

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## METHODS OF VALUATION FOR CUSTOMS PURPOSES

### Reports received from the contracting parties

Each contracting party was asked, in document L/81, to submit by 1 June 1953 a report on the steps taken to conform to Article VII of the General Agreement. The reports received to date are reproduced herewith:

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Appendix - Comment by the Interim Valuation Committee of the Customs Co-operation Council on the Correlation of the Brussels Definition of Value to Article VII of the General Agreement on Tariffs and Trade; the Brussels Principles of Valuation; and the Brussels Definition of Value with Interpretative Notes.

A U S T R A L I A

1. In Australia, the basis to be used to determine the dutiable value of imported goods is set forth in Sections 154 and 157 of the Customs Act, which read as follows: -

154 (1) When any duty is imposed according to value, the value for duty shall be the sum of the following: -

- (a) (i) the actual money price paid or to be paid for the goods by the Australian importer plus any special deduction, or
- (ii) the current domestic value of the goods in the country of export, whichever is the higher; and
- (b) all charges payable or ordinarily payable for placing the goods free on board at the port of export.

(2) In the case of goods consigned for sale in Australia, the value for duty shall be the amount which would be the value for duty if the goods were at date of exportation sold to an Australian importer instead of being consigned for sale in Australia.

(3) In this section -

"Current domestic value" means the amount for which the seller of the goods to the purchaser in Australia is selling or would be prepared to sell for cash, at the date of exportation of those goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country; and

"Special deduction" means any discount or other deduction allowed to the Australian importer which would not ordinarily have been allowed to any and every purchaser at the date of exportation of an equal quantity of identically similar goods.

157 (1) Where any amount which is, under any other provision of this Act, required to be taken into account for the purpose of ascertaining the value for duty of any goods is not an amount in Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to a fair rate of exchange at the date of exportation of the goods.

(2) For the purposes of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the Gazette, a rate which is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency -

- (a) on a date, or during a period, preceding the date of publication of the notice; or
  - (b) from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.
- (3) The rate of exchange specified in relation to any currency in pursuance of the last preceding sub-section shall, in relation to the value for duty of any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange which shall be applied for the purposes of sub-section (1) of this section in respect of the currency specified in the notice.
- (4) In any case in which the rate of exchange to be applied is not ascertained by virtue of the last preceding sub-section, and in which doubt exists as to that rate, the Minister may specify a fair rate of exchange to be applied for the purpose of the particular case.

2. "Value" ascertained in accordance with those provisions, is based on the actual value of the goods. It is also governed by the quantity in each transaction, and does not include the amount of any internal tax applicable within the country of origin or export, from which the particular goods have been exempted or have been or will be relieved by means of refund. This basis of valuation does not supplement the protection afforded by the Customs Tariff and is regarded as conforming with the principles of valuation set forth in Article VII of GATT.

3. Where it is necessary to convert into Australian currency a price expressed in the currency of another country, Section 157 of the Australian Customs Act requires that the conversion be made "according to a fair rate of exchange at the date of exportation of the goods". Where the par value of the currency involved is established pursuant to the Articles of Agreement of the International Monetary Fund, the conversion made is based on the par value so established.

4. In practice, the rates of exchange used for the conversion into Australian currency of values not shown on invoices in Australian currency are the bank quotations for the particular currency on the date of exportation of the particular goods. This is the general practice and applies although a "par value" may not have been established. The principles and practices followed in Australia are, therefore, regarded as providing for the use of conversion rates which reflect effectively the current value of the particular currency in commercial transactions.

5. In the case of imports from a country which maintains multiple rates of exchange, the Australian practice is to employ a single conversion rate with respect to all commodities imported from that country and not a series of rates

varying with the commodities involved. Although the rate so employed is based on a determination by the customs administration, the law requires specification of a "fair rate of exchange", and thereby protects traders from the use of arbitrarily determined conversion rates.

6. Since multiple currency practices vary so much with respect to their detailed application and their motives, Australia foresees many difficulties in formulating precise or definitive rules to govern the conversion of the currency of countries which use multiple rates of exchange.

7. As regards the rule that the bases and methods for determining the value of products should be given sufficient publicity to enable traders to estimate with a reasonable degree of certainty the value for customs purposes, an explanatory memorandum, drawn up by the Australian Department of Trade and Customs for the guidance of exporters of goods to Australia, includes an explanation of the provisions of the Customs Act and regulations relating to the valuation of goods exported to Australia. The explanatory memorandum \* is made available without charge to exporters or other interested parties.

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\* This memorandum is not reproduced in this document, but the original is available in the office of the secretariat.

B E N E L U X  
(Translation)

Concerning methods employed in Belgium for determining the customs value of goods, the following points should be borne in mind in regard to this note: -

- (1) The first part is concerned with the definition of value applied at present in the three Benelux countries.
- (2) The second part\* is based on the "Comments on the correlation of the Brussels Definition of Value to Article VII of the GATT", in Annex A of the Report of the Interim Valuation Committee, dated 25 April 1953, to the Customs Co-operation Council (Document 1352 E).

This part deals with the new definition of value, for customs purposes, which the Benelux countries propose shortly to incorporate in their common legislation, and which is in harmony with the "Definition of Value" given in the "Convention on the Value of Goods for Customs Purposes", concluded at Brussels on 15 December 1950, and approved by the Law of 2 January 1953 (Moniteur belge, 17 January 1953).

Part I

Legal provisions concerning the valuation of goods for customs purposes are contained in paragraph 1 (1) of the Preliminary Provisions to the Import Duty Tariff attached to the Customs Convention between Belgium-Luxembourg and the Netherlands, and read as follows:

"For the purpose of the application of the import duty tariff, it shall be understood that:

1°. The VALUE is the normal price of the goods; the normal price is the price which could be stipulated on the day of declaration, by the first seller abroad for delivery at the place of clearance of the goods, excluding duties levied in the country of importation.

In regard to separate parts of a whole entity which do not constitute independent commercial articles, the value is established having regard to the price of the whole entity of which they are deemed to be part.

2°. In the case of goods delivered as the result of a normal transaction, the value can be regarded as the purchase price plus all charges incurred by the goods up to the place of clearance, where these charges are not included, minus the taxes levied in the country of importation

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\* This comment, prepared by the Interim Valuation Committee of the Brussels Co-operation Council, is attached as Appendix.

where these are included in the price. If, on importation into the Belgo-Luxembourg Economic Union, the price is expressed in foreign currency, the conversion into Belgian currency will be effected at exchange rates, established in a normal manner in Brussels at the beginning of the day on which the goods are declared. In the same way, if at the time of importation into the Netherlands the price is expressed in foreign currency, the conversion into Dutch currency will be made according to the exchange rate established in a normal manner in Amsterdam at the beginning of the day on which the goods are declared.

3°. The previous paragraph shall not be applicable if the normal price is greater than the purchase price.

4°. In regard to goods the containers of which, owing to their nature or to existing trade practices, are regularly returned to the supplier, the price of such containers is not to be included in the value of the goods, provided that this price is discounted or not charged if the containers are returned to the owner."

The extent to which this definition of value conforms to the principles set forth in Article VII will now be examined:

GATT  
Art. VII

Para. 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.

These principles are included in the definition in the following manner:

a) Actual value:

The value is expressed by the term "normal price", whose definition corresponds to that of the "actual value" given in paragraph 2 (b) of Article VII.

b) Valuation based on the value of merchandise of national origin:

This method of valuation is ruled out by the Definition, which states that the normal price is the price which could be quoted by the first seller abroad.

c) Valuation based on arbitrary or fictitious values:

This procedure is also excluded, since the normal price is the actual price at which any buyer in the country of importation may obtain, from the country of shipment, the goods that are being imported.

GATT  
Art. VII

Para. 2(b) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale 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.

These principles are found in the Definition in the following form:

a) Time of sale for the purpose of ascertaining the price:

The time of sale is defined as the day of declaration.

b) Place of sale for purpose of ascertaining the price:

This is defined as the place of clearance of the goods.

c) The price at which, in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions:

The Definition states that the value of goods delivered as a result of a normal transaction can be regarded as the purchase price plus the other charges. The idea of a normal transaction corresponds exactly to that of the ordinary course of trade in which goods are sold under fully competitive conditions.

d) Quantity insofar as it affects the price:

In describing the normal price as the price which could be stipulated by the first seller abroad, the text of the Definition implies that the first seller would have taken the quantity involved in the transaction into account when deciding on the price. It follows that the price to be considered in ascertaining the dutiable value must be related to comparable quantities.

GATT  
Art. VII

Para. 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.

According to the definition given, the normal price is the price which could be stipulated, and must necessarily correspond to the nearest ascertainable equivalent.

GATT  
Art. VII      Para. 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.

An identical provision is expressly included in the Definition.

GATT  
Art. VII      Para. 4    Provisions laid down by the General Agreement concerning the rate of exchange employed in determining the value of the goods.

The Definition states that where a price is expressed in foreign currency, the conversion into Belgian currency is effected according to the exchange rate established in a normal manner at the beginning of the day of declaration. In Belgium, the rates of exchange correspond to those of the International Monetary Fund.

GATT  
Art. VII      Para. 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.

The bases and methods for determining the value of goods have been codified in a booklet, "Instruction sur la Valeur", which is on sale to the public.

Part II\*

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\* This Comment, prepared by the Interim Valuation Committee of the Brussels Co-operation Council, is attached as Appendix.

Belgian Congo and Ruanda Urundi  
(Translation)

The Convention on the Valuation of Goods for Customs Purposes was approved by the Law of 2 January 1953. Belgium has deposited the instruments of ratification of this Convention, and it has already been applied by France.

The Colony was one of the first countries to apply the Brussels nomenclature, and it is thus appropriate that it should hasten to give effect to the new definition of value for customs purposes.

Nevertheless, before taking this step, it seems prudent to await the practical results of the application of the new Definition in Belgium where it is not considered possible to apply the Convention on the date appointed.

Moreover, the French Customs Administration, which was the first to apply the said Convention, has encountered such difficulties that it was obliged to instruct its services to revert temporarily to the former definition of customs value.

It thus seemed necessary to postpone action for the present, especially as the colonial customs administration does not have all the import offices or specialized agents able to investigate and analyse the various facts submitted for their consideration, especially as regards the interpretation of the terms: "in the open market" - "buyer and seller independent of each other" - "the price made is not influenced by a commercial, financial or other relationship, whether by contract or otherwise", etc.

An erroneous or improper interpretation of these expressions might lead to endless discussion, which would be both fruitless and troublesome.

It should also be noted that the customs officials cannot undertake journeys to verify at the destination of the goods the terms of sale among associated firms, for example, nor is it possible to send a mission of enquiry to the place from which the goods were exported to check the validity of all the arguments which importers might submit. Consequently, considerable prudence is required, and the new Definition should be only accepted after proof of real achievements.

The terms of reference of the Valuation Committee and the Colony's obligations ensuing from its decisions are another disquieting factor.

