

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Multilateral Trade Negotiations

### NON-TARIFF MEASURES AFFECTING TRADE OF DEVELOPING COUNTRIES

#### Note by the Secretariat

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NON-TARIFF MEASURES AFFECTING TRADE OF  
DEVELOPING COUNTRIES

Note by the Secretariat

1. At the March 1974 meeting of Group 3(b), it was agreed that the secretariat should amplify and update, as necessary, certain background notes which contained an examination of non-tariff measures affecting the trade of developing countries. This note updates and amplifies the information contained in COM.TD/W/182, one of the documents mentioned in this respect in paragraph 14 of MTN/3B/7. On the basis of notifications, non-tariff measures relevant to developing country interests are identified and various suggestions for solutions, including those relating to the extension of differential treatment to developing countries, are reviewed. As explained below this note is concerned with a detailed review of the discussions that have taken place and points touching on the interests of the developing countries with respect to a certain number of these non-tariff measures. There are also questions relating to the coverage of non-tariff measures in the negotiations, the possibility of making a selection of measures and procedures for seeking negotiations on individual measures which may need to be examined in the Trade Negotiations Committee in due course.

I

Identification of Non-Tariff Measures

2. The work in GATT in the field of non-tariff measures is based on notifications made by countries indicating specific problems faced by them. The Inventory of Non-Tariff Measures, revised in MTN/3B/1 to 5 and Addenda, summarizes the view-points expressed by the notifying countries and the countries against whom notifications were made, as regards the nature of the problems that arise in respect of each of the notified measures in trade in industrial products. On the basis of the initial examination of these notifications, a list of twenty-seven categories of non-tariff measures has been drawn up. The list is reproduced in Annex I.

3. Notifications regarding non-tariff measures that affect trade in agricultural products are contained in the documentation of the Agriculture Committee.<sup>1</sup> This documentation is in the process of revision. In this context, it may be noted that the illustrative list of non-tariff measures in Annex I

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<sup>1</sup>These documents are COM.AG/W/90/Rev.1 and Addenda; COM.AG/W/79/Rev.1 and Addenda; L/3833 and Addenda; COM.AG/W/68 and Addendum 4 and COM.AG/W/71 and Addendum.

does not include health and sanitary regulations mainly because these regulations affect primarily trade in agricultural products and, as such, an examination of the problems and solutions was pursued in the Agriculture Committee; further work in this area has been done in Group 3(e).

4. An analysis of the notifications made specifically by developing countries as well as of other notifications in the inventory relating to products in which the developing countries have an export interest shows that these countries are specially concerned about the adverse effects which quantitative restrictions and export restraints have on their trade. Their concern appears to relate as much to the existence of restrictions as to the manner in which they are administered. Also of importance, from the point of the restrictive effects cited and the range of products covered, are health and sanitary regulations. Other non-tariff measures which have featured significantly in the notifications are those relating to valuation for customs purposes, standards, export subsidies and countervailing duties, import documentation, packaging, labelling and marking requirements, selective excise taxes, government procurement and import deposits.

5. While certain types of non-tariff measures such as import restrictions, health and sanitary regulations, excise taxes, etc. can be related without too much difficulty to individual products or product groups, there are others such as valuation for customs purposes, industrial standards etc. which tend to apply generally to all imported products and thus could have an impact on the entire range of imports. In the case of the latter group of non-tariff measures, it has been stated that a commodity-by-commodity analysis is generally not feasible and in practice any such analysis may give an inadequate picture of their effects on international trade. In general, however, it may be said that certain non-tariff measures may provide a special impediment to the trade of developing countries particularly as these countries which often tend to be peripheral suppliers situated at a distance from the main importing markets, have inadequate facilities to undertake compliance with laws, regulations and formalities relating to importation of goods in the importing countries. It has also been suggested that a threat or mere existence of non-tariff measures tends to act as a serious deterrent to the exports of a developing country seeking to penetrate a new market.

## II

### Brief Review of the Work Done in the Field of Non-Tariff Measures

#### Introduction

6. Separate notes have been prepared by the secretariat recently on certain non-tariff measures, including quantitative restrictions, export subsidies and countervailing duties. As regards quantitative restrictions, it may be mentioned

that document COM.TD/W/203/Rev.1 contains an illustrative list of items of interest to developing countries, which are subject to restrictions in developed countries; document MTN/3B/15 contains a synthesis of the various suggestions that have been made by developing countries for extending differential treatment to them. In addition, document MTN/3B/20 describes past experience with regard to the application of preferential treatment in the liberalization of quantitative restrictions and examines the technical feasibility of implementing proposals for extending preferential treatment to developing countries in any programme for the removal of quantitative restrictions. Similarly, document MTN/3B/21 indicates the special problems faced by developing countries in the field of export subsidies and countervailing duties and synthesizes the various proposals made for extending differential treatment to developing countries in elaborating solutions to the problems in this area.

7. In view of this, the analysis and review in this note of the work done in the field of non-tariff measures, has been confined to measures other than quantitative restrictions, export subsidies and countervailing duties. It should be mentioned that on some of the remaining non-tariff measures, particularly on standards (COM.TD/W/191), customs valuation procedures (COM.TD/W/195) and health and sanitary regulations (COM.TD/W/190), the secretariat has prepared detailed background notes for developing countries analyzing the various proposals for solutions that have been elaborated or are under consideration and explaining the implications which the acceptance of the ad referendum solutions would have for trade of developing countries.

8. In describing and updating the work, this note deals first with standards, health and sanitary regulations and packaging and labelling requirements as the ad referendum solutions that have been evolved in the field of standards are considered by a number of delegations to have relevance to the problems that arise in respect of the other two non-tariff measures. This is followed by a brief description of the problems encountered by developing countries and of the proposals for solutions, in regard to such non-tariff measures as customs valuation procedures, import documentation, administration of import licensing etc. It should be noted however that the summary of the problems and proposals for solutions contained in this note may not reflect fully the emphasis laid by individual delegations on particular points made by them in the discussion. For a more detailed account of the points discussed on a particular issue, delegations may wish to refer to the basic documentation and reports on the meetings. For convenience, the relevant documents have been listed in the Annex.

## A. Standards

### Introduction

9. A "standard" may be described as any specification which lays down some or all of the properties of a product in terms of quality, purity, nutritional value, performance, dimensions and other characteristics. Standards are of value to industries, as they help permit mass production, avoidance of waste and better inventory control. They are also used to lay down minimum public health and safety conditions.

10. Standards have a considerable impact on international trade. In the main they are a constructive element and facilitate the process of ordering between buyers and sellers situated in different countries and eliminate potential causes of misunderstanding and dispute about performance, testing and inspection. Standards may however, in some cases also act as a barrier to trade.

### Nature of the problems

11. Barriers in the field of standards could arise, inter alia, because of the existence of divergences in national standards. It would appear from the notifications that, in some cases, a number of standards which were initially prepared by professional bodies and national standards organizations were based largely on domestic production processes and failed to take into account the practices and manufacturing processes prevalent in other countries. Such standards, particularly if they were mandatory, posed problems to exporters as there was an obligation to comply with the specifications laid down. A foreign manufacturer was thus able to sell his product only if he adapted his production process to the requirements prescribed by different importing countries. Though there was no such obligation to comply in the case of voluntary standards, these may in practice pose problems similar to mandatory standards. This may be relevant in cases where there were wide differences between standards adopted by different countries and buyers such as governmental agencies and manufacturing associations who required that products which they purchased should conform to particular national standards. Further, in some cases, methods used for assuring compliance with standards may act as barriers to trade, especially if they were unnecessarily rigorous or where they did not provide for acceptance of tests and inspections carried out in the exporting country. The notifications in the inventory indicate that, in such cases, the restrictive effects of the methods adopted could vary from increased expenses and delays to making it practically impossible for an exporter to market his product because of the difficulties in obtaining the necessary approval.

Special problems of developing countries

12. A scrutiny of the notifications in the Inventory indicates that the products for which compulsory regulations applied in a number of importing countries, and where difficulties were experienced by foreign sellers, often included less sophisticated manufactures and processed agricultural commodities which were also being produced by developing countries. In the industrial sector, illustrations of such products are electrical switches, plugs, fuses, cables, transformers and electrical appliances, pressure cookers and domestic gas cooking equipment, oil burners, safety equipment for ships etc. Among processed agricultural products, examples are canned fruits, fruit juices, chocolates etc., where the existence of differences in regulations among countries regarding the use of additives and colouring materials pose problems to exporting countries.

