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

VERBATIM REPORT.

THIRTY-FOURTH MEETING OF COMMISSION A
HELD ON FRIDAY, 8 AUGUST 1947, AT 2.30 P.M. IN THE PALAIS DES NATIONS, GENEVA.

H.E. Mr. Erik COLBAN (Chairman) (Norway)

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CHAIRMAN: The Meeting is open.

We have on our Agenda the Technical Articles 16-23 and 27. You have the text of the Articles as previously agreed to in Document T/142 and this morning I received Document T/154 containing the Legal Drafting Committee's Report. Now, that paper has not been in our hands very long but I have gone through it and I do not think it would meet with any serious difficulty if, when examining the paper T/142, we take into account such remarks as the Legal Drafting Committee submits. I would like to know if there is any Delegate who objects to this procedure? We really are obliged to do our utmost to get through.

The Delegate of the United States.

Mr. J.M. LEDDY (United States): Mr. Chairman, I believe Document T/154 was distributed yesterday and I think we have all had an opportunity to go over it, and I believe it would expedite matters if we could just proceed on Document T/154 instead of having to compare two papers.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): I also think, Mr. Chairman, that, as Document T/154 was circulated yesterday afternoon, it should be taken as a basis for our discussions. I have already had occasion to examine it, and I think that I shall have a few remarks to make concerning the French version as the text comes up for discussion because there are some slight difficulties with regard to the French version.

CHAIRMAN: The Delegate of Belgium.
Mr. Chairman, when we accepted the schedule of our work here, we said that we wanted to have at our disposal all the texts covering the Charter before deciding on any one Article. At present, a number of texts pertaining to important Articles have not been distributed to us.

As far as Articles 16 - 23 and 37, 34, 35 and 38 are concerned, I believe we can discuss and consider them here without the necessity for having all the texts. However, any approval we may give here may be subject to comments or reservations we shall make later, when we have all the documents at our disposal.

CHAIRMAN: I understand that there is general agreement that we should base our discussion on Document T/154, the Report of the Legal Drafting Committee. A few minutes ago we received an addition to that paper from the Legal Drafting Committee. I have glanced through it, as well as I have been able to here, and I see that it does not seem to have any material importance. It is a question of commas and brackets and underlinings, etc.; but we shall keep an eye on it when we go through the different paragraphs.

We begin with Article 16, paragraph 1, and I would like to draw the attention of the Delegates to the fact that the Legal Drafting Committee has transferred the last sentence of our text to a new sub-paragraph 7 reading as follows: "The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit goods (including baggage)". It is not an alteration of the text or of substance - it is simply a drafting amendment.
We have a footnote, saying that "the Delegate of Chile declared that he maintained, for the time being, the view that Article 16 should be confined to goods only, in which case the words "and also vessels and other means of transport" should be deleted". I would like to ask the Delegate of Chile whether he maintains that declaration.

I see now that the Delegate of Chile is not present, so I cannot see any other way of solving the problem (unless he should turn up later) than to maintain the note, but, in accordance with our general practice, not to mention the name of the country, but simply to say "one Delegate".

The Delegate of Belgium.

Baron Pierre de GAIFFIER (Belgium) (Interpretation):
Mr. Chairman, I should like to make a remark concerning the transfer of the provisions which are now at the end of paragraph 1 to another paragraph (7). I wonder to what extent this transfer can be logical?

Paragraph 1 of Article 16 deals with goods, transportation, etc. to which "in transit" applies. Now we extend transit facilities also to aeroplanes. Therefore, it seems to me that the logical place would be paragraph 1 of Article 16, and I would like to know whether the Legal Drafting Committee has serious arguments in favour of their suggestion.

CHAIRMAN: Is there any member of the Legal Drafting Committee present who would be willing to reply to this question?

M. ROUX (France) (Interpretation): Mr. Chairman, I think there would be no objection to following the Legal Drafting Committee on this point, since the result is exactly the same
wherever these provisions are placed. However, I would like to point out that in the French text of paragraph 7 the word "alinéa" should be replaced by "Article".

CHAIRMAN: Is this satisfactory to the Delegate of Belgium?

Baron P. de GAIFFIER (Belgium): I will not press the point, Mr. Chairman.

CHAIRMAN: May I then take it that we accept paragraph 1 of Article 16 in the text of the Legal Drafting Committee?

It is approved.

I mentioned one note to paragraph 1. There is another one: "The Preparatory Committee considered that the wording of this paragraph is intended to cover transit from one point to another in a given country across the territory of another country".

I have compared these notes in the Legal Drafting Committee's Report with the original text we had adopted, and I found the corresponding paragraph, so unless there is any contrary opinion we should maintain it.

Mr. G.B. URQUHART (Canada): Mr. Chairman, I suggest that the text of paragraph 1 is quite explicit, and that the note 2 is fairly gratuitous. I would suggest it be deleted.
CHAIRMAN: The Delegate of Australia.

Mr. MORTON (Australia): I would support that suggestion, Mr. Chairman.

CHAIRMAN: Does any delegate wish this Note to be maintained? I personally agree with what has been said by the Delegate of France.

The Delegate of Czechoslovakia.

Mr. MINOVSKY (Interpretation) (Czechoslovakia): I would point out that this Note, No. II, was inserted on the suggestion of the Chilean Delegate, and considering that he is not present...

Mr. LEDDY (United States): Mr. Chairman, I understand that it will be your intention to return to the first Note when the Chilean delegate returns; so perhaps we can consider the second note tentatively, and if he wishes to raise any objection at that time, he may.

CHAIRMAN: I take this to be agreed?

Then we pass on to paragraph 2 of Article 16. You will see that in the Text the Legal Drafting Committee has practically approved the text agreed on previously. Is that approved?

The Delegate of France.

Mr. ROUX (France) (Interpretation): The French Delegation raises a point which does not apply to the English version.

CHAIRMAN: Has any other delegate any objection to accepting the views of the French Delegate, with regard to the drafting of the French text?
The Delegate of Belgium.

BARON P. DE GAFFIER (Belgium) (Interpretation): The remark made by us affects only the French text.

CHAIRMAN: May I take it we all agree to maintain the previous text of the French translation of paragraph 2? Agreed.

Paragraph 3. There I see in the white paper the Legal Drafting Committee has said that they want us to strike out the "s" in the fourth line of paragraph 3, the "s" in the word "customs". That is the kind of alteration they want us to make, so you see it is not very important.

We leave it to the Legal Drafting Committee to see to it that the text is final, in the proper form.

The Delegate of Australia.

Mr. MORTON (Australia): I suggest we leave the text as it stands - the reference to "customs" is now more common.

CHAIRMAN: May I take it that we approve the English and French texts of paragraph 3? Approved.

Paragraph 4. The French and English texts, are they both approved? Approved.

Paragraph 5. Approved.

There we have a footnote on page 5. "With regard to Transport charges, the Preparatory Committee understood that the principle of paragraph 5 refers to like products being transported on the same route under like conditions."

You will remember we had some exchange of views as to how to translate this into French, the two likes, because in the French
text, when we discussed it, we had two different terms for "like", we had "similaires" and we had "analogues". We asked the Legal Drafting Committee to look into it, and they told us that it is quite right in French to translate two likes first by "similaires" and then by "analogues", and I think we bow to the wisdom of the Legal Drafting Committee.