C A N A D A\*

Paragraph 1 of Article VII provides that the CONTRACTING PARTIES recognize the validity of the general principles of valuation set forth in this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on importation or exportation based upon or regulated in any manner by value, at the earliest practicable date.

Pursuant to this undertaking, the Canadian Customs Act was amended by Parliament in 1948 to conform to the provisions of Article VII.

The provisions of the Customs Act pertaining to valuation for duty purposes prior to amendments in that year (Section 35 and following) were as shown in the copy of the Act herewith marked "A", and as amended in 1948 and subsequently are as shown in a copy of the Act (dated 1953) herewith, marked "B".

The changes by the 1948 and subsequent amendments were as noted hereunder.

Section 35, sub-section (1) was rewritten to include therein the phrases: "in the ordinary course of trade", "under fully competitive conditions" and "like quantities", as contained in paragraph 2(b) of Article VII. "Under comparable conditions of sale" was also introduced, and the phrase "at the time when the place whence such goods were exported by the vendor abroad to the purchaser in Canada" was substituted for "in the principal markets whence and at the time when the same were exported directly to Canada".

Sub-section (2) providing for determining the nearest ascertainable equivalent to the value as outlined in sub-section (1) where such value is not ascertainable, was introduced as a new provision, in accordance with paragraph (c) of Article VII.

Sub-section (3) was included as a final method of determining actual value, where this could not be ascertained by sale as outlined in sub-sections (1) and (2) of Section 35. This provision superseded the authority vested in the Minister to determine values in difficult cases as contained in Section 41 of the Act.

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\* Attached to this answer was a table showing the numbers of the various sections of the Customs Act as in effect in 1948 prior to the amendments made in that year and at subsequent dates, with a notation as to whether amended or repealed. The two editions of the Customs Act (1948, 1953) are available in the offices of the secretariat. The most important regulations of the Customs Act (Articles 35 and 55) are attached for the convenience of the reader.

Sub-section (4) provides statutory authority for the non-inclusion in the value for duty of the amount of any internal tax in the country of origin or export, from which goods are exempted on export. This supersedes the discretionary authority vested in the Governor in Council as formerly provided by Section 36A of the Act. This change is in conformity with paragraph 3 of Article VII of GATT.

Sub-section (5) continued the discretionary authority of the Governor in Council to disregard import duties of the country of export in determining valuation for duty, as was contained in Section 36A repealed.

Sub-sections (2), (3) and (4), which provided bases for valuation of goods imported from countries whose currency was substantially depreciated, were repealed.

Sections 36 and 36A were repealed.

Section 38 (1) was amended, and sub-section (4) was repealed.

Section 39 remained without change, with the exception that sub-section 2 was repealed.

Sections 40, 41 and 42 were repealed.

Section 46 was amended to authorize the Governor in Council to make regulations under which goods shipped directly to Canada from one country, via another in transit, may be valued for duty purposes as from the country from which shipped direct.

Sections 48, 49, 50 and 51 provide a sequence of authority for review of classifications and valuations for duty purposes, and appeal therefrom to the Tariff Board, Exchequer Court and the Supreme Court of Canada. This is in accordance with the provisions of paragraph 3 (b) of Article X of GATT, in providing an appeal body in respect to administration action on customs matters, independent of administrative enforcement agencies.

Sections 48, 49, 50, 51, 52, 53 and 54 of the Customs Act, prior to amendment in 1948, provided for methods for review and appeal in respect to valuations and tariff classifications, and were repealed.

Section 55 requires that invoices shall exhibit values as provided by the valuation sections of the Act in the currency of the country of export, and also the true transaction between the vendor and purchaser, and the price including cartons, cases and coverings of all kinds, and all expenses incident to placing the goods in condition, packed ready for shipment.

This section also provides for the rate of exchange for conversion of foreign currencies to Canadian currency for customs purposes. Under this section, the rate of exchange shall be that as declared by the Bank of Canada and in the absence of a value so declared, or where multiple rates of exchange exist, a conversion rate which shall reflect effectively the current value of such currency in commercial transactions as determined and ordered by the Minister. This is in conformity with paragraph 4 of Article VII of GATT.

The law formerly provided for proclaiming the standard value of foreign currencies in terms of Canadian currency, based on the relative metal content. Also, where a currency became depreciated or appreciated as compared to the standard value, provision was made for acceptance of the exchange rate on the date of shipment. Such rate required to be substantiated by a certificate of some Consul or Canadian Trade Commissioner, resident in the country of export, or by a bank.

Extract from the Customs Act of Canada

Article 35

(1) Whenever any duty ad valorem is imposed on any goods imported into Canada, the value for duty shall be the fair market value of such or the like goods when sold for home consumption in the ordinary course of trade under fully competitive conditions, in like quantities and under comparable conditions of sale at the time when and place whence such goods were exported by the vendor abroad to the purchaser in Canada; or, except as otherwise provided in this Act, the price at which the goods were sold by the vendor abroad to the purchaser in Canada, exclusive of all charges thereon after their shipment from the place whence exported direct to Canada, whichever may be greater.

(2) When the fair market value of any goods is not ascertainable under subsection one, the value for duty of such goods shall be the nearest ascertainable equivalent of such value.

(3) When neither the fair market value nor the equivalent of such value can be ascertained, the value for duty shall be the actual cost of production of similar goods at date of shipment to Canada, plus a reasonable addition for administration, selling cost and profit.

(4) The value for duty shall not include the amount of any internal tax applicable within the country of origin or export from which the imported goods have been exempted or have been or will be relieved by means of refund or drawback.

(5) The Governor in Council may order that import duties of a country of export shall be disregarded, in whole or in part, in estimating the value for duty of goods of any kind imported into Canada from a country specified in the order. R.S., c. 48, s. 40; 1922, c. 18, s. 2; 1948, c. 41, s. 2; 1949 (Second Session), c. 14, s. 1.

Article 55

(1) Every invoice delivered pursuant to this Act or any Regulation shall exhibit in the currency of the country of export the fair market value of the goods to which it relates, when sold for home consumption in the ordinary course of trade under fully competitive conditions in like quantities and under comparable conditions of sale at the time when and the place whence the same were exported direct to Canada, and the true price at which such goods were sold by the vendor to the purchaser; and in computing the value for duty of the goods in Canadian currency the rate of exchange shall be such as may be declared from time to time by the Bank of Canada.

(2) Where the rate of exchange of the currency of any country has not been so declared, or where multiple rates of exchange exist, a conversion rate which shall reflect effectively the current value of such currency in commercial transactions may be determined and ordered by the Minister.

(3) . . . . .

C Z E C H O S L O V A K I A

The regulations in force in Czechoslovakia with respect to the customs valuation of goods have undergone no change in recent years. Under Czechoslovak Customs Law, duties for goods which are subject to duty according to value, may be assessed either according to their actual value or according to the established average price. Recently we have abandoned the practice of establishing average prices, so that duties are only assessed according to the actual value, i.e. according to the total general value of acquisition, i.e. the sum which is paid for new goods of identical or similar kind of goods, and all the expenses incurred until the time the goods are transported across the frontier, freight, insurance etc.

In our opinion, the present Czechoslovak regulations and practice are thus in accordance with Article VII of the General Agreement on Tariffs and Trade. We would add that new customs regulations are being prepared, which will also include new and more specific regulations of the question of the customs valuation of goods.

D E N M A R K

Article VII, 2(a) and (b)

The principal rule on the valuation for customs purposes of imported merchandise is laid down in the Tariff Act of 29 March 1924. According to that Act the value of merchandise for customs purposes is the wholesale export price at the time and place of purchase in a foreign country, plus the value of outside and inside packing and all the costs of transportation, insurance, etc. up to the arrival of the merchandise at the place of customs clearance.

The value for customs purposes of merchandise sold (bought) for future delivery is the price which, at the time and place of purchase in a foreign country, is current for delivery at the time agreed upon, plus the above-mentioned costs of transportation, etc. The value for customs purposes of merchandise not finally sold is the wholesale export price at the time and place of shipment plus costs of transportation etc.

The value for customs purposes comprises commissions for agents, cash discounts and discounts allowed only for a particular sale or a sale to a particular buyer, and royalties for patents, licences and similar charges to be paid for the acquisition or use of merchandise in Denmark.

The value for customs purposes does not comprise discounts for quantity and discounts generally allowed for sales to Danish importers (dealer's discounts and price reduction discounts).

Article VII, 2(c)

In cases where the customs authorities find themselves unable to determine the value for customs purposes in accordance with the above provisions (for instance in the case of deliveries to sole distributors, branches or affiliated companies), the value for customs purposes shall be the ordinary sales price of such imported merchandise from importer to wholesaler in Denmark at the time of clearance, including packing but not tariff duty. However, the price of packing of some value with which such merchandise may be provided in this country, may be excluded from the value for customs purposes. If no such value can be determined either, the value for customs purposes shall be determined by a similar method on the basis of the ordinary price of the imported merchandise as sold in Denmark by importer to retailer or by importer to consumer, less a deduction to be fixed at the discretion of the customs authorities, corresponding to the normal profit on sales from wholesaler to retailer or consumer.

Article VII, 3

The rules on the valuation of merchandise for customs purposes - cf. 2(a), (b) and (c) - imply that internal taxes applicable in the country of export, from which the product imported into Denmark has been exempted, are not included in the value for customs purposes.

Article VII, 4

The Tariff Act prescribes that foreign currency must be converted into Danish kroner at the current rate of exchange in force on the date of purchase. In cases where that date cannot be stated and proved by documentation, the customs authorities shall determine the value for customs purposes by applying the rate of exchange in force on the date of the invoice or, if no rate of exchange was quoted on that date, the rate of exchange on the last preceding date of quotation. If neither of these dates can be ascertained, the customs authorities shall be entitled to apply the rate of exchange of the date of clearance.

Denmark is a member of the International Monetary Fund, and discrepancies between the rates quoted in this country for foreign currency and the par values agreed with the International Monetary Fund are within the terms of the Articles of Agreement of the International Monetary Fund.

The rules in force in Denmark on the valuation for customs purposes are considered to be consistent with Article VII of the General Agreement on Tariffs and Trade.

F I N L A N D  
(Translation)

The basic regulations under which the dutiable value of imported goods is determined in the case of customs duties established on the basis of the value of the goods are laid down in Articles 84 and 85 of Law No. 271/39 of 8 September 1939 concerning the customs tariff, as amended by Law No. 542/50 of 14 November 1950. These regulations are also applicable in cases when the value of imported goods is determined for the purpose of establishing the turnover tax, because Article 8 of Law No. 605/50 of 22 December 1950 provides that the value of imported goods shall be deemed to be the value laid down in Articles 84 and 85 of the Customs Tariff Law, plus the amount of customs duties and of the consumption tax in cases when the latter is levied. Detailed instructions relating to the determination of value for duty purposes are contained in Article 108 of the Customs Regulations of 8 September 1939 (No.275/39), in the form in which they were promulgated under Decree No. 135/51 of 9 March 1951. Furthermore, the Director General of Customs has issued several supplementary instructions in various circular letters.