13. The developing countries have explained that one of the major difficulties which they have experienced in this field has been their inability to obtain readily available information on technical regulations in force in the importing markets. They have also referred to the potential nature of the problems in this area, since in a number of developed countries, increasing numbers of regulations laying down compulsory standards regarding quality and safety of equipment and product were being issued with a view to protecting consumer interests and public health and for the prevention of environmental pollution.

Ad referendum solutions

14. As a solution to the various problems which arise in this field, Working Group 3 of the Committee on Trade in Industrial Products elaborated, on an ad referendum basis, a Code on Prevention of Technical Barriers to Trade (COM.IND/W/108). While a large measure of agreement has been reached on the text of the proposed Code there are still differences of views on some of the issues.<sup>1</sup> The Group's report has been referred to national administrations with the request that they should examine (a) the outstanding issues with a view to finding mutually

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<sup>1</sup>These differences of views have been set out as clearly as possible in the Group's report or in the text of the proposed Code itself. Among the main points on which differences of view remained were: the question whether, in effect, any obligation to permit equal access by third country suppliers or adherents to national or regional quality assurance systems should be conditional or unconditional; the question of the relationship between the General Agreement and the proposed Code; and the question of the functions of the Committee for Preventing Technical Barriers to Trade envisaged in section 19 and the enforcement of obligations under section 21 of the proposed Code.

acceptable solutions to them at the appropriate time and (b) the implications arising from the acceptance of the instrument. It may be stated in this context that the applicability of the provisions in the Code to agricultural products has been under examination in Group 3(e).

15. The implications of the various provisions in the Code for trade of developing countries have been analyzed in detail in document COM.TD/W/191. In addition document MTN/3E/W/11 contains an analysis of the main concepts in the Code, with special reference to the applicability of the provisions to trade in agricultural products. In view of this, the description in the following paragraphs has been confined to indicating the main objectives and the important provisions in the Code.

16. One of the main objectives of the Code is to ensure: (a) that standards are not prepared, adopted or applied with a view to creating obstacles to international trade and (b) that neither standards themselves nor their application have the effect of creating an unjustifiable obstacle to international trade. This principle applies to all categories of standards, their related test methods, administrative procedures, quality assurance systems and to the various bodies which formulate and apply them. It recognizes that to some extent the achievement of positive results in minimizing adverse trade effects in the field of standards would be facilitated through the greater use of internationally accepted standards and related practices. For this purpose, the proposed Code requires adherents to use, where they exist, appropriate international standards as a basis for their national standards; it also makes incumbent upon adherents to participate in the work of international standards bodies, with a view to harmonizing their standards and related measures on as wide a basis as possible. The proposed Code further establishes a number of procedural requirements, in order to give effect to the general principle that standards should not result in the creation of obstacles to international trade. Thus, the Code states that except in cases where the technical content of the proposed standard is substantially the same as the technical content of an international standard, the adherents should take into account any reasonable comments that may be made by other adherents on the draft standards. To ensure that all interested adherents have an opportunity to offer comments in such cases, it lays down an obligation on adherents to publish a notice indicating that they are working on a standard, to make copies of the drafts available to interested countries and to allow them reasonable time for comment.

17. The other provisions of the proposed Code relate to the treatment to be accorded to the imported products and arrangements for establishing their conformity with standards requirements. In cases where adherents require positive assurances that imported products conform to the prescribed standard, the Code lays down that they should wherever possible accept an assurance of conformity

provided by regulatory bodies constituted in the territories of other adherents, or allow tests to be carried out in the territories of other adherents. In cases where the tests are to be carried out in the importing country, the importing adherent should ensure that the imported product is not accepted for testing under conditions which are less favourable than those accorded to domestic products. The provisions in the draft Code relating to the formulation of and participation in international or regional quality assurance systems are intended to ensure that all interested countries are able to participate and benefit from such schemes.

18. The draft Code provides for the establishment of a "Committee for Preventing Technical Barriers to Trade" composed of adherents to the Code which would meet to consult on matters relating to the implementation of the Code. In the case of nullification or impairment or any other matter affecting the implementation of the Code, there is a primary obligation to consult with the interested party. Failing the attainment of a mutually satisfactory solution within a reasonable period of time, provision is made for the disputed matter to be referred for consideration by the Committee.

#### Implications of the proposed solutions for trade of developing countries

19. The basic objective of the Code as well as the general principles on which it is based has received the support of those developing countries which have been able to participate in the work. The Code contains a number of provisions which are intended to provide solutions to the special difficulties which developing countries encounter in this area. These provisions relate to (a) establishment of enquiry points; (b) notification to GATT, and (c) technical assistance to developing countries.

##### (a) Enquiry points

20. The Code provides that to help interested parties in getting all relevant information in regard to the technical regulations, each adherent should establish an enquiry point or points which are able to answer all reasonable enquiries relating to mandatory and voluntary standards and quality assurance systems in other countries.

##### (b) Notification to GATT

21. The Code contains provisions for publication of draft standards in order to give an opportunity to all interested adherents to offer comments. Developing countries have pointed out that, as they do not have well-developed commercial intelligence services, they may not, in most cases, come to know of such notices and thus not benefit from the right to offer comments. To assist these countries, therefore, the draft Code lays down an obligation to notify to the GATT secretariat



the products to be covered whenever the central governmental bodies are (i) working on a mandatory standard which is not based on an international standard; (ii) formulating quality assurance systems, and (iii) formulating international or regional quality assurance systems or arrangements. The secretariat is then expected to circulate the list of such products to all adherents and draw the particular attention of developing adherents to products of particular interest to them.

(c) Technical assistance

22. With regard to technical assistance, the draft Code recognizes that to overcome some of the problems which arise, developing countries would require technical assistance. It provides that adherents should, when requested, advise and consider requests for technical assistance from other adherents, especially developing countries, and defines situations in which such assistance should be provided. Briefly, the purposes for which an adherent is required to advise and to consider requests for technical assistance from other adherents, are:

- (i) for the establishment of national standards bodies;
- (ii) for the establishment of quality assurance systems;
- (iii) to enable producers from the requesting adherent to participate in quality assurance systems of the importing adherent; and
- (iv) to enable the requesting adherent to establish such institutions and a legal framework as would enable it to participate in regional or international quality assurance systems.

It is also provided that adherents should, if a specific request is made, advise other adherents as to the methods by which their mandatory standards could be met.

Adherence to the Code by developing countries

23. A related question that arises in this context is that of adherence to the Code by developing countries. It is evident that the Code, or any other solutions that may be ultimately evolved would result in the creation of new rights and obligations. As is evident from the above paragraphs, considerable attention has been paid during the drafting of the various provisions, to the special problems of developing countries; the nature of the obligations have been also defined in such a way as to facilitate the adherence by developing countries to the Code. In this context, a point which is generally made is that as barriers in this field arise because of unco-ordinated action taken by individual countries, acceptance of a certain discipline by all countries would be in the interests of the development of trade of all of them including the trade of developing countries among themselves.

It is also stated that, judging from the experience of the developed countries, developing countries may stand to benefit if they oriented their industrial development on the basis of international standards in cases where these are relevant. The point could also be made that developing countries are more likely to be able to ensure that production processes in their countries are duly taken into account in the formulation of international standards if they are in a position to participate directly in the process of consultations envisaged in connexion with the preparation of such standards.

## B. Health and Sanitary Regulations

### Introduction

24. Almost all countries have legislation for the protection of the health and safety of their human, animal and plant population. The GATT provisions relating to health and sanitary regulations are contained in Article XX dealing with "General Exceptions". Sub-paragraph (b) of the Article lays down that nothing in the Agreement shall be construed to prevent the adoption and enforcement by any contracting party of measures "necessary to protect human, animal or plant life or health". This exception, as well as other exceptions, provided for in the Article are however subject to the restraint that any "such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade".

