

UNITED NATIONS

NATIONS UNIES

ECONOMIC  
AND  
SOCIAL COUNCIL

CONSEIL  
ECONOMIQUE  
ET SOCIAL

RESTRICTED  
E/PC/T/A/PV/31  
21 July 1947

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SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.

VERBATIM REPORT

THIRTY-FIRST MEETING OF COMMISSION A  
HELD ON MONDAY, 21 JULY 1947, AT 10.30 P.M. IN THE  
PALAIS DES NATIONS, GENEVA.

Mr. ERIC COLBAN (CHAIRMAN) (NORWAY)

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CHAIRMAN: The meeting is opened

We have to-day to consider two Articles, Article 18, Tariff Valuation for customs purposes, and certain proposals relating to Article 37. I would suggest that we start with Article 18.

If there is no objection, we start with Article 18. You will find on page 15 of Document T/103 that this Article has been worked out by an ad hoc Sub-Committee consisting of a number of delegates, with Dr. Holloway in the chair. I have been informed that Dr. Holloway had planned to be here to-day, but he has been unavoidably detained in London. Nevertheless, even though he cannot give us his personal assistance, we can doubtless consider the matter to-day.

We will start with paragraph 1 of Article 18. You will see that there is no comment or amendment suggested by the sub-Committee and that the draft replaces, practically without any drafting changes, the New York text.

Mr. C.E. MORTON (Australia): Are we considering document T/103 or M/41-47 which the Secretariat has issued?

CHAIRMAN: I am starting with document T/103, and when we come to 18: 2 I will take up document T/W/247. May I take it that we are all in agreement with the Sub-Committee's proposal with regard to paragraph 1?

(Agreed)

We pass on to paragraph 2. There you have an explanatory note on page 15 of document T/103. You have read the text of that explanatory note and I very much doubt whether it is worth while letting that explanatory note go forward to the World Conference, but I would like to hear the views of the delegates.

Mr. S. KORTEWEG (Netherlands): I think it would be useful to maintain this explanatory note in order to show that a specified limited period has been considered. Certain questions were raised by the various delegations in this Preparatory Committee and I think it might be useful for the Conference to know that.

CHAIRMAN: If the Commission is in agreement with the view expressed by the delegate of the Netherlands we could maintain the explanatory note and merely alter the first sentence to read: "The Preparatory Commission examined ....." instead of "the sub-Committee decided to report that it had considered....."

Is that agreed?

Mr. ROUX (France) (Interpretation): It seems to me, Mr. Chairman, that the Preparatory Commission should at the present stage provide for a definite undertaking with regard to the date of the entry into force of the new provisions concerning the tariff regulation and imposition on value.

We think that the text which is going to be inserted in the Charter should be more definite on that point, and may very well provide for the entry into force of these provisions within three or six months after the ratification of the Charter.

This is indeed one of the essential Articles of the Charter, and it is important that the countries which negotiate now the new tariff agreements should have an idea about the date of the entry into force of these provisions.

We quite realise that it would be difficult to apply these provisions immediately to the tariff agreements under negotiation. That is why we only propose that these provisions should be included in the Draft Charter; and it would, indeed, be strange, if such an important question was to be left open in the Charter, and if it were not provided for the entry into force of these provisions within a short time. I quite agree that it is not going to be a very easy task to pass the necessary legislation. Nevertheless, taking into account the time which will elapse before the Charter itself is ratified and comes into force, and adding to that a margin of three or six months, I think we should arrive at quite a reasonable period of time, and therefore I suggest that this question should be reconsidered and a more definite proposal included in the text of the Draft Charter.

CHAIRMAN: You have heard the suggestion of the Delegate

of France. I would like some Member of the Sub-Committee finally to express his view.

The Delegate of Belgium.

BARON PIERRE DE GAIEFFIER (Belgium) (Interpretation): The Belgian Delegation supports the French proposal.

Mr. KORTEWEG (Netherlands): We also support the French proposal.

CHAIRMAN: Do other Delegates feel the same as the Delegates of France, Belgium and Netherlands.

Mr. LEDDY (United States): What is the specific proposal?

CHAIRMAN: To replace <sup>in</sup>the text, as far as I understand, ~~with~~ the words "at the earliest possible practicable date", by a definite term of say three or six months after the coming into force of the Charter.

Mr. LEDDY (United States): Mr. Chairman, I had thought that this question was rather fully discussed in the Sub-Committee and that the Sub-Committee was unanimous in its view that a fixed date would not be desirable.

