

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/51/Rev.1

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Special Distribution

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

Revision

1. At its July 1976 meeting the Sub-Group "Customs Matters" agreed that the secretariat prepare, in consultations with interested delegations and as a basis for discussion at its next meeting a revised version of MTN/NTM/W/51 indicating areas of broad consensus and areas where divergencies exist (MTN/NTM/18, paragraph 5). It was generally recognized that MTN/NTM/W/51/Rev.1 would not be binding on any delegation and that participants made their submissions on the understanding that their comments reflected only preliminary views on 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 multilateral trade negotiations and were not meant to reflect their views on current valuation rules or on the desirability of creating a new valuation system (MTN/NTM/18, paragraph 2).
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 comments reproduced in MTN/NTM/W/51 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.

1. NEUTRALITY

CTIP* 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.

The valuation system(s) should be neutral in its (their) effect and in no case should be used as a means of providing additional protection ...

Austria (MTN/NIM/W/33/Add.4, para. (d))
Canada (MTN/NIM/W/20/Add.2, para. 23)
EEC (MTN/NIM/W/20/Add.9, para. 3)
Japan (MTN/NIM/W/20/Add.10)
Korea (MTN/NIM/W/20/Add.7)
Nordic countries (MTN/NIM/W/20/Add.12)
Turkey (MTN/NIM/W/33/Add.7)

... by artificially increasing the value to which the rate of duty is to be applied.

Austria (as above)
EEC (as above)
Japan (as above)
Korea (as above)
Nordic countries (as above)

Valuation systems in determining duties or other charges should be neutral their effect and in no case be used as a disguised means of providing additional protection. Variable levy systems would appear particularly liable to infringe this principle where they are based on the "most favourable purchasing possibilities on the world market" rather than, e.g. on "representative" import prices.

Australia (written notification)

* CTIP = Committee on Trade in Industrial Products of GATT.

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.

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

Customs valuation procedures should not constitute a protection mechanism in themselves. This is 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 Sub-Committee 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.

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

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.

Mexico (MTN/NTM/W/20/Add.5, para. 2)

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.

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

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.

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

2. NON-DISCRIMINATORY APPLICATION

CTIP Draft Principle No. 4

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

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

EEC (MTN/NTM/W/20/Add.9, para. 2)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)
Turkey (MTN/NTM/W/33/Add.7)

The valuation system should not discriminate between the classes of importers or exporters or between different sources of supply.

India (MTN/NTM/W/33/Add.8)

It is considered necessary that any new international principle or rule established should specify the need for genuine non-discrimination in valuation systems.

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

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

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

3. RELATION WITH ANTI-DUMPING

GTP Draft Principle No. 2

Valuation systems should not be used to combat dumping.

The valuation system(s) should not be used to combat dumping.

Canada (MTN/NTM/W/20/Add.11)
EEC (MTN/NTM/W/20/Add.9)
Japan (MTN/NTM/W/20/Add.10)
Korea (MTN/NTM/W/20/Add.7)
Nordic countries (MTN/NTM/W/20/Add.12)

Valuation systems used in calculation of duties or other charges should not be used to combat dumping. Variable levy systems would appear to be particularly prone to infringe this principle because they are often based on lowest world offer prices. Such prices would no doubt sometimes be dumped prices and so the resultant levy would automatically incorporate an anti-dumping margin.

Australia (written notification)

Paragraph 2 of "draft Principle" 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.

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

4. UNDERVALUATION

CTIP Draft Principle No. 3

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

The valuation system(s) should protect trade against unfair competition arising from undervaluation.

EEC (MTN/NTM/W/20/Add.9, para. 3)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)

5. CONSISTENCY WITH COMMERCIAL PRACTICES

CTIP Draft Principle No. 5

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

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).

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

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

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

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

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

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.

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

6. DOCUMENTS AVAILABLE IN COUNTRY OF IMPORTATION

CTIP 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.

The valuation system(s) 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. There should be no obligation to produce parallel documents for purely customs purposes.