### Problems faced by developing countries

25. A significant number of notifications from developing countries relate to the difficulties which their trade encounters as a result of the existence of, in certain countries, what they consider as stringent health and sanitary regulations. The difficulties mentioned include the prohibition of imports of certain products from particular sources, or from all sources, difficulties encountered because of the differences in standards regarding the use of additives and colouring materials, the rigorous application of regulations regarding requirements of import permits, production of health certificates and inspection of imports as well as production units, etc. The products which are stated to be affected cover a range of agricultural products including meat and meat products, poultry, fish, hides and skins, vegetables, fruits and processed fruit products. A scrutiny of the notifications would also suggest that, in a number of cases, an important problem faced by developing countries is the difficulty in knowing precisely the requirements under the mandatory health and sanitary regulations prescribed by the importing countries.

26. As health and sanitary regulations generally apply to agricultural products, substantial discussion on this subject has taken place in the Agriculture Committee and more recently in Group 3(e).

Discussions in the Agriculture Committee<sup>1</sup>

27. Possible approaches for the reduction or elimination of the adverse trade effects of health and sanitary regulations discussed in the Agriculture Committee ranged from proposals to establish guidelines and principles including procedures for arbitration similar to those in the International Plant Protection Convention, to proposals that reliance should be placed on bilateral consultations, with or without recourse to consultation procedures under the General Agreement.

28. Other approaches suggested included proposals, inter alia, to supplement consultations on trade effects under Article XXII of the General Agreement through the use of expert rapporteurs and expert advice from specially competent bodies or international organizations; and proposals aimed at strengthening and giving greater precision to Article XX(b) including, for example, procedures for notification of and consultations on, measures maintained under that Article.

29. With regard to proposals to draw up general guidelines to reduce or eliminate the adverse trade effects of such regulations, the following elements have been suggested for inclusion:

- (i) elimination of health and sanitary regulations where they no longer meet the requirements of the situation which had motivated their establishment;
- (ii) relaxation, where necessary, of measures currently in force so that they would not be more stringent than necessary;

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<sup>1</sup>For a more detailed account of the proposals for solutions, see Report of the Working Group on Techniques and Modalities to the Agriculture Committee (COM.AG/25); Sanitary and Phyto-sanitary Regulations (MTN/3E/W/2); Report of Group 3(e) (MTN/5); and Background Note for Developing countries on Non-Tariff Barriers arising in the field of Health and Sanitary Regulations (COM.TD/W/190).

- (iii) requirement that new measures should not be made more stringent than necessary;
- (iv) provision of equal treatment for imported and domestically produced goods;
- (v) requirement that measures taken by State or local authorities are consistent with national and international regulations;
- (vi) application of health and sanitary regulations on a most-favoured-nation and non-discriminatory basis;
- (vii) provision for greater co-operation between exporting and importing countries, with regard to importation, testing and issuance of certificates.

30. It has been suggested that some of the above elements and the principles involved are covered by the Draft Code on Standards and, as such, it would be necessary to examine if its provisions would provide solutions to problems in the field of health and sanitary regulations. A detailed background note on certain aspects of the applicability of the Draft Code on Standards to agricultural products is contained in MTN/3E/W/26. Some of the provisions which would appear to be relevant to solutions to the problems in this area would include prior publication of notice of the fact that new regulations were being formulated; offering opportunities to interested parties to comment on draft regulations; the establishment of an enquiry point or points from which all relevant information may be obtained regarding health and sanitary regulations; and the establishment of machinery for consultations and the consideration of complaints.

31. In this context, a point has been made that standards have been defined in the Draft Code in terms of quality, purity, nutritional value, performance etc., and, as such, the definition might cover a large number of sanitary and phyto-sanitary measures including those relating to the incidence of parasitic and cystic diseases, permissible levels of residues in meat and processed foods, etc. It was, however, not clear whether it would cover regulations relating, inter alia, to the production or processing of a product, including for example, conditions in slaughter houses, dairy factories or other processing plants or to conditions affecting imports from certain producing countries where there was an incidence of certain diseases not prevalent in the importing countries.

Discussions in Group 3(e)<sup>1</sup>

32. In a recent discussion on this subject, particularly in Group 3(e), some members have stated that it was necessary to examine whether the Draft Code on Standards was fully applicable to health and sanitary regulations. It was suggested that if it was only partly applicable, it may be necessary to modify the code to take into account some of the aspects to which it did not apply, or to adopt an entirely different approach.

33. Some delegations have stated that it may be desirable to adopt, in the negotiations, a broad and pragmatic approach. In most countries, health and sanitary regulations are considered of major importance for the protection of public health; it was, however, necessary to ensure that such measures were not applied as a means of arbitrary or unjustifiable discrimination or as a disguised restriction on international trade. These delegations suggested that for this purpose it would be interesting to see whether existing regulations in this field were consistent with GATT principles in order to ascertain whether there were any measures likely to prevent the normal conduct of trade. Since, however, regulations in this area were complex and numerous there was a feeling that the best approach would be for a country which considered itself prejudiced as a result of existing regulations to enter into direct negotiations on a bilateral basis. Because of the limited results achieved with existing mechanisms and procedures for consultation, it might be appropriate to draw up, in the multilateral trade negotiations, certain guidelines or criteria, or a certain framework, which should be respected in order to ensure that such bilateral consultations proceeded smoothly and led to results. It has been also suggested that such guidelines might be developed in a number of possible ways such as through an interpretative note to existing GATT provisions, through the draft standards code or an independent code.

Points made by developing countries

34. In the discussions on the subject in the Agriculture Committee and elsewhere, representatives of developing countries have stated that their requests for differential treatment did not imply that developing countries should be exempted from the application of health and sanitary regulations, or that less strict standards should apply to imports from their countries. They have, however, pointed out that as peripheral suppliers distant from main markets, they had, in some instances, difficulties in complying with the regulations operating in the

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<sup>1</sup>For a more detailed account of the specific points made by delegations in Group 3(e), see document MTN/3E/11.

importing countries. In such cases, they might need technical assistance to be able to comply with the regulations which might need to be modified to take into account the special situations and the problems faced by developing countries. Some of these countries have stated that they proposed to take advantage of the opportunities which the multilateral trade negotiations could provide for negotiations on problems resulting from specific health and sanitary regulations and have suggested that suitable procedures might be established for such negotiations between developed and interested developing countries. These countries have attached considerable importance to the provision in the proposed solutions for closer co-operation between exporting and importing countries, which may gradually result in greater confidence and understanding of the methods adopted in developing countries for protection of health and for inspection and certification of export products. They have also pointed out that provisions in the proposed solutions regarding the establishment or designation of "enquiry points" from which all relevant information regarding health and sanitary regulations may be available, would be of particular interest to them.

### C. Packaging and Labelling

#### Introduction

35. A package is material in which the commodity is wrapped, or filled. Packages serve different purposes. Goods are packed in commercial packages in quantities required by direct consumers; such packages are usually designed to prevent damage to the contents or to increase the consumer appeal for the product. Goods are also packed in containers for transporting them to their place of use; the containers protect not only the commodity itself but also the other goods, the transportation facilities and the personnel handling the containers.

36. Labels also can be of different types. They generally provide written information to the customer on the commodity, its composition, mode of use and occasionally, its price. Labels may also have marks indicating the country of origin of products. Marks of origin<sup>1</sup> may also be shown by embossing or engraving on containers or tins.

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<sup>1</sup>There was a difference of opinion in Group 3(b) as to whether problems in the field of marks of origin were covered by its terms of reference. The Trade Negotiations Committee has, at its meeting in July 1974, decided that the problems in this field "should be taken up in the context of non-tariff measures at an appropriate time, but without delay in the course of the negotiations".

37. Requirements in the field of packaging and labelling may be mandatory or voluntary. For example, in the case of some products, it is mandatory to label a product. The mandatory obligation may be of two types; it may be obligatory to show certain information on the label; it may be obligatory to present information in a certain way. In other cases it may not be mandatory to label a product, but if labels are used they are required to conform to certain requirements (conditional labelling); in some other cases labelling may be purely voluntary inasmuch as it is not required under any regulation.

#### GATT provisions

##### (i) Packaging and labelling

38. The General Agreement as such does not explicitly refer to questions of packaging and labelling, but Article III, which lays down the principle of "national treatment" to imported goods, is applicable to laws and regulations adopted by countries in this area. In particular, paragraph 4 of that Article states that imported products "shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale ... distribution or use".