The Delegate of France.

Mr. ROUX (France) (Interpretation): Mr. Chairman, I must point out that the question was raised by my colleague from Chile.

CHAIRMAN: I also remember that he raised the question because he wanted to have some explanation. I consider that he should be satisfied now with the explanation supplied by the Legal Drafting Committee.

I would like to mention that the Legal Drafting Committee is slightly mistaken when they take it we have asked for this because we did not consider the French and English texts as having the same value and force; of course that was never our intention. So we can leave out this Note by the Legal Drafting Committee.

We pass on to paragraph 6 of Article 16.
You will see that the text is practically the same as we had adopted previously, but on Page 7 of Document T/154 the Legal Drafting Committee says: "It is suggested that since the process of accepting the Charter will not include signature, the expression 'on the day of the signature of this Charter', wherever it appears in the Charter, be replaced by a fixed date."

We had in the New York text a term "the final act of the Conference." That does not appear in the sub-committee's text so far as I can see, but I cannot doubt that there must be a final act. There must be some document when the Conference comes to an end and that final act will have a date, so would it not be right to insert it? That is only a suggestion.

The Delegate of the United States.

Mr. J.M.LILLEY (United States): I do not think the question has been raised here that the Charter will not be signed. I think it may well be that we may wish to have a signature and the mere fact that there is a provision for the procedure does not leave that signature out of it. Whilst we should prefer to have a fixed date for other reasons, I think possibly the best thing to do is to leave it alone for the moment, unless at a later stage of the meeting it is possible for a sub-committee to examine all the places in the Charter where reference is made to the date of the signature of the Charter and suggest a fixed date. But that has some substantive effect and I think that for purposes of the technical Articles we should leave the text as it stands.

CHAIRMAN: The Delegate of France.
M. ROUX (France) (Interpretation): Mr. Chairman, I support the views just expressed by the Delegate of the United States. This is a general matter which applies to the Charter as a whole and I think we should use here, for legal reasons, the phrase at present in force.

CHAIRMAN: I take it, in the light of what we have just heard, the present text will also cover the different alternatives, including the one I had in mind, and that there will be a final act, to which the Charter will be annexed.

If there are no further remarks I take it we can pass Paragraph 6 in its present form.

Mr. C.E.MORTON (Australia): Mr. Chairman, I note that the Legal Drafting Committee proposes to dispense with the phrase "expédition directe" appearing in the English text. At least, that is the significance of the square brackets which have been placed there. You will recollect that there was quite a considerable amount of discussion in the sub-committee on that same point, and we agreed to maintain the phrase. I would like to know if any reason has since been advanced for removing it.

CHAIRMAN: The Delegate of France.

Mr. ROUX (France) (Interpretation): Mr. Chairman, it was at the request of the French Delegation that after the London Conference the words "direct consignment" were added between parentheses after the words "expédition directe" because of the difficulty of translating these words into French and of having an accurate French equivalent. But now that we have found one, I agree with the Legal Drafting Committee when it thinks that these words which were in parentheses are no longer necessary; that is the reason why they appear between square brackets. I also think they should be deleted.
CHAIRMAN: It was reasonable to keep the words in the English text as long as the two texts were separate, but now they are side by side in the same document I think we may accept the suggestion of the Legal Drafting Committee. Then there cannot be any further misunderstanding.

Are there any further remarks?

Paragraph 6 is therefore approved.
Mr. J.A. MUNOZ (Chile): Mr. Chairman, first of all I wish to apologise for being so late, but my chairman has become suddenly ill and he is in his hotel, and there are certain reservations to be made in certain paragraphs by us. I would ask for indulgence if you could wait for a few minutes until I get instructions.

CHAIRMAN: Very well. We now pass on to paragraph 7, the new paragraph which we have already dealt with and where we have approved a slight amendment of the French text replacing the word "alinea" by "article". I take it that paragraph 7 is unanimously approved. We pass on to Article 17. A propos, there was a footnote on paragraph 6 of Article 16. You will find it at the bottom of page 7:

"The Preparatory Committee was in favour of the retention of this paragraph as adopted by the Drafting Committee, subject to a reservation recorded by the French Delegate when Article 14 was discussed."

I wonder whether it is necessary to maintain that footnote?

M. ROUX (France) (Interpretation): Mr. Chairman, I must ask you to retain this note till a decision is taken on Article 14.

CHAIRMAN: We then pass on to Article 17, paragraph 1. You have the text before you, and you will see that it is practically the same as we have passed before, but there are some notes on page 10. "The delegate for Cuba maintained for the time being his criticism of the way of approach to the problem of dumping by Article 17 which confines itself to restricting the rights of Members affected by dumping, whilst not condemning those practising it; he would prefer to introduce the Article by an express statement of condemnation."

As the delegate for Cuba is not here at the moment, we shall maintain this note provisionally until he comes. It was the second note that was adopted by Commission A previously, that the Preparatory Committee understood that the obligations set forth in Article 17 would, as in the case
of all other obligations under Chapter V be subject to the provisions of Article 34."

Mr. J.M. LEDDY (United States): I believe that note is intended to apply not to the whole of Article, but it is pertinent only to paragraph 6. As quantitative restrictions are also mentioned, I think that it should be moved as a comment to paragraph 6 and amended accordingly to paragraph 6 of Article 17.

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, I agree with the representative of the United States that the note should be moved to refer to paragraph 6, but I am of the opinion that it should not be deleted because we need this note and it was a compromise with the sub-Committee.

BARON P. de GAIFFIER (Belgium) (Interpretation): (The Belgian representative refers to a drafting point which only applies to the French text of Note II).

CHAIRMAN: I take it that we all agree with the suggestion of the United States delegate that we transfer Note II to paragraph 6. That is agreed. We have another note on paragraph 1. You will find it at the bottom of page 10, and as you know already, it was adopted unanimously previously, and if there is no objection we shall pass it.

Mr. J.M. LEDDY (United States): Are we going on to the text, or are we just taking up the note first?

CHAIRMAN: I shall take it page by page.

Mr. J.M. LEDDY (United States): I have a very small point on page 8.
Small (a) in the indented paragraph beginning "the comparable price" should go before the words "is less than" so that it would read:

".....exported from one country to another (a) is less than the comparable price....."

CHAIRMAN: I did not quite catch that.

MR. J.M. LEDDY (United States): The small letter (a) in the first indented paragraph which reads "the comparable price....." should be moved up so as to appear before the words "is less than.....", so that it would read:

".....the product exported from one country to another (a) is less than the comparable price ........."

CHAIRMAN: I see. I think that that drafting amendment is approved.

MR. C.E. MORTON (Australia): It is departing from the original text as in T/142. I am just trying to think whether it is a justifiable departure.

M. ROUX (France) (Interpretation): In the French text the small (a) should come before the words "la différence".

CHAIRMAN: Is there agreement on this drafting amendment? Agreed.

Any further remarks on the text of paragraph 1 of Article 17? The French or the English?

MR. C.E. MORTON (Australia): Mr. Chairman, when you deal with the note at the bottom of page 11 regarding "duty or charge" or "duty and charge" I am assuming you will ascertain then that
certain alterations to paragraph 1 may be necessary.

