the transaction price to arrive at the valuation.

Goods are sometimes shipped by an exporter without a sale taking place prior to importation and clearance through customs. In most of such situations, the goods are cleared through customs in the country of importation by a party acting on behalf of the exporter for future sale.

Any international rules or principles on valuation should deal adequately with the issues raised by consignment shipments, so as to ensure that they are valued in a manner consistent with the way in which other goods are valued.

(MTN/NTM/W/20/Add.11)

#### EEC

1. A definition of customs value should describe the basic elements needed for valuation, i.e., the price, time, place, commercial level and quantity factors to be taken into consideration. It should also state clearly that the value to be determined is that of the goods actually being imported.

2. The value for customs purposes is the price at which the goods are sold or would be sold with a view to importation into the country of importation in the ordinary course of trade under fully competitive conditions between a buyer and a seller independent of each other, where that price is the sole consideration.

The theme that should run through a description of these elements is the need to respect the commercial realities at all times. If one factor more than another should predominate in a valuation system, it is this very need for respecting the commercial realities - a principle already inherent in GATT Article VII itself.

(MTN/NTM/W/20/Add.9, page 4)

#### Hong Kong

Hong Kong attaches particular importance to retention of the qualification in D.I.N. 2 - that to be defined as "like merchandise" a product must be of the same origin as the product imported.

(MTN/NTM/W/20, page 2)

#### Japan

Drawing up a common rule on the basis of paragraphs 1, 2, 3 and 8 of the "draft Interpretative Notes" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Korea

The value of imported merchandise for customs purposes should be the price at which the imported merchandise is sold or would be sold with a view to importation into the country of importation in the ordinary course of trade under fully competitive conditions between a buyer and a seller independent of each other, where that price is the sole consideration.

(MTN/NTM/W/20/Add.7, para. 2)

Mexico

As regards the draft Interpretative Notes drawn up within GATT:

- (a) in paragraph 1, the first sub-paragraph could not be accepted because it is based on the positive concept of value, which is contrary to the Brussels definition requiring the notional concept of value to be used.

As regards the second and third sub-paragraphs, there would be no difficulty in accepting them inasmuch as they are consistent with the Brussels valuation.

- (b) With respect to paragraphs 2, 3, 4 and 5 concerning the system in general and the concept of "like merchandise", it is considered that their administration would give rise to difficulties that could be solved by adoption of the Brussels valuation system.

(MTN/NTM/W/20/Add.5)

New Zealand

Interpretative Note No. 1 should be suitably amended to delete reference to valuation systems which include the cost of delivery of merchandise. This is regarded as natural consequence to the adoption of f.o.b. alternative to the Brussels Valuation System. In any case it is not felt that contracting parties should be compelled to include delivery charges in their systems and thus tending to penalize distant suppliers.

(MTN/NTM/W/20, page 5)

13(a)-(e) PRICE, TIME, PLACE, COMMERCIAL LEVEL, QUANTITIES

Draft Interpretative Note No. 6

With regard to the elements of level, quantity and time, contracting parties should respect economic reality and commercial practice and, inter alia

- accept the usual quantity rebates even in the case of fulfilment of a contract in successive consignments;
- take into account the time required for executing the contract in the branch of trade in question.

Japan

Drawing up a common rule on the basis of paragraph 6 of the "Draft Interpretative Notes" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Mexico

As regards paragraph 6 of D.I.N., it is pointed out that the system proposed and the Brussels system are mutually exclusive, in that in this GATT document free competition is viewed from the aspect of the trade, whereas the Brussels document views it from the aspect of the State. In these circumstances, it would be appropriate to examine the possibility that it is Article VII of the General Agreement that should be aligned with the Brussels customs valuation system and not the reverse.

(MTN/NTM/W/20/Add.5, para. (c))

Venezuela

Differentiation as between quantity and commercial level: there is no economic reasoning indicating the possible practical differences for the purposes of accepting simultaneously rebates granted in respect of both commercial level and quantity. It is constantly found that that commercial level corresponds implicitly to quantity; thus, the greater the quantity, the higher the economic level of the purchaser is presumed to be, and this must be so since what interests the manufacturer is to place his goods as soon as possible.

(MTN/NTM/W/20/Add.6, para. (b))

(a) Price

EEC

The price paid or payable should be taken as the basis of value as far as possible.

