

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/206
14 December 1978

Special Distribution

Multilateral Trade Negotiations

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

CUSTOMS VALUATION

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade

1. The following text of the draft Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade is circulated at the request of a number of delegations for consideration by the Sub-Group.
2. The draft includes one General Interpretative Note and individual Interpretative Notes to Articles 1, 1.2, 2 and 3, 6, 7, 8.1(b)(iii) and 11. Other Notes will be circulated as soon as possible as an addendum to this document.
3. The draft does not commit any delegation to all or any part of the text.

General Introductory Commentary

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer, but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money.

2. Where the goods being valued were sold for export to the country of importation, the customs value should be determined under the provisions of Article 1 if the buyer and seller are unrelated or, where they are related, if the relationship did not influence the price, provided that in both cases the conditions specified in paragraphs 1(a) (b) and (c) of the Article are met.

3. Articles 2 to 7, inclusive, provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1. They are set out in a hierarchical order. Whenever the customs value cannot be determined under the provisions of Article 1, it should be determined by proceeding sequentially through the following Articles to the first of the Articles which can be applied. Except as mentioned in paragraph 5 below, it is only when a customs value cannot be determined under a superior Article that the provisions of an Article lower in the hierarchy can be invoked.

4. Where the customs value cannot be determined under the provisions of Article 1, there should normally be a process of consultation between the customs and importer with a view to arriving at a basis of value under the provisions of Articles 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar goods which is not immediately available to the customs in the port of importation. On the other hand, the customs may have information about the customs value of identical or similar goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.

5. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of imported identical or similar goods. Under Article 5.1 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if he so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods. If the importer does not exercise his option under Article 4 the normal order of the hierarchy should be followed. Where the importer does exercise his option but it then proves impossible to determine the customs value on the basis of Article 6, an attempt should be made to determine a customs value under the provisions of Article 5.

6. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Agreement on Implementation of Article VII of the
General Agreement on Tariffs and Trade

PREAMBLE

The parties to this Agreement,

Desiring to further the objectives of the General Agreement on Tariffs and Trade and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform, and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should be, to the greatest possible extent, the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

PART I - RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation, adjusted in accordance with Article 8 provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the country of importation;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 8; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price.
- If, in the light of information provided by the importer or otherwise, the customs have grounds for considering that the relationship

influenced the price, they shall communicate their grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
 - (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
 - (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;
 - (iv) the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in the two transactions are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8, and costs incurred by the seller in sales to unrelated buyers that are not incurred in sales to related buyers.

- (c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued, subject otherwise to the provisions of Article 1.

(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities shall be used, adjusted to take account of differences attributable to commercial level and/or to quantity, provided that such adjustments can be made on the basis of demonstrated evidence which clearly determines the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued, subject otherwise to the provisions of Article 1.
 - (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities shall be used, adjusted to take account of differences attributable to commercial level and/or to quantity, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
 3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2, and 3, the customs value shall be determined under the provisions of Article 5, or when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods are sold in the country of importation in the condition as imported, their customs value under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
 - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
 - (iii) where appropriate, the costs, charges and expenses referred to in Article 8.2;
 - (iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.
 - (b) If the imported goods or identical or similar imported goods were not sold at or about the time of importation of the goods being valued, the value shall be determined, subject to the provisions of paragraph 1(a) of this Article, on the basis of the price at which the imported goods or identical or similar imported goods are sold at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.
2. If the imported goods or identical or similar imported goods are not sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a) of this Article.

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the party under Article 8.2

2. No party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement, and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in the country of importation of goods produced in such country;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
- (e) the price of goods for export to a country other than the country of importation;
- (f) minimum customs values;
- (g) arbitrary or fictitious values.

3. Where he so requests, the importer shall be informed in writing of the value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1 there shall be added to the price actually paid or payable for the imported goods:-

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

- (i) selling commissions;
- (ii) brokerage;
- (iii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iv) the cost of package whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connexion with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

- (i) materials, components, parts, and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds, and similar items used in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:-

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made in pursuance of this Article only when they can be made on the basis of objective and quantifiable data. If such data is not available, such additions shall not be made.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each party.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential and shall not be disclosed by the authorities concerned without specific permission of the party submitting such information, except to the extent that domestic legislation or judicial proceedings otherwise require.