The procedure for the determination of value for duty purposes followed in Finland is regarded as fulfilling the requirements of Article VII of the GATT and, therefore, the provisions relating thereto have not been altered as a result of Finland's accession to the Agreement. These provisions can be summarized as follows:

In cases when customs duties applicable to merchandise imported into the customs territory have to be assessed on the value of such merchandise, the value of the merchandise shall be deemed to be the buying price on the foreign market where it was sold to the Finnish buyer or, in the case when the merchandise has not been bought, the current market price at the time and place of landing. In both cases, the value of packing, costs of transportation and insurance and other charges incidental to transportation and delivery of the merchandise at the place of landing, or, if transportation is effected by land or over expanses of frozen water, up to the frontier locality, shall be added to the price.

If the price of the merchandise and the above-mentioned costs and charges are expressed in foreign currencies, the amount shall be converted into Finnish currency at the sales quotation registered by the Bank of Finland at the time of customs clearance. In cases when the price of the merchandise was paid prior to customs clearance, the sales quotations on the day or days when payment or payments were effected shall be applicable. If it is demonstrated that seller and buyer have previously agreed on a specific rate of exchange, this rate of exchange shall be applicable provided the Bank of Finland agrees thereto.

The holder of the merchandise shall be required to declare and, if requested, to certify the value at which the merchandise shall be cleared from

the customs. If he does not do so, or if the customs authorities have reasons to presume that the declared buying price or, if the goods have not been bought, the declared value is less than the buying price or the actual value, or if the buying price or the declared value are substantially lower than the price of like merchandise which has not been cleared at the time of customs clearance and at the place of arrival, the goods shall be appraised on the basis of the price of like merchandise which has not been cleared at the time of clearance and at the place of arrival. The cost of appraisal shall be borne by the holder of the merchandise, if he has not declared and certified the value of such merchandise, or if the value at which the merchandise has been appraised is higher than the declared value.

As regards price rebates mentioned on the invoice, the Customs Tariff Law and the Customs Regulations do not include any requirements under which they might be taken into consideration at the time of valuation for duty purposes, but the directives issued by the Director General of Customs lay down as a general principle at present followed that reductions for reasons of the type of the merchandise or granted for wholesale quantities and any other reductions independent from the date of payment may be deducted for valuation purposes. On the other hand, cash reductions or other reductions for reasons of the date of payment or for advertising purposes (~~less advertising~~) or on account of replacement for damage in the course of transport (less replacement) or discounts for cash payment (less manual), may not be deducted.

F R A N C E  
(Translation)

In acceding to the General Agreement on Tariffs and Trade, France undertook to apply its recommendations, particularly those in Article VII concerning the customs valuation of goods.

France is also a contracting party to the Brussels Convention and has, in consequence, introduced into its customs legislation a definition of the value of imported goods along the lines of the Definition adopted by all the signatory States.

From the purely theoretical point of view, a comparison is made in the attached documentary note between the Brussels Definition and the corresponding provisions of Article VII of the General Agreement, which shows a complete concordance between the two systems.

It only remains, then, to examine whether the practical regulations applied in France are in conformity with the Geneva Agreement. This is the aim of the present report.

The following principles, as stated in Section 35 of the French Customs Code, have been applied since 10 February 1953. This was the date of the coming into force of Law No. 53-79 of 7 February 1953, which gives a definition of the value to be declared for imported goods.

Section 35

1. The value to be declared on importation is the normal price of the goods, that is, the price they would fetch at the time and place stated herein-after, on a sale in the open market between a buyer and seller independent of each other.

If a sale has been effected in these conditions, the normal price may be ascertained on the basis of the invoice price.

2. The normal price of imported goods shall be determined on the following bases: -

- (a) the time to be considered is the date when the declaration is registered at the customs office;

- (b) the goods shall be treated as having been delivered to the buyer at the place of introduction into the customs territory;

- (c) the seller shall be deemed to defray and have included in the price the costs arising out of the transport of the goods, as well as any other costs incidental to the sale and delivery of the goods to the place of introduction to the customs territory;

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\* This Comment, prepared by the Interim Valuation Committee of the Brussels Co-operation Council, is attached as Appendix.

(d) costs arising out of transport in the customs territory shall be excluded, as well as duties and taxes applicable in that territory.

3. A sale in the open market between buyer and seller independent of each other pre-supposes:

(a) that the price is the sole consideration; and

(b) that the price made is not influenced by a commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer and any person associated in business with him (other than the relationship created by the sale of the goods in question);

(c) that no part of the proceeds of the subsequent assignment or utilization of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.

Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have any common interest, or some third person has an interest in the business or property of both of them.

4. When the goods to be valued:

(a) are manufactured in accordance with any patented invention or are goods to which any registered design has been applied; or

(b) are imported under a foreign trade mark, or are imported for sale under a foreign trade mark,

the normal price shall be determined on the assumption that the value of the right to use the patent, design or trade mark in respect of the goods is covered by the price.

5. Every declaration must be supported by an invoice.

If the goods are liable to ad valorem duty, the invoice must be legalized by the French diplomatic or consular authority. Under reciprocal agreements, this legalization may be substituted by a visa issued by organisations approved by the French Government, or the formality of legalization or visa may be abolished.

6. The customs officials may also require the production of agreements, contracts, correspondence etc. referring to the sale.

7. Neither the customs officials nor the Superior Customs Tariff Committee shall be bound to accept the evidence of the invoice or any of the other documents referred to above.
8. If the elements considered in ascertaining the normal price are expressed in foreign currency, the conversion shall be made on the basis of the official rate of exchange in force on the date when the declaration is registered.
9. The value ascertained according to the above rules shall, as appropriate, be rounded off to the nearest 100 francs below.

If the above provisions and those of Article VII of the General Agreement are compared, their agreement on practical points is apparent.

GATT Article VII: 1 This paragraph recommends that the principles governing the value for customs purposes be applied to "all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value".

The French definition is more universal in scope, since it applies to all imported goods without exception, whatever the customs procedure applied to them, and includes merchandise exempted from duty or liable to a specific duty.

GATT Article VII: 2(a) The CONTRACTING PARTIES agreed that the value for customs purposes should be based on "the 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".

Now, Section 35, paragraph 1, of the French Customs Code states at the outset that the customs valuation should apply to the imported goods themselves, and definitely excludes any consideration of internal prices or of any arbitrary or fictitious prices.

Again, the idea of actual value is practically identical with that of the normal price applied in French law, which stipulates that the invoice price which has been or will be paid, and is essentially the actual price, is the basis of valuation for sales in the open market between a seller and buyer independent of each other (Section 35, paragraph 1).

GATT Article VII: 2(b) Under the General Agreement, the criteria of time and place are left to be decided by the CONTRACTING PARTIES. In French law, however, the time and place are specified (Section 35, paragraphs 2 a, b and c). This is a definite advance since, in addition to the exactitude sought by the framers of the Geneva Convention, it shows a concern for uniformity.

Secondly, the idea of the ordinary course of trade and of competitive conditions stipulated in Article VII of the General Agreement are also contained in the French definition (Section 35, paragraphs 1 and 3).

Finally, the normal price referred to in Section 35 of the French Code is essentially based on the actual amount of the transaction, since this price refers not to any similar merchandise imported, but to the goods themselves, taken at the stage of presentation to the customs officials.

GATT Article VII: 2(c) If the "actual value" cannot be determined according to the principles laid down in paragraph 2 b, the CONTRACTING PARTIES have undertaken to consider the "nearest ascertainable equivalent of such value".

It is obvious that the French regulations do not have to consider a substitute value of this kind, since all transactions are, before valuation, assumed to be made under competitive conditions, a single method which is sufficient in itself and which avoids the necessity of resorting to alternative methods, which are bound to be more or less arbitrary.

We should add here that in this point also French legislation shows a notable advance.

GATT Article VII: 3 It was decided that 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 had been exempted or had been or would be relieved by means of refund.

Although this provision was never explicitly incorporated in French legislation, it has nevertheless been applied long since and no complaints have ever been made in this connection.

However, it is now implicitly contained in the French Customs Code, since Section 5, paragraph 2, states that the normal price shall be determined by considering that the seller is deemed to defray and have included in the price the transport cost of the goods, as well as any other cost arising out of the sale and delivery of the goods to the place of introduction to the customs territory; this automatically excludes any internal taxes from which the goods were or would be exempted in the country of origin or export on the occasion of this particular sale or delivery.

GATT Article VII: 4 Article VII, paragraph 4, of the General Agreement lays down rules for the conversion of prices expressed in foreign currency and recommends the adoption of official rates of exchange.

This procedure is expressly referred to in paragraph 8 of Section 35 of the French Customs Code and the administrative instructions in the matter specify that the rates to be considered are:

- (i) for currency sold on the free exchange market, the opening rate published in the last number of the "Journal Officiel" to reach the locality where the import office is situated;
- (ii) for currency sold on the official exchange market, the arithmetical average of the last selling and buying rates fixed by the Exchange Stabilisation Fund;
- (iii) for currency not sold on the free market, or on the official exchange market, the last approximate rates published for such currency by the Banque de France.

GATT Article VII: 5 Finally, Article VII, paragraph 5, refers in particular to the publicity to be given to the bases and methods for determining the value of imported goods, so as to enable traders to estimate this value with a reasonable degree of certainty.

It should be noted that the French definition has been given a wide circulation. It was published first of all in the Law of 17 February 1953, and inserted in the "Journal Officiel", finally in the "Documents Douaniers", a weekly publication which importers can easily obtain and which contains texts of a general nature, administrative instructions, and departmental notes on matters affecting the Customs Administration, including the value of goods.

Again, the information bureaux are available to traders concerned for the purpose of studying special cases, clarifying points in the present regulations which may seem obscure, and in general to inform importers about the method of valuation of goods.

. . . . .

In conclusion, it can be stated that the general principles set forth in Article VII of the General Agreement are also embodied in the Brussels Convention and in French legislation.

The International Chamber of Commerce regrets that these principles are not more clearly expressed and considers, in particular, that the importance to be attached to invoice prices should be emphasised, and that competitive conditions should be defined, taking full account of commercial practice.

The Chamber of Commerce also feels that the theoretical basis of value for customs purposes should be replaced by a more positive criterion, that of the actual value.

France, for its part, has decided to refer explicitly to the invoice price, from which the normal competitive prices can be determined (Section 35 of the Code, paragraph 1). In addition, administrative instructions advise the customs officials, even in the case of transactions made outside the open market, to base their valuation on the invoice price each time it is possible to rectify such prices by taking into account the special advantages allowed by the seller to the buyer in view of their common interests.