The price for valuation purposes should be the competitive price however described, i.e. the price made on a sale between a buyer and a seller independent of each other, when the price is the sole consideration.

(MTN/NTM/W/20/Add.9, page 5)

Nordic countries

The value for customs purposes is the price at which the goods are sold or would be sold with a view to importation into the country of importation in the ordinary course of trade under fully competitive conditions between a buyer and a seller independent of each other, where that price is the sole consideration.

(MTN/NTM/W/20/Add.12)

(b) Time

Canada

Since the actual value of imported goods may change between the time a contract or purchase order is signed and the time of direct shipment, it is for consideration how legislation in countries of importation should be drafted so as to respect, to the extent possible, commercial realities.

(MTN/NTM/W/20/Add.11)

EEC

In regard to the actual time for valuation there is need for some measure of flexibility which would recognize the commercial reality. Ideally, the best moment for the valuation of goods would be that at which they are being cleared for home use. However, this would not always be in conformity with commercial realities. Clearly, contracts will generally be made sometime before that amount and one should therefore allow some degree of tolerance as between the date of making a contract and the date of clearing of the goods through customs.

(MTN/NTM/W/20/Add.9, page 5)



Nordic countries

The moment for the valuation of goods should be the time, when the goods are cleared for home use. However, this would not always be in conformity with commercial practice and realities. Contracts are generally made some time before that moment and account should therefore be taken of the time normally required for executing the contract.

(MTN/NTM/W/20/Add.12)

(c) Place

Canada

Most systems based on the transaction price, however, currently include in the value for duty all charges incurred on the sale of the goods up to the place of importation (i.e. inland freight from factory to port, insurance, ocean freight, etc.). If there is any merit in the argument that valuation systems should be subject to some measure of harmonization, there would appear to be a case for the use of an internationally agreed rule which would specify only one concept for the place element in determining value for duty.

(MTN/NTM/W/20/Add.11)

EEC

As regards the apportionment of delivery costs (particularly transport costs) which have an incidence on the customs value of the goods the place to be taken into consideration should be precisely indicated in order to avoid dispute. It would be desirable for international rules on valuation to prescribe a uniform criterion for this place. The place of introduction into the country of importation would seem to offer the best point for this purpose although there are some others available. Once again it is a question of respecting the commercial realities.

(MTN/NTM/W/20/Add.9, page 5)

Nordic countries

As regards the apportionment of delivery costs the place of introduction into the country of importation should be the place to be taken into consideration for this purpose.

(MTN/NTM/W/20/Add.12)

(d) Commercial level

The commercial level or stage at which a buyer is operating can influence the price at which a seller will sell his goods to him, and accordingly valuation procedures should respect such a commercial reality. If the commercial level or stage claimed by the buyer is confirmed by the circumstances and facts of the transaction and his activities, then that commercial level or stage, and any price variations in respect thereof, should be taken into consideration in determining the customs value.

The commercial distribution patterns may be different in the various countries and may also be different within a particular country. Once again valuation law should respect the commercial realities.

(MTN/NTM/W/20/Add.9, page 5)

Nordic countries

The system of valuation should accept prices applicable at different trade levels and thus respect commercial practice.

(MTN/NTM/W/20/Add.12)

(e) Quantity

EEC

Valuation should be related to the actual quantity of goods being imported with all due allowance being made for a certain flexibility in treatment where it is necessary to bring in a purchased quantity in split consignments. Any attempt to value goods by relation to a standard quantity bought in specified circumstances should be avoided for the reason that it does not respect commercial realities.

(MTN/NTM/W/20/Add.9, page 6)

Nordic countries

Valuation should be related to the actual quantity of goods being imported with all due allowance being made for a certain flexibility in treatment where it is necessary to bring in a purchased quantity in split consignments.

(MTN/NTM/W/20/Add.12)

14. ADJUSTMENT OF VALUE - NEAREST ASCERTAINABLE EQUIVALENT

GATT Article VII:2(c) and :3

VII:2(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.