Article 11

1. The legislation of each party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer, consignee or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each party shall provide for the right of appeal without penalty to a judicial authority in the final instance.

3. Written notice of verdict on appeal shall be given to the appellant, and shall state the reasons for the verdict and give notice of the rights to any further appeal.

Article 12

All laws and legal instruments giving effect to these rules shall be published in conformity with Article X of the General Agreement by the country of importation concerned.

Article 13

If, in the course of determining the value of goods for customs purposes, it becomes necessary to delay the final determination of a customs value, the importer shall nevertheless be able to withdraw his goods from customs provided he offers sufficient guarantee, in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each party shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In these rules:

"customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

"country of importation" means country or customs territory of importation;

"produced" includes grown, manufactured, mined or otherwise obtained.

2. (a) In these rules "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance, such as colour, would not preclude goods otherwise conforming to the definition from being regarded as identical.

(b) In these rules "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

(c) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1(b)(iv) because such elements were undertaken in the country of importation.

(d) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.

(e) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In these rules "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector and include identical or similar goods.

4. For the purposes of these rules, persons shall be deemed to be related if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;

- (e)(i) one of them directly or indirectly controls the other;
- (ii) both of them are directly or indirectly controlled by a third person; or
- (iii) together they directly or indirectly control a third person.
- (f) they are members of the same family.

5. Persons who are associated in business with one another inasmuch as that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of these rules if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs of the country of importation as to how the customs value for his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II - AGREEMENT ADMINISTRATION AND DISPUTE RESOLUTION

Institutions

Article 18

There shall be established under this Agreement:

1. A Committee on Customs Valuation (referred to in this Agreement as "the Committee") composed of representatives from each of the parties to this Agreement. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording parties to this Agreement the opportunity to consult on matters relating to the administration of the customs valuation system in any country or customs territory party to this Agreement as it might affect the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Cooperation Council which shall carry the responsibilities assigned to it by the Parties as set forth in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultations

Article 19

1. If any party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as

a result of the actions of another party or parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the party or parties in question. Each party shall afford sympathetic consideration to any request from another party for consultations.

2. The parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to parties engaged in consultations.

Resolution of Disputes

Article 20

1. If no mutually satisfactory solution has been reached between the parties concerned, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations and/or to questions requiring detailed technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out an examination of the matter as provided in paragraph 4 below.

3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall consider any results of relevant work of the Technical Committee that pertain to the matter in dispute.

Technical Issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

Panel Proceedings

5. If no mutually satisfactory solution has been reached following the presentation of the report of the Technical Committee or, if the matter has not been referred to the Technical Committee, after three months from the date of the request to the Committee to investigate the matter, the Committee shall, upon request of any party to the dispute, establish a panel.

6. (a) When a panel is established, it shall be governed by the procedures as set forth in Annex III.

(b) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panels shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

Enforcement

7. After the investigation is complete or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action [within thirty days of] [promptly after] receipt of the report, including:

- (i) a statement concerning the facts of the matter;
- (ii) recommendations to one or more parties to this Agreement;
- (iii) any other ruling which it deems appropriate.

8. If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more parties to this Agreement to suspend the application to any other party or parties to this Agreement of such obligations under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If disputes arise between parties relating to rights and obligations of this Agreement, parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the General Agreement. Parties recognize that, in any case so

referred to the CONTRACTING PARTIES, any finding, recommendation or ruling pursuant to paragraphs 4 to 6 above may be taken into account by the CONTRACTING PARTIES, to the extent they relate to matters involving rights and obligations under the General Agreement. When parties resort to GATT Article XXIII a determination under that Article shall be based on GATT provisions only.