I think that three or six months would probably be too short a time for some countries and too long for others. I would be inclined to leave the provision for the inclusion of "the earliest possible <sup>practicable</sup> date" in the text - saying that while the Committee felt that it may not be practicable for all Members of the Organisation to give effect to these principles by a specific date, nevertheless it is anticipated that the majority of countries would be able to bring their legislation into accordance with this at the time of accepting the Charter - that would be our own form of procedure - in other words, changes in our own legislation when the Charter was up for consideration, and not at a later stage.

I do not see much difference between three or six months and simply saying that you give effect to it at the time of bringing the Charter forward, and I rather suspect that when we get into the larger Conference we will find that the working out of tariff valuation provisions to conform with these principles will cause some difficulty, and therefore a flexible period of transition should be provided.

I think, so far as we ourselves are concerned, we have no objection to a particular date, but I think we would almost prefer to say that it should be done at the time when the Charter was in force.

CHAIRMAN: You have heard the suggestion by the United States Delegate, who maintains the text of ~~para~~graph 2 as it stands, while amending the explanatory note by inserting some words, more or less, to the effect, if I have understood it rightly - to maintain the paragraph as it stands in the expectation that most Members will be able to give effect to the principles of tariff regulation at the same time as the Charter comes into operation; and in such cases where it is impossible, the Organisation may draw the attention - and so on.

Mr. J.M. LEDDY (United States): It could be mentioned in the note that the intention of the Members of the Preparatory Committee is to give effect to this rule at the stipulated time.

CHAIRMAN: You have heard the suggestion. It seems to me to be very logical, and it ought to give satisfaction to those who would like to have a fixed date, if it is said in the explanatory note that we expect the different Governments to place themselves in a position conforming to the principles of tariff valuation when the Charter comes into force. That should be a reasonable solution, and there is the second proposal by the United States Delegate that Commission A might add that as far as the Members represented on this Commission are concerned, they intend to make good this expectation of adapting their rules when the Charter comes into force.

I should like to hear the opinion of Delegates on the first, that is, the main proposal of the United States.

M. Louis ROUX (France) (Interpretation); I am very grateful to the United States representative for his suggestion. I think the proposed solution is excellent, and it is a material improvement upon the previous text.

It is a good thing that the principle should be stated that upon the entry into force of the Charter, all the provisions of the Charter, including those concerning the definition of value, will come into force; but in these circumstances one question only remains, and that is, why we maintain in the text of the Article the words "at the earliest practicable <sup>date.</sup>" If these words were not included in the text of the Article, it would be clear that the provisions of Article 18, exactly like all the other provisions of the Charter, will

come into force simultaneously with the entry into force of the Charter itself, and this would be still clearer in the light of the explanations included in the explanatory note.

CHAIRMAN: We must think of the other Delegations who will take part in the World Conference.

Mr. J.G. CHERRY (South Africa): Mr. Chairman, I would just like to confirm the statement of the Delegate of the United States that this matter was pretty fully discussed in the sub-Committee. It was then decided to add this commentary which now appears on page 15.

The South African Delegation is affected to the extent that probably South African customs legislation will have to be amended as the result of this Article. We have no intention of evading that amendment, and we rather objected to using a specified period of three months or six months on the grounds of administrative practicability - that it might be found awkward. We have now the alternative "when the Charter comes into operation". I still feel that that is rather an unknown quantity, and I am wondering if there is very much difference between that statement and the original suggested specific period. We do not wish to embarrass the Commission at this stage by establishing a reservation on this point. We should prefer the note or the commentary to remain as it is on page 15, but if we find ourselves in a minority here we shall not press it.

CHAIRMAN: I think this clears the ground for a reasonable solution. I understand that there is no objection to the first (the main) amendment proposed by the United States Delegate.

I think it would be true to say that it is expected that

most countries will be in a position to adapt their national rules to these principles at the same time as the Charter comes into force; but as to the second suggestion of the United States Delegate that we should express a unanimous view as Members of this Commission that our Governments commit themselves to give effect--in view of what the South African Delegate has just said, I think we should not press that point.

CHAIRMAN: Is there any objection to the procedure I have just suggested? As this is not the case, I take it that that is agreed.

We pass on now to the more difficult part of article 18.....

MR. G.B. URGUHART (Canada): I would not anticipate that, Mr. Chairman.

CHAIRMAN: .....although in principle I am very optimistic. You will find it on page 16 and the Comments on page 17. Let us take the Comments as they stand.

The first paragraph: "The Sub-Committee considered that it would be in conformity with Article 18 to presume that 'actual value' may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of 'actual value' and plus any abnormal discount or other reduction from the ordinary competitive price".

The question is whether we maintain or not this explanatory note. If we do maintain it, it will then be "Commission A considered that.....", and so on. It has been, I take it, unanimously agreed by the sub-committee that the Note was desirable and, unless any Delegate wishes to express a divergent opinion, I take it that we pass the Note for insertion.

The Delegate of Chile.