Again, as regards the idea of competitive conditions, it seems difficult to define this more clearly than has been done by the parties to the Brussels Convention, and it is certainly not the intention of the French legislator to penalize this or that type of trade. It is in any case customary in regard to goods imported into France to permit discounts, refunds, rebates etc. on the gross invoice price, subject only to such discounts, refunds and rebates being granted by the seller to all clients and according to the size of their orders, and also that their rates should be normal in the branch of trade concerned. French law is thus very liberal in this respect.

This being so, the French legislation on this point appears to be in keeping with the spirit of the General Agreement and to take full account of the recommendations adopted at Geneva.

FEDERAL GERMAN REPUBLIC  
(Translation)

The Act of the Federal Republic of Germany on Customs Tariffs containing provisions on valuation for customs purposes came into force on 1 October 1951. The Federal Republic, which became a member of the GATT in 1951, is obligated, under paragraph 1 (a)(ii) of the Torquay Protocol of 21 April 1951, to apply the Second Part of the Agreement and consequently, Article VII of the GATT on valuation for customs purposes, insofar as this is compatible with the national legislation in force at the date of the Protocol. The Act on Customs Tariffs which is valid at present, having entered into force after that date, the Federal Republic had to take into account the provisions of the GATT on valuation for customs purposes, contained in Article VII, when drafting the text of the Act on Customs Tariffs.

The provisions on valuation for customs purposes, as contained in the Act of the Federal Republic on Customs Tariffs, are based on the definition of valuation for customs purposes formulated by the European Customs Union Study Group of Brussels, and contained in Appendices I and II of the Agreement on Valuation for Customs Purposes (Brussels Agreement)\*. The Federal Republic has ratified that Agreement. As evidenced by the exposé below, the Brussels study group, and consequently the Federal Republic, took into account the principles establishing the concept of valuation for customs purposes, in formulating a definition of valuation for customs purposes, the said principles being practically identical with those of Article 35 of the Havana Charter of 24 March 1948.

The Federal Republic has thus applied the principles on valuation for customs purposes contained in Article VII of the General Agreement.

Exposé

GATT Art.VII paras. 1 & 2      The Federal Republic has followed the principle set forth in paragraph 1, and has laid down that the compensatory turnover tax on imported goods shall be assessed on the dutiable value of such goods (Article 4, paragraph 1 of the Regulations relating to the Compensatory Turnover Tax).

GATT Art.VII para.2(a)      The relevant provisions of the national legislation on ad valorem duties are to be found in Article 5, 6, paragraph 1, of the Customs Tariff Law, and in Article 1, paragraph 1, of the Regulations on the application of ad valorem duty.

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\* The Comment, proposed by the Interim Valuation Committee of the Customs Co-operation Council as well as the Brussels Definition of Value, are attached as Appendix.

The text of Article 5 of the Customs Tariff Law is as follows:

- (1) the duty payable for goods subject to ad valorem duty shall be established on the basis of the dutiable value of such goods.
- (2) the dutiable value shall be the normal price (Article 6). Under the provisions of Article 7, the invoiced price may also be deemed to be the dutiable value.

The text of Article 6, paragraph 1, of the Customs Act is as follows:

"1. The normal price shall be such price as the imported goods would fetch on a sale in the open market between buyer and seller independent of each other and at such time as the relevant regulations are applicable thereto (Art. 58 and 60 of the Customs Law)."

The text of Article 1, paragraph 1, of the Regulation concerning ad valorem duties is as follows:

"The open-market price shall be deemed to be the price which the goods imported into the customs territory would fetch on a sale under fully competitive conditions at such time as the relevant regulations are applicable thereto (Art. 50 and 60 of the Customs Law). In the cases referred to under Article 58, paragraph 3, of the Customs Law, the normal price shall be deemed to be the price which the goods in question would fetch on the date when the customs provisions were modified."

GATT  
Art. VII  
para. 2(b)

a) Time

Article 6, paragraph 1, of the Customs Law contains the following provisions:

". . . such time as the relevant regulations are applicable thereto (Art. 58 and 60 of the Customs Law)".

Under Articles 58 and 60 of the Customs Law, the time in question is generally the date when the goods destined for the open market were presented for customs clearance or imported under temporary duty exemption.

b) Place

Article 6, paragraph 3, of the Customs Law provides that only charges and expenses incidental to delivery up to the place of introduction into the country shall be included in the value for customs purposes. The text of the paragraph is as follows:

"3. The normal price shall include all charges and expenses (Art. 9, paragraph 1) incidental to the sale of the goods and their delivery to the buyer and incurred up to the arrival of the goods at the place of introduction into the country".

c) Price

The relevant provision relating to the price at which such or like merchandise is sold or offered for sale in the ordinary course of trade and under fully competitive conditions provides as follows, by way of analogy, in conformity with Article 1 of the Brussels Definition of Value for Customs Purposes (Art. 6, paragraph 1, of the Customs Law):

". . . as the imported goods would fetch on a sale in the open market between buyer and seller independent of each other".

d) Quantity

Article 6, paragraph 2, of the Customs Law, in conformity with the Brussels Definition relating to the definition to be attached to the concept of 'comparable quantities', provides as follows:

"2. The normal price shall be established on the basis of the quantity of the goods presented for customs clearance. Quantitative discounts which conform to commercial usage shall be taken into account in determining the normal price".

GATT  
Art.VII  
para.2(c)

The provision of Article 6, paragraph 1, of the Customs Law, which states that the price that the merchandise can fetch shall be deemed to constitute the customs value, certainly affords adequate guarantee that the value determined by the customs administration can only be the nearest ascertainable equivalent of the actual value. If this were not to be the case, the party which has to pay the tax could no doubt appeal against the appraisal.

GATT  
Art.VII  
para.3

Article 9, paragraph 1, of the Customs Law provides as follows:

"1. The charges and expenses referred to in Article 6, paragraph 3, shall, in particular, include:

- Carriage or freight;
- Insurance;
- Commission;
- Brokerage;
- Costs incurred abroad for the issue of documents required for the introduction of the goods into the country of importation;

The amount of duties and taxes payable outside the country of importation, excluding those for which exemption has been granted or for which a drawback has been or will presumably be granted;  
Cost of packings (labour, packing materials and or other expenses), excluding such packings as are treated as separate articles for the purpose of levying customs duties;  
**Loading charges."**

GATT  
Art.VII  
para.4

As regards the rate of exchange, Article 11 of the Customs Law provides as follows:

"Prices and values quoted in foreign currency shall be converted into Deutsche Marks at the current official rate of exchange."

Article 26 of the Regulations concerning ad valorem duties provides as follows:

"The official current rate is the latest official selling price communicated to the customs administrations without any deduction. Publications inserted in the Federal Customs Journal (Bundeszollblatt) shall be deemed to constitute an official communication."

GATT  
Art.VII  
para.5

The method for determining the value for customs purposes is provided for in the Customs Law and the Regulations on the application of ad valorem duty which guarantee that appraisals shall be uniform. Those two sets of provisions have been published.

G R E E C E  
(Translation)

Under Greek legislation, the value, for customs purposes, of goods on their home market, on the day of their entering the customs, augmented by freight and insurance charges (i.e., their c.i.f. value), is taken to be the value of such goods taxed ad valorem.

In accordance with the above provisions, as applied in practice, the value of goods imported is considered equivalent to the value obtainable, in the country of exportation, by any buyer, under fully competitive conditions. Reductions granted only to certain countries or certain buyers are not taken into account, for they are considered special and not general, such as may be obtained by any buyer.

Consequently, the rule in force in Greece for determining valuation for customs purposes, is in conformity with the provisions of paragraph 2 of Article VII of the General Agreement.

Valuation for customs purposes of imported goods is fixed by the customs authorities who are competent to tax them. If the consignee-importer does not accept the value assessed by the customs authority, an appraisal is carried out by two experts, one of whom is nominated by the customs authority, and one by the importer. If the two experts fail to agree, an arbitrator is nominated by the President of the Lower Court, whose decision is final.

Conversion of the value of merchandise expressed in foreign currency is based on the official rate of exchange in force in relation to the drachma and in conformity with the daily bulletin of exchange rates published by the Bank of Greece.

Greece signed the Convention on valuation for customs purposes drawn up by the European Customs Union Study Group, and ratified it by Act 1923/1951. The provisions of that Convention were actually in conformity with the legislation in force in Greece at the time of its signature.

Appended are excerpts from the legal provisions under which determination of valuation for customs purposes is carried out, and which establish the methods of conversion of the value of merchandise expressed in foreign currencies.

Royal Decree of 25 July 1920

(Official Bulletin No. 170 of 30 July 1920, Volume A)

Code of Laws on Customs Tariffs

Article 3

The value of goods in the country of exportation, as certified by documents (consular invoices, Foreign Goods Exchange bulletins, certificates by diplomatic and consular authorities, etc.) augmented by freight and insurance charges, shall be taken to be the value of goods taxed ad valorem for customs purposes.

Article 4

Should differences arise between the consignees and the customs authority on matters pertaining to valuation of goods for customs purposes, two experts shall be asked for a decision; one shall be nominated by the customs authority and shall be a civil servant, and one by the consignee. If they fail to agree, an arbitrator shall give a decision which shall be final. The arbitrator shall be a civil servant, fully qualified in matters of valuation of goods for customs purposes, and shall be designated by the Lower Court at the seat of the customs authority, or, failing that, by the Justice of the Peace. The decision of the arbitrator shall not go beyond the scope of the decisions of the experts.

Act 1805/1952

Article 7

I. Conversion of foreign currency for the determining of "valuation for customs purposes" in drachmae shall be carried out according to Article 3 of the Royal Decree of 25 July 1920, on the "Code of Laws on Customs Tariffs", on the basis of the official rate of their values.

H A I T I  
(Translation)

In Haiti the fundamental statutory provisions governing the valuation of imported goods for customs purposes are Sections 36, 37 and 38 of the Law of 26 July 1926:

Section 36

The value of the internal and external packing of goods liable to ad valorem duty shall always be included in the dutiable value of the said goods.

Section 37

For the purpose of levying ad valorem duties, the value of an article shall be deemed to be its wholesale price in the principle markets of the country from which it is imported ready for shipment, including the cost of packing, the freight and cost of transport to the port of shipment, the cost of cartage, the purchase commission, and the interest, if any. The export duties paid in the country of origin, plus the sea freight, insurance, consular duties, landing charges and all other costs of any nature whatsoever shall form part of the cost price of the goods to the importer.

Section 38

The conversion of foreign currency into Haitian currency shall be effected according to the current rate in the customs-house on the day of taxation. The rates shall be established by the Chief Collector (Receveur Général) and notified to the collecting officers at least once a month, and shall be based on the average of the rates quoted the previous month by bankers established in the capital for the sale of foreign currency.

The method employed in Haiti for ascertaining the customs value agrees on all points with the principles underlying Article VII of the General Agreement:

- "(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

. . . . .

- (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."