PART III - SPECIAL AND DIFFERENTIAL TREATMENT

Article 21

1. Developing countries party to this Agreement (referred to in this Agreement as "developing parties") may delay application of its provisions for a period of three years from the date of entry into force of this Agreement. Developing parties who choose to delay application of this Agreement shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.
2. In addition to paragraph 1 above, developing parties to this Agreement may delay application of Article 1.2 (b)(iii) and Article 6 for a period of five years following their application of all other provisions of this Agreement. Developing parties that choose to delay application of the provisions specified in this paragraph shall notify the Director-General to the CONTRACTING PARTIES to the GATT accordingly.
3. Developed countries party to this Agreement (referred to in this Agreement as "developed parties") shall furnish, on mutually agreed terms, technical assistance to developing parties that so request. On this basis developed parties shall draw up programmes of technical assistance which may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV - FINAL PROVISIONS

Signature and Acceptance

Article 22

1. This Agreement shall be open for signature in Geneva, at the headquarters of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, from until by governments contracting parties to the General Agreement on Tariffs and Trade and by the European Economic Community. It shall also be open for signature by other governments undertaking to observe the provisions of this Agreement and such other provisions related to the effective application of rights and obligations as may be agreed between the Parties to the Agreement and the governments in question.
2. This Agreement shall be deemed to be accepted by a government only after fulfilment of its constitutional procedures.
3. Parties to this Agreement may adhere in respect of those territories for which they have international responsibility in accordance with the provisions of Article XXVI:5(a) and (b) of the General Agreement, provided that the General Agreement is being applied in respect of such territories; and each such territory shall be treated as though it were a party to this Agreement.

Reservations

Article 23

1. In accordance with established practices, reservations in respect of any of the provisions of this Agreement may not be entered without acceptance by the other parties to this Agreement.

Entry into forceArticle 24

1. This Agreement shall enter into force on 1 January 1981 as among the parties which have accepted it. For each government which accedes thereafter, this Agreement shall enter into force on the thirtieth day following the date of such accession.

2. Each party to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

AccessionArticle 25

1. Any government not party to this Agreement may accede to it on terms to be agreed between that government and the parties to this Agreement.

2. Accession shall take place through signature of a Protocol of Accession to be deposited with the Director-General to the CONTRACTING PARTIES to the GATT.

ReviewArticle 26

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the periods covered by such reviews.

AmendmentsArticle 27

Amendments to this Agreement may be proposed by any party to this Agreement at any time. Any party to this Agreement wishing to propose an amendment shall present it to the Director-General to the CONTRACTING PARTIES to the GATT, who shall notify all parties to this Agreement of any proposed amendments. An amendment shall come into force twelve months after such notification provided that no party to this Agreement informs the Director-General to the CONTRACTING PARTIES to the GATT of its objection to the proposed amendment or requests an extended period for further consideration of the proposed amendment. Parties to this Agreement may request an extension of six months for consideration of a proposed amendment, after which time such amendment shall enter into force unless any party to this Agreement informs the Director-General to the CONTRACTING PARTIES to the GATT of its objection.

WithdrawalArticle 28

Any party to this Agreement may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of ninety days from the date on which the written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. The Director-General shall promptly inform each party to this Agreement. Any party to this Agreement may, upon such notification, request an immediate meeting of the Committee.

Secretariat

Article 29

This Agreement shall be serviced by the GATT secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the Customs Co-operation Council.

Deposit

Article 30

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof pursuant to Article 22 or of each accession thereto, pursuant to Article 25, to each party to this Agreement.

Registration

Article 31

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this day of nineteen hundred
and, in a single copy, in the English, French and
Spanish languages, each text being authentic.

A N N E X I

INTERPRETATIVE NOTES

General NoteUse of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For instance, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8(1)(b)(ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller. Activities undertaken by the buyer, on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities are not, therefore, part of the customs value.

The customs value of imported goods does not include: duties and taxes of the country of importation; cost of transport after importation; or charges for services, such as assembly and maintenance, performed after importation. A price which includes such elements should be reduced accordingly in determining the customs value.