MR. F. GARCIA OLDINI (Chile) (Interpretation): I should like to raise a question, Mr. Chairman, which is perhaps more related to the next sub-paragraph, but I prefer to raise it now in order to avoid any possible misunderstanding.

There may be two methods in determining the ad valorem value. The first method is that it is determined in each case on the basis of data provided in the text of this Article, but it is a

practice adopted in many countries that, when a definition is made on this basis, it is maintained for a certain period. Now, conditions may change during that period, and a moment may come when the valuation thus applied will no longer correspond exactly to the conditions prevailing at the given moment.

I have the impression that such a case is provided for in the text before us, but I am not quite certain of that and I should like to have a confirmation.

CHAIRMAN: The Delegate of Australia.

MR. C.E. MORTON (Australia): The practice of establishing value for particular products which are expected to extend over a period of time was thoroughly canvassed by the sub-committee, and it was universally agreed that such a practice was in contravention of Article 18:2,a(i), which provides that values shall not be based on arbitrary values, that each individual importation should be dealt with on its merits on the basis of the price value ruling at the time that importation was made.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I see no direct relation between the remark made just now, and the question raised by the Delegate of Australia. I actually never said that I envisaged valuations which would not be based on the real value. The only question which I pointed out was that the correct interpretation should be given to the expression which you would find at the beginning of sub-paragraph 2, where we read that the "actual value should be the price at which, at a time and place determined ....." Now what do these words "at a time and place determined" mean? Valuation will be made on the basis of the real value, we are agreed on that, but the only question is whether this valuation should be made on each occasion, for each consignment of goods or whether, on the other hand, it could be made at a certain time on the basis of the considerations laid down here, and then be maintained for a certain period.

It seems to me that, if we expect the Member Countries to make a new valuation upon each consignment of goods, this would be an administratively impossible proposition.

CHAIRMAN: Does any Delegate want to express a view on this?

Well, if nobody wants to, I will try to answer it, although I am not an expert on these particular questions. The words "at a time and place determined" should, in my opinion, be read together with the words which follow - "by the legislation of the country of importation....." These following words limit the field of the possible interpretation of the previous expression and define in which way they must be interpreted; that means at a time and place determined by the legislation of the country.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, what you said is perfectly in conformity with my interpretation. The position will be that any particular legislation may lay down, at a certain moment, these valuations, provided they are made in accordance with the provision of this Article, and then they will be normally maintained.

M. LOUIS ROUX (France) (Interpretation): It seems to me, Mr. Chairman, that the explanation given by you is quite in conformity with the idea which guided the authors of this text. What was envisaged in the Sub-Committee was the fact that there may be, in the different legislations of the Member States, various criteria for determining the time and place, but, essentially, the criterion, whichever it is, should be applied in all cases, and it should be clearly laid down in the relevant legislation. The law should lay down the date - it may be the date of the commercial transaction, the date of the shipping of the goods, or the date of their arrival - whichever is chosen, it should be the same in all cases, and the same principle should be applied to the place, be it within the exporting country, at the port of embarkation, at the port of arrival or at the customs station in the importing country. What is important is that a rule should be formulated, and that it should be the same rule which will be applied in all cases.

Mr. G.B. URQUHART (Canada): I think, Mr. Chairman, that I agree with your explanation of the time and <sup>being determined</sup> place by legislation of the importing country, but as I understand the question put by the Delegate of Chile, it is this, that, having once established a value for duty of certain goods from a specified country in accordance with the criteria laid down in 2(a), that value be applied for a period to all importations of such goods. Now, if that is the question, I should say that it is not permissible under the Act.

Mr. J. M. LEDDY (United States): Mr. Chairman, our point of view is expressed by the Canadian Delegate.

CHAIRMAN (Interpretation): I am quite aware of the possibility that the Chilean Delegate had such a situation in mind. In view of the remarks made by the Delegates of Canada and the United States, I should like to ask the Delegate of Chile to be good enough to clarify the position of his Delegation: whether it is his intention that the law should give a value determination and then apply it for a certain period, or should the law only lay down the methods whereby the value will be determined? In other words, whether the law is to lay down the actual valuations and figures for a certain period, which would be wrong from the point of view of the text before us, or whether, on the other hand, the law would only lay down the principle and the method for establishing the value. In the latter case, that would be within the provisions of this Article.

The Delegate of Chile will understand that I address this question to him only because the point was raised by other Delegates here. (Interjection by Mr. OLDINI: Yes, I understand).

The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, my question is as follows: The laws will lay down the procedure whereby the value of the goods must be established in accordance with the provisions included in this Article of the Charter, and, on the basis of this law, and taking into account the time and place determined by the law and other provisions of this Article, the customs value of the goods will be established. My question is this: as to the value established in the way just mentioned by me, and which will be applied to all goods of certain categories, will it be proper to apply it during a certain period?