VII:3. The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

Draft Interpretative Notes Nos. 4 and 5

D.I.N 4. Value should be determined in accordance with the foregoing Interpretative Notes. However, in cases where actual value cannot be ascertained in this fashion, Article VII, paragraph 2(c) is applicable. The "nearest ascertainable equivalent" within the meaning of that sub-paragraph should normally be based on information available on the importing market, such as:

- the price of merchandise conforming to the definition of "like merchandise" given in Interpretative Note No. 2 above in all respects but which originates in a country other than the country of origin of the merchandise to be valued, provided that in that other country the conditions of production (including wage rates) are comparable to those in the country of the merchandise to be valued, and prices are established in fully competitive conditions;
- if the imported merchandise is sold or resold, the price made on the first sale or resale in fully competitive conditions, such price being adjusted to take account of the various elements that should not be included in the customs value as defined in Interpretative Note No. 1; or
- any other element that can constitute a valid basis for determining the value for customs purposes (for example, rental during the normal lifetime of the merchandise, value shown in the balance sheet as an asset (and information provided by the exporter)).

D.I.N. 5. If there is a difference between the price paid or payable for the imported merchandise and a value obtained by other methods, that should not in itself constitute a reason for rejecting the price paid or payable. There may be acceptable reasons for the difference; e.g. technical developments in the exporting country, different distribution methods, etc.

Canada

Whether a valuation system is based on actual transaction prices or prices in the exporter's home market, situations will always arise where values for duty will have to be adjusted as a result of unusual conditions affecting the transaction. In the view of the Canadian delegation, it is important, however, that valuation systems keep to a minimum the necessity for these adjustments and that rules applied in these cases be precise so as to avoid arbitrariness and undue discretion. This should apply to any type of system.

(examples are shown in MTN/NTM/W/20/Add.11)

EEC

When the price requires adjustment, for example, because it is not the sole consideration or because it is influenced by association between buyer and seller, such adjustment should be reasonable having regard to the circumstances of the particular importation.

Rules 3-5 aim at making it possible to clear goods to the maximum extent feasible on the basis of purchase prices. Adjustments of such prices must be allowed to meet certain contingencies, but the adjustments should never result in valuations which once again do not respect the commercial realities or to be more specific the adjustments should not lead to an assessment base which, demonstrably, would not be economically viable for imported goods in the market conditions obtaining in the country of importation. If such lack of viability exists it should not arise from the customs adjustment procedures.

(MTN/NTM/W/20/Add.9, page 6)

Hong Kong

The following amendments should be made in the present provisions of D.I.N. 4:

- (a) Deletion of the words "provided that in that other country the conditions of production (including wage rates) are comparable to those in the country of origin of the merchandise to be valued" and substitution for them of "provided that that other country is at a similar stage of economic development to the country of origin of the merchandise to be valued". The present formula appears to be both too narrow in its effect and likely to be impractical in administration; comparison of conditions of production would be likely to give rise to substantial difficulties for Customs administrations and, in particular, comparisons of wage rates would involve difficult considerations of exchange rate fluctuations, variations in productivity etc.

- (b) Removal of the square brackets round the last six words of D.I.N. 4 and addition of words so that the end of the sentence reads "and information provided by the exporter, including information of the exporter's invoice price for like goods sold to other markets)." This addition would reflect the intention, with which Hong Kong is in agreement, of the second sentence of the Statement by India recorded in Annex 2 of MTN/NTM/W/7.

(MTN/NTM/W/20, page 3)

Japan

Drawing up a common rule on the basis of paragraphs 4 and 5 of the "Draft Interpretative Notes" should be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

When the value for customs purposes cannot be determined on the basis of the price paid or payable by the importer or on the price made by the seller to other buyers in the country of importation for identical or, failing this, similar goods, the dutiable value should be ascertained from information available in the country of importation concerning the imported goods, such as the price made on sales of the imported goods, rentals if the goods are supplied on hire or lease, value shown in the balance sheet as an asset.

(MTN/NTM/W/20/Add.12)

15. PRECISE AND FAIR HANDLING OF NON-ARM'S-LENGTH TRANSACTIONS

Draft Interpretative Notes No. 11 and 12

D.I.N. 11. The customs administration shall explain to the importer or exporter, on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded.

D.I.N. 11 bis. On the request of the person declaring the goods the customs administration shall explain how the value for customs purposes has been calculated for his goods.

Austria

When an imported merchandise is not sold under full competitive conditions the fact itself should not entitle to an automatic increase of the invoice price for the purpose of customs valuation. In the first instance, the customs administration should examine if and to what extent the invoice price is influenced by the existence of a non-arm's-length transaction; only in cases where such an influence is determined, the invoice price should be adjusted as necessary in order to correspond to the normal price.