CHAIRMAN: I understand that

We pass on to paragraph 2, page 11. There you will see that the Legal Drafting Committee have not altered our previous text but have drawn our attention to the fact that we have used "duty or charge" and only "duty" indiscriminately, and they want us to use the same expression all through. I do not know what would be the wisest way out of it. You will see at the top of page 12 that the United States representative on the Legal Drafting Committee declared that it was the same to him, but we should either say only "duty" or we should say "duty or charge" - use the same expression all through this article. I believe speaking for myself, that as we have started paragraph 1 by "anti-dumping duty or charge" it would perhaps be logical to use the same expression all through the article.

CHAIRMAN: The Delegate of France.

MR. ROUX (France) (Interpretation): I readily support this proposal, especially as the text of Article 17, notwithstanding the views of the Drafting Committee, is perfectly clear and could lead to no confusion in the reader's mind. People are apt to use rather indiscriminately the words "charges" or "duties", therefore, I think both should be used here.

CHAIRMAN: The Delegate of Australia.

MR. C.E. MORTON (Australia): The heading of Article 17 is "anti-dumping and Countervailing Duties". It is true that reference is made from time to time in the article to "duty or charge". Any amount imposed at the time of importation to cover
what is supposed to be dumping is a charge, certainly, but it is invariably known in all countries as an "antidumping duty" or "countervailing duty". I think we could well dispense with the use of the word "charge" and just use the words "antidumping duty" or "countervailing duty" throughout the text.

CHAIRMAN: Does any other Delegate share the views of the Australian Delegate?

The Delegate of the United States, Mr. J.M. LEDDY (United States): I think that would be much the simplest way of handling it, Mr. Chairman, and the position would be fully safeguarded by paragraph 6 which would provide that no measures other than anti-dumping or countervailing duties would be applied - delete the words "or charges" whenever they appear. That would be perfectly consistent.

CHAIRMAN: Does any other Delegate wish to express an opinion on this? I am no expert but I have a slight feeling that it is safer to say "duties and/or charges" than simply "duties". They talk about "antidumping duty". But in a Charter of this kind I do not think it does any harm to make it very explicit that even if the charge is not exactly the same type as the customs duty, it is covered. But I do not insist! It is for the Commission to decide.

The Delegate of Belgium, Baron P. de GAUTIER (Belgium) (Interpretation): Mr. Chairman, I wish to support the views you have just expressed.

CHAIRMAN: Does anybody feel that there is anything wrong in maintaining "duties and charges"?

The Delegate of the United States, Mr. J.M. LEDDY (United States): I have a little difficulty with it, after looking at the French text, because it seems to me
the French text rather talks about an "antidumping duty" and a "countervailing duty" but it does not refer to "antidumping duties or charges" or "countervailing duties or charges" and the only thing that would make the two texts completely consistent, I think, would be to stick to the one name in the English text, namely "duties". After all, it is the Customs Officers who collect these things.
CHAIRMAN: The Delegate of Australia.

Mr. C.E. MORTON (Australia): Mr. Chairman, the point is that the amount you collect on dumping or subsidization is an anti-dumping duty or an anti-dumping charge, a countervailing duty or a countervailing charge. There is no occasion to refer to it as "an anti-dumping duty or charge" or "a countervailing duty or charge" - it's one or the other. There is no need to say both.

CHAIRMAN: I would only mention that in the New York text says "anti-dumping duty or charge", but I have no objection to striking out "or charge" if that is the general feeling of the Commission. Are there any strong objections to the proposal of the Australian and United States Delegations?

Then I take it that the Commission is in agreement with the simplification: that we should simply say "duty".

Mr. G.B. URQUHART (Canada): Mr. Chairman, before you pass the text of paragraph 2, I note that the Drafting Committee has made a change in the thirteenth line which they apparently regretted and want to change back. They changed the words "a particular product" to "any special product". Now they want to change it back again.

CHAIRMAN: Is there any objection to that drafting amendment? That is, "special subsidy to the transportation of a particular product". It makes the text somewhat more attractive, because we do not repeat the word "special".

Mr. G.B. URQUHART (Canada): The original intention was "a particular product" and the Drafting Committee have changed it to "any special product" without noting the change - now they want to change it back again.
CHAIRMAN: Yes, in the last paper they propose to change it back. It is simply a clerical error in Document T/154.

We pass on to the footnote on paragraph 2, on Page 12. We have already approved that unanimously, and unless anyone wishes to raise a question, I take it that we still approve it.

(Approved).

(Interpretation)

M. ROUX (France) raised a drafting point which does not apply to the English version.

CHAIRMAN: We pass on to page 13, paragraph 3 of Article 17. Agreed? Agreed.

Paragraph 4? Agreed.

Paragraph 5. There is a footnote: "The Delegations of Belgium, Czechoslovakia, France, Luxembourg and the Netherlands expressed the fear that abuses might be committed under cover of the provisions of paragraph 5 regarding the threat of injury, of which a State might take advantage on the pretext that it intended to establish some new domestic industry in the more or less distant future. The Committee considered that, if such abuses were committed, the general provisions of the Charter would be adequate to deal with them".

I wonder whether these Delegations are interested in the maintenance of this note. May I call upon the Delegate of France?
Mr. ROUX (France) (Interpretation): Mr. Chairman, of course the interest of this comment may be questioned, but a moment ago we adopted as a principle a remark which, at the suggestion of the United States Delegate, was transferred to paragraph 6, namely, the Note II on page 10, saying that "It was the understanding of the Preparatory Committee that the obligations set forth in Article 17 would, as in the case of all other obligations under Chapter V, be subject to the provisions of Article 34."

Now I submit that there is a relationship between these two comments, and it may be said, in a general way - I am stating what may be a questionable fact - that the provisions of Article 17 are always subject to the provisions of Articles 34 and 35. I think that is, maybe, an adequate answer.

CHAIRMAN: I would like to hear the observations of any other Delegations to this footnote. Is there any one of them who wants to maintain that Note?

The Delegate of Belgium.

BARON DE GAIFFIER (Belgium) (Interpretation): Mr. Chairman, this Note was proposed by the Committee. I do not intend to reopen the discussion on the general interest of this Note, but our Delegation considers that it is relevant to our purpose and would like to maintain it.

CHAIRMAN: Then I take it the right thing is to maintain the Note with the introduction, "Five Delegations expressed the fear", and so on; but apart from that I take it we all agree to the text submitted by the Legal Drafting Committee on paragraph 5?

BARON DE GAIFFIER (Belgium) (Interpretation): This deals
with a Drafting point.

CHAIRMAN: The Secretary draws my attention to the fact that the Luxemburg Delegation itself...

Mr. MORTON (Australia): I wonder whether it is the correct answer, to amend reference to paragraph 3 of Article 30. It appears to me to be the fourth line of paragraph 5 of Article 17...

CHAIRMAN: Well, we have not as yet passed Article 30, as far as I remember, in Commission B. The Legal Drafting Committee will have to modify its attitude on Article 30. Any further remarks on paragraph 5?

Mr. MORTON (Australia): The Legal Drafting Committee might not like to have our very important inclusion in Article 17 nullified by reference to the wrong Chapter.

CHAIRMAN: Paragraph 6 of Article 17. You will remember that it is on this paragraph that the reference to Article 34 will now figure in an explanatory Note.

No observations?