The method employed in Haiti also conforms to the four standards recommended by the International Chamber of Commerce in 1949 at its Congress in Quebec:

- (1) that the methods of valuation should not be used as a means of increasing protection;
- (2) that the regulations indicate clearly and thoroughly the basis employed in ascertaining the dutiable value for customs purposes;
- (3) that sufficient publicity should be given to the said regulations;
- (4) that internal duties or taxes from which the exported goods will be exempted should not be included in the dutiable value.

Two other rules in the systems employed in Haiti are worthy of note. Section 91 of the Act of 4 September 1905 provides for the pre-emption by the customs of goods which are manifestly under-valued.

#### Section 91

Should the customs authorities consider that the price of an article subject to ad valorem duties has been reduced, it may place it at the disposal of the State, against immediate payment of the cost price plus 10 per cent, or have it analysed by an expert. In the latter case, three experts shall be appointed, one by the customs authorities, the second by the importer, and the third by both. Customs duties shall be levied on the results of their valuation.

In addition, since 1 March 1953, the consular invoice form utilized for all shipments of goods to Haiti contains the following item:

"I declare that the price, weight, description and origin of the above articles are genuine and correct and that they are exactly the same as those appearing on our export declaration No.---, dated -----, made at the Customs Office of our country."

The chief concern of the Haitian Customs Administration, as regards the determination of the customs value, and which appears from the provisions referred to, is to prevent the deliberate and fraudulent under-valuation of goods subject to ad valorem duty. The means employed for this purpose seem to accord with the spirit and letter of Article VII of the General Agreement and do not add any

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further barrier or discrimination to international trade. The Republic of Haiti is, from the technical point of view, prepared to assist, as far as lies within its powers, in the efforts of the CONTRACTING PARTIES to reach at the next Session of GATT, a uniform definition of value for customs purposes applicable to all countries, with the Brussels Definition as a starting point.

I N D I A

1. Value for customs purposes of merchandise imported into India and subject to ad valorem rates of duty are determined in terms of Section 30 of the Indian Sea Customs Act, 1878, which is reproduced below:

"30: For the purposes of this Act the real value shall be deemed to be:

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof: or

(b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid."

It will be seen that Section 30(a) conforms to the general principles set forth in paragraphs 2(a) and (b) and 3 of Article VII of GATT. Similarly Section 30(b) of the Indian Sea Customs Act conforms to the principle set forth in paragraph 2(c) of the same article.

2. Under Section 22 of the Indian Sea Customs Act, 1878, and Section 2(2) and 2(3) of the Indian Tariff Act, 1934, (extracts enclosed), tariff values may be fixed by the Government of India. These tariff values, which are based on the average of actual prices and revised from time to time, are fixed only when it is essential to do so on account of unreliability of invoices, frequent fluctuations in values of the goods concerned, etc. The items for which tariff values have been fixed are few and are published in the "Gazette of India" as and when they are revised. The bases and methods for determining the value of products subject to duties being according to the legal provisions referred to above which are accessible to the public, the principles laid down in paragraph 5 of Article VII of GATT are also observed.

3. Paragraph 4 of Article VII of GATT provides that, subject to certain exceptions, when the price of an imported article is expressed in the currency of another country, the conversion in the currency of the importing country should be made at the par rate of exchange. The practice followed in India is to base such conversions on the exchange rate quoted by banks on the day previous to the date on which the Bill of Entry is presented to the Customs House. This is in conformity with the general international practice.

4. On the whole, therefore, the method of valuation for customs purposes of imported merchandise followed in India conforms to Article VII of GATT. Document E/Conf.2/C.3/SR.30 of the Havana Conference has recognised this fact.

Extract of Section 22 of the Sea Customs Act

22. The Central Government may from time to time, by notification in the (Official Gazette), fix for the purpose of levying duties, tariff-value of any goods exported or imported by sea on which customs duties are by law imposed and alter any such values fixed by any Tariff Act for the time being in force.

Extract of Section 2(2) and 2(3) of the Indian Tariff Act, 1934

2(2) The Central Government may, by notification in the (Official Gazette), fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the said Schedules as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

2(3) Different tariff values may be fixed for different classes or descriptions of the same article.

I N D O N E S I A

Referring to your letter of 26 January 1953 regarding valuation of goods for customs purposes I have the honour to inform you that due to existing regulations in Indonesia it is superfluous to take additional steps in order to give effect to the principles embodied in article seven, General Agreement. Much regret not to be in position to communicate this information earlier as requested by you.

I T A L Y

(Translation)

The ad valorem method of assessment was introduced in Italy in July 1950 by the publication of the "General Customs Import Duty Tariff", which was approved by Decree No. 442 of the President of the Republic, on 7 June 1950, and came into operation on 15 July 1950.

The principles governing the assessment of dutiable value are set forth in Sections 17 to 19 of the Preliminary Provisions of the above-mentioned Tariff (see below).

The rules in these Sections are applied by the customs in determining the dutiable value of goods for the purpose of levying ad valorem import duties or other duties levied by the customs on the value of the imported goods.

Instructions have gone out to the customs officials to ensure a thorough and systematic enforcement of the above legal provisions, and are to be found in the printed Circular No. 352 of 28 November 1951, issued by the Ministry of Finance, Department of Customs and Indirect Duties (see Annex, original text).\*

An examination of Sections 17 to 19 of the Preliminary Provisions to the Tariff and the Circular No. 352 will show that all the principles stated in the different paragraphs of Article VII have been applied, as follows:

1) Paragraph 1:

Uniform standards have been evolved for determining customs value for the purpose of levying all duties imposed on the value of goods.

2) Paragraph 2(a):

The actual value of the goods has been defined as being equal to the original price plus all charges incurred for the despatch, shipment and delivery of the goods up to the Italian frontier; this prevents the dutiable value being established on an arbitrary basis.

3) Paragraph 2(b):

The "time" and "place" when the goods are valued has been defined; according to paragraph 2(b), this definition should be established by the legislation of the CONTRACTING PARTIES.

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\* This annex is not reproduced in this document, but the original is available in the office of the secretariat.

According to the above-mentioned Italian legislation, the time of valuation is "the moment when clearance is effected", that is the moment of customs declaration specified in Section 16 of the Customs Code, 29 September 1940, No. 1424. Once the declaration is made, the goods are then inspected. However, in order to speed up the customs formalities, it is provided that the customs office may decide not to take into account the price fluctuations occurring during the fifteen days after the date when the declaration is presented, provided it has not been possible to carry out inspection of the goods immediately.

As regards the "place of valuation", the law provides that the goods shall be assessed "when they have arrived at the Italian frontier". It is thus assumed that the seller considers himself obliged to defray, and include in the price, all charges arising out of the sale, despatch and delivery of goods up to the Italian frontier.

4) Paragraphs 2(c) and 3:

The instructions issued to customs officials in the printed Circular No. 352 authorise valuation of the goods on the basis of their actual value, excluding taxes levied in the country of origin which have not been collected or which have been or will be reimbursed, and including any abnormal discounts or any other abnormal reductions from the competitive price, as admitted by the interpretative notes to Article VII of the General Agreement.

5) Paragraph 4:

The procedure followed in Italy for the conversion of prices expressed in foreign currency conforms to the principles stated in this paragraph.

Except for the price of goods coming from countries with which Italy has concluded payment agreements establishing a particular rate of exchange, the conversion is effected as follows:

- (a) for convertible currency the conversion is based on the average weekly rate of exchange obtained from daily quotations of the preceding week in the stock exchanges of Rome and Milan;
- (b) for other currencies, the conversion is based on the rate of exchange equal to the ratio between the official par value in U.S. dollars and declared for each of these currencies, and the average weekly rate of exchange of the U.S. dollar, obtained by the method described in paragraph (a) above.

All the above rates of exchange, including those in (a) and (b) above which are established in accordance with the Decree of 21 September 1949, No. 644, by the Treasury, in agreement with the Italian Exchange Office (U.I.C.), are communicated to the customs officials each week by the Ministry of Finance, Department of Customs and Indirect Duties.

6) Paragraph 5:

It can be seen from the preceding paragraphs that uniformity has been obtained in the bases and methods employed in Italy in the valuation of goods for customs purposes. As regards publicity, this is ensured by the publication of Sections 17 to 19 of the Preliminary Provisions to the Tariff, and by Circular 352, which have been widely distributed among the offices concerned.

Italian laws and regulations are, therefore, fully in accordance with the ideas, principles and other elements contained in Article VII of the General Agreement.

Furthermore, Italy has signed the Brussels Convention relating to the value of goods for customs purposes. Annexes I and II of this Convention - "Definition of Customs Value" and "Interpretative Notes" - which reproduce, amplify and complete the principles of Article VII of the General Agreement, are a methodical and complete set of rules for determining the dutiable value of goods.

The "Definition of Customs Value" drawn up at Brussels is in harmony with Article VII of the General Agreement, as can be seen from the note attached (see Appendix), which draws attention to the concordance between the principles stated in Article VII of the General Agreement and in the Brussels Definition.

With a view to a thorough application of the above Convention, a Bill is being prepared for consideration by Parliament at the beginning of the new session (see Annex, original text)\*, under which Sections 17 to 19 of the Preliminary Provisions to the Customs Tariff will be completed by a series of twelve Sections, from 17 to 28, whose provisions amplify and supplement the present provisions as well as those of the Convention, and take into account the opinions of the organisations concerned (C.C.I. and U.I.C.C.) and the experience acquired during the initial phase of the application of the ad valorem tariff.

It thus follows that Article VII also will soon be applied in a thorough and systematic manner.

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\* This annex is not reproduced in this document, but the original is available in the office of the secretariat.

Determination of Dutiable ValueArticle XVII

Import duties on goods subject to ad valorem duty are established on the basis of the value of these goods landed at the frontier at the time of customs clearance, that is on the basis of the normal price of such goods at that time computed from the original price plus any expenditure on account of loading **placing** on board ship, transportation, insurance, commissions, and any further charges incidental to sale, shipping and delivery of the goods up to the place of arrival at the frontier of the Republic.

The current normal price shall be deemed to be the price which the goods can fetch on a sale in fully competitive conditions, independent from any other obligation which may exist between buyer and seller, on the day when the declaration required under Article XVI of the Customs Law of 25 September 1940 (Law No. 1424) is submitted to the customs and when the verification of the goods is effected.

When verification of the goods does not take place immediately after the declaration has been submitted, the Customs Administration cannot take account of price **fluctuations** occurring within the fortnight following the date when the declaration has been submitted.

The dutiable value of the goods includes the value of internal and external packing and generally of packing not subject to duty proper. However, the value of such packings as are normally returned to the sender according to normal trade usages and which, under Royal Decree No. 1453 of 18 December 1913, which has since become Law No. 473 of 17 April 1925, may be temporarily imported to be cleared of their contents, shall be included in the dutiable value of the goods that they contain only in such cases when such packings have been invoiced<sup>1</sup> for final transfer of ownership or when in any case they are not re-exported.