CHAIRMAN (Interpretation): May I ask the Delegate of Chile whether it would be possible for a Chilean importer of goods to raise that question; that is to say, in practice, to contest at a certain moment the impositions applied to his goods and to say that they were right and well-founded, let us say, a month ago but that they do not apply any more at a given date, and may a Chilean importer, in those conditions, request that the value determination should be reconsidered?

Mr. OLDINI (Chile) (Interpretation): It seems to me that there are two possibilities. In the first case the law could lay down that the value determinations will be revised, let us say, every six months, or, alternatively, the law may say that the value determinations will be revised if and when appreciable changes in the actual value have occurred.

I think that the importer will have no right to raise the question in the first case unless six months have elapsed, and in the second case unless there have been appreciable changes, but under the two provisions he will have the right to raise the question when the conditions provided for have been fulfilled.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. G. IMMS (United Kingdom): Mr. Chairman, this Article deals with the "definitions of value and procedures for determining the value of products subject to customs duties, or other charges or restrictions based upon or regulated in any manner by value." What I cannot understand is how the Chilean Delegate reconciles this practice about which he has just told us with that provision in Paragraph 1.

If the value of goods - beans or peas, or anything you like - is fixed at £5 per ton, it does not seem to me to matter whether that value at the time of its fixation is the actual value of the goods, because, if that value runs for six months and the value of beans varies in that six months, if the value is fixed at £5 per ton and the duty is fixed at, say, 20 per cent, then for those six months the duty is £1 per ton, irrespective of the actual current value of the beans. That seems to me not to be an ad valorem duty at all, but a specific duty.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): This is precisely the question I have raised, Mr. Chairman. I think it is not only in our country but also in several other countries that there is a system of establishing the customs value which is based on the actual value and tends to approach the actual value as nearly as possible. But we have not that administrative machinery which would be necessary to change the value, perhaps every day, in accordance with the fluctuating prices. Therefore, the possible solutions are to establish the value for a period, or in accordance with certain conditions. It is the practice in my country that the value should be established for a certain period and I ask whether this is in conformity with the provisions of this Article.

BARON PIERRE DE GAIFFIER (Belgium) (Interpretation): It seems to me, Mr. Chairman, that the system referred to by the delegate of Chile falls into the category of arbitrary or fictitious valuations.

CHAIRMAN: I take it that the Commission, having listened to the remarks of the delegates who have spoken, feels that the scheme mentioned by the delegate of Chile is not in conformity with the actual text of Article 18. It is, as the delegate of the United Kingdom mentioned, a kind of amphibian system, half ad valorem, half specific duty. There was no provision in the Charter that would allow for such a system. I do not think it is possible to work out any real ad valorem system and such customs items as have been bound by our intended multilateral tariff agreement can, of course, not be subject to such a system.

CHAIRMAN (Interpretation): May I ask the delegate of Chile whether, after the exchange of views which has taken place, he considers that we can accept the text of this Article of the Charter as it stands? I am naturally referring only to paragraph 2, subparagraph (a), subparagraph (ii).

Mr. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, our customs tariffs include several categories and certain of them lay down specific duties. I cannot state definitely how and when our specialised administration will be in a position to adapt their practices to these provisions, but I hope you will understand that in these circumstances I am obliged to formulate a reservation with regard to this sub-paragraph.

CHAIRMAN (Interpretation): It seems to me that the best solution would be to insert, in the comments, a sentence to the effect that the delegate of Chile reserves, for the time being, the position of his Government. I hope that the delegate of Chile will be able to accept the expression "for the time being."

Mr. GARCIA OLDINI (Chile) (Interpretation): Yes.

Mr. J.M. LEDDY (United States): If it is not a question of principle but only one of time, I hope that the delegate of Chile will take note <sup>of the fact</sup> that we have decided to maintain that those principles shall be given effect to at the earliest practicable date. That is to say, that Chile would be one of those countries which might require several months to adapt its machinery.

CHAIRMAN: (Interpretation): The comments already accepted on page 15 of T/103 deal with the same question, and, in fact, they will allow the Chilean Government to take the time which will be necessary to bring the administrative practices into conformity with the provisions of Article 18.

CHAIRMAN: We pass on to the next sub-paragraph on page 103. "The Sub-Committee considered that the words "between independent buyer and seller" in (ii) might be deleted on the understanding that the phrase "under fully competitive conditions" covers the same concept."

The Delegate of the United Kingdom.

Mr. DUMS (United Kingdom): Mr. Chairman, the United Kingdom Delegation have reviewed the question from their point of view, whether it is or is not necessary to retain the words "independent buyer and seller" in this paragraph, and have come to the definite conclusion that they cannot agree that the words "fully competitive conditions" do, in fact, entirely cover the same concept.