A note by the Legal Drafting Committee. "It is suggested that the phrase "in respect of any product of any other Member country" be inserted after the word "Member" if this interpretation was intended by the Committee".

I cannot speak on behalf of the Committee, but I think it was the intention of the Committee, so, if you agree, we add these words in the text of paragraph 6.

Mr. MUNOZ (Chile): It seems quite obvious, Mr. Chairman, that is right.

CHAIRMAN: Agreed.
Mr. Liddy (United States): The words "or charges", I take it, must now be deleted?

Chairman: Yes, they have been deleted, all through the Article.

A footnote to paragraph 5, on page 15, has already been regulated.

Mr. Liddy (United States): In fact, the note is deleted?

Chairman: Well, it is in our Minutes of the day, as a reminder to the Legal Drafting Committee that...

Mr. Liddy (United States): Sorry, I thought you meant the note in paragraph 5.

Chairman: No, the reference to paragraph 3 of Article 30.

Then, we have on page 16, a Note to paragraph 6. "The Preparatory Committee was not unanimous on the addition of this paragraph. Its inclusion was supported by twelve delegations and opposed by four".

I wonder whether any of the Delegates who opposed this drafting would be willing to modify their attitude. As far as the previous discussion was concerned, their attitude was so definite, that I think it is simply a waste of time to reopen the discussion.
The Delegates in question were China, India, Cuba and Chile. Remembering the discussion which took place, I do not think any of them is prepared as yet to alter his point of view.

Mr. J.A. MUNOZ (Chile): I am sorry, Mr. Chairman, but I have to maintain our reservation.

CHAIRMAN: Then I take it that we maintain that note to Paragraph 6 unaltered.

We pass on to Article 18, Paragraph 1. Delegates will see that there has been practically no alteration by the Legal Drafting Committee. Is that approved?

The Delegate of France.

M. ROUX (France) (Interpretation): This remark refers only to the French text.

CHAIRMAN: Is Paragraph 1 approved?

(Agreed)

Is Paragraph 2 approved?

The Delegate of Canada.

Mr. G. B. URGUHART (Canada): No, Mr. Chairman. The Legal Drafting Committee have suggested the deletion of the word "and" in the sixth line, between 4 and 5. I would suggest the deletion of "and 6" instead, because "6" is not a principle of valuation; it is a procedure for the application of those principles. I advanced the same argument in the Sub-committee and in Commission A and it was adopted.

CHAIRMAN: Are there any other speakers?
M. ROUX (France) (Interpretation): I would like to make the same remark as I made before regarding Lines 13 and 14 of the French text of Paragraph 2, in which there are clerical errors.

CHAIRMAN: What exactly is the purpose of the Canadian Delegate's remark?

Mr. G. B. URGUHART (Canada): To delete the word "and" and the figure "6" in brackets, because "6" is not a paragraph dealing with the principle of valuation; it is a procedure for the application of those principles.

CHAIRMAN: The Delegate of Australia.

Mr. C. E. MORTON (Australia): We support the amendment suggested by the Delegate of Canada.

CHAIRMAN: To delete "and 6"; that is, to read: "3, 4 and 5 of this article"?

Mr. G.B. URGUHART (Canada): Yes.

CHAIRMAN: Is that agreed?

(Agreed)

We pass on to Paragraph 3, Page 18. Are there any observations on the drafting of Paragraph 3 by the Legal Drafting Committee?

Mr. J. A. MUNOZ (Chile): Mr. Chairman, I must again apologise for having to speak out of turn. There is, however, a saying in Spanish: "Más vale llegar en tiempo que ser convidado," which means that one has to get up very early in the morning. But my reservation is for what now is sub-paragraph (b) of Paragraph 3, and sub-paragraph (c). I do not
think that we have any particular objection to it, but we have not received instructions and therefore I have to maintain a sort of overall reservation.

CHAIRMAN: We have on Page 21 of Document T/154, in Note V: "The Delegate of Chile reserved his position for the time being." I hope that when the Preparatory Committee passes all these texts in a formal manner, the Delegate of Chile will be able to withdraw that reservation.

Mr. J. Á. MUNOZ (Chile): I hope so, Mr. Chairman.

CHAIRMAN: The Delegate of the United States.

Mr. J. M. LEDDY (United States): As regards Paragraph 3(a), Line 7, we suggest that the phrase "like merchandise" should read "like foreign merchandise", in order to avoid the construction that we are talking about "like domestic merchandise."

CHAIRMAN: Are there any observations on that suggestion?

(Several Delegates requested clarification and the Chairman asked the Delegate for the United States to repeat his proposal.)

Mr. LEDDY (United States): We would just like to insert the word "foreign" between the words "like" and "merchandise" in lines 7 and 8, so that it would read: "of like foreign merchandise."

CHAIRMAN: Is it necessary to add: "should not be based on the value of merchandise of national origin"?

Mr. LEDDY (United States): If it causes difficulty we will not press the point, but we think it would make it clearer.
CHAIRMAN: Is it necessary to add these words?

Mr. J.M. LEDDY (United States): If there is any difficulty about this we will not press it, but we think that this small amendment would make the text clearer.

CHAIRMAN: The delegate of the United States does not insist, and as the text seems to me to be perfectly clear and consistent, I take it that we shall maintain the text. It is agreed.

Mr. S.L. HOLMES (United Kingdom): I will have a remark to make, Mr. Chairman, on note II which I think is part of the paragraph. Can I make the remark immediately?

I should like to call attention if I may to Paper W.262 which is being circulated in the Committee. It relates to the fact that in Note II the United Kingdom delegation found it necessary to reserve their position as regard the deletion of certain words from this passage "between independent buyer and seller" but which did appear after the words "in the ordinary course of trade." We should like if we can to get a clear text without reservations as far as possible, and we should like to withdraw our reservation provided that the note would be in a form which would perhaps be agreeable to other delegations. The suggestion is that the text of the note instead of appearing as it does should be replaced by the text given in our paper W.262.

CHAIRMAN: You will see that on page 20 in Note II the explanatory note was tentatively approved at our last meeting and to which the delegates of India and the United Kingdom reserved their position. The new draft of this explanatory note now submitted by the United Kingdom delegate seems to me to express practically the same idea as the note we then agreed to that between
independent buyer and seller" which read in conjunction with "under fully competitive conditions", should be meant to cover the same context, but I leave it to the Commission to decide whether the wording now submitted by the United Kingdom delegate is entirely satisfactory. To my mind it covers exactly the idea that the Chairman of the Sub-Committee of Article 18 explained with some force in our last meeting.

Mr. G.E. MORTON (Australia): Mr. Chairman, I would agree to replacing Note II on page 20, by the Note in Document U.262.

Mr. RANGANATHAN (India): I just wish to say that if the revised note is accepted we shall also be in a position to withdraw our reservation.

Mr. J.G. CHERRY (South Africa): Mr. Chairman, I am in a position to state that the Chairman of the Sub-Committee dealing with Article 18 accepts this draft proposed by the United Kingdom delegation.

CHAIRMAN: May I take it that we are all in agreement?