(MTN/NTM/W/33/Add.4, para. (c))

Canada

A major problem with which any valuation system must deal in some precise detail is how to value goods imported in arm's-length transactions and in non-arm's-length transactions on an equitable basis so as not to give an advantage to one or other category of importer: this should be reflected in any interpretative note to Article VII.

(MTN/NTM/W/20/Add.2, para. 2A)

The Canadian delegation attaches great weight to the provisions of Article VII:2(b) which provide that "actual value" is determined by reference to sales "in the ordinary course of trade" and "under fully competitive conditions". However, when sales are not taking place under fully competitive conditions, e.g., non-arm's-length transactions, as stipulated in AD to paragraph 2 of Article VII, provisions of paragraph 2(B) do not apply and those of paragraph 2(c) of Article VII become relevant, i.e. the value for customs purposes should be based on the nearest ascertainable equivalent of the "actual value". In these circumstances, the determination of the value for duty is likely to be complicated and to involve a measure of administrative discretion. In this connexion it might be appropriate if the Sub-Group addressed itself to the elaboration of or addition to or interpretation of the provisions of sub-paragraph (c) of paragraph 2 of Article VII.

(MTN/NTM/W/20/Add.2, para. 2(c))

EEC

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.

No method of assessment should ever lead to a price which would not be economically viable for the imported goods in the market conditions obtaining in the country of importation.

(MTN/NTM/W/33/Add.1, para. (c))

Iran

To bring about an explicit and equitable investigation of any business which has not been transacted on a fully competitive basis, it is desirable that a special tribunal comprised of specialists with, also, complete knowledge of international trade and customs matters, enjoying full judicial independence be organized and empowered to determine impartially the matters referred to them.

(MTN/NTM/W/33, para. (c))

Japan

Because the "discounts" which may be granted to a buyer in the transaction based on a special business relationship cannot be considered as a discount in the true sense of the word, i.e. a discount "under fully competitive conditions", we hold the view that the amount discounted in such a case should be included in the dutiable value.

Drawing up a common rule along the line of either paragraph 11 or paragraph 11 bis of the "draft Interpretative Notes" could be one of the realistic solutions.

(MTN/NTM/W/33/Add.3, para. 2(2)(c))

Mexico

As regards precise and fair handling of non-arm's-length transactions, 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.

(MTN/NTM/W/33/Add.5, para. (c))

#### New Zealand

New Zealand charges duty on the current domestic value which has advantages in dealing with the problem of non-arm's-length transactions. This minimizes many of the difficulties encountered by Customs Administrations which use other valuation systems.

Section 146 of the Customs Act 1966 empowers the Minister of Customs to determine the current domestic value of goods where, in his opinion, it is difficult, inequitable or impracticable to determine the value of goods for the purposes of duty in accordance with the normal provisions of the Act. Such a situation could arise where the transaction was made on a non-arm's-length basis.

The principles used by the New Zealand administration in determining the value for the purposes of duty would be explained to the importer provided the confidentiality of business secrets was maintained.

(MTN/NTM/W/33/Add.2, para. (c))

#### Nordic countries

When an imported merchandise is not sold under fully competitive conditions, the fact itself should not entitle to an automatic increase of the invoice price for the purpose of customs valuation. In the first instance, the customs administration should examine if and to what extent the invoice price is influenced by the existence of non-arm's-length conditions (transactions between a buyer and a seller not being independent of each other); only in cases where such an influence is determined, the invoice price can be adjusted to correspond to the value for customs purposes.

(MTN/NTM/W/20/Add.12)

Spain

In all cases in which the customs authority considers it appropriate to increase the value owing to the existence of business or other relations between seller and buyer, the importer or his representative makes the submission which he considers appropriate and in support thereof produces the documents in his possession. If he should not be in agreement with the increase proposed by the customs authority, the interested party may appeal in the manner described in paragraph (a) above.