Note to Article 1.2.

1. Article 1.2(a) provides that where the buyer and seller are related, the transaction value is to be accepted as the customs value if the relationship did not influence the price. Where the customs have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs may have previously examined the relationship, or may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

2. Where the customs are unable to accept the transaction value without further inquiry, they should give the importer an opportunity to supply such further detailed information as may be necessary to enable them to examine the circumstances surrounding the sale. In this context, the customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been fixed in a manner consistent with the normal pricing practices of the industry in question or with the way the seller fixes prices for sales to non-related parties, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative

period of time (e.g. on an annual basis) in sales of goods of the same class or kind this would demonstrate that the price had not been influenced.

3. Article 1.2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a test value previously accepted by the customs and is therefore acceptable under the provisions of Article 1. If the customs already have sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in Article 1.2(b) has been met, there is no reason for them to require the importer to demonstrate that the test has been met.

Note to Articles 2 and 3

1. For the purposes of Articles 2 and 3, the "transaction value" of identical or similar imported goods means a customs value, adjusted as provided for in these Articles, which has already been accepted.
2. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities.

As an example of the above, if the imported goods being valued consist of a shipment of 10 units and the only identical (or similar) imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 (or 3) is not appropriate.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "costs or values" referred to in paragraph 1(a) of this Article are to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. They are to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "amount for profit and general expenses" referred to in paragraph 1(b) of this Article is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

4. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

5. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

6. The "general expenses" referred to in paragraph 1(b) of this Article covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a).

7. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of imported goods, which includes the goods being valued, for which the necessary information can be provided, should be examined.

For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

Customs values determined under this Article should be based to the greatest possible extent on previously determined customs values.

The methods of valuation to be employed under this Article should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of the present Article.

Some examples of reasonable flexibility are as follows:

Identical goods - the requirements that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.

Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in Article 5.1(a) could be flexibly interpreted; the "ninety days" requirement could be administered flexibly.

Note to Article 8.1(b)(ii)

Apportionment

1. The circumstances under which the elements in Article 8.1(b)(ii) are incurred, with respect to their application under the provisions of both Article 1 and Article 6, will vary from one case to another. Accordingly, no one method of apportionment is appropriate for all conditions. Rather, the apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.
2. There are two factors involved in the apportionment of the elements in Article 8.1(b)(ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods.
3. Regarding the determination of the value of the element, the following is appropriate. If the importer acquires the element from an unrelated seller at given cost, the value of the element is that cost. If the element had been previously acquired and used by the importer, the original cost of the element would have to be adjusted downward to reflect its use in order to arrive at the value. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it.
4. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. The possibility used by customs will depend on the documentation provided by the importer. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire

value at one time. As another example, the value might be apportioned over the number of units produced up to the time of the first shipment. As a further example, the value might be apportioned over the entire number of anticipated imports where contracts exist for the quantity.

5. As an illustration of the above three examples, an importer provides a producer with a mould to be used in the production of an imported good. Further the importer contracts with the producer to buy 10,000 units of the imported good. By the time of arrival of the first shipment, which is 1,000 units, the producer has already produced 4,000 units. The importer may ask the customs to apportion the value of the mold over 1,000 units, 4,000 units, or 10,000 units.

Note to Article 11

Article 11 provides the importer with the right to appeal against a valuation determination made by the customs authorities for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

"Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

However, nothing in Article 11 shall prevent a party from requiring full payment of assessed customs duties prior to allowing an appeal.

ANNEX II

Technical Committee on Customs Valuation

In accordance with Article 18 of this Agreement, a Technical Committee on Customs Valuation shall be established under the auspices of the Customs Cooperation Council with a view, at the technical level, towards uniformity in interpretation and application of this Agreement.

The Technical Committee shall have the responsibilities assigned to it by the Parties, including the following:

1. to examine specific technical problems arising in the day to day administration of the customs valuation systems of parties and to give advisory opinions on appropriate solutions based upon the facts presented;
2. to study, as requested, valuation laws, procedures, and practices as they relate to this Agreement and to prepare reports on the results of such studies;
3. to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
4. to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any party or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
5. to facilitate, as requested, technical assistance to parties with a view to furthering the international acceptance of this Agreement; and
6. to exercise such other responsibilities as the Committee may assign to it.