##### (ii) Marks of origin

39. The provisions in the General Agreement regarding marks of origin are contained in Article IX. It reaffirms the principle of the most-favoured-nation clause in respect of marks of origin and states that "laws and regulations relating to marks of origin should be reduced to a minimum so as not to hamper international trade". The Article further states that in order to reduce the difficulties and inconvenience which such measures may cause to the commerce and industry of the exporting countries, each contracting party should as far as possible, permit required marks of origin to be fixed at the time of importation, should settle amicably any disputes that might arise and should "accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party". In addition to these provisions, the CONTRACTING PARTIES, at their thirteenth session, adopted a Recommendation on the subject. This Recommendation calls upon the countries "to scrutinize carefully their existing laws and regulations, with a view to reducing as far as possible, the number of cases in which marks of origin are required"; it further suggests the use of standard wordings, cases where requirements should be exempted and states that penalties should not be imposed for failure to comply with marking requirements prior to importation, except in cases of fraudulent intent.

Nature of the problem(a) Notification in the inventory(i) Marks of origin

40. A number of notifications in the inventory concern detailed requirements, imposed by certain countries regarding marks of origin, whether in regard to wording (no adjectives) marking techniques (engraving or labelling), placing and legibility. Some countries also have special marking regulations for certain products such as cutlery, scientific instruments, thermos bottles, etc., with which foreign exporting firms sometimes find difficulty in complying. In a few cases, marking requirements are insisted upon by professional standards organizations; as these are non-governmental bodies, their intention, which is not always related to the protection of consumer interests may result in additional protection being given to the domestic industry.

(ii) Labelling requirements

41. The notifications in the Inventory indicate that the problems in this area arise because, in some cases, the regulations are too detailed or unnecessarily stringent and are different from the standards adopted generally in other countries. There are also wide differences in the regulations adopted by different countries in regard to the type of information required, modalities of presentation and languages which can be used. In particular, some countries do not permit dual labelling under which it is permissible to indicate weights both in metric and other systems of measurements. In certain cases, especially in regard to food products, nutritional information on the labels has to be provided according to the standards of the importing country.

(iii) Packaging

42. Notifications indicate that problems in the field of packaging arise because of the differences among countries in the type of requirements in the area. Such requirements relate to the material that can be used for packaging, the range of sizes of packages and cans that are permitted to be used, etc.

(b) Views expressed by delegations

43. In the discussion in Group 3(b), it has been generally accepted that obstacles to international trade arise in the field of packaging and labelling because of the existence of differences in regulations and requirements laid down by certain countries. A number of delegations have, in this context, referred to the potential nature of the problems that are likely to arise in this field,



particularly as increasing numbers of regulations were being issued by governments in the field of packaging and labelling in order to protect consumers interests and to ensure fair trade practices.

44. A number of delegations have stated that the problems in the field of packaging and labelling sometimes arise because more severe requirements are applied to imported goods than to domestically produced goods in clear violation of the provisions of Article III. A more common case was, however, that though the same requirements were applied to domestically and imported goods, in practice it was more burdensome for foreign manufacturers or exporters to comply with the requirements.

(c) Special problems of developing countries

45. Delegations from developing countries have pointed out that packaging and labelling requirements created, in a number of cases, more acute problems to their trade than for the trade of other countries, as in many instances it was difficult for their traders to know the precise regulations. This was particularly so in cases where the regulations were unnecessarily complicated. The existence of wide differences in regulations of different countries further acted as a barrier to their trade. Some delegations have, in this context, mentioned additional costs which are incurred by traders in developing countries because of certain special regulations regarding packaging and labelling existing in importing countries.

Proposals for solutions

(a) Packaging and labelling

46. There has been a wide measure of agreement that the ultimate solution to the problems in this area would be harmonization of packaging and labelling requirements. Though the technical work in this regard would need to be done by the appropriate international organizations, it has been proposed that GATT could support this work by requiring countries to participate actively in the activities of the relevant organizations. Further, in order to ensure that new regulations did not result in the creation of additional barriers to trade, it has been suggested that drafts of new regulations in the field of packaging and labelling should be published before finalization and governments should take into account any comments made by interested parties. Other suggestions made include the institution of a grace period before new regulations entered into force, establishment of enquiry points for making available information on packaging and labelling regulations and the establishment of procedures for consultations in cases of difficulty.

47. Delegations from developing countries have attached considerable importance to the proposals for simplification and harmonization of regulations in the field of packaging and labelling and for the establishment of enquiry points. They have also indicated that, in certain cases, they may require technical assistance to enable their traders to comply with the requirements in importing countries.<sup>1</sup>

48. Some delegations have suggested that, in the search for solutions, it would be necessary to make a distinction between goods sold to consumers and other types of goods. A suggestion has also been made that it would be useful to draw up an inventory which would contain information on national practices and legislation in the field of packaging and labelling, products or product groups to which these regulations applied and indicate whether the national practices were in conformity with international standards, where such standards existed, or with regulations generally applied by other countries. Some delegations have also suggested that apart from general guidelines which may be adopted, it would be necessary to attempt to resolve specific problems notified, through negotiations among interested countries, if necessary on a product-by-product basis.

49. It may be relevant to note in this context that many delegations have stated that the draft Code on Standards was intended to cover the problems in the field of packaging and labelling and by and large its provisions could provide solutions to the problems in this area. Some delegations have, however, stated that it would be premature at this stage to decide which of the number of possible approaches could be adopted.

(b) Marks of origin

50. As regards marks of origin, Group 3(b) has not yet considered solutions to problems in this field. However, in the context of the discussions in Working Group 3 of the Committee on Trade in Industrial Products, some delegations have pointed out that close observance by all contracting parties of the 1958 Recommendation on Marks of Origin would provide solutions to the problems in this area. Some other delegations considered that the Recommendation would need

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<sup>1</sup>Several intergovernmental organizations, including the UNCTAD/GATT International Trade Centre, UNIDO, FAO give technical assistance to developing countries in the field of packaging. The International Trade Centre has prepared a provisional two volume study entitled "Promoting Packaging for Exporters - A Guide to Institutional Measures and Technical Assistance".

further elaboration and precision in relation to certain points. In particular, it was suggested that the concept that marks of origin "should be limited to cases where marking is considered necessary" needed closer definition; it might also be necessary to elaborate further the provisions relating to penalties in the 1958 Recommendation. One delegation suggested that the Recommendation should be put on a contractual basis.

#### D. Customs Valuation Procedures

##### Introduction

51. Customs duties are assessed on the basis of specific rates, ad valorem rates, or combined rates. With some exceptions, most countries levy duties mainly on an ad valorem basis, while for some products specific duties or combined duties, containing both specific and ad valorem rates, are prescribed. In the case of ad valorem rates, the actual incidence of duty depends as much on the dutiable value of the goods to which the rate is applied as on the rate of duty. Thus the definition adopted to determine the value of goods for customs purposes and the methods used for ascertaining such value have a considerable impact on the actual incidence of duty, and thereby on the level of protection and may, in some cases, act as a para-tariff barrier to trade.

52. Relevant provisions in the General Agreement relating to valuation for customs purposes are contained in Articles II and VII. Article II lays down an obligation on contracting parties not to alter their methods of determining value or of converting currencies so as to impair the value of any tariff concessions exchanged. However, the basic provisions relating to valuation are contained in Article VII, which lays down certain broad principles for valuation which each contracting party has undertaken to give effect to "in respect of products subject to duties or other charges or restrictions on importation or exportation based upon or regulated in any manner by value". These principles are the following:

1. Value for customs purposes should be based on the "actual value" of the imported merchandise or of like merchandise and not on the value of merchandise of national origin (i.e. prices prevailing for comparative or like articles in the domestic market of the importing country) or on arbitrary or fictitious values. The expression "actual value" has been further defined as the price at which such or like merchandise is sold, or offered for sale in the ordinary course of trade under fully competitive conditions, at the time and place to be determined by the legislation of the country of importation.
2. In cases where it is not possible to determine "actual value" on the above basis, the value for customs purposes should be determined on the basis of "nearest equivalent of such value".