EEC (MIN/NTM/W/20/Add.9, para. 5)
Japan (MIN/NTM/W/20/Add.10)
Nordic countries (MIN/NTM/W/20/Add.12)

7. SIMPLICITY

CTIP Draft Principle No. 5

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

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.

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

Dutiable value should be based on simple criteria which do not cut across commercial practice.

EEC (MTN/NTM/W/20/Add.9, para. 1)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)

The customs valuation systems of various countries should be as simple and stable as possible based on the same principle and the same criteria.

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

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

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

8. FAIRNESS AND EQUITY

CTIP Draft Principle No. 5

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

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. (For detailed explanation see MTN/NTM/W/20/Add.2, para. 2(c).) 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 subparagraph (c) of paragraph 2 of Article VII.

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.

Canada (MTN/NTM/W/20/Add.2, paras. 2(A), 2(C) and 2(D))

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

EEC (MTN/NTM/W/20/Add.9, para. 1)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)

The valuation system should avoid uncertainties and should be fair and equitable.

India (MTN/NTM/W/20/Add.13)

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.

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

9. QUICK CLEARANCE OF GOODS

CTIP Draft Principle No. 7

Valuations systems should not prevent the quick clearance of goods.

The valuation system(s) should keep formalities to a minimum and should not prevent quick clearance of goods.

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

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

Nordic countries (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.

CTIP 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.

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 given sufficient publicity to enable traders to estimate with a reasonable degree of certainty, value for customs purposes.

This objective would appear to present particular difficulties for variable levy systems. Because of their tendency to vary from day to day, traders are unable to determine what levy their landed goods will attract.

Australia (written notification)

The elements of administrative discretion and arbitrariness can and should be minimized by enacting as law all the general rules. This would permit importers and exporters to predict dutiable value.

When separate and different rules for specified group of products are unavoidable, the country imposing them should ensure that the products involved can be easily identified.

Canada (MIN/NTM/W/20/Add.2 and Add.11)

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.

EEC (MTN/NTM/W/20/Add.9, para. 7)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.
United States (MTN/NTM/W/20, page 6)

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.

United States (MTN/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."

CTIP Draft Principle No. 9

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

The valuation system(s) and practices should take into account the need to safeguard business secrets.

EEC (MTN/NTM/W/20/Add.9, para. 8)
Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)

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

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

12. PUBLICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE DECISIONS - READY AVAILABILITY OF NEEDED INFORMATION TO TRADERS AND CUSTOMS OFFICIALS

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 thereof, 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 thereof, shall be enforced before such measure has been officially published.

CTIP 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.

The legal and administrative provisions and decisions of general application concerning customs valuation should be published and should be readily accessible to the general public.

Austria (MTN/NTM/W/33/Add.4 para. (b))
Canada (written notification)
EEC (MTN/NTM/W/33/Add.1, para. (b))
Iran (MTN/NTM/W/33, para. B)
Japan (MTN/NTM/W/33/Add.3, para. 2(2)(b))
Mexico (MTN/NTM/W/33/Add.5, para. (b))
New Zealand (MTN/NTM/W/33/Add.2 and Corr.1)
Spain (MTN/NTM/W/33/Add.6, para. (b))
United States (MTN/NTM/W/20, page 8)
Turkey (MTN/NTM/W/33/Add.7)
India (MTN/NTM/W/33/Add.8)

The following opinions have been expressed on the question whether administrative decisions related to specific cases should be also published:

- EEC: only to those affected by them (MTN/NTM/W/33/Add.1 para. (b))
- New Zealand: only to the parties directly involved
(MTN/NTM/W/33/Add.2 and Corr.1)
- United States: the legal and regulatory provisions and all administrative decisions (MTN/NTM/W/20 page 8)
- India: important administrative decisions having general and direct interest to the trade (MTN/NTM/W/33/Add.8 page 2)
- Japan: only decisions of general application (MTN/NTM/W/33/Add.3)

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

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

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.

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

12a. INCORPORATION OF VALUATION PROVISIONS IN A PUBLIC LAW

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.

Canada (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.

CTIP Draft Interpretative Notes No. 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, the 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.

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.*

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 valuation 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.

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.2, para.F)
Canada **(MTN/NTM/W/20/add.11)

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.