(Agreed)

Dr. S. KORTEVEG (Netherlands): Mr. Chairman, I should like to ask something about 3(b) of the text of the Article itself. It is the question that was raised in a former meeting. I mean the end of the first sentence of that point 3(b). It begins with "actual value". At the end of the sentence in which the definition of "actual value" is given, we find the words "under fully competitive conditions." Now the question is whether it is necessary or desirable to add the words "comparable" between the words "competitive" and "conditions." The reason for that would be that we must take account of the place which buyer and seller occupy in the distribution process. Now, I think it is covered in this case by the words that follow some lines further on where it mentions the place which buyer and seller occupy in the distribution process. Even if this question is covered, I think it would be desirable to add the words "and comparable" between "competitive" and "condition" to make the question quite clear.
CHAIRMAN: Does any other delegate wish to express an opinion on this suggestion?

MR. C.E. MORTON (Australia): I should like to express whole-hearted opposition to it.

MR. S.L. HOLMES (United Kingdom): I agree.

CHAIRMAN: I am in the hands of the Commission, of course, but I might perhaps point out that the term "comparable" is sufficiently vague to open the door for all kinds of disputes, and so for that reason I think it is not wise to insert it. I understand and fully appreciate the idea behind the Netherlands suggestion, but in our Draft Charter we should try to have as much plain speaking as possible and therefore I would suggest that we should maintain the text which we have previously agreed on.

DR. S. KORTENEG (Netherlands): Yes, Mr. Chairman, I see there is that danger and therefore it would be better not to insist, I think.

CHAIRMAN: Thank you.

There is still one point on paragraph 3(b). You will find it on the bottom of page 19, the Note by the Legal Drafting Committee, and it is also explained further in the white paper: "It is not clear whether the expression 'in the ordinary course of trade' qualifies the word 'sale' or 'time and place'. If the former, it should be placed after the word "sale".

MR. G.B. URQUHARD (Canada): I suggest, Mr. Chairman, that we maintain the text as it stands.

CHAIRMAN: The Delegate of the United States.
MR. J.K. LEDDY (United States): Mr. Chairman, I think the intent is surely that it must come after the word "sale": "sale or offered for sale in the ordinary course of trade".

CHAIRMAN: The Delegate for Australia.

MR. C.E. MORTON (Australia): Mr. Chairman, I would support the American Delegation's suggestion that the words be deleted from the place in which they appear and re-inserted to read: "offered for sale in the ordinary course of trade and under fully competitive conditions".

CHAIRMAN: The Delegate for the United Kingdom.

MR. S.L. HOLMES (United Kingdom): Mr. Chairman, does not the expression in question qualify the word "price" in the second line?

CHAIRMAN: The Delegate for Australia.

MR. C.E. MORTON (Australia): Mr. Chairman, the expression originally "in the ordinary course of trade between independent buyer and seller" as such had a meaning on its own, and the place in which it was inserted was not of great moment. When the words "between independent buyer and seller" are taken away and the phrase is placed after the word "sale", it has a definite value.

CHAIRMAN: Are there any further remarks?

The Delegate of India.

MR. S. RANGANATHAN (India): I think the expression, Mr. Chairman, "in the ordinary course of trade" really qualifies all three items - price, time and place and the sale. It is very
difficult to find one place where they can all qualify equally. I think the position that has been found for this in the original Draft is as good as any other.

CHAIRMAN: The Delegate of the United States.

MR. J. H. LEDDY (United States): I think it must be made clear that what we are talking about is the price of merchandise when it is sold or offered for sale in the ordinary course of trade, and trade means to exchange, sell or offer for sale, and therefore I think it is much better if you put it after the word "sale". If you leave it where it is, there may be some confusion as to whether it is designed to refer solely to the time and place determined by the legislation of the country of importation.

CHAIRMAN: Well, the opinion seems to be sufficiently divided to require me to give an opinion, and my opinion is exactly the one expressed by the Delegate of India. I think that we have here a number of words to determine the price: "actual value should be the price at which, at a time and place... and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions". I do not think it matters a bit whether you put "in the ordinary course of trade" after the word "sale" or whether you leave it where it stands, but it would not alter the sense of the paragraph if you put it after the word "sale".
CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, this text has been studied at great length. The present drafting seems to me to be well-balanced, and I would be in favour of its retention.

M. J.A. MUNOZ (Chile): I am in agreement with what you have just said, Mr. Chairman, and with what the Delegate of France has just said. I think the text should be left as it is.

CHAIRMAN: Well, I think personally that the text is perfectly clear as it stands. I think it is sufficiently clear to enable one to decide, and whether the words "in the ordinary course of trade" remain where they are or are put after "sale" does not matter a bit, and I have the impression that the general feeling in the Commission is that we should abide by the text before us.

Is there any objection to maintaining the text? Then we keep the text as it is presented to us.

We pass on to paragraph 3(o). There is no objection to the text, either the French or the English, but we have some notes. The first note is on Page 20: "The Preparatory 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".

We have agreed unanimously to that before, and unless there is any objection, I take it that we all agree.

Note II we have already dealt with. On Page 21 there is Note III: "The Preparatory Committee considered 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. That was also unanimously approved before, and I take it that we maintain it.

Dr. S. KORTEWEG (Netherlands): I should like to make a comment on Note III, which says "special discount". It would be better to speak in both cases of "abnormal discount". I think it is not a question of "special" discount.

Mr. J.G. CHERRY (South Africa): Mr. Chairman, Note III was introduced in order to meet representations made by the South African Delegate, and the alteration of "special" to "abnormal" would not, to the best of my recollection, reflect the sense of the discussion that took place in the sub-Committee on that occasion. The whole idea was that distributors were not under fully competitive conditions, and in this connection, special discounts to distributors were involved. It was not that they were abnormal. There were special discounts to distributors, and we should prefer the word "special" to be retained.

CHAIRMAN: In the light of the statement by the South African Delegate, does the Netherlands Delegate insist on his proposition?

Dr. S. KORTEWEG (Netherlands): I should like to ask, is it the intention of South Africa to exclude any discount even if normal. If he should say "special discount" in this case is a normal thing, why should you exclude something that is normal in the ordinary course of trade?
Mr. J.G. CHERRY (South Africa): Mr. Chairman, the idea was to exclude from consideration not so much normal discounts as distributors' prices which involve a special discount limited to exclusive agents. We have got to take those last six words as one explanatory fact. The distributors' prices involving special discounts limited to exclusive agents we do not wish to be considered.
CHAIRMAN: Does anybody else view this matter in the same light as the Netherlands Delegate?

This not being the case I would ask the Netherlands Delegate kindly to withdraw his Amendment.

Mr. KORTEWEG (Netherlands): I don't insist.

CHAIRMAN: Note IV on page 21. That was also unanimously agreed to. You have the text before you.

The Delegate of Canada.

Mr. URQUHART (Canada): There seems to be a typographical error in that fourth line. The word "duty" after "assess" has been omitted.

Another point is that the deleted letters (a) and (b) - that is, placed in square brackets - I think they had better be left in.

Mr. JOHNSEN (New Zealand): I think the letter (a) at the beginning should be before the (i) in brackets, in the third line.

Mr. MORTON (Australia): As that was put in at the instigation of the Australian Delegation, I feel very much like a commercial traveller coming home from a long voyage and trying to recognise any of the younger children. "The Preparatory Committee considered that the wording of" - what? - "would permit...", etc.