In their view, the phrase "fully competitive conditions" is qualified by the words "between independent buyer and seller". In the absence of the latter phrase it seems to the United Kingdom Delegation that "fully competitive conditions" might legitimately be considered as meaning conditions which are fully competitive with those under which like merchandise is sold or offered for sale. Such a construction would involve the question of whether or not prices were fully competitive, and would have very serious consequences, very much to the disadvantage of the importing community on the system of valuation at present in use in the United Kingdom.

On our reading of it, the phrase "under fully competitive conditions" covers the concept of open market price (which is, of course, in the United Kingdom, the open market price at the time and place of importation) plus some of the assumptions included in the United Kingdom law. But on U.K. experience going back over many years, partial cover of this kind is not enough. "Open market" needed qualification and definition to reach a clear interpretation and avoid a mass of case law. Hence it is that in our law, as it now stands, it has been found necessary to include certain assumptions to re-inforce the 'open market' concept, which is the basis of our system. In the same way, it is necessary here to qualify the words "fully competitive conditions".

Our practice is briefly to divide by automatic declaration on a statutory form the transactions in which buyer and seller are fully independent from those in which they are, in any respect, not at arm's length. In the former case, the price paid is prima facie acceptable. In the latter, the price paid is prima facie unacceptable, and our normal procedure is to work back from realisations, actual or anticipated, which represent the first arm's length price in the history of the goods. We do not, of course, have the domestic value recourse of prices in the country of origin. Once we have satisfied ourselves as to the precise status of an importer and established the basis of valuation of his goods we have, broadly speaking, disposed of his problem once and for all. We do not have to reconsider the valuation of his imports on any and every change in prices.

We would not work this system if the criterion instead of whether or not the supplier and importer were independent was

whether or not the prices were fully competitive. The former, as I have explained, is ascertained automatically by declaration, whereas the latter would require appraisal or something similar of all importations from associated suppliers, would cause endless trouble and delay, and would, I must reiterate, be regarded as a retrograde step by the importing community.

It may be asked, and was, in fact, asked by some Delegates in the Committee, what precisely are the classes of case in which the omission of the words "between independent buyer and seller" is expected to cause embarrassment to us. On the basis of past United Kingdom experience (and I feel justified in remarking that in the paper sent to us by the Netherlands Delegation which, no doubt, many of you have read, it is stated that the United Kingdom was working ad valorem duties in the 14th century), the omission of these words would be liable to embarrass us in dealing with proprietary articles such as, e.g. Swiss watches, toilet preparations, medicines and importations of parts for assembly, where all the transactions are between associated houses, but such houses are "fully" - indeed in most cases "keenly" - "competitive" one with another. None the less, each of them individually does not satisfy the independence test.

For these reasons we cannot agree that "between independent buyer and seller" in the new text of this paragraph is redundant, and regard it as of first importance that these words should be retained.

This is not a question of reluctance to alter our practice on a small issue. It is vital to the whole structure of our system that these words should be retained.

CHAIRMAN: You will have noted that the comments on page 17 of Document T/103 simply state that these words "might be deleted on the understanding that...". If that understanding is not a foregone conclusion, and I think it is not, I take it that the simplest solution would be not to omit these words.

Mr. J.M. LEDDY (United States): In our view, the governing principle is that the merchandise should be sold or offered for sale under fully competitive conditions. Now, we admit and recognize that in certain cases administrations may require, in order to be satisfied that this principle has been met, that buyer and seller should be independent; but we do not think that the independence of the buyer and seller is a separate test, because, as the Delegate of the United Kingdom has pointed out, in the case of certain associated houses, although it is freely recognized that there is competition and that the prices, therefore, represent the actual value, nevertheless the mere fact that they are associated in some way has thrown those values out of consideration.

Now, I think that if we make the independence between buyer and seller one of the governing principles here, there is very little left for this provision for valuation - at least, very little benefit from our point of view. In the case of the United States, I think that it can be held that perhaps 80% of the imports are conducted between buyers and sellers who are in some way related or associated, notwithstanding the fact that the trade takes place under fully competitive conditions;

I wonder whether it would meet the United Kingdom to add, either in the note, or in the text, a provision that a country may require that buyer and seller be independent where

this is necessary to ensure that the conditions are fully competitive. We could accept that, but we could not, I do not think, accept independence between buyer and seller as a separate governing principle.

Mr. G. IMMS (United Kingdom): Mr. Chairman, concerning the United States Delegate's suggestion as to a way in which my point might be met, I would like the opportunity of discussing the matter with the United States Delegate.