General

1. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by parties or the Committee, in a reasonably short period of time.
2. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Cooperation Council.

Representation

3. Each party to this Agreement shall have the right to be represented on the Technical Committee. Each party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a party so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers. The GATT secretariat may also attend such meetings with observer status.
4. Members of the Customs Cooperation Council who are not parties to this Agreement may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.
5. Subject to the approval of the Chairman of the Technical Committee, the Secretary General of the Customs Cooperation Council (referred to in this Agreement as "the Secretary General") may invite representatives of governments which are neither parties to this Agreement nor members of the Customs Cooperation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.
6. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary General.

Technical Committee Meetings

7. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session.

The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the Members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman.

8. The meetings of the Technical Committee shall be held at the headquarters of the Customs Cooperation Council unless otherwise decided.

9. The Secretary General shall inform all Members of the Technical Committee and those included under paragraph 4 and 5 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

10. A provisional agenda for each session shall be drawn up by the Secretary General and circulated to the members of the Technical Committee and to those included under Paragraphs 4 and 5 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary General or by any Members of the Technical Committee.

11. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and Conduct of Business

12. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice Chairmen. The Chairman and Vice Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice Chairmen are eligible for re-election. A Chairman or Vice Chairman who ceases to represent a member of the Technical Committee shall automatically lose his mandate.

13. If the Chairman is absent from any meeting or part thereof a Vice Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

14. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

15. In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant.

16. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state his ruling. If this ruling is challenged the Chairman shall submit it to the meeting.

17. The Secretary General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and Voting

[18. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.]

[19. Each member of the Technical Committee shall have one vote.

Decisions shall be taken (to be agreed). The fact that such (to be agreed)

has not been obtained on a particular question shall not preclude the Technical Committee from making a full report to the Committee and to the Customs Cooperation Council on that matter and indicating the different views expressed in the relative discussions.]

Languages and Records

20. The official languages of the Technical Committee shall be English, French, and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in the event the delegation concerned shall provide the translation into English, French and Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

21. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the Customs Cooperation Council.

ANNEX III

AD HOC PANELS

1. Ad hoc panels established by the Committee under this Agreement shall have the following responsibilities:

- (a) to examine the matter referred to it by the Committee;
- (b) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- and
- (c) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connexion, each party to this Agreement shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the parties to this Agreement would be willing to make available for such work. If a panel is requested, the Chairman, after seven days shall propose the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned

shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. All parties having a substantial interest in the matter and having notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Any party to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

4. Where the parties to the dispute have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should set out the rationale behind any findings and recommendations that it makes.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20.4 as the basis for its consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and to enable the panel to take note of observations of such parties and take them into account when it deems appropriate, each panel should inform the parties to the dispute of its conclusions before they are circulated to the parties to this Agreement.

PROVISIONAL LIST OF INTERPRETATIVE NOTES
IN PREPARATION

General

1. Treatment of "unrepresentative values" in Articles 1.2(b), 2, 3 and 5.
2. Duty relief for reimported goods

Article 1

1. Article 1(a)(iii) - concerning restrictions which do not substantially affect the value of the goods
2. Clarification of the expression "at or about the same time"

Articles 2 and 3

1. Clarification of the term "and/or"

Article 5

1. General note on application of Article 5
2. Note on unit price in "greatest aggregate quantity"

Article 6

1. Treatment of elements in Article 8 in computed value

Article 8

1. General note on application of Article 8

Article 9

1. To explain that currency conversion rates can be published to apply during a specific period

Article 10

1. To explain that confidential information can be used in litigation.

Article 15

1. To explain concepts of "partners in business" and "members of the same family" and that persons includes "legal persons".
2. To further clarify the term "control" in 15(4)(e)

Annex II

1. To clarify the term "international organizations"