Article XVIII

The owner of the merchandise is required to declare to customs authorities the dutiable value in conformity with the foregoing Article and to amend his declaration in the light of the price fluctuations referred to in paragraph 3 of the said Article. The owner is furthermore required to submit to the customs authorities the original invoice, the transport documents and any such other **commercial** documents (contracts, correspondence, etc.) as might be required by the Customs Administration for the purpose of verification.

Prices and charges expressed in foreign currencies shall be converted into Italian lire at the official rate of exchange applied by the Customs Administration on the date when the verification of the merchandise is undertaken.

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<sup>1</sup> See Circular 160 - Prot No. 1868 UTCD of 23 May 1951.

Article XIX

Should any difference arise as regards the declared value, the Chief Controller of the Customs may, upon request of the importer, collect the advice of two experts, the one chosen by him, the other chosen by the importer, amongst those whose names appear on the list approved by the Chambers of Commerce, Industry and Agriculture.

The Chief Controller of Customs may accept the opinion expressed by the two experts when these are agreed; alternatively, he may use the results of the expert appraisal to modify, according to his own judgment, the value proposed by the Customs Office.

When the litigation cannot be resolved the experts' report and the findings of the Chief Controller of Customs shall be fully reproduced in the minutes of the litigation to be drawn up under the provisions of Article III.<sup>1</sup>

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<sup>1</sup> Article III: As regards settlement of litigations between the customs and debtors, even as regards the value or origin of the goods, the application of the tare regulations or the treatment of packing, the procedure laid down in the Codified Legislation approved by Royal Order No.330 of 9 April 1911 and amendments thereto shall be applicable.

NEW ZEALAND

The Government of New Zealand advises that no steps have been necessary in New Zealand to give effect to the principles of valuation of goods for customs purposes embodied in Article VII of the General Agreement, as existing procedures in New Zealand are already in line with those principles.

N O R W A Y

The Norwegian regulations regarding valuation for customs purposes are established in paragraph 8 of the Preliminary Provisions of the Norwegian Customs Tariff which reads:

"When goods are subject to ad valorem rates, the value generally taken shall be the price of the goods in the country of export, to which, if not included in such price, the following shall be added:

- (a) export duty, if any;
- (b) cost of packing;
- (c) freight and other shipping charges, such as insurance, cartage, etc. incurred up to the landing or discharge of the goods at the place of destination.

"When merchandise has been sold at a lower price than the ordinary inland wholesale selling price obtaining in the country of exportation at the time of the sale, or than the wholesale export selling price of that merchandise or of merchandise of like description, duty shall be levied on the enhanced value ascertained by basing the calculation on the higher price. Duty shall likewise be assessed on the enhanced value ascertained by computing, instead of the freight actually paid, the freight usually paid for the goods in question.

"In case goods are forwarded beyond the first custom house where they could have been landed or discharged, a deduction may be made in respect of the extra expenses caused by the freight and other shipping charges involved by the further transport, if duly proved.

"When goods have been sold for delivery, duty shall be assessed according to the price in force at the time of sale in the foreign place of sale for delivery at the time agreed upon. If imported goods are not ultimately sold in Norway, the price at the time of shipment shall be deemed to be the selling price.

"If goods have been deposited in a transit warehouse, or a free warehouse or free port, the Customs Department may decide that the duty shall be assessed according to the estimated price at the time of clearance.

"Should it be impossible to procure the necessary particulars enabling determination of the value of goods, such value shall be taken as equivalent to the selling price (inclusive of packing cost but exclusive of customs duty) fixed in Norway by the wholesale merchant to the retailer at the time of clearance. If such selling price cannot be established, or if the goods are seriously damaged, the customs at the place of clearance will estimate the value.

"The Customs Department will decide whether the conversion of foreign values into Norwegian money is to be based on the rate of exchange of the day of clearance at the custom house, or on the rate of some other date.

"The vista quotations ruling at Oslo shall be followed. If the value in question is not quoted at Oslo, the Customs Department will issue instructions accordingly."

In the view of the Norwegian authorities these provisions conform to the principles incorporated in Article VII of the General Agreement.



- Power to 22 The [Central Government] may from time to time, by notification  
fix tariff in the [Official Gazette], fix, for the purpose of levying  
values duties, tariff-values of any goods exported or imported by sea  
on which customs duties are by law imposed and alter any such  
values fixed by any Tariff Act for the time being in force.
- "Real value" 30 For the purposes of this Act the real value shall be deemed to be -  
defined
- (a) the wholesale cash price, less trade discount, for which  
goods of the like kind and quality are sold, or are capable  
of being sold, at the time and place of importation or  
exportation, as the case may be, without any abatement or  
deduction whatever, except (in the case of goods imported)  
of the amount of the duties payable on the importation  
thereof; or
  - (b) where such price is not ascertainable, the cost at which  
goods of the like kind and quality could be delivered at  
such place, without any abatement or deduction except as  
aforesaid.

SOUTHERN RHODESIA

In Southern Rhodesia the value for duty purposes, i.e. for goods subject to ad valorem duties, is based on the current domestic value of such goods in the country of supply, provided that this value is not less than the f.o.b. price of the goods.

"Current domestic value" in respect of goods imported into Southern Rhodesia is defined as being the market price at which, at the time of exportation, such or similar goods are offered for sale for consumption in the country from which the goods are exported, to all purchasers, in wholesale quantities in the ordinary course of trade in the principal markets of such country, including the cost of packages ordinarily used in those markets, but less any drawback or remission of duty granted by the Government of the exporting country on exportation.

S W E D E N

According to the current Swedish regulations for the valuation of goods for Customs purposes (which are contained in the Customs Value Ordinance of 4 October 1929) the value of an article for Customs purposes is to be taken as equal to the market price for sale in Sweden of the article ruling at the place of purchase at the time of purchase, plus the value of the packing together with freight, insurance and any other expense incurred in respect of the article up to the time when the article reached Sweden. It is the responsibility of the owner of the article to state and, so far as possible, prove the accuracy of the amount mentioned. If there are reasonable grounds for assuming that the stated value is less than the real value, the Customs value may be taken to be equal to the market price in Sweden for the imported article ruling at the place where the Customs assessment is made at the time of such assessment, with deduction for Customs duty together with reasonable selling costs and normal trade profit.

As the purchase price is usually regarded as corresponding to the market price, in practice the customs value (ordinarily) will be based on the price stated in the trade invoice. The supplementary rule for the calculation of Customs value is comparatively seldom applied, but it is resorted to when reasonable grounds exist for suspecting an intent to deceive the Customs and in certain cases when the buyer and seller have financial interests in common (e.g. parent and subsidiary companies).

The Swedish provisions mentioned above for the valuation of goods for Customs purposes are regarded as compatible with corresponding principles in the General Agreement and it has not therefore been necessary to make amendments therein as a result of Sweden's adherence to GATT.

For the conversion of foreign currencies in connection with the calculation of Customs value, the Rules for Application of the Customs Value Ordinance (adopted 29 November 1929) state that the rate to be applied is the selling rate given in the latest official quotations available to the customs post at the time when the customs assessment takes place.

These rules, which have their counterpart in the Brussels Definition, are regarded as being largely in agreement with Article VII in the GATT Agreement, which states that the conversion rate is to be based on the par value of the currency according to the International Monetary Fund. It has therefore not been considered necessary to revise the conversion rules at present applied in Sweden.

The rules for the valuation of goods for Customs purposes which are at present applied in Sweden are, however, of only temporary interest for judging the extent to which Sweden has made adjustments in accordance with the

principles for such valuation contained in Article VII of the General Agreement. This is due to the fact that Sweden has signed the Convention, prepared by the Study Group for a European Customs Union, concerning the Customs value of goods (Brussels, 15 December 1950), and intends, after the ratification of the Convention, to incorporate in its legislation the definition of Customs value contained in an annex to the Convention. With regard to the conformity of this definition with the GATT principles, reference is made to the comparative study, entitled "Comment by the Interim Valuation Committee" on the correlation of the Brussels Definition of Value to Article VII of the GATT", which was prepared in Brussels in April of this year. A copy of the comment is attached to this memorandum.\*

Work is now in progress on the revision of the Swedish Customs value rules in accordance with the Brussels Definition.

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\*) see Appendix.

UNITED KINGDOM

United Kingdom law and practice in regard to valuation of goods for Customs purposes were in conformity with Article VII when the Agreement was first applied by the United Kingdom under the Protocol of Provisional Application. Since that date the United Kingdom system has undergone only minor changes designed to bring it into line with the Convention on the Valuation of Goods for Customs Purposes which was signed at Brussels on 15 December 1950, and to which the Government of the United Kingdom is a contracting party. As required by that Convention the Definition of Value set out in Annex I to the Convention has been introduced into United Kingdom domestic law and is applied in conformity with the provisions of the Interpretative Notes set out in Annex II to the Convention. The principles of valuation embodied in Article VII were already being observed in the dependent territories of the United Kingdom when the Protocol of Provisional Application was extended to them.

1. The Brussels Convention and Definition of Value

In common with the other signatories to the Convention, the Government of the United Kingdom considers that in adopting the Convention it has conformed to the GATT provisions since there is a close correlation between the two texts. This correlation is set out in the Comment prepared at a meeting of the Interim Valuation Committee, which was set up by the Customs Co-operation Council (see Appendix).\*

2. Application by the United Kingdom of the Brussels Definition of Value

(1) Introductory remarks

The Brussels Definition has been embodied in the law of the United Kingdom (with minor textual adaptations to conform with the domestic law) and now appears as section 258 of and the Sixth Schedule to the Customs and Excise Act 1952. The full text is reproduced as Appendix 2 to this Note.\*

The following analysis shows how the relevant provisions of the law of the United Kingdom are in conformity with the Brussels Definition and with the principles of Article VII of the General Agreement.

- (2) The value for Customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

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\* These appendices are not reproduced in this document, but the originals are available in the office of the secretariat.

These principles are given effect by paragraph 1 of the Sixth Schedule to the Customs and Excise Act, 1952, which closely follows Article I of the Brussels Definition. Paragraph 1(1) of the Sixth Schedule expresses the value as the "normal price" and paragraph 1(2) defines "normal price".

GATT (3) "Actual value" should be the price at which, at a time and place  
Art. determined by the legislation of the country of importation, and  
VII: in the ordinary course of trade, such or like merchandise is sold  
2(b) or offered for sale under fully competitive conditions. The the  
extent to which the price of such or like merchandise is governed  
by the quantity in a particular transaction, the price to be con-  
sidered 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.

The Sixth Schedule to the Customs and Excise Act, 1952 closely following the Brussels Definition, gives effect to these principles as follows:

(a) The time of sale for determining price

Paragraph 1(1) fixes the time as that when the goods are entered for home use (or if they are not so entered, the time of importation). This is the time under United Kingdom customs law when the duty becomes payable.

(b) The place of sale for determining price

Paragraph 1(2) fixes the place as the port or place of importation and stipulates that the "normal price" shall include freight, insurance, commission and all other costs, charges and expenses incidental to the sale and the delivery of the goods at that port or place.

(c) The price at which such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions.