3. Any such value should not include the amount of any internal tax from which the goods have been exempted or relieved in the country of origin on export.
4. The bases and methods for determining the 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.
5. The administration of customs valuation should be uniform, impartial, reasonable and subject to arbitration.<sup>1</sup>

#### Existing valuation systems

53. A large number of countries which include most of the countries in Europe and several developing countries, have adopted for the purpose of customs valuation the Brussels Definition of Value, based on c.i.f. prices. The definition lays down that the value of imported goods shall be determined on the basis of "normal price" which has been defined as the price which the imported goods would fetch on sale in the open market between a buyer and seller independent of each other. The countries which base valuation on f.o.b. prices are relatively few in number, but they include some of the important trading countries, viz the United States, Canada, Australia and New Zealand. In the case of the United States, the primary standard for determining value for customs purposes for most imported goods is the "export price" which is the price at which the merchandise or similar merchandise is sold or offered for sale in principal markets of the exporting country for export to the United States. For

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<sup>1</sup>In addition, the Article and its interpretative notes lay down certain guidelines governing some of the elements relating to valuation. Thus, it is stated that "to the extent to which the price of such merchandise is governed by the quantity in a particular transaction, the price to be considered should be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of merchandise is sold in the trade between the countries of exportation and importation". As regards the phrase "fully competitive conditions" used in the definition of actual value, one of the interpretative notes lays down that it excludes any transaction "wherein the buyer and seller are not independent of each other and price is not the sole consideration".

a number of products, however, which are included in what is known as the Final List, the United States legislation provides that duty should be on the basis of "foreign value", or "export value", whichever is higher. The term "foreign value" has been defined as the price at which, at the time of exportation to the United States, such or similar merchandise is freely offered for sale in the principal markets of the exporting country for consumption in those markets. In addition, for certain benzenoid chemicals the value for customs purposes is determined on the basis of the American Selling Price (ASP), i.e. prices at which domestically produced comparable articles are sold in the principal United States market for home consumption. In the case of Canada, the primary standard for the determination of dutiable value is the "fair market value" which is the price at the time and place from which the goods are shipped directly to Canada, of like goods for home consumption in the exporting country. In the case of Australia and New Zealand, dutiable value is determined on the higher of the actual invoice f.o.b. price or current domestic value, which is the price at which the exporter is selling or would be prepared to sell for cash, at the date of exportation, the same quantity of identically similar goods for consumption in the domestic market.

#### Nature of the problems

54. A detailed background note describing the existing GATT provisions relating to valuation for customs purposes, the nature of the problems that arise in this field and the implications of the ad referendum solutions which have been elaborated for the trade of developing countries, is contained in document COM.TD/W/195. It is therefore proposed to indicate briefly, in the following paragraphs, the special problems faced by developing countries in this field and refer to the provisions in the ad referendum solutions that have particular relevance for solutions to the problems of these countries.

55. In the view of a number of countries, the problems in the field of valuation arose because of the lack of uniformity among countries in practices used for determining value where, for one reason or another, invoice prices were not acceptable. In addition, in the view of some of the notifying countries, problems in this field arose because of the practices followed in certain countries, which base their valuation systems on an f.o.b. basis and take into account, in determining the dutiable value, the domestic prices prevailing in the exporting countries or in the importing countries. Developing countries have pointed out that the existence of such valuation procedures posed special problems for their trade. In particular it has been stated that the system

prevalent in some countries of levying customs duty on the basis of f.o.b. value or current domestic value, whichever was higher, made it difficult for exporters to know in advance the amount of duty payable; resulting uncertainty had adverse effects on exports. It has been further stated that these systems acted particularly to the disadvantage of developing countries as in a large number of cases, because of structural imbalances, supply scarcities and such other factors, the domestic prices in these countries ruled at artificially high levels. In addition, in some cases, goods which were produced by specially established export-oriented industries were not sold in the domestic market, which created special difficulties in ascertaining comparable current domestic value.

#### Proposals for solutions

56. The ad referendum solutions, which have been evolved by the relevant Working Group of the Committee on Trade in Industrial Products, consist of a set of draft principles on which valuation systems should be based and a set of interpretative notes to Article VII. The Article lays down that value for customs purposes should be based on "actual value" of the imported merchandise or of like merchandise. Interpretative notes 1 to 6 in the draft text lay down the basis on which actual value is to be calculated in the case of countries which base their values on c.i.f. or f.o.b. prices and indicate other methods of valuation to calculate the nearest ascertainable equivalent to actual value, in cases where invoice prices are not accepted. Note 7 further states that "the value of imported merchandise for customs purposes should in no case be based on the price of goods of national origin nor on the price of goods in the domestic market of the exporting country nor, in accordance with Article VII paragraph 2(a) on any arbitrary or fictitious values, such as any system of valuation based on the concept of minimum value".

57. It is relevant to note in this context that the Customs Co-operation Council has adopted, at its meeting in June 1974, a proposal of the Valuation Committee recommending the amendment of the Convention on the Valuation of Goods for Customs Purposes so as to permit those countries which at present base their valuation systems on an f.o.b. basis to adopt the Brussels Definition on an

f.o.b.basis.<sup>1</sup> It is expected that the acceptance of the BDV on the basis of this facility by major trading countries which base their valuation systems on an f.o.b. basis could lead to the solution of many of the problems that may arise in this area.

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<sup>1</sup>The relevant portion of the text of the decision adopted by the Council reads as follows:

The Customs Cooperation Council ...

RECOMMENDS Contracting Parties to the Convention on the Valuation of Goods for Customs Purposes to add as Annex IV to the Convention the following text:

**ANNEX IV**

**PROTOCOL CONCERNING ARTICLE I (2)(b)  
OF THE DEFINITION OF VALUE**

The Contracting Parties to the Convention on the Valuation of Goods for Customs Purposes (hereinafter referred to as "the Convention") have agreed as follows:

Any Contracting Party to the Convention establishing a Customs Cooperation Council which does not include in the dutiable value of goods the costs, charges and expenses incidental to the delivery of the goods from the port or place of exportation to the port or place of introduction into the country of importation and nevertheless wishes to accede to the Convention shall be regarded as fulfilling the requirements of Article II of the Convention if that Contracting Party introduces into its domestic law and applies the following provision in lieu of sub-paragraph (b) of Article I (2) of the Definition of Value:

- "(b) that with the exception of any costs, charges and expenses incidental to the delivery of the goods from the port or place of exportation to the port or place of introduction, the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the port or place of introduction, which are hence included in the normal price;"

Acceptance of the solutions by developing countries

58. It would appear from the notifications that some developing countries, whether basing their valuation system on the Brussels Definition or not, have practices for fixing values not based on invoice prices, but on systems for determining "official values" and "minimum values". In regard to "official values", while some of these countries fix such values for the entire range or a significantly large number of imported products, a few others determine such values for a limited number of products only. The developing countries maintaining "official indicative values" for a limited number of products have stated that they have found it necessary to adopt such a system to curb "under-invoicing" of goods or similar unfair practices. It has been stated that apart from such cases, fixing official values on the basis of "average prices of imports" may be necessary for commodities which are subject to wide fluctuations in prices. It is relevant to note in this connexion that the system of fixing average values for some "non-ordinary" products by some developing countries have been examined in the past by GATT and found to be in accordance with the principles of Article VII.<sup>1</sup> In regard to "minimum values", developing countries fixing such values have explained that they were being determined for a limited number of products, in order, inter alia, to protect their nascent industries from competition from well-established industries in other countries. A question which has been raised in this connexion is whether it would not be possible for these countries to give the same level of protection by abolishing minimum values and by making appropriate changes in the rates of tariff.

59. It would appear that considerable attention to the problems that arise as a result of differences in practices of valuation by developing countries is being given by these countries themselves in the context of the work being done for the removal of barriers affecting their intra-regional trade, particularly by countries belonging to the Latin-American Free Trade Area and those in the ESCAP region. Most countries in Africa have either adopted or are using the Brussels Definition of Valuation. It is to be expected therefore, that the practices which have been notified as barriers to trade would be modified as progress is made in the further examination of these problems by the developing countries themselves on a regional basis. Consideration at this stage of the acceptance of the ad referendum solutions elaborated in GATT may therefore supplement further work that is being done on a regional basis, and provide conditions that would facilitate their ultimate adoption and implementation. It has, however, been suggested that not all developing countries would be able to implement the solutions within the

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<sup>1</sup>See Analytical Index to the General Agreement.



time-limit that may be set for their acceptance, and that some flexibility, especially in regard to the time-limit for acceptance may be necessary, as at least in the case of a few developing countries, modifications of some of the existing practices might result in an overall decline in the revenue collected from customs duties.