(MTN/NTM/W/33/Add.6, para. (c))

United States

The United States seeks to have included in any valuation system the implementation of the principles expressed by CTIP Interpretative Note No. 11:

In order to determine the value of goods in "non-arm's-length" transactions, the United States first attempts to base value on the prices at which such or similar goods from the same country are freely sold to the United States. If this value cannot be determined, ordinarily a value is found by using the constructed value basis of appraisement. Generally, this is based on the costs to the producer of materials and fabrication, less certain taxes and includes an amount for general expenses and profit as that usually reflected in sales to the United States of goods of the same general class or kind in the country of exportation. United States customs explains the basis for its action and its computation to the importer. If agreement cannot be reached, the importer has the right to petition judicial and administrative appeals procedures - an appeal not generally available elsewhere.

(MTN/NTM/W/20, pages 9-10)

Venezuela

Rules affording protection to developing countries against decapitalization through over-invoicing:

Valuation practice has permitted the accumulation of evidence affording technical proof that over-invoicing is a demonstrable occurrence in international transactions, primarily in the case of operations effected between subsidiaries and their parent companies. Such practice becomes significant where subsidiaries are established in a country for the purpose of overcoming customs barriers, and to that end rely on imports of semi-manufactures which generally enjoy total or partial exemption from duty. In this way, it is possible on the one hand to evade tariffs, scale down earnings prior to income tax, inflate purchase prices,

collect royalties elusively, etc.; on the other hand, the result is loss of revenue, over-priced products, and decapitalization in the country.

It should be noted that the spirit in which the rules regarding the collecting of ad valorem duties have been formulated is directed toward an entirely fiscal objective, and that for countries such as ours the fiscal concept has to be combined with national development interests.

(MTN/NTM/W/20/Add.6, para. (c))

16/17. PRICE OF GOODS IN THE DOMESTIC MARKET OF IMPORTING COUNTRY OR EXPORTING COUNTRY

18. PRICE TO OTHER COUNTRIES

19. ARBITRARY OR FICTITIOUS VALUE

GATT Article VII:2(a)

The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

Draft Interpretative Note No. 7

Notes 1-6, together with Article VII and its existing Interpretative Notes, describe the calculation of actual value and indicate other acceptable methods of valuation to calculate the nearest ascertainable equivalent to actual value. The value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin, nor on the price of goods in the domestic market of the exporting country, nor, in accordance with Article VII, paragraph 2(a) on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value.<sup>1</sup>

Czechoslovakia

According to the Czechoslovak view the new rules on custom valuation should in every case embody the principle mentioned in the second sentence of the paragraph 7 of the draft Interpretative Notes.

The use of customs valuation of imported merchandise based on the price of goods in the domestic market of the exporting country may not always be appropriate with regard to Czechoslovak exports in view of the principles governing the internal price formation and functioning in Czechoslovakia and may cause special difficulties in determining the value for customs purposes.

(MTN/NTM/W/20/Corr.2)

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<sup>1</sup>The representative of Argentina could not accept this formulation which appeared to classify a system based on minimum values, alone among all named systems as using "arbitrary or fictitious values".

EEC

Moreover this concept\* would exclude not only reference to domestic prices in the exporting country and export prices of the exporting country to a country other than the importing country but also to the price of goods of national origin in the importing country.

(MTN/NTM/W/20/Add.9, para. 1)

Hong Kong

Hong Kong attaches particular importance to retention of the provisions on D.I.N. 7 that value for customs purposes should in no case be based on (a) the price of goods in the domestic market of the exporting country, nor (b) on any arbitrary or fictitious values, with an explicit understanding that any valuation system based on the concept of minimum value is to be regarded as arbitrary or fictitious.

(MTN/NTM/W/20, page 2)

Hungary

... arbitrary interpreted application of customs value for imported goods, or that of based on domestic market prices of the individual countries should be stopped.

(MTN/NTM/W/20/Add.8, page 2)

Japan

Japan considers that the future multilateral colution should include at least the following elements:

- (a) Abolition of the customs valuation system of an arbitrary nature which goes counter to the words and/or spirit of Article VII of the General Agreement.
- (b) Abolition of the system which uses the higher of the two, the domestic price of exporting countries or the export price, as the basis of customs valuation.

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\* See MTN/NTM/W/20/Add.9, para. 1.

- (c) Abolition of the system which uses as a rule domestic price of exporting countries as the basis of customs valuation.

From this point of view drawing up a common rule on the basis of paragraph 7 of the "Draft Interpretative Notes" would be an appropriate solution.

(MTN/NTM/W/20, page 4)

Korea

The value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin, nor on the price of goods in the domestic market of the exporting country, nor on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value.