Paragraph 1(1) expresses this as

"the price which they would fetch on a sale in the open market between buyer and seller independent of each other",

and paragraph 2 defines a sale in the open market between buyer and seller independent of each other.

Thus the value is defined as the price which the merchandise **actually** imported would fetch under an open market contract of sale between buyer and seller independent of each other. When the merchandise is actually sold under these conditions the price it would fetch is indicated by the price it does fetch and the proviso to Section 258 of the Customs and Excise Act, 1952, allows such a contract price to be accepted as the basis of the value for duty subject to any necessary adjustment, e.g. to the defined standard of time or place ((a) and (b) above).

This provision, whilst giving effect to Interpretative Note 5 to Article 2 of the Brussels Definition, continues the practice which has been followed for many years in the United Kingdom of accepting the price paid or payable, in respect of open market purchases, as the basis of value for customs purposes. The great majority of importations into the United Kingdom are valued for customs purposes on the basis of the ordinary commercial invoice price.

(d) Quantity

The value is defined in paragraph 1(1) as the price which the imported goods themselves would fetch, and it follows that where the value would depend on quantity it has to be determined on the assumption that the sale is a sale of the quantity to be valued.

{4) When the actual value is not ascertainable in accordance with sub-paragraph (b), the value for customs purposes should be based on the nearest ascertainable equivalent of such value

The United Kingdom definition of value is applicable to all importations whatever the circumstances of the transaction (open market purchase or otherwise). A supplementary provision similar to paragraph 2(c) of Article VII of the GATT is therefore unnecessary. Where the price the imported merchandise has fetched is unknown or the actual price paid is not in conformity with the Definition, the price which it would fetch as contemplated by the Definition is undoubtedly the "nearest ascertainable value". In determining the price which the particular goods to be valued would fetch in the prescribed conditions account would be taken of all relevant evidence.

GATT  
Art.VII  
Para.3

(5) 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 or will be relieved by means of a refund.

The United Kingdom definition of value is not related to domestic values within the country of origin or export and this provision of Article VII of the GATT is, therefore, not required in United Kingdom law.

GATT (6) GATT's provisions for currency conversions

Art.VII

Para.4 These obligations are met by sub-section 2(c) of section 258 of the Customs and Excise Act, 1952. There is no system of multiple exchange rates in the United Kingdom and the "current selling rate" to which this sub-section refers fully satisfies paragraph 4 of Article VII of the GATT.

GATT (7) The bases and methods of determining value should be stable and should

Art.VII be given sufficient publicity to enable traders to estimate with a

Para.5 reasonable degree of certainty the value for Customs purposes

Section 258 of and the Sixth Schedule to the Customs and Excise Act 1952 provide a stable basis for valuation of goods. The inclusion of the definition of value in United Kingdom law ensures publicity and traders should have no difficulty in appreciating the methods of determining the value and, in all but a small proportion of exceptional and difficult cases, in estimating the values for customs purposes of imported goods. For the great majority of importations the price paid affords an acceptable basis of value. When the price paid is not so acceptable regular importers may avail themselves of standing arrangements under which bases of value are agreed in advance of importation of the goods taking into account the particular conditions of trading between the parties concerned. These bases are then applied to the importations as they arise.

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The Government of the United Kingdom are confident that their action in becoming a party to the Brussels Convention on the Valuation of Goods for Customs Purposes, enacting the provisions which now appear in Section 258 of and the Sixth Schedule to the Customs and Excise Act, 1952, and administering the law in accordance with the principles of the Brussels Definition, is fully in conformity with both the principles of Article VII and the spirit which animates them.

UNITED STATES

Principles and practices followed by the United States:

- A United States laws relating to customs valuation are found in United States Code, Title 19, Sections 1402, 1503 and 1503a. The texts of these sections are annexed.
- B Customs regulations issued in connection with these provisions of law are found in Part 14 of the United States Customs Regulations 1943. (See Annex E for these regulations.)\*
- C Proposals have recently been under consideration in the United States for revising the customs valuation legislation. These proposals are reflected in Section 15 of H.R. 5106, a bill introduced into the House of Representatives on May 11, 1953. This section is similar to Section 13 of H.R. 5505, a bill passed by the House of Representatives during the last Congress and referred to the Senate for further action. Section 15 of H.R. 5106 may be useful in indicating the type of changes in existing law which have been receiving considerable attention in the United States. (For the texts of Section 15, see Annex C.)\*

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\* These annexes are not reproduced in this document, but the originals are available in the office of the secretariat.

UNITED STATES CODE

1946 Edition

Para. 1402. Value - (a) Basis

For the purposes of this chapter, the value of imported merchandise shall be:

1. The foreign value or the export value, whichever is higher;
2. If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;
3. If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;
4. In the case of an article with respect to which there is in effect under section 1336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article.

(b) Review of appraiser's decision

A decision of the appraiser that foreign value, export value, or United States value cannot be satisfactorily ascertained shall be subject to review in reappraisal proceedings under section 1501; but in any such proceeding an affidavit executed outside of the United States shall not be admitted in evidence if executed by any person who fails to permit a Treasury attaché to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise.

(c) Foreign value

The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(d) Export value

The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(e) United States value

The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale for domestic consumption, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per cent, if any has been paid or contracted to be paid on goods secured otherwise than by purchase or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.

(f) Cost of production

For the purpose of this subtitle the cost of production of imported merchandise shall be the sum of:

1. The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;
2. The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;
3. The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and
4. An addition for profit (not less than 8 per centum of the sum of the sum of the amounts found under paragraphs (1) and (2) of

this subdivision) equal to the profit which ordinarily is added in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

(g) American selling price

The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale for domestic consumption to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article. (June 17, 1930, ch. 497, title IV, para. 402, 46 Stat. 708; June 25, 1938, 5 p.m. E.S.T., ch. 679, para. 8, 52 Stat. 1081.)

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Para. 1503. Dutiable value -- (a) General rule

Except as provided in section 1562 of this title (relating to withdrawal from manipulating warehouses) and in subdivision (b) of this section, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be the entered value or the final appraised value, whichever is higher.

(b) Entries pending reappraisalment

If the importer certifies at the time of entry that he has entered the merchandise at a value higher than the value as defined in this chapter because of advances by the appraiser in similar cases then pending on appeal for reappraisalment or re-reappraisalment, and if the importer's contention in such pending cases shall subsequently be sustained, wholly or in part, by a final decision on reappraisalment or re-reappraisalment, and if it shall appear that such action of the importer on entry was taken in good faith, the collector shall liquidate the entry in accordance with the final appraisalment.

(c) Basis of rate

For the purpose of determining the rate of duty to be assessed upon any merchandise when the rate is based upon or regulated in any manner by the value

of the merchandise, the final appraised value shall (except as provided in section 1562 of this title) be taken to be the value of the merchandise. (June 17, 1930, ch. 497, title IV, para. 503, 46 Stat. 731).

Para. 1503 a. Construction of section 1503 (b)

It was and is the true intent and meaning of subsection (b) of section 1503 of this title, that imported merchandise entered in accordance with the provisions of said subsection (b) shall be appraised and reappraised in the same manner as though the merchandise was not so entered; that the appraisement and reappraisement of such merchandise shall have the same force and effect as in the case of merchandise not so entered; and that entries covered by certification of the importer as provided in said subsection (b) shall be liquidated in accordance with the final appraised value of the merchandise covered by such certificates. (July 12, 1932, ch. 473, 47 Stat. 657.)

A P P E N D I X

Comment by the Interim Valuation Committee on the  
Correlation of the Brussels Definition of Value  
to Article VII of the General Agreement on  
Tariffs and Trade

The Brussels Definition of Value, the drafting of which was commenced in 1948, was conditioned to the then recently adopted Geneva Principles of Valuation, incorporated in Article VII of the General Agreement on Tariffs and Trade, and was adopted by a Committee on which all of the European countries which had been associated with the Geneva Principles were represented. This Committee followed the Geneva Principles not only during the initial discussions (when a definition was produced for use in a European Customs Union) but during later sessions, when the definition was broadened for inclusion in a Convention on the Valuation of Goods for Customs Purposes which was signed at Brussels on 15 December 1950.

A correlation of the Brussels Definition to the Geneva Principles was carried out, but had regard also to complementary principles of valuation which the Committee laid down at the commencement of its work. It may be of interest to the Contracting Parties to the General Agreement on Tariffs and Trade to see how closely the Brussels Principles, which were the combined work of seventeen countries, reflect those of Geneva. The text of the Brussels Principles and that of the Brussels Definition of Value and Notes are appended (Annexes B, C and D).

The correlation of the Brussels Definition to the Principles of Article VII is set out below:

GATT (1) Introductory remarks

Art.VII

paras.

1 & 2

The Brussels Definition is in itself a considerable measure of the standardization contemplated by paragraph 1.

The requirement that the CONTRACTING PARTIES must give effect to the principles of valuation "in respect of all products subject to duties or other charges or restrictions on importations and exportations based upon or regulated in any manner by value" is reflected in the General Addendum to the Interpretative Notes to the Brussels Definition which recommends that "the concept of value . . . be employed for the valuing of all goods subject to customs declaration, including duty-free goods and goods liable to specific duty".

- GATT  
Art.VII  
para.2(a)
- (2) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

The principles contained in this paragraph are given effect to by the Brussels Definition of Value as follows:

- (a) Actual value is expressed by the Brussels Definition as "normal price". Just as Article VII goes on to define "actual value" in paragraph 2 (b), so the Brussels Definition goes on to define "normal price" in Article 1 (1). Both ideas have the same weight.
- (b) Valuation on the basis of merchandise of national origin. This is precluded by the requirement of the Brussels Definition that the value to be established is that of the merchandise actually imported (i.e. "the" goods of Article 1).
- (c) Valuation at arbitrary or fictitious values. This is precluded by the same requirement of the Brussels Definition.

- GATT  
Art.VII  
para.2(b)
- (3) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale 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.

The principles contained in this paragraph are given effect to by the Brussels Definition as follows:

- (a) The time of sale for determining price  
The only requirement of the GATT Article in this respect is that time should be fixed by law. It has been fixed by Article 1 (1) of the Brussels Definition and is in terms of the time when the duty becomes payable.
- (b) The place of sale for determining price  
Similarly, the only requirement of the GATT Article in this respect is that place should be fixed by law. It has been fixed by Article 1 (2) of the Brussels Definition under which it is necessary, inter alia, for the purpose of allocating transportation

expenses; it is in terms of the port or place of introduction into the country of importation.

- (c) The price at which such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions

The corresponding text of the Brussels Definition Article 1(1) is:

"The price which the imported goods would fetch on a sale in the open market between buyer and seller independent of each other".

In this text, the meaning of the phrase "in the open market between buyer and seller independent of each other" is identical with that of the GATT phrase "in the ordinary course of trade under fully competitive conditions". The interpretation given to Article VII, paragraph 2, of the GATT by the note to that Article (Annex I to the Agreement) bears this out.