E. Import Documentation Including Consular Formalities

GATT provisions

(a) Import documentation other than consular formalities

60. Provisions in the General Agreement regarding "Fees and Formalities Connected with Importation and Exportation" are contained in Article VIII. Paragraph 1 of the Article recognizes the need "for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements". As regards fees and charges imposed in connexion with importation or exportation, it states that they "shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes". Paragraph 3 of the Article further lays down that no contracting party "should impose substantial penalties for minor breaches of customs regulations or procedural requirements".

61. It is relevant to note in this context that CONTRACTING PARTIES at their sixth session elaborated a "Code of Standard Practices for Documentary Requirements for the Importation of Goods". The code, *inter alia*, lays down that facts relating to imported goods which are required for customs or other purposes "should, to the greatest extent possible, be ascertained from the commercial documents relating to the transactions in question". It further states that in principle, commercial documents such as (i) transport document (bill of lading, consignment note) and (ii) commercial invoice, accompanied where necessary by a packing list, should be sufficient to meet governmental requirements.<sup>1</sup>

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<sup>1</sup>The Code further states that "the specification of these documents does not mean that documents such as manifests, customs entry or declaration forms or import licences can be dispensed with. It is also understood that in certain circumstances, the production of other documents such as certificates of origin, consular invoices, freight or insurance papers, sanitary certificates, etc., may be required."

For a more detailed analysis of the provisions in the General Agreement and text of the Code of Standard Practices for Documentary Requirements for the Importation of Goods, see document (COM.LND/W/79).

(b) Consular formalities

62. The provisions of Article VII regarding fees, charges, etc., also apply to "consular formalities, such as consular invoices and certificates". Because of the difficulties which consular formalities pose to the export trade, CONTRACTING PARTIES have adopted, from time to time, recommendations<sup>1</sup> calling upon countries still maintaining such requirements, to abolish them.

Nature of the problem

(a) Notifications in the Inventory

63. Some of the notifying countries have stated that requirements prevalent in several countries regarding production of customs invoices constitute a barrier to trade.<sup>2</sup> Some of these customs invoices also require more information than is strictly necessary for the purpose of statistics and for valuation for customs purposes; in the view of the notifying countries such requirements are not in conformity with the provisions of Article VIII. In addition, certain countries require "additional information" on a number of points in regard to certain products including textiles, footwear, pearls, hemp and ramie fabrics, etc. It has also been notified that the recommendation adopted by the CONTRACTING PARTIES that certificates of origin should be required only in cases "where they are deemed to be strictly indispensable", was not followed in practice by all countries and such certificates of origin were required by some countries even in cases where they did not appear to be strictly necessary.

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<sup>1</sup>Recommendations for notification and abolition of consular formalities were adopted by CONTRACTING PARTIES at their eighth, ninth, eleventh, and twelfth sessions. At the twentieth session (1962), the CONTRACTING PARTIES adopted the Report of the Panel of Experts on Consular Formalities and a recommendation calling on countries to abolish consular formalities. Further reviews of progress in the abolition of consular formalities appear in document L/3089, and Addendum 1, L/3090 and L/3408.

<sup>2</sup>The countries which according to notifying countries require customs invoices include Australia, Canada, Ghana, Israel, Malawi, Malta, Mauritius, New Zealand, Nigeria, South Africa, Tanzania, United States, Zambia.

64. As regards consular formalities, the notifications reveal that although since the adoption of the 1952 Recommendation some countries had abolished these requirements, a number of them, mostly developing countries, permitted imports only on the basis of consular invoices or certificates. Further, in a number of cases, the consular fees charged were high and excessive penalties were imposed for relatively small errors in the documents presented.

Views expressed by delegations

65. Some delegations have suggested that the problems in this field could broadly be grouped into three categories, namely:

- (i) Those arising from the nature and the form of documentation.
- (ii) Those arising from the type of information required in documents used for customs clearance purposes.
- (iii) Those arising from the penalties which might be applied.

Group 3(b) has agreed that it would be desirable for it to concentrate in the initial stages on the second point, namely the type of information and data required for customs clearance purposes. On the question of penalties, there have been differences of view among members as to whether those issues fell within the Group's task.

66. The various proposals for solutions which have been made in the Group, take into account and refer to the work that is being done by other organizations in this field. A detailed account of the work being done by the Customs Co-operation Council (CCC) and the Economic Commission of Europe (ECE) in the field of simplification and harmonization of customs requirements and documentation is contained in documents MTN/3B/8 and MTN/3B/13. For information, the main points concerning work in progress in the two organizations mentioned above have been summarized below.

(i) Work in progress in the Customs Co-operation Council

67. Work on the elaboration of a new Customs Convention on Simplification and Harmonization of Customs Procedures is in progress in the Customs Co-operation Council. The Convention is divided into two parts. The first is the body of the Convention; the other comprises individual Annexes, each dealing with

specific procedures. In addition to the text of the Convention, the Council has so far adopted<sup>1</sup> the following nine Annexes out of the total number of nearly forty Annexes that would be incorporated in the Convention:

- (i) Annex concerning Customs Warehouse;
- (ii) Annex concerning Drawback;
- (iii) Annex concerning Temporary Admission subject to re-exportation in the same state;
- (iv) Annex concerning rules of origin;
- (v) Annex concerning documentary evidence of origin;
- (vi) Annex concerning the control of documentary evidence of origin;
- (vii) Annex concerning temporary admission for inward processing;
- (viii) Annex concerning the procedure of duty-free replacement of goods; and
- (ix) Annex concerning the repayment of import duties and taxes.

Further, the Permanent Technical Committee of the Council considered and provisionally adopted, at its meeting in October 1974, the Annex concerning clearance of goods for home use.

The Annex concerning clearance of goods for home use is considered to be of direct relevance to work in GATT in the field of import documentation as it spells out the principle that goods declarations should be limited to a minimum of information and contains a list of particulars generally deemed necessary for the assessment and collection of import duties and taxes and for the fulfilment of functions which devolve on the Customs Authorities.

(ii) Work in progress in the ECE

68. The Economic Commission for Europe (ECE) has elaborated a lay-out key for trade documents. The key system is intended for application in designing and standardizing documents used in external trade and would provide a basis for the

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<sup>1</sup>The body of the Convention and any of its Annexes become effective only after they have been signed without reservations in regard to ratification by at least five member States of the Customs Co-operation Council. The Convention and the Annex concerning Customs Warehousing has been signed without reservation as to ratification by eleven countries and by the European Economic Communities; the Annex concerning Drawback has been signed by five countries. The Convention and these two Annexes have thus become effective as among the signatory countries.

design of aligned series of forms.<sup>1</sup> Further work on the elaboration of a model form for an aligned Commercial Invoice is at present being done by an ECE Group of Experts on Data Requirements and Documentation. The draft model form<sup>2</sup> for such an invoice, which has been prepared by the Trade Facilitation Adviser, enumerates the data which are considered necessary for the customs clearance or for meeting other administrative requirements. The draft model form together with the replies to the questionnaire on the invoices which was circulated earlier, was considered by the Expert Group, which decided to combine the two approaches in its future work.

#### Proposals for solution

##### (i) Import documentation, other than consular formalities

69. The Group, in the course of its work has been giving consideration to the type of information that should be required by the Customs Authorities, on the basis of a specific proposal made by one delegation regarding the type of information that should be required in the Common Invoice for Customs Purposes and in an All-Purpose Entry Document (Annex II). A number of delegations have, in this context, proposed that it would be desirable to base future work in this area on the draft Annex concerning Clearance of Goods for Home Use in the CCC Convention and on the proposal for Aligned Commercial Invoices that are under consideration in the ECE. Some delegations, particularly those from developing countries, have suggested that information in regard to current home consumption price, current price for export, country of origin and rebates or subsidies given on goods exported should not be required in Common Invoice forms and that as such these aspects should be deleted from the proposals made for Common Invoice Requirements. In this context, some of these delegations have stated that standardized invoice requirements adopted by some countries did not require information to be given on the above points. Other delegations, however, were opposed to their deletion.

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<sup>1</sup>The ECE layout key is intended for application in the designing of documents relating to the various administrative, commercial, productive and distributive activities constituting external trade, whether these documents are completed in handwriting or by mechanical means such as typewriters and automatic printers, or by reproduction. It can also be used as a basis for the designing of aligned series of forms employing a reproducible master in a one-run method of document preparation.