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.

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

and as far as the second paragraph above is concerned also:

Korea (MTN/NTM/W/20/Add.7 para. 2)
Nordic countries (MTN/NTM/W/20/Add.12)

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.

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

A rule based on paragraphs 1, 2, 3 and 8 of the draft Interpretative Notes.

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

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.

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

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 a 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 tend to penalize distant suppliers.

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

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

CTIP 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.

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

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

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.

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

(a) Price

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.

EEC (MTN/NTM/W/20/Add.9, page 5)
Nordic countries (MTN/NTM/W/20/Add.12)

GATT Article VII:1 says that the provisions of Article VII apply in respect of "all products subject to duties or other charges or restrictions on importation ... based upon, or regulated in, any manner by value".

Variable levies are "a charge or restriction on importation" which is "based upon ... value" since calculation of the variable levy depends upon determination of the value of imported goods.

For this reason variable levies are subject to the provisions of Article VII:2(a) which stipulate that the value of imported merchandise must be the actual value of the goods in question and not some arbitrary or fictitious value.

It would appear to be especially difficult for variable levy systems to conform to this requirement, because to do so would involve breaches of the m.f.n. rule of GATT, i.e., if the variable levy was based on the actual value of each shipment, then it would vary for different countries.

Variable levy systems thus appear to involve a dilemma, either they infringe the valuation provisions of Article VII by observing the m.f.n. provisions of Article I or they infringe the m.f.n. provisions of Article I by observing the valuation provisions of Article VII.

Australia (written notification)

(b) Time

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.

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

In regard to the material 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 moment 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.

EEC (MTN/NTM/W/20/Add.9, page 5)
Nordic countries (MTN/NTM/W/20/Add.12)

(c) Place

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.

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

As regards the apportionment of delivery costs which have an incidence on the customs value of the goods, the place to be taken into consideration should be indicated. Once again, it is a question of respecting the commercial realities.

EEC (MTN/NTM/W/20/Add.9, page 5)
Nordic countries (MTN/NTM/W/20/Add.12)

(d) Commercial level

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

EEC (MTN/NTM/W/20/Add.9)
Nordic countries (MTN/NTM/W/20/Add.12)

(e) Quantity

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.

EEC (MTN/NTM/W/20/Add.9, page 5)
Nordic countries (MTN/NTM/W/20/Add.12)

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.

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

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.

CTIP 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.

Valuation systems should keep to a minimum the necessity for the adjustments of value for duty and rules applied in these cases should be precise so as to avoid arbitrariness and undue discretion.

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

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.

It should be 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.

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

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".
- (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)."

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

Valuation in cases where the prices are not ascertainable might have to be determined according to following principles in order in which they are mentioned:

- (a) The value of the imported goods may be based on the value at which such goods or comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed are ordinarily sold or offered for sale to other buyers in the importing country under competitive conditions;
- (b) If the value cannot be determined under (a) above, it may be based on the export price at which such goods/comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed are ordinarily sold or offered for sale under competitive conditions to buyers in countries other than the importing country;
- (c) If the value cannot be determined under (a) or (b), it may be based on the value at which comparable goods produced or manufactured by other persons in the country in which the goods to be assessed have been produced or manufactured are ordinarily sold or offered for sale to other buyers in that country under competitive conditions.

It may also be pointed out that while taking note of the price of the same or similar goods in the country of origin, due allowance is also required to be given to the amount of internal tax levied in the country of origin from which the goods on being exported are exempted or relieved by means of refund, etc. Thus attempt is made to find out the approximate c.i.f. value even though it is done by deducing backward from the domestic market price. India is therefore of the view that in order to provide an element of regression in the system, the provision for resort to the concept of prices of goods in the domestic market of the exporting country may be acceptable in the manner set out in paragraph 3 on the clear understanding that it should not be a principle of general application.

India (MTN/NTM/W/20/Add.13)

A rule based on paragraphs 4 and 5 of CTIP Draft Interpretative Notes.

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

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.

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

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

CTIP Draft Interpretative Notes No. 11 and 11 bis

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.

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.