The remainder of the Brussels text has been differently worded in order to ensure its universal application, without need for alternatives, to any and every importation, including those excluded by the GATT text. But it does not conflict with the GATT requirement that, subject to conformity with the other GATT conditions, the price at which merchandise "is sold or offered for sale" is a true measure of its value.

The Brussels Definition has sought in particular to establish a simple, uniform and equitable standard of valuation embracing all of the multiplicity of circumstances in which merchandise is imported. Consignments of similar merchandise imported at one time may have been sold, or offered for sale, at many different prices, and under contracts subject to widely differing conditions. The mere invoice price, or the price at which the merchandise "is sold or offered for sale", does not, therefore, in itself provide a uniform and equitable basis of value. Nor, of course, can it be adopted in the more difficult cases of valuation, such as those of goods imported otherwise than on sale, goods bought other than under open-market conditions, and goods in respect of which under-valuation is attempted.

The Brussels Definition is designed to apply uniformly to all of the above circumstances and in fact, as stated above, to all importations without recourse to any alternatives, such as that provided by paragraph 2 (c) of the GATT Article VII. It does so by defining value as the price which the merchandise (i.e. the merchandise actually imported and to be valued) would fetch on a sale in the open market between buyer and seller independent of

each other. It is a definition which contemplates a standard contract, just as the GATT Article contemplates a standard contract. Moreover, the conditions of both contracts (see (a) and (b) above and (d) below) are virtually identical, and if these are also identical with the contract under which the merchandise is imported (i.e. sold or offered for sale), the price at which it is so sold is as acceptable under the Brussels Definition as it would be under the GATT Article. This is indeed expressly referred to in Interpretative Note 5 to Article I of the Definition.

(d) Quantity (insofar as it affects price)

The Brussels Definition of Value accepts the GATT option of "comparable quantities", Interpretative Note 3 to Article I of the Definition provides that where the value would depend on the quantity in the sale, it is to be determined on the assumption that the sale is a sale of the quantity to be valued.

- GATT (4) When the actual value is not ascertainable in accordance with sub-  
Art.VII paragraph (b), the value for customs purposes should be based on the  
para.2(c) nearest ascertainable equivalent of such value.

The Brussels Definition, by reason of its uniform applicability to all importations, notwithstanding that the "actual value" may not be ascertainable in accordance with para. 2 (b) of Article VII, does not require this supplementary provision. Where the price which the imported merchandise has fetched cannot be ascertained (or does not conform to the terms of the Definition), the value contemplated by the Definition, i.e. the price which it would fetch, cannot be other than the "nearest ascertainable equivalent". It could take into account the actual value of like merchandise, as permitted by paragraph 2 (d) or the price which the goods to be valued would be likely to fetch in the conditions prescribed, or any other reasonable basis of value. But it clearly precludes valuation at an unreasonable figure since "would fetch" implies factual justification and an excessive assessment **could not** be factually corroborated and would undoubtedly be rejected in arbitration.

- GATT (5) The value for customs purposes of any imported product should not  
Art.VII include the amount of any internal tax, applicable within the country  
para. 3 of origin or export, from which the imported product has been exempted  
or has been or will be relieved by means of a refund.

This requirement is given effect to in the Brussels Definition by Interpretative Note 2 to Article 1, which provides that the amount to be included in the value of imported merchandise in respect of duties and taxes applicable outside the country of importation is confined to the "net amount (after allowing for repayments made or to be made)".

GATT (6) GATT provisions for currency conversions

Art.VII

para. 4

Interpretative Note 4 to Article 1 of the Brussels Definition provides that, when the value depends upon factors expressed in a currency other than that of the country of importation, conversion is to be made at the official rate of exchange applied by the importing country to the currency of the foreign country in question.

In countries using or adopting the Brussels Definition, the said rate of exchange generally corresponds to that of the International Monetary Fund. The Brussels Definition is thus again in conformity with Article VII of the GATT.

GATT (7) The bases and methods of determining 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.

Art.VII

para. 5

The whole object of the Brussels Definition is to establish uniformity of valuation and the maximum simplicity in the law and practice of countries using or adopting it. A Valuation Committee will seek to secure uniformity in the interpretation and application of the definition and notes. The Committee will also collect and circulate information concerning the valuation of goods by the countries concerned and prepare explanatory notes as a guide to the application of the definition. Thus, provision has been made with the object of ensuring that the bases and methods of determining value will be stable, not only in individual countries, but throughout all the countries in which the Brussels Definition applies.

Doubtful and complicated cases will come before the Valuation Committee for examination with a view to the adoption of standard procedures and practices.

Publicity has already been given by publication of the Definition and the bases of valuation which are prescribed in some detail in its Article and Annexes.

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Reference has been made in the opening remarks of this comment to the fact that the Brussels Definition of Value is the work of seventeen European countries. Many of them have already incorporated the Definition in their domestic law. All of them are working in collaboration with the object of devising procedures of application which will ensure uniform valuation of merchandise brought to any port or place in their territories.

This multi-national standardization was facilitated by the fact that as a general rule the commercial practices of these countries have become

integrated by a century or more of mutual exchanges; and that their customs systems, in following commercial usage, have developed basically similar procedures. Nevertheless, all of the participating countries have had to make sacrifices to reach agreement upon a uniform system of valuation. Some of them have had to make sweeping changes in law and procedure, or have such changes in preparation.

It may, perhaps, be claimed that the Brussels Definition, in its purpose of harmonising the customs valuation procedures of an important territorial group of countries, has the unique merit of carrying into the field of action not only the principles of Article VII of the GATT, but also the fundamental aspirations of the Agreement.

ANNEX A

THE BRUSSELS PRINCIPLES OF VALUATION

Principle I

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

Principle II

The concept of dutiable value should be readily comprehensible to the importer as well as the Customs.

Principle III

The system of valuation should not prevent the quick clearance of goods.

Principle IV

The system of valuation should enable traders to estimate, in advance, with a reasonable degree of certainty, the value for customs purposes.

Principle V

The system of valuation should protect the honest importer against unfair competition arising from under-valuation, fraudulent or otherwise.

Principle VI

When the Customs consider that the declared value may be incorrect, the verification of essential facts for the determination and enforcement of dutiable value should be speedy and accurate.

Principle VII

Valuation should be based to the greatest possible degree on commercial documents.

Principle VIII

The system of valuation should reduce formalities to a minimum.

Principle IX

The procedure for dealing with lawsuits between importers and the Customs should be simple, speedy, equitable and impartial.

ANNEX B

THE BRUSSELS DEFINITION OF VALUE

Article 1

(1) For the purposes of levying duties of customs, the value of any goods imported for home consumption shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable on a sale in the open market between buyer and seller independent of each other.

(2) The normal price of any imported goods shall be determined on the following assumptions:

- (a) that the goods are treated as having been delivered to the buyer at the port or place of introduction into the country of importation; and
- (b) that the seller will bear all costs, charges and expenses incidental to the sale and to the delivery of the goods at that port or place; but
- (c) that the buyer will bear any duties or taxes applicable in the country of importation.

Article II

(1) A sale in the open market between buyer and seller independent of each other pre-supposes:

- (a) that the price is the sole consideration; and
- (b) that the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him, and the buyer or any person associated in business with him (other than the relationship created by the sale of the goods in question); and
- (c) that no part of the proceeds of the subsequent re-sale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.

(2) Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

Article III

When the goods to be valued

- (a) are manufactured in accordance with any patented invention or are goods to which any registered design has been applied; or
- (b) are imported under a foreign trade mark or are imported for sale under a foreign trade mark,

the normal price shall be determined on the assumption that the value of the right to use the patent, design or trade mark in respect of the goods is covered by the price.

Interpretative Notes to the Brussels Definition of Value

Addendum to Article I

Note 1

"The time when the duty becomes payable", referred to in paragraph (1) of Article I, may, in accordance with the legislation of each country, be either the time at which the entry is presented or registered, the time of payment of customs duty or the time of clearance.

Note 2

The "costs, charges and expenses" mentioned in Article I, paragraph (2)(b) include, inter alia, any of the following: -

carriage and freight;

insurance;

commission;

brokerage;

costs, charges and expenses of drawing up outside the country of importation documents incidental to the introduction of the goods into the country of importation, including consular fees;

the net amount (after allowing for repayments made or to be made) of duties and taxes applicable outside the country of importation;

cost of containers, excluding those which are treated as separate articles for the purpose of levying duties of customs;

cost of packing (whether for labour, materials or otherwise);

loading charges.

Note 3

Where the normal price would depend upon the quantity in the sale, it shall be determined on the assumption that the sale is a sale of the quantity to be valued.

Note 4

Where the determination of the value or of the price paid or payable depends upon factors which are expressed in a currency other than that of the

country of importation, the foreign currency shall be converted into the currency of the importing country at the official rate of exchange of that country.

Note 5

The object of the definition of value is to make it possible in all cases to calculate the duties payable on the basis of the price at which imported goods are freely available to any buyer in the open market at the port or place of introduction into the country of importation. It is a concept for general use and is applicable whether or not the goods are, in fact, imported under a contract of sale, and whatever the terms of that contract.

But the application of the Definition implies an enquiry into current prices at the time of valuation. In practice, therefore, when imported goods are the subject of a bona fide sale, the price paid or payable on that sale can generally be considered as a valid indication of the normal price mentioned in the Definition. This being so, the price paid or payable can reasonably be used as a basis for valuation, and customs authorities are recommended to accept this price as the value of the goods in question, subject

- (a) to proper safeguards aimed at preventing evasion of duty by means of fictitious or colourable contracts or prices; and
- (b) to such adjustment of the contract price as may be considered necessary on account of circumstances differentiating the contract from the notional concept embodied in the Definition of Value.

Adjustments under paragraph (b) above may, in particular, be required with reference to freight and other expenses dealt with in paragraph (2) of Article I and Note 2 of the Addendum to Article I, or with reference to discounts or other reductions in price granted in favour of sole agents or sole concessionnaires, or to any abnormal discount or any reduction from the ordinary competitive price.

Addendum to Article III

Note 1

The provisions of Article III (b) may also be applied to goods imported for sale, after further manufacture, under a foreign trade mark.

Note 2

Sub-paragraph (b) of Article III, or that sub-paragraph amended in accordance with Note 1 above, may be extended so that it shall not apply to a trade mark registered within the country of importation, unless it is a mark used for the purpose of indicating that the goods in relation to which it is used are those of:

- (a) any person by whom the goods to be valued have been grown, produced, manufactured, selected, offered for sale or otherwise dealt with outside the country of importation: or
- (b) a person associated in business with any such person is as referred to in (a) above; or
- (c) a person to whom any such person as is referred to in (a) or (b) above has assigned the goodwill of the business in connection with which the trade mark is used.

General Addendum

It is recommended that the concept of value expressed by the Definition and these Interpretative Notes be employed for the valuing of all goods subject to customs declaration, including duty-free goods and goods liable to specific customs duties.