<sup>2</sup>For model form for Aligned Commercial Invoice see MTN/3B/14.

70. Some delegations have suggested that the Group should examine the possibility of formulating general principles as regards the type of information required for imported goods. This could lead to the establishment of two lists; firstly, a harmonized positive list of items and secondly, a negative list indicating items which should not normally be included in the import documentation requirements. There could be, however, an intermediate category of items falling outside the two lists, where some countries may require certain types of information; countries requiring such information would be required to justify their request and to enter into consultation in order to control any possible harmful trade effects.

71. It has been suggested that to a great extent the type of information required in import documentation depended upon the legislation and the policy pursued by countries in determining value for customs purposes, and as such, solutions to the problems in the field of customs valuation would have a bearing on the problems arising in the field of customs documentation. In this context, the Group has discussed a proposal according to which the adoption of Brussels Definition of Value could contribute to the simplification of customs documentation requirements, particularly as under the proposal adopted by the CCC, it would be possible for countries basing their valuation system on an f.o.b. basis to adopt the Brussels Definition of Value. Some delegations, however, have maintained that the BDV was not necessarily the ideal definition and have stated that under this definition no standardized documentation existed.

72. The Group has also considered a proposal that the customs invoices should be abolished and that commercial invoices and customs entry forms should be the basis for customs clearance. In this context, an opinion has been expressed that the adoption of the various Brussels Conventions, the implementation of the CCC Convention on Simplification and Harmonization of Documents and adoption of its Annex on the Clearance of Goods for Home Use, of the ECE aligned commercial invoice, would make it possible for countries to dispense with customs invoices. Some delegations have proposed that special declarations concerning the correctness of the invoice and the origin of goods should be required in customs invoices only in cases where they are strictly indispensable; in such cases the contents of these declarations should be harmonized. Other delegations have stated that information requirements concerning valuation and origin of goods in customs invoices were necessary and often facilitate the flow of goods.

73. Delegations from developing countries have stressed that priority attention should be given to the elaboration of guidelines for the simplification and harmonization of the requirements for import documentation which create special difficulties for developing countries. They have also stated that developed countries should show greater flexibility in the application of documentation requirements in respect to imports from the developing countries and that technical assistance would be required in this field. This would enable the latter to cope with what appeared to them to be increasingly difficult regulations.

(ii) Consular formalities

74. As regards consular formalities, a proposal has been made that it may be desirable for contracting parties to adopt an interpretative note to Article VIII requiring countries to abolish the remaining consular formalities by a particular date in accordance with the recommendations on consular formalities adopted in the past. It has been suggested by some delegations that one of the ways by which the developing countries could make a contribution to the objectives of the multilateral negotiations, would be by agreeing to abolish consular formalities. Other delegations have pointed out that the problem of consular formalities was of relatively minor importance and that it was legitimate for countries to request payment for the actual costs of services rendered. Negotiations could be held to the extent that consular fees went beyond such costs and with respect to formalities to the extent that they went beyond the requirements of administrative control.

F. Administration of Import Licensing

75. Some of the notifications in the inventory relate to barriers that arise as a result of the existence of systems for automatic licensing for some products in certain countries. It has been also pointed out that methods used for the issue of licensing and administration of quantitative restrictions sometimes act as barriers to trade, particularly in cases where there were delays in the issue of licences or where licences were issued in such small quantities as to make imports uneconomical.

76. As solutions to the problems in this area, Working Group 4 of the Committee on Trade in Industrial Products has elaborated on an ad referendum basis two texts, one on automatic licensing and the other on licensing to administer import restrictions. In regard to automatic licensing, which covers such measures as technical visa requirements, surveillance systems, etc. the text lays down the principles and rules on which they should be based. The provisions contained in the draft text on licensing to administer import restrictions are intended to minimize the additional restrictive effects arising from procedures adopted in various countries to administer such restrictions and to facilitate full utilization of quotas allotted.

77. In particular, the draft text states that all useful information concerning formalities for application should be published as far in advance as possible of any opening date for the submission of applications for licences. In regard to procedures for distribution of licences, it states that licences should not be issued to importers in such small quantities as to make imports uneconomical and that consideration should also be given to ensure a reasonable share of licences to new importers. In order to minimize the restrictive effects of the systems adopted for the issue of import licences, it urges that wherever practicable,

imports of goods under restrictions, should be allowed on the basis of export permits issued by exporting countries, in accordance with procedures worked out between exporting and importing countries.

G. Other Non-Tariff Measures of  
Interest to Developing Countries

78. Among the other non-tariff measures included in the illustrative list at Annex I in which developing countries have expressed interest through notifications or during discussion, but which have not as yet been taken up for discussion by Group 3(b), would appear to be selective taxes, prior import deposits and government procurement. In regard to selective excise taxes, however, it may be pointed out that products of interest to developing countries, which are subject to such taxes, are mainly tropical products. The problems in this field are being examined in Group 3(f). As regards import deposit schemes and such other measures which are adopted by countries as measures in the trade field, a suggestion has been made that it would be useful in order to correct adverse balance-of-payments situations, to develop guidelines which might establish principles to be followed with a view to reducing the harmful effects of such schemes on the trade of developing countries. In regard to government procurement it has been suggested that one of the solutions in this field may be the formulation of a Code or a set of guidelines that would apply to government procurement operations.

III

Concluding Remarks

Differential measures

79. It is evident from the description in this note of the work in progress in the field of non-tariff measures that attention is being given to the identification of special problems faced by developing countries, including those of the least developed countries, and a number of provisions have been included in the ad referendum solutions taking into account such problems. In the course of further work in this field, it may be expected that consideration will be given to the feasibility of extending differential treatment to developing countries in the general solutions that are being elaborated in respect of each of the non-tariff measures. In this context, a point has been made that in some cases there may be neither the scope nor the need for differential treatment as the general solutions contain elements which would appear to take care of the special situation of developing countries; for instance, the provisions in the solutions for the establishment of enquiry points for providing information on regulations in the importing countries would benefit exporters from developed and developing countries, but given the nature of the problems of developing countries, its advantage would be greatest for exporters from the latter countries.



80. It would also appear that, broadly speaking the type of differential measures that could be taken would depend on the nature of the non-tariff measure, the impact which it has on the trade of developing countries as well as how far and to what extent the various elements in the general solutions are adequate to take care of the problems of the developing countries. For example, it has been suggested that in the field of quantitative restrictions it may be feasible, at least from a technical point of view, to consider on a case-by-case basis, pending application of global solutions, advance action for the removal of restrictions on imports from developing countries in regard to products which are of export interest to them. In the case of other non-tariff measures it has been proposed that the concept of more favourable treatment to developing countries may, inter alia, take the following forms:

- (i) provision of technical assistance to developing countries to enable them to overcome the difficulties which they face in complying with the regulations of importing countries;
- (ii) requirements that, before taking any measures which, though permissible under the provisions of the General Agreement, result in the creation of barriers to trade, there should be prior consultation between the country taking the measures and the developing countries whose interests are likely to be adversely affected<sup>1</sup>;
- (iii) provision for taking into account the special situation of developing countries under any procedures that may be established for consultations and the consideration of complaints under the general solutions or the Codes that are being elaborated, etc.

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<sup>1</sup>Any such provision in the ad referendum solutions would be in accordance with paragraph 3(c) of Article XXXVII in Part IV of the General Agreement. The paragraph reads as follows:

"The developed contracting parties shall:

.....

- "(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties."

81. It has been also suggested that apart from provisions on the above lines that may be made in the general solutions, one of the practical ways in which it might be possible to ensure that the interests of developing countries are adequately taken into account is by eliminating through bilateral or multilateral negotiations, specific, identified non-tariff measures affecting products of interest to developing countries, on the basis of requests that may be made by these countries.