MR. C.E. MORTON (Australia): I must say that Australia definitely had a certain feeling that the words "independent buyer and seller" are in themselves somewhat ambiguous, because the degree of independence may vary.

I would strongly support the suggestion that has been put forward by the Delegate of the United States who says, in effect, that a country, in order to cover its concept of the term "under fully competitive conditions", may require that the transaction be between an independent buyer and seller. If such an intent can be arrived at, it would be more satisfactory to everybody.

CHAIRMAN: It appears quite impossible to terminate the labours of the Commission today. I would suggest that the Delegates of the United States, United Kingdom and Australia try to work out for our next meeting an agreed formula either involving a slight amendment to the text of the Charter, or an amendment in the Explanatory Note. Is that agreed?

Agreed.

We pass on to the last sub-paragraph on page 17 of document T/103: "Further, the Sub-Committee considered that the prescribed standard of "fully competitive conditions" would meet the contention of the South African Delegation that countries should not be required to consider distributors' prices which involve special discounts limited to exclusive agents".

I would ask the Delegate of South Africa whether he wants some explanatory note of that kind to be maintained.

MR. J.G. CHERRY (South Africa): Mr. Chairman, as I stated a short while ago, this Article will necessitate certain alterations in our existing legislation and practice. We asked for the insertion of this Note in order that those alterations should not be

too drastic. We have at the present moment adopted certain practices, against which there has been practically no objection, and if we had to abandon those practices our only alternative might be, in respect of certain commodities and in certain classes of trade, to have to review our tariff rates.

We should therefore appreciate the retention of this Note. Whether it is intended to mention the South African Delegation by name or not, I do not know. I do not wish to press this particularly in one direction or another, but I do not think it is usual, when a document goes forward, for specific delegations to be mentioned.

CHAIRMAN: Well, I had already struck out on my text the words "of the South African Delegation" because, as the South African Delegate has said, it is not usual to quote the Delegation which has brought up such a question, but that is on the condition that the Commission unanimously <sup>agree</sup> to the Note as it then would read. The Delegate of the United States.

MR. J.M. LEDDY (United States): I wonder if this could not be met, Mr. Chairman, by re-phrasing it to read "Commission A considers that the prescribed standard of fully competitive conditions would permit Members to exclude from consideration distributors' prices which involve special discount limited to exclusive agents".

MR. G.B. URQUHART (Canada): Could we have that again, Mr. Chairman, please?

MR. J.M. LEDDY (United States): "Commission A considers that the prescribed standard of fully competitive conditions would permit Members to exclude from consideration distributors' prices which

involve special discounts limited to exclusive agents".

CHAIRMAN: Does that re-draft meet with the approval of the Commission?

Approved.

Then we have a further comment which is contained in document W/247, that is a suggested note by the Delegation of Australia. Perhaps the Australian Delegate would like to speak on this.

Mr. C.E. MORTON (Australia): Mr. Chairman, the Australian Government felt rather strongly that, in going into the details as we have done in Article 18:2, we have ventured into fairly troubled waters. We agree, however, that some effort must be made to spell out the vague formula that was initially put forward in the proposals of the United States Government, and we are much inclined to the opinion that the whole subject should be considered carefully by the ITO, if and when established, but they have come to the conclusion that it is well that we should have a shot at the problem here.

They feel, however, that, with regard to 18:2(a), the emphasis seems to be on valuation on the basis of the general price level, rather than on the basis of a particular exporter's prices, and as valuation on the basis of a particular exporter's prices is the ground work of the valuation system of a number of countries, they wish it to be made clear that the present formula does permit a Member to assess duty uniformly, either (a) on the basis of a particular exporter's prices of the imported merchandise, or (b) if he chooses, on the basis of the general price level of like merchandise according to the Member's established practice. I take it, Mr. Chairman, that, in conformity with the practice you have been pursuing this morning, you will slightly amend the purpose of this note agreed upon, by saying that "Commission A agreed", or even "considers" that the formula permits of this suggestion that I have put forward, just as you have done with regard to the latest note regarding competitive conditions.

CHAIRMAN: Before giving the floor to the next speaker, I would like to ask the Delegate of Australia whether the words "according to the Member's established practices" refer both to (a) and (b) of this proposal, or only to (b)?

Mr. C.E. MORTON (Australia): Whichever may happen to be the country's practice. If a country has been in the habit of

uniformly using the merchant's price as the sole basis, it shall continue to do so. But if that is objectionable to any country, I am quite prepared to have the reference to "Member's established practice" deleted.

CHAIRMAN: Either deleted, or to put those words after the word "uniformly" so as to make it perfectly clear.

Mr. C.E. MORTON (Australia): Well, it would make it perfectly clear if you put it after the word "uniformly", but in case it meets with objection from any other country, I am prepared to see it deleted.