CHAIRMAN: There are two errors in this. In the third line there should be (a) and (b), and in the fourth line, the word duty. The French text is exact. I take it that you have no objection to this explanatory Note? Agreed.

Mr. MORTON (Australia): The Note reads: The Preparatory committee considered that the wording of (a) and (b) would permit
a Member to assess duty uniformly either (a) on the basis of a particular exporter's prices of the imported merchandise, or (b) on the basis of the general price level of like merchandise.

But why, Mr. Chairman?

Mr. LEDDY (United States): If (a) follows (a) in the first sentence, and (b) follows (b) in the second sentence - either/or - that might meet the Australian Delegation's point.

CHAIRMAN: I say either/or - that is quite sufficient. Does that satisfy the Australian delegate?

Mr. MORTON (Australia): Mr. Chairman, I would like to see that all my children have blue eyes. Accordingly I would like (a) turned to (i) and (b) to (ii).

CHAIRMAN: Well, that disposes of Note IV. We pass on to the following page, 22. No observations? Agreed.

Then the Legal Drafting Committee says it has suggested that the text of paragraph 4 be transferred from this place to become the last sentence of paragraph 3(a).

We have already approved paragraph 3(a), and the question is simply whether we now should agree with the Legal Drafting Committee to transfer the whole of paragraph 4 to paragraph 3(a).

I have read the two jointly, and cannot see any objection to it. On the other hand, I do not think it is very important.

The Delegate of Canada.

MR. URQUHART (Canada): It may be, Mr. Chairman, that the paragraph is out of place. I do not know; but I do not
like the idea of adding it to a paragraph (a). If they want to change it to some place else, they might change 4 and 5 — make the present paragraph 4 paragraph 5.

CHAIRMAN: As the Legal Drafting Committee has not made the transfer as it has done in other cases, but simply put a suggestion to us, it seems that the Legal Drafting Committee does not feel very strongly about it. I think that unless any Delegate takes up the idea of the Legal Drafting Committee, we can maintain the text as it stands. Is that agreed?

Agreed.

Paragraph 5. (a) No objections? Agreed.
(b) Agreed.
(c) Agreed.
(d) The English text is agreed. The French text, there the Legal Drafting Committee draws our attention to the fact that they have modified the original French text by replacing the word "autorisant" by "obligeant". That was in conformity with what we all decided on a previous occasion.

So I take it we also approve the new French text.
That disposes of the Note by the Legal Drafting Committee at the top of Page 25.

Mr. J. M. LEDDY (United States): Mr. Chairman, I would like to ask that the commas be deleted from sub-paragraph (d). I believe it is a typographical error; it was not so in the original draft.

CHAIRMAN: It reads: "The Preparatory Committee decided that the following should appear in its Report as a comment on (d): 'The alteration of a currency which is recognized by a change in its established par value shall not be considered a change in the method of converting currencies.'" That must be re-drafted. I propose to say something like this: "The Preparatory Committee considered that the alteration of a currency which is recognized" and so on, and leave out the quotation marks.

The Delegate of China.

H. E. Mr. WUNSZ KING (China): Mr. Chairman, as regards this paragraph, the Technical Expert of the Chinese Delegation had a conversation with the Technical Expert of the United States Delegation and, for the sake of further clarification, we would suggest that the wording should be altered to read as follows: "... the alteration of a rate of exchange" — in substitution of the word "currency" — "which is recognized by a change in the established par value of a currency or in accordance with the changes in the market value of a currency shall not be considered a change in the method of converting currencies." With your permission, I will ask the Secretariat to be kind enough to distribute these copies.

(Copies of the Chinese Delegation's proposal were passed round).
CHAIRMAN: You have heard the Chinese proposal. The first part of it is to alter the expression "a currency" to "a rate of exchange" and it is, of course, logical to say that you do not alter a currency but you alter its value - the rate of exchange. I do not know what Delegates feel about that.

I would also add that the French text presented by the Legal Drafting Committee - "le changement de la valeur d'une monnaie" - comes nearer to the Chinese proposal than the English text.

Mr. J. M. LEDDY (United States): Mr. Chairman, I think this is probably an illogical proposal. I do not believe we ever intended the provisions relating to the alteration of a method of converting currencies to prevent taking into account changes in the rate of exchange. For example, if a Member is using, let us say, a particular type of rate of exchange - supposing there are two rates of exchange and a Member is using Type B instead of Type A - what we meant by the change in the method is that he may not change from Type B to Type A, but if Type B should vary from day to day, of course that change would not be considered a change in the method, just as a change in the par value of the currency would not be a change in the method; you are always using the par value. So I think this is an illogical proposal.

CHAIRMAN: The Delegate of Australia.

Mr. C. E. MORTON (Australia): Mr. Chairman, the original note dealing with this matter read: "The depreciation of a currency which is recognized by a change . . .". It was correct English. They changed it to read: "the alteration of a currency which is recognized . . ." I felt it did need some change, but for the sake of peace and quietness I let it go.
That portion of the Chinese amendment which does alter it to that extent - "the alteration of a rate of exchange which is recognized by a change in the established par value of a currency . . ." - is all right. From there on we read: "or in accordance with the changes in the market value of a currency . . .". I think perhaps anything of that kind is too casual. That introduces all sorts of free market rates.

The purpose of this Article was to say that values for duty should be first re-converted on the basis of par value of a currency. It became necessary to take notice of certain multiple currency practices, but not to introduce free market rates. That would certainly introduce questions of free market value.

I for one, Mr. Chairman, would have strong objection to any alteration of the wording of the Note as it now appears, after long consideration and much deliberation on the matter.
Mr. J. M. MUNOZ (Chile): Mr. Chairman, I would like a little clarification. Perhaps the delegate of the United States will help me out on this. Does he mean that we are to recognise different rates of exchange such as, for example, is now done in Spain? You have the ordinary rate of exchange and the tourist rate of exchange. Does that mean that you can recognise that as legitimate? I do not quite follow the argument.

Mr. J. M. LEDDY (United States): In order to answer the delegate of Chile's question it is necessary to review the text that provides first that Members shall use rates of exchange based upon the par value of the currency for purposes of tariff regulation. This is a general rule but there are two exceptions. One is that you may use rates of exchange which are based upon the value of the currency, and commercial transactions in cases where there is no par value and there are certain cases of that kind. The second exception is that countries which use rates of exchange which are not based upon the par value but are based upon, say, an average of multiple rates of exchange, may continue to do so until the Organisation would provide rules to cover that case. Now, we have never understood why the reason for variations in any one of those three permissible rates of exchange in accordance with the variations in the market or the par value, or variations in the market where no par value has been established, would constitute an alteration in the method. We never considered that the original note was necessary and we did not feel that the Chinese amendment was necessary at all, but in view of the statement by the delegate of Australia, we should rather have the note accurate, and include the amendment proposed by the Chinese delegation. Otherwise there will be some question in our mind as to whether the Commission intends to say that variations in rates of exchange other than those inflicted by the change in the par value are an alteration in the method that has been referred to.
Mr. WUNSZ KING (China): Mr. Chairman, as regards the objection raised by the Australian delegate, I have nothing to add to what the United States delegate has said. I am not a technical man and therefore I would like to leave all technical arguments either to the technical experts of my own delegation or to the technical experts of some other delegation, but I would like to add a word of general explanation.