(MTN/NTM/W/20/Add.7, para. 3)

The value of imported merchandise for customs purposes should not be based on the alternative valuation system, which means, for example, using the higher price of the two, the domestic price of exporting countries or the export price on certain products.

(MTN/NTM/W/20/Add.7, para. 4)

New Zealand

New Zealand disagrees with D.I.N. 7 since, in effect, it would compel a country to adopt the Brussels Valuation System.

(MTN/NTM/W/20, page 4)

Nordic countries

The value for customs purposes shall not be based on the price of goods in the domestic market of the country of exportation, nor on the price of goods in the domestic market of the country of importation, nor on the price made to countries other than the country of importation, nor on the concept of minimum value, nor on arbitrary or fictitious values.

(MTN/NTM/W/20/Add.12)

20. DECLARATION OF IMPORTER

Draft Interpretative Note 9

The importer should be made responsible for the accuracy of his customs valuation declaration.

Japan

Drawing up a common rule on the basis of paragraph 9 of the "Draft Interpretative Notes" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

The importer shall be made responsible for the accuracy of his customs valuation declaration.

(MTN/NTM/W/20/Add.12)

21. EXPLANATION BY CUSTOMS AUTHORITIES UPON REQUEST

Draft Interpretative Notes 10, 11 and 11 bis

D.I.N. 10. On the request for an importer or an exporter the customs administration shall explain in advance the general principles and practices for the calculation of value for customs purposes /so that traders can estimate with a reasonable degree of certainty the value of their goods for customs purposes/.

D.I.N. 11. The customs administration shall explain to the importer or exporter, on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded.

D.I.N. 11 bis. On the request of the person declaring the goods the customs administration shall explain how the value for customs purposes has been calculated for his goods.

Hong Kong

Hong Kong attaches particular importance to retaining the substance of D.I.N. 10 and D.I.N. 11 (of D.I.N. 11, not of D.I.N. 11 bis), particularly in regard to the supply of information and in regard to the recognition that an exporter, as well as an importer, has the right to explanation on request from the customs administration of an importing country, a priori of the general principles and practices used in calculation of value and a posteriori of how value in regard to a particular consignment was calculated.

(MTN/NTM/W/20 page 3)

Japan

Drawing up a common rule on the basis of paragraph 10, 11 or 11 bis of the "Draft Interpretative Notes" could be an appropriate solution.

(MTN/NTM/W/20/Add.10)

Nordic countries

On the request of an importer or an exporter the customs administration shall explain in advance the general principles and practices for the calculation of value for customs purposes so that traders can estimate with a reasonable degree of certainty the value of their goods for customs purposes.

The customs administration shall explain to the importer or exporter on his request, how the customs value has been calculated for his goods, particularly in cases where the invoice price is not acceptable, provided the confidentiality of business secrets is safeguarded.

(MTN/NTM/W/20/Add.12)

21a. READY AVAILABILITY OF NEEDED INFORMATION TO TRADERS AND CUSTOMS OFFICIALS

Draft Principle No.8

The legal and administrative provisions concerning customs valuation should be accessible to the general public and be sufficiently clear and precise to enable traders to estimate, with a reasonable degree of certainty, the value of their goods for customs purposes.

Japan

Drawing up a common rule on the basis of paragraph 8 of the "Draft Principles" would be an appropriate solution.

(MTN/NTM/W/20/Add.10)

United States

The information required to administer a customs valuation standard should be readily available to traders and customs officers. Many customs valuation standards in current use involve requirements for which the needed information is difficult to obtain within a reasonable time. If at all, a full administration of such requirements inevitably leads to delays in the final determination of dutiable value.

(MTN/NTM/W/20 page 6)

## 22. APPEAL AND JUDICIAL REVIEW PROCEDURES

GATT Article X:3(b) Each contracting party shall maintain, or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers. Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

### Draft Interpretative Note No. 12

D.I.N. 12. Consistent with Article X:3(b), each contracting party shall provide a procedure for appeal to an independent and impartial administrative and/or judicial body against valuation decisions of its customs authorities.