Mr. S. KORTEWEG (Netherlands): Mr. Chairman, if there is a wish to avoid unnecessary changes in legislation in the different countries, I would propose that the best way is to have a note like this one. Nevertheless, we think there is a big difference between rule (a) and (b), and anyway there is a difference in place in the distribution process of the merchants who are selling and buying the goods. If you are selling in detail, then the prices are different from cases where you are selling in big quantities, and therefore I think it would be better to have only the possibility of (a) and not also of (b).

Mr. J.M. LEDDY (United States): Mr. Chairman, we think that this note is fully consistent with the text of paragraph 2(a), because 2(a) says that the value may be based on such merchandise or like merchandise, and then goes on to talk about the extent to which the price of such commodities is governed by quantity. So, although I think this is fully satisfactory to us, we would like to see the deletion of the phrase "according to Member's established practice". That might be misleading, because some Members have an established practice for basing value on the general price level of like merchandise, which I think, perhaps, may not meet the requirements of the Article.

CHAIRMAN: You have heard the different opinions. The Delegate of the Netherlands has no real objection to the text. He would prefer the omission of Point (b), but he would, I understand, also be willing to accept the text as it stands. The Delegate of the United States proposes the striking out of the final words, "according to the Member's established practice." That has already been agreed to by the Delegate of Australia, so I beg to submit to the Commission the question of whether we agree to the Australian explanatory note in the form resulting from the omission of that last line. It would then read: "Commission considers," etc. Are there any objections?

(Agreed)

Before we go further, I should say we have now dealt with all the comments on Point (a) of Article 18, subject to the reservation of the United Kingdom Delegate on the question of "between independent buyer and seller" -----

Mr. G. IMMS (United Kingdom): Mr. Chairman, I have had a word with Mr. Leddy and Mr. Morton and I think our point will be met in a manner acceptable to both those gentlemen if the words "between independent buyer and seller" were deleted and a new sentence were inserted at the end of that first sentence of sub-paragraph (ii), reading: "In determining whether the conditions of sale are fully competitive, a Member may have regard to the question whether the transaction is one between a buyer and seller who are independent of each other."

CHAIRMAN: You have heard the suggestion of the United Kingdom Delegate. Is that agreeable to the United States Delegate?

Mr. C.E.MORTON (Australia): Rather than alter the text to that extent, I was wondering if the United Kingdom Delegate would not agree that that formula should be represented by our explanatory note. I take it that it would have the same validity for interpretative purposes, and it would not clutter up the text with a very long paragraph.

CHAIRMAN: If I may give my personal opinion it is that the less we have of explanatory notes the better, because, even if we adopt the suggestion of Dr. Holloway, to insert in the Charter some general clause imputing a strong interpretative value to the explanatory notes, it is not entirely the same as the text of the Charter and it might lead to confusion. On the other hand, I entirely agree that the Charter should not be over-burdened. I will leave the decision to the United Kingdom Delegate.

The Delegate of Canada.

Mr. G.B.BURGHEART (Canada): I wonder, Mr. Chairman, if, instead of altering the text of the paragraph, we could insert it as a note in the text at the bottom of the paragraph - right in the text.

CHAIRMAN: All the explanatory notes will be at the bottom of the text, where they belong. That was decided in the Chairmen's Committee the other day.

The Delegate of the United Kingdom.

Mr. G. IMMS (United Kingdom): Mr. Chairman, this Article, I think, is of prime importance and I think it is wrong to talk about cluttering up the text when we put in a provision which is, in itself, of considerable importance. I can see no reason why this sentence should not go in the text, particularly if I compare it with the United States sentence already in the text.

CHAIRMAN: I should like to ask the delegate of Australia if he feels very strongly about this?

Mr. C. MORTON (Australia): I hesitate before accepting a modification of the text of the Charter. I think there should be consideration of the question of phraseology and I am glad to note that there is less hesitation on the fact that the note may be capable of some slight modification. It was rather hastily put together. The phrase "between independent buyer and seller" sounds all right on the face of it, but when lawyers get to work on it, it may not sound so good.

Mr. G. LEMS (United Kingdom): I think the answer to Mr. Morton on that point is that if the note has any validity, the same objection to the phraseology can be raised if it is put in as a note, as if it were put in a text. It seems very unlikely that the Commission will dispose of Article 18 to-day, and I therefore suggest that the phrase be put in tentatively, with the proviso that members can return to the point at the next meeting.

CHAIRMAN: I was just going to make <sup>the</sup> same suggestion - that we insert the provision in the Text, and at the next meeting we will have an opportunity of deciding whether it should be in the Text or an explanatory Note, and in exactly what words.