You will doubtless notice that paragraph (d) on page 24 of Document 154 seems to the Chinese delegation to have given rise to some doubts as to the actual value of the stipulations which are contained in 5 (a) and (b) on pages 22 and 23. I presume that it was for the purpose of removing some of these doubts that a footnote which is now the second paragraph on page 25 was inserted, but I submit that while the original wording seems to have the effect of removing one doubt as to the value of stipulations in 5 (a), it has not had the effect of removing a lingering doubt as to the value of stipulations in 5 (b), and it is for this purpose that the Chinese amendment is introduced in order to cover these two aspects so as to remove what I call the lingering doubt on the second aspect, and I do hope that the other delegations will have no serious objections to our two amendments.
CHAIRMAN: The Delegate of Australia.

Mr. C.E. MORTON (Australia): Mr. Chairman, the Delegate of the United States has not carried the story far enough forward in the resume of what led up to this Note. It is provided for in this Article that countries shall convert foreign currency at a rate of exchange which is based on the par value of the currencies involved. In the case of two countries, Members of this Conference, they convert foreign currency at the rate of exchange applicable not to their own currency but to that of sterling. The paragraph as it is so worded would authorise those two countries, by this wording, to take measures which would cause an increase in the amount of duty payable. Certainly paragraph (iv) says that no country should alter its method of converting currencies in such a manner as to increase generally the amount of duty payable. This Note applies solely to paragraph (iv) and it is simply said that, when a country's currency depreciates, as the currency of Australia and New Zealand is likely to do at any time, that should not be regarded as a change in method of converting currencies. Sooner than have that Note played around with by references such as appearing in the Chinese Delegation's amendment, I am prepared to withdraw it altogether.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, I see no necessity for changing the text that has been submitted to us by the Legal Drafting Committee. As has been said before, this is a technical matter, and I am afraid that if at this late stage of our work we adopt an amendment rather hastily we may thus be led to take an unfortunate decision.

As far as I am concerned, I cannot adopt the second part, at least, of the Chinese amendment, and as far as the first part
is concerned I believe it is covered by the French version, at any rate, of the text of the Legal Drafting Committee. If the whole text of the Chinese amendment were to be adopted here I would have to reserve provisionally the position of the French Delegation.

CHAIRMAN: Of course, I am subject to those who want to speak: but we have thrashed out these difficult technical aspects of the Article so many times that I hope you will content yourselves with saying whether you abide by the text of the Legal Drafting Committee or whether and to what extent you may be prepared to accept the proposal of the Chinese Delegation.

The Delegate of Belgium.

Baron Pierre de GAGIFFIER (Belgium) (Interpretation): Mr. Chairman, in conformity with your proposal, the Belgian Delegation fully supports the text presented by the Legal Drafting Committee.

CHAIRMAN: The Delegate of Brazil.

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, I accept the first part of the amendment of China and not the second part, because I feel that if the general meaning of the "established par value" covered both the declared par value of a country and the real par value, the countries which are Members of the International Monetary Fund and the countries which are not Members can enjoy all these facilities; and it will not need the second part which reads "or in accordance with the changes in the market value of a currency" because there will be no cause for such changes.
Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, I would like to confirm the position as outlined by the Delegate of Australia. The paragraph to which this note refers -paragraph (v), re-numbered (d)- relates solely to the method of converting currencies.

I find difficulty in seeing how the provisions suggested by the Chinese Delegate fit in with that context, and I would support retaining the note as it came from the Legal Drafting Committee.

I might add that I think the change in the wording suggested in the first part of the proposal made by the Chinese Delegate is acceptable.

CHAIRMAN: Well, I have the impression that the great majority of the Delegates feel that we should abide by the text submitted by the Legal Drafting Committee, and the more I read it, the more I feel that the first part of the Chinese proposal is really already covered by the text of the draft: "The alteration of a currency which is recognized by a change in its established par value".

As to the second part of the Chinese proposal, I find considerable opposition, and I would allow myself to say to the Chinese Delegate that the discussion that has taken place should give him considerable satisfaction as to the interpretation of the different clauses of this Article. I wonder whether, if this discussion goes into our minutes, he would then, in the light of the explanation which has been given, be prepared to abide by the text of the Legal Drafting Committee.

Mr. J.M. LEDDY (United States): As I said at the beginning, we should have preferred that this note should not appear in the text at all, since we have never agreed that variations in rates of exchange constituted an alteration in the method of converting the currency. I think that there has been a lack of understanding
possibly based on a lack of knowledge of the Chinese proposal.

As I understand the situation, there is no par value for the Chinese currency. There are two rates of exchange. One is an official rate and the other a market rate, but the official rate is much more favourable to importers than the market rate, that is to say, importers pay at the market rate for their goods, but the valuation of their products is based upon the official rate, so that the duty is lower.

Now, as the market rate goes up, adjustments are made in the official rate to keep it in line, but always below, and that is the reason why the Chinese Delegation, as I understand it, has proposed this addition; to make it clear that allowing an increase in the official rate - to keep in line with changes in the market rate - would not be considered an alteration in the method. We do not think it would be. We would prefer either to have the note amended - to make it accurate, or delete it entirely, but we are willing to abide by whatever the Commission decides.

Baron Pierre de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I would understand the objection of the United States Delegate if the Charter did not cover such circumstances, of Article 18 but we have paragraph 2(b)/of the Charter which precisely deals with that kind of position, and therefore I do not understand his statement.

CHAIRMAN: The Delegate of China.

H.E. Mr. Wunsz KING (China): Mr. Chairman, with your permission I would like to ask the technical expert of the Chinese Delegation to give a further explanation.
Mr. C.H. CHEN (China): Mr. Chairman, this note is added by the Chinese Delegation simply in order to avoid misunderstanding. We know that it is provided in paragraph 2(b) that where no such par value has been established, the conversion value shall reflect effectively the current value of such currency in commercial transactions.

The conversion rate, at present, in China is changing from time to time because of the currency inflation. We have to adjust it from time to time, so we generally express in terms of American currency. For instance, at present the official conversion rate is 12,000 to 100 dollars, but this rate can compare with the so-called market value, as we state in our amendment, which is equivalent to the current value in this text.
This at present is about 50,000. That is about 1 to 4.

Now, if we do have such an understanding, then we can change our official conversion rate. That is why we want to make this addition. But if all the Members here think they understand it in this text — if what we have in mind as a new Amendment is considered as superfluous — then we expect this explanation to be placed on the official record of this Conference, because there may be a dispute later on. We have to adjust our conversion rate from time to time, even though we do not do it as frequently as we should.

For a country such as China, where the financial and monetary situation is unfortunately not such as it should be, we attach the greatest importance to the wording of the Amendment which the Chinese Delegation has proposed; but in order to reach a compromise, in view of the strong opposition from some of the Delegations, which I do not understand very well, I would suggest that in the Report itself some such formula might appear on the lines of saying that it is understood that nothing in this paragraph or Article is to be construed as to prevent any Member States from readjusting their rates of exchange as conditions might require. If this formula is agreeable to the Commission, then the Chinese Delegation might consider the possibility of withdrawing its Amendment.

CHAIRMAN: Any further remarks?