#### Austria

It would be suitable to provide for a judicial as well as for an administrative procedure for reviewing administrative decisions in customs matters. The review by an independent court would better secure the impartiality just because of its independence from the administration; an administrative review procedure has however the advantage that it is at the same time simpler to handle and that it can normally be carried out within a shorter period than a judicial procedure. A combination of these two procedures would in particular correspond to the last of the Nine Brussels Customs Valuation Principles drawn up by a study group and which determines that review procedures for the settlement of disputes between the importer and the customs administration should be simple, fast, just and impartial.

(MTN/NTM/W/33/Add.4 para(a))

#### Canada

##### Review and judicial overview

Paragraph 3 of Article X requires contracting parties to provide for "the prompt review and correction of administrative action relating to customs matters" by the institution of "judicial, arbitral or administrative tribunals or procedures..." The Canadian delegation considers that these obligations apply fully to the application by contracting parties of their laws, regulations and practices with regard

to customs valuation. It appears that there is a wide diversity in the present scope of such review procedures; moreover, to the extent that contracting parties rely on administrative discretion and thus that rules of practice are not incorporated into rules of general law, the scope of such review procedures and the application of judicial overview is restricted.

EEC

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.

(MTN/NTM/W/33/Add.1)

Hong Kong

Hong Kong attaches particular importance to retention of the substance of D.I.N. 12 in regard to the establishment of appeal procedures.

(MTN/NTM/W/20 page 3)

Iran

The customs procedures in respect of assessing "dutiabale value of goods" should provide a uniform payment of customs duties for all importers who import any identical goods about the same date and from the same country of origin, and, moreover, any special arrangements between suppliers and purchasers should have no effect whatsoever on the payment of the customs duties. The customs procedure to determine the dutiable value of the goods should in the meantime provide the importers with such possibilities that when their documents establishing value of the goods are to be reconsidered, they may be able to appeal to an independent judicial body within shortest possible time by presenting their evidence in support of the correctness of their documents, and ask for investigation of the matter, by pointing out the facts causing difference in the value assessed by the customs authorities.

(MTN/NTM/W/33 para (a))

Japan

Drawing up a common rule along the line of paragraph 12 of the "draft Interpretative Notes" could be an appropriate solution for this question.

(MTN/NTM/W/33.Add.3 para 2(2)(a))

Mexico

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. (MTN/NTM/W/33/Add.5 para(a))

New Zealand

Section 140 of the Customs Act 1966 empowers the Collector of Customs to value goods for the purposes of duty and Section 141 of the Act provides that such valuation shall be presumed to be correct. However, this same section provides for an appeal to be lodged against the valuation made by the Collector which may be heard either by the Minister of Customs (or his delegate) or by a Court of competent jurisdiction.

Section 142 of the Act specifies that notice of appeal against the Collector's valuation must be made in writing within 14 days after the assessment of duty, or within such further time as may be allowed by the Collector, and while the goods remain subject to the control of the Customs.

The appellant is given reasonable opportunity to be heard and the valuation for duty purposes determined in accordance with this section of the Customs Act is deemed to be the true value.

In addition to the rights of the Collector to place a value upon goods, Section 146 of the Customs Act 1966 gives the Minister the power to determine the correct domestic value, if in his opinion it is difficult, inequitable or impracticable to determine such value in accordance with Section 136, which defines c.d.u.

This provision can be taken as a general appeal mechanism and importers and department may request that the Minister exercise his powers under this Section.

(MTN/NTM/W/33/Add.2)

Nordic countries

All countries should have an appeal procedure, which includes a body independent of the customs administration.

(MTN/NTM/W/20/Add.12)

Spain

On 12 February 1973, Spain accepted the recommendation of the Customs Co-operation dated 6 June 1967, which provides for the possibility of an appeal to a competent authority on the part of any person who considers himself prejudiced by a decision or a measure taken by the customs authorities.

(MTN/NTM/W/33/Add.6 para(a))

United States

The system should provide a procedure for the review of valuation decisions that will be readily available to all parties and will afford impartial, equitable, and rapid decisions on appeals. Regardless of how clearly and explicitly the value standard is defined, importers and customs officials will sometimes differ as to the correct dutiable value. Valuation systems should, therefore, provide for review of valuation decision within the customs service and for appeal of contested valuations to the courts. When interpretations of valuation standards are made by customs authorities or the courts, the interpretations should be publicized to avoid repetitious litigation and should be followed uniformly.

The appeal procedures for protesting an appraisement should be guaranteed and made financially accessible to the importer.

(MTN/NTM/W/20 page 6,8)