I am not quite as optimistic as the Interpreter, who spoke about "une prochaine seance"; but now I take it we are unanimous in accepting point (a) of Article 18, subject to the possibility of coming back on the point just discussed.

We pass on to sub-para. (b). On that there is no comment, and so I take it that we all agree to the proposal of the Sub-Committee. You have it at the top of page 18 of T/103 - sub-paragraph (b).

Agreed? Agreed.

Well, now we come to the rather important sub-paragraph (c). There you have a new Draft submitted by the Sub-committee in four sub-paragraphs; and you have <sup>a document containing</sup> on page 18/certain comments, which I got to-day, and I asked that it should be distributed, particularly with regard to the suggestion by the United States Delegate, with regard to sub-paragraph (iii). I take it that you have all received it. Let us go through, briefly, the comments. The majority of the Sub-Committee accepted (i) and (ii), but wished to delete (iii). The question is now whether the new U.S. re-draft of (iii) may be accepted; but we will come back to that. The U.S. Delegate stated that (i) and (ii) were acceptable only if (iii) were retained.

The comment further says that the Canadian Delegation did not oppose the retention of (iii).

New Zealand wished further to consider the matter.

All these questions will, we hope, disappear after the full discussion. Finally, the Sub-Committee thought the following sentence should appear in a Note as a comment on (iv): "The appreciation"....down to "currencies". We shall take that when we arrive at sub-paragraph (iv).

CHAIRMAN: I take it that in order to arrive at the unanimous decision, we should start by considering the new United States amendment on sub-paragraph (iii).

Mr. C.E. MORTON (Australia): I would like to draw your attention, Mr. Chairman, before we consider sub-paragraph (c) to what might be termed an error, perhaps, in document T/103. If you will turn to the Report of the sub-Committee in document 41/47, you will see that paragraph (iii) was in asterisks, indicating that that sub-paragraph had no real standing insofar as it had little or no support in the sub-Committee. In the document T/103 it appears en clair, which may indicate that it has a validity equal to that of the other paragraphs in the document.

CHAIRMAN: I entirely agree with the remarks of the Australian Delegate, but in defence of those who have prepared document T/103, I would say that it is stated on page 19 that the majority of the sub-Committee wished to delete (iii), so that achieves exactly the same result.

MR. J.M. LEDDY (United States): We were working on the basis of Document M.41/47, and there is some slight difference between M.41/47 and T/193. I think document M.41/47 is the actual text.

CHAIRMAN: Does the Delegate of the United States wish to explain his new proposal or not?

MR. J.M. LEDDY (United States): I should say, first, Mr. Chairman, that we are putting it forward ad referendum and that our instructions do not permit us to accept fully at the moment. If it is approved by the Commission, we hope that we will be able to accept also, but we are without final instructions which will permit that at the moment. If the text is acceptable to the rest of the Commission I think we might avoid rather a long discussion. Perhaps you might wish to ask some of the delegates whether, having thought it over, they find it satisfactory. If there is some doubt about it we might go over the background of the discussions in sub-committee and the reasons why we have supported the existing text, and what our position is.

CHAIRMAN: The Delegate of Belgium.

Baron Pierre de GAIFFIER (Belgium). (Interpretation): Mr. Chairman, the Belgian Delegation was included in the majority of the Sub-Committee, which wished to delete sub-paragraph 3. We considered indeed, that this provision was not satisfactory from the point of view of principle, because it permitted each country to define the rates of exchange and each country was at liberty in these definitions, and such a practice might lead to discriminatory measures. The new text now proposed by the United States Delegation shows a considerable progress as compared with the original proposal. It is now suggested that it is the Organization which, in agreement with the International Monetary Fund, should define the exchange rates. Therefore, we think that we can reconsider our position and, although the new United States proposal actually provides for the retention of the differential rates, which is an undesirable thing, at the same time it takes into account established facts, and we also agree that it rather belongs to the International Monetary Fund than to the Organization to make such a determination. Therefore, we would have no objections to the adoption of the new United States proposal if this is the wish of the majority of this Commission.

Mr. G.B. URQUHART (Canada): Mr. Chairman, this paper, which was handed round by the United States this morning, is headed Article 18, paragraph 2(c). It is not quite clear to me whether this is intended to replace the whole of 2(c) or just/<sup>sub-</sup>paragraph (iii).

CHAIRMAN: Only sub-paragraph (iii).

Well, it is rather late, and I think that if the Delegates got this paper only this morning, they had better think it over and we shall meet again on Wednesday morning at half-past-ten, and then I hope that we shall rapidly get through this Article. There remains a certain addition to Article 37, and the further consideration, if any delegates so wish, of what Mr. Coombs said at our last meeting on the points relating to Article 37.

The meeting rose at 1.00 p.m.