Acceptance of the Solutions by Developing Countries

82. As has been mentioned earlier, a number of delegations have suggested that one of the ways in which developing countries could make a contribution to the objectives of the negotiations is through acceptance of the ad referendum solutions that are being elaborated in the field of non-tariff measures. By accepting the solutions, individual developing countries may also be in a position to ensure that they derive full benefits from the provisions in the Code which are intended to take care of their special situation including those relating to technical assistance or prior consultations with interested countries before any measures are taken which may result in barriers to trade. It has been also suggested that as these non-tariff barriers arise in many cases because of differences in legislation and regulations among countries, acceptance of a certain discipline by as many countries as possible, including developing countries, would contribute to the efforts which these countries are making for the expansion of trade, including trade among developing countries. Some delegations have, in this context, referred to the work which is being carried out on a regional basis by developing countries themselves, for the removal of barriers in such fields as customs valuation, import documentation etc. and have stated that acceptance of the solutions that are being evolved would further facilitate work on a regional basis.

ANNEX I

ILLUSTRATIVE LIST OF NON-TARIFF MEASURES

Part 1: Government Participation in Trade

<u>Description</u>	<u>Number of Notification in the Inventory</u>
<u>Trade-diverting investment</u>	
- Investment grants to aluminium	44
<u>Export subsidies on industrial products</u>	
- Payroll tax rebate and market development allowance	4
- Tax incentive	33
- Tax reliefs for expenditure on development of export markets	38
<u>Countervailing duties</u>	
- Countervailing duties	55
<u>Government procurement</u>	
- Government procurement	56, 57, 58, 64, 65, 66, 67, 74, 76, 79, 80
<u>State-trading enterprises in market economy</u>	
- State trading or monopoly organizations in tobacco, cigarettes and manufactured tobacco; paper for periodicals and newsprint; petroleum products; coal, manganese ore; potash fertilizers	101
- Tobacco monopoly, matches, cigarette lighters, salt	108
- State trading in salt, alcohol, petroleum	109

Part 2: Customs and Administrative Entry Procedures

<u>Description</u>	<u>Number of Notification in the Inventory</u>
<u>Desirability of harmonization of valuation systems</u>	
- General	2B
<u>Special valuation procedures</u>	
- Arbitrary valuation	138, 161
- Fair market value	144
- Adherence to Brussels Convention on Valuation	165
- American Selling Price	166
- "Final list" valuation	167
<u>Anti-dumping practices of certain countries not accepting the Anti-Dumping Code</u>	
- General	2B
- Market disruption legislation	129
- Calculation of anti-dumping duties	132
<u>Desirability of wider acceptance of BTN classification</u>	
- Non-conformity of tariff classification to BTN and need for explanatory notes.	173, 175
<u>Documentation, consular fees and formalities</u>	
-- Legalization of commercial invoices	180
- Documentation requirements	184
- Customs regulation permitting requirement of certificates of origin in case of doubt	208
- Customs invoice form 5515	229

Part 3: Standards Involving Imports and Domestic Goods

<u>Description</u>	<u>Number of Notification in the Inventory</u>
<u>Industrial, health and safety standards acting as barriers through disparities in existing legislation or regulations</u>	
- Standards for plywood, electric consumer goods and building codes	256
- Standards (plumbing and heating equipment, lumber, fire-fighting equipment and electrical equipment)	272
- Safety standards of motor vehicles	305
<u>Industrial, health and safety standards acting as barriers through disparities in future legislation or regulations</u>	
- Harmonization of electronic component systems	254, 259, 268
- Standards (plumbing and heating equipment, lumber, fire-fighting equipment and electrical equipment)	272
- Quality control for pharmaceutical products (draft legislation)	308
<u>Lack of mutual recognition of testing</u>	
- American Society of Mechanical Engineers' Seal of Approval (Boilers and Pressure Vessels)	270
- Standards (plumbing and heating equipment, lumber, fire-fighting equipment and electrical equipment)	272
- Coast Guard inspection of safety equipment for use on United States flag vessels	304
- Pharmaceutical regulations	310

<u>Description</u>	<u>Number of Notification in the Inventory</u>
<u>Unreasonable application of standards</u>	
- Canadian Standards Association for Electrical Equipment	251
- Technical visas required for a range of products not subject to quantitative restrictions	253
<u>Packaging, labelling and marking regulations</u>	
- Imports permitted only in can sizes established by the Canadian Government	322
- Labelling requirements calling for indications in metric measurement only	328
- Marks of origin	338
<u>Part 4: Specific Limitations</u>	
<u>Licensing arrangements</u>	
- Import licensing and quotas	376, 439
<u>Quantitative restrictions, including embargoes</u>	
- General comments	360
- Licensing, quotas (see also Item 608)	503
- <u>De facto</u> prohibitions	553
- Copyright legislation "manufacturing clause"	556
- Prohibition on imports of firearms and munitions	558
<u>Bilateral agreements</u>	
- General comments	363
- Bilateral balancing of trade	604
- Bilateral arrangements	608

<u>Description</u>	<u>Number of notification in the inventory</u>
<u>Voluntary restraints</u>	
- General comments - export restraints	613
<u>Screening quotas</u>	
- Import quotas and licences for motion pictures	481
<u>Minimum prices on textile imports</u>	
- Minimum prices for imports of textiles	549
<u>Part 5: Charges on Imports</u>	
<u>Prior deposits</u>	
- Prior import deposits	631
- Advance deposits	632
- Advance deposit, guarantee deposit	641
<u>Administrative and statistical duties</u>	
- Administrative duty	674
<u>Taxes on motion picture tax matters</u>	
- Exhibition tax on foreign films	732
- Dubbing tax	750
- Admission film tax	756
<u>Restrictions on foreign wines and spirits</u>	
- Border tax adjustments	795
- Internal tax on whiskies and brandies	818
- Excise tax system	847

ANNEX II

List of Documents

A. Inventory of non-tariff measures

Part 1: Government participation in trade	MTN/3B/1
Part 2: Customs and administration entry procedures	MTN/3B/2
Part 3: Standards	MTN/3B/3
Part 4: Specific limitations	MTN/3B/4
Part 5: Charges on imports	MTN/3B/5

Background note of the implication for developing countries of the <u>ad referendum</u> solutions in the field of standards	COM.TD/W/191
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Report of Working Group of the Committee on Trade in Industrial Products containing <u>ad referendum</u> solutions	COM.IND/W/108 and Corr.1
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C. Health and sanitary regulations

Background note for developing countries on non-tariff measures arising in the field of health and sanitary regulations	COM.IND/W/190
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Sanitary and phyto-sanitary regulations: Note by the secretariat	MTN/3E/W/2
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Report of the Working Group on Techniques and Modalities to the Agriculture Committee	COM.AG/25
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Report of Group 3(e) to the Trade Negotiations Committee	MTN/5
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Note on some aspects of the applicability of draft code on standards to agriculture	MTN/3E/W/26
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D. Packaging and labelling

Packaging and labelling: Note by the secretariat	COM.IND/W/114
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- Packaging and labelling - Note by the secretariat on the meeting of Group 3 May 1974 MTN/3B/12
- Packaging and labelling - Note by the secretariat on the work of other organizations MTN/3B/17
- Report of Group 3(b) to the Trade Negotiations Committee MTN/3
- E. Customs valuation
- Background note for developing countries on trade barriers arising in the field of customs valuation COM.TD/W/195
- Ad referendum solutions in the field of valuation: Report by the Chairman of Working Group 2 COM.IND/W/64
- F. Import documentation including consular formalities
- Background note by the secretariat COM.IND/W/79 and Add.1  
COM.IND/W/115
- Import documentation - Note by the secretariat MTN/3B/8
- Import documentation - Note by the secretariat on the meeting of May 1974 MTN/3B/11
- Import documentation - Note by the secretariat on information required by countries for customs entry purposes MTN/3B/13
- Report of Group 3(b) to the Trade Negotiations Committee MTN/3
- G. Administration of import licensing - Ad referendum solutions
- Report by Chairman of Working Group 4 of the Committee on Trade in Industrial Products COM.IND/W/82
- H. General
- Report of the Committee on Trade in Industrial Products containing summary of the solutions suggested during first discussions of each category of non-tariff measures L/3496

Reports of the Committee on Trade and  
Development containing a summary of the  
discussions on matters relating to  
tariff and non-tariff measures

Report of Group 3(b) to the Trade  
Negotiations Committee

L/3873  
COM.TD/89  
COM.TD/90

MTN/3

ANNEX III

Common Invoice Requirements for Customs Purposes

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

Common Requirements for an All-Purpose,  
(Consumption, Warehouse, Appraisement),  
Entry Document

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