Statement by Mr. F. Edmond-Smith, Representative of
the European Customs Union Study Group

May I thank you, Mr. Chairman, on behalf of the European Customs Union Study Group, for the courtesy of inviting me to address this meeting in a matter which, I believe, of mutual interest and concern to both of our organisations. We are, as it were, harnessed together by the Lisbon Resolution of the International Chamber of Commerce and I hope that we shall find no need to pull in opposite directions.

The Lisbon Resolution of the International Chamber of Commerce suggests that the Chamber is not wholly satisfied either with Article VII of your Agreement or with the Brussels Definition of Value which was formulated under Article VII. In particular, it stresses its desire for formal recognition of bona fide commercial contract prices as the basis of valuation.

So far as the Brussels definition is concerned, the criticism advanced by the Lisbon Resolution has been discussed in detail by representatives of the Chamber and the Study Group at meetings held in Paris and Brussels. A very considerable measure of agreement has now been reached. I will try to explain how the criticism arose. The explanation may at the same time help to throw some light on the International Chamber of Commerce's appeal to the Contracting Parties to GATT.

Two years ago the Study Group sponsored a Convention on Import Duty Valuation. It embodies a Definition of Value. The drafting of the Definition had been preceded by months of discussion and all of the participants - the representatives of the thirteen signatory countries - knew in broad outline how it was to be applied. The Convention, however - apart from a few interpretative notes, introduced for the sake of flexibility - did not include any reference to its administration and application by the Customs authorities concerned.

It was on this account, I think, that misunderstanding first arose. The commercial importing interests, represented by the International Chamber of Commerce, full of traditional mistrust of the Customs - a distrust which the work of your organisation is now I hope rapidly dispelling - envisaged (at least so it seemed to me from their comments) that the Brussels Definition might be handed to ruthless douaniers to apply according to their own
individual whims. Perhaps this is an over-statement. But I have in fact heard this sort of fear expressed. And, indeed, had it been the intention of the Study Group to hand out the definition unaccompanied by rules of application it might not have been unjustified. Rules of application have, however, now been drafted. They have been shown confidentially to the International Chamber of Commerce who are, I understand, on the whole well satisfied that if they are faithfully carried out, they will give them protection from the arbitrary interpretation which they feared.

I would like at this point, with your permission, Mr. Chairman, to make a digression into theory. Article VII of your Agreement, the Brussels definition, and the rules of application of the Brussels definition which have been or will be drawn up by the participating Customs administrations, represent three stages of thought on the subject of valuation.

Article VII represents the constitutional position - the background against which laws are to be framed.

The Brussels Definition of Value represents the legal position - a project of law framed against the constitutional background.

The rules of application represent the administrative position - rules framed against the legal background.

There is also a fourth and final position: the application of the rules to particular importations. But there is little or nothing of the metaphysical about this. It is a question of practice, wholly or mainly determined on the facts of the particular case.

I must apologise if this analysis appears recondite. But it is important to get it clear if the responsibilities and preoccupations of the several parties concerned and in particular of the I.C.C. are to be understood.

We thus get, if I may repeat myself for the sake of clarity, four processes -

First. The making of the international framework.

Second. The making of a series of definitions of value, i.e. projects of law fitting into this framework.

Third. The making of Rules of application varying according to the nature of the definition of value chosen.

Fourth. The application of the rules to particular importations.

In the first process principles are set down which are applicable in a fully international field; principles which hold good for every
system of import duty valuation and which condemn any system in which they are not observed. I hope I am correct, Mr. Chairman, in saying that this is the general purport of Article VII and that this process is the particular preoccupation of your organisation.

In the second process, the making of legal definitions of value, each country must, within the restrictions of Article VII, apply the method and system best suited to its national, fiscal and geographical needs. This will be true also of the Brussels Countries, since the Convention gives them some tolerance in drafting.

Perhaps I might say at this point that the Brussels definition has been minutely analysed by the Study Group with reference to Article VII and is claimed to give effect to each and every provision of that Article. We do not, however, claim it to be a model definition or to be appropriate to other countries. It can apply directly only to countries using the c.i.f. system of ad valorem taxation. Its chief merit is administrative flexibility.

To return to my argument, the third process of making rules of application is the particular province of Customs administrations, who, with their experience of trade, transport, etc., introduce rules mutually convenient to themselves and, so far as possible, to importers. It goes without saying that these rules must not be discordant with the definition of value, or the purposes of the definition, under which they are made.

The fourth process, the application of the rules to particular cases is, as I have already stated, almost entirely a question of fact and is the especial job of the Customs officer on the spot.

Commercial importing interests are concerned particularly with the fourth process. It is carried out by the Customs officer, the importer, and in the case of a dispute, the arbitration tribunal. The results of arbitration may affect the third process, the making of rules of application, but never the first or second. For this reason commercial importing interests may also be concerned with the rules of application but should have no further preoccupation. It is on such considerations as these that the Study Group has established its relations with the I.C.C.