Austria (MTN/NTM/W/33/Add.4, para. (c))
Nordic countries (MTN/NTM/W/20/Add.12)

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 such particular trade practices as trade between affiliated companies. 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.

Canada (MTN/NTM/W/20/Add.11, page)

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.

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

In cases where invoiced value is not accepted, having regard to the special relationship between the importer and exporter, the assessable value should be determined in accordance with the relevant provisions without making a distinction as to the source of supply, etc. If it is decided to load the invoice value for purposes of assessment a decision in this regard should be given in the form of speaking order which fully explains the reasons for the loading and the same should be also made available to the importers. These decisions should be appealable and there should be a further right to seek revision before the appropriate authorities.

India (MTN/NTM/W/33/Add.8)

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.

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

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.

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

Similar practices carrying the same 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 unfair business practices.

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

Current domestic value system 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.

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

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.

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

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 developing countries the fiscal concept has to be combined with national development interests.

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

When imported goods are not sold under fully competitive conditions the adjustment to the invoice price should be made, subject to investigation, in order to find out to what extent it is influenced by the existence of special business relations.

Turkey (MTN/NTM/W/33/Add.7)

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.

CTIP 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.¹

A rule based on paragraph 7 of CTIP Draft Interpretative Notes

Czechoslovakia (MTN/NTM/W/20/Corr.2)
Hong Kong (MTN/NTM/W/20, page 2)
Hungary (MTN/NTM/W/20/Add.8, page 2)
Japan (MTN/NTM/W/20, page 4)
Korea (MTN/NTM/W/20/Add.7, para. 4)
Nordic countries (MTN/NTM/W/20/Add.12).

¹The 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".

The valuation system(s) should 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.

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

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 such particular trade practices as trade between affiliated companies. The use of rules 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.

Canada (MTN/NTM/W/20/Add.11, page 2)

New Zealand agrees that a valuation system should not be based on arbitrary or fictitious values but disagrees with DIN 7 since, in effect it would compel a country to adopt the Brussels Valuation System.

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

... in the normal course the domestic prices in developing countries should not be used as a yard-stick for valuation purposes as it not only introduces an element of uncertainty but it also fails to take into account the special features of the economies of developing countries.

India (MTN/NTM/W/20/Add.13)

20. DECLARATION OF IMPORTER

Draft Interpretative Note 9

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

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

Japan (MTN/NTM/W/20/Add.10)
Nordic countries (MTN/NTM/W/20/Add.12)

21. EXPLANATION BY CUSTOMS AUTHORITIES UPON REQUEST

CTIP Draft Interpretative Notes 10, 11 and 11 bis

D.I.N. 10. 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/.

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.

A common rule based on paragraphs 10, 11 of the CTIP "Draft Interpretative Notes".

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

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

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

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.M. 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.

- review and appeal procedures provided for by the general law.

Canada (MTN/NTM/W/20/Add.2, para. 2(E))
United States (MTN/NTM/W/20, page 6, 8)

-- open to all interested parties

-- review at the administrative level

- appeal at the judicial level to an independent and impartial body

Austria (MTN/NTM/W/33/Add.4, para. (a))
Canada (MTN/NTM/W/20/Add.2)
EEC (MTN/NTM/W/33/Add.1)
Hong Kong (MTN/NTM/W/20, page 3)
India (MTN/NTM/W/33/Add.8)
Iran (MTN/NTM/W/33, para. (a))
Japan (MTN/NTM/W/33/Add.3, para. 2(2)(a))
Mexico (MTN/NTM/W/33/Add.5, para. (a))
New Zealand (MTN/NTM/W/33/Add.2)
Nordic countries (MTN/NTM/W/20/Add.12)
Spain (MTN/NTM/W/33/Add.6, para. (e))
United States (MTN/NTM/W/20, page 6, 8)

- financially accessible to the importer

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

- an intermediary level between administrative and judicial levels: arbitration

Turkey (MTN/NTM/W/33/Add.7)

EEC (suggestion made at the meeting)

- full harmonization of procedures desirable but differences in existing legal systems could not be disregarded.

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

Turkey (MTN/NTM/W/33/Add.7)

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