I am afraid that this has been a rather lengthy digression. The point I have wished to make is that the I.C.C.'s Lisbon Resolution in fact, although perhaps not wholly in form, relates to rules of application and to the use of these rules. It is as such that it has been discussed at Paris and Brussels. The final meetings held in Brussels on the 18th and 19th November, 1951, left it clear that one major issue alone was outstanding, that of the maximum use of the commercial invoice. This is of course not a question of definition but of application and cannot therefore be settled until after the Brussels Convention on Valuation has come into force. It has been agreed with the I.C.C. that it will be reconsidered at this stage.
I would like finally, Mr. Chairman, to refer to the Note of the Executive Secretary contained in Document G/22. This refers to the work of the Brussels Study Group, and I am glad to be able to endorse the references. It would perhaps be out of place for me to make any further comment on this Note. But I think I have already made it clear that in the view of the Study Group, the principle suggested by the I.C.C. regarding the use of commercial invoices cannot be applied by definition. It can only be a rule of application. If this view is right such a principle might be held to be somewhat outside the field of Article VII, just as we in Brussels have held it to be outside our definition of value. The Brussels definition is not however incompatible with a tolerance for the use of commercial invoice prices, so that presumably such a tolerance is already inherent in Article VII.

I have tried to explain to this meeting as simply as possible the views held by the Study Group with regard to its relations, on the question of import duty valuation, to other interested bodies, in particular to the I.C.C. At the same time I have tried to put into perspective the Study Group's work on this question. This would not, however, be complete without reference to the I.C.C.'s Lisbon Resolution on "Future action in the field of International Customs Co-operation". This is as follows:

"The International Chamber of Commerce has taken note of the Convention establishing an International Customs Co-operation Council, which has already been signed at Brussels by thirteen European countries. The Convention makes clear its intention to further the interests of international trade by improving and making uniform customs techniques and legislation; and to this end it provides for consultation and co-operation between the Council and interested non-governmental organisations.

The I.C.C. welcomes this new technical specialised agency and suggests that liaison between it and the Chamber should be established as soon as possible.

In particular, the I.C.C. suggests that the Council, in carrying out its responsibility for control of the Brussels Valuation Convention, should arrange for preliminary studies to be undertaken in consultation with the I.C.C. and along the lines which the I.C.C. has suggested."

This Resolution does not modify the I.C.C. Resolution which is before this meeting but it is important to the Study Group - which acts as caretaker for the Customs Co-operation Council pending its establishment - that the two resolutions should be jointly before you.

In the foregoing remarks I have avoided any reference to the technical side of import duty valuation. I am prepared, however, to answer to the best of my ability any technical questions. One of these I should perhaps anticipate. The meeting will probably wish to know why the Study Group takes
exception to the I.C.C.'s main proposition of acknowledging the overriding validity of the commercial invoice price.

To explain this I would first like to quote three types of cases.

First, there is the case of goods bought and held abroad. An importer buys, for example, goods at £100 per ton f.o.b. foreign port. Owing to strikes, failure to get an export licence, or any other reason, he is unable to obtain shipment. When he is able to do so the goods may be worth no more than £80 a ton. A criterion of value in terms of the commercial invoice price deprives him of the opportunity of claiming a value based on less than his purchase price of £100.

Secondly, we get a parallel case of, for example, £10,000 worth of goods which suffer damage on the high seas by water or fire. The value according to the commercial price remains at £10,000 although on arrival the actual value may be no more than £1,000.

A third type is that of goods which have been the subject of many commercial transactions. They may have been bought by an importer at £100 a ton, sold by him afloat at £110 a ton and again sold, perhaps in three parts to different buyers at £115, £117 or £120 a ton. All of these transactions may have occurred before the goods have to be valued for import duty purposes. If value is the commercial price which of these five values should be taken?

Then there is the difficulty of dealing with the exceptions which everyone will admit must be made from a normal acceptance of the commercial price. The I.C.C. admit these in their own resolutions. They make exception firstly for cases where there is presumption of deliberate under-valuation or fraud. But such an exception makes it impossible for the Customs to challenge a doubtful value without the direct implication that the importer is fraudulent. Such an embarrassing position for both parties would result in an administrative impasse. The other exception is where there are specially close relationships between seller and buyer. In such cases, where the price is deemed to be unacceptable a different standard of value is suggested. Whatever this standard may be it cannot be that of the commercial price. The result is two bases of value applicable according to the status of the buyer. The use of two such bases would inevitably be unfair to one or other of the two classes of importer.

These are some of the reasons which have led the Study Group to resist the use of commercial invoice price as a standard. The use of it for practical valuation is admitted but the problem of devising uniform rules governing its application in the systems of all of the participating countries has not yet been solved.

In conclusion, Mr. Chairman, may I thank you once more for allowing me to express the views of the Study Group and to put before the meeting the developments which have taken place since the I.C.C.'s Lisbon Resolution was made.