Well, we have different proposals, one from the United States representative that one alternative solution will be to omit any reference to this question, and confine ourselves to the discussion we have had here. The other is the proposal just made by the Chinese Delegate, that the Commission should
express the view that nothing in this Article prevents a
Government from - I hesitate to formulate the exact wording of
their proposal - nothing in this Article should prevent a
Government from re-adapting its currency value in accordance
with the conditions... What was, exactly, the wording you
suggested?

Mr. WUNSCH-KING (China): "Would not prevent the Member
States from readjusting the rate of exchange of their currency
from time to time as conditions might..."

CHAIRMAN: But these proposals are rather tentative; we have
not had any opportunity of studying them fully, and I am always
a little bit afraid to adopt proposals made on the spur of the
moment without consideration by all the Delegations. So I myself
feel rather inclined to come back to the proposal of the Legal
Drafting Committee and record the discussion in full in the
Minutes of this Meeting of Commission A, and that would, to my
mind, give the Chinese Delegation all the satisfaction they want.
They would then be free to pursue the matter further at a later
moment.

He was afraid of creating misunderstandings, and I think
that the discussion in this case should do away with any fear
on that score.
CHAIRMAN: The Delegate of China.

H. E. Mr. WUNSZ KING (China): Mr. Chairman, I am sorry to say I am distressed to hear that the spirit of compromise which has inspired the formulation of this wording has not been reciprocated by an equal spirit of compromise on the part of my colleagues. On the other hand, I am very grateful to you for having suggested that in the Minutes a full account should be recorded concerning the Chinese amendment and the result of the discussions and the opposition, etc. But with your permission I would like to suggest something more; that the Commission might see its way to agree to the inclusion in the report of a passage saying that the Chinese Delegation has proposed an amendment, quoting the exact words, and that the Delegation has reserved its position thereon.

CHAIRMAN: I thank the Chinese Delegate for his remarks and, as far as I can see, the best solution would then be that we maintain in our text the Explanatory Note as previously agreed to and reproduced by the Legal Drafting Committee, and that we add, in the official text: "One Delegate would have preferred the following text" and then insert the Chinese proposal.

H. E. Mr. WUNSZ KING (China): And add: "and the Delegate has reserved his position in this regard."

Mr. J. M. LEDDY (United States): Mr. Chairman, I wonder if it would be simpler if the Chinese Delegation reserved its position without putting the alternative draft in, because, as I say, we do not object to the interpretation the Chinese Delegation is getting at. We do not wish to support a text which leads to doubts in some Members' minds as to its exact meaning.
CHAIRMAN: May I ask the Delegate of China whether that would be satisfactory to him: that we maintain the previous Note and that we simply add that one Delegate (The Delegate of China) reserved his position on this matter; then we put in full in our Verbatim Record of this meeting the result of the discussion, including the Chinese proposal?

H.E. Mr. WUNSZ KING (China): Mr. Chairman, I would have no objection to maintaining the original text so long as the Chinese text as it is also appears in the Report.

CHAIRMAN: That was just what the United States Delegate said: that he and other Delegates have no objection to the idea of the Chinese amendment and that is why it would be misleading to put in that amendment in the name only of one Delegation. It would be easier to say that the Chinese Delegation - or one Delegation - reserved its position, and leave the matter open for further discussion.

Mr. J. M. LEDDY (United States): Mr. Chairman, would it not be agreeable that we should all leave it to the Organization and its powers of interpretation to determine the method of conversion of currencies and not have a Note at all?
CHAIRMAN: We have heard the last two questions which were made some time ago by the United States delegate but we would omit any reference to this question in our texts and confine ourselves to having one whole discussion in the Minutes. Would that be agreeable?

H. E. Mr. WUNSZ KING (China): I am very sorry to speak again, Mr. Chairman. Well, I have another compromise to suggest. I will not insist even upon the wording of my amendment if we could omit altogether from the Article itself paragraph (d) with its footnote.

CHAIRMAN: Does any delegate wish to support that last proposal? That does not seem to be the case.

H. E. Mr. WUNSZ KING (China): Then, in that case, I am sorry to have to insist upon the inclusion of this Chinese text in the report saying that the Chinese delegation has maintained or reserved its position.

CHAIRMAN: Well, I must try to find what the Commission has agreed to.

Mr. J. M. LEDDY (United States): Mr. Chairman, just one point. I would like to call the attention of the Chinese delegation to the fact that paragraph (d) states that nothing in this paragraph shall be construed to require any member, but it does not say that any member shall be prevented. Therefore there should be no difficulty in connection with the Charter. There may be a difficulty in connection with the Trade Agreement because we have in the Trade Agreement a reservation that no Member shall alter the method of converting currency so as to increase the par value of concessions. I might suggest that we go along without any note until the time at which the Trade Agreement is drawn up.
CHAIRMAN: Does that remark of the United States delegate alter the view of the Chinese delegate?

H.E. Mr. WUNSZ KING (China): Well, I am very grateful to the United States delegate for his remark and for his support. Nevertheless, I feel sure that there should be no great difficulty in the inclusion of the Chinese amendment in the Report.

CHAIRMAN: Well, I take it that the general opinion of the Committee will be that we maintain the note we had agreed to already weeks ago, and that one delegate would prefer the following wording of this note and insert the text of the Chinese delegate. When he prefers another wording, that means he reserves his position to the text that we have previously agreed to, and if he likes we can say that one delegate reserves his position and would prefer the following text.

H.E. Mr. WUNSZ KING (China): Yes, this is excellent.

CHAIRMAN: Well, I take it that in the circumstances we must adopt this solution and pass on to paragraph 6 of the Article. Are the English and French texts of paragraph 6 agreed?

(Agreed)

Article 19, paragraph 1 - no objection?

(Agreed)

You will see that paragraph 2 is former paragraph 3. Any objections?

(Agreed)

Mr. J.M. LEDDY (United States): Only a small point, Mr. Chairman. In the last sentence "The Organisation is authorised to request" we should like changed to "The Organisation may request."
CHAIRMAN: We have already made that alteration.
Paragraph 3, former paragraph 2, any objections? (Agreed.)
Paragraph 4.

Mr. C.E. MORTON (Australia): I would prefer that the word "enforce" in the second line of paragraph 4 be replaced by the word "impose" and also that the word "penalty" in brackets remains is and/not replaced by the word "fine".

Mr. G.B. URQUHART (Canada): I would support that, Mr. Chairman.

CHAIRMAN: Can the French text remain as it is?

Mr. ROUX (France) (Interpretation): Mr. Chairman, obviously the second sentence deals with fines and not with penalties such as an imprisonment term or anything like that.

CHAIRMAN: Does the remark of the French delegate modify the view of the Australian delegate?

Mr. C.E. MORTON (Australia): Although hanging, drawing and quartering may not be covered by the word "penalty", nevertheless, the seizure of goods is a penalty, not a fine.
CHAIRMAN: You have heard the suggestion of the Australian Delegate to slightly modify paragraph 4. It does not alter the French text; I think it clarifies the position, and unless there is any objection I take it that we agree.

Mr. J.M. LEDDY (United States): The French text will be brought into conformity, because it clearly refers only to money fines as it stands.

CHAIRMAN (Interpretation): I believe that the French text must be re-drafted.

M. ROUX (France) (Interpretation): Mr. Chairman, I believe that the French term would properly be "penalités pecuniaires" - that is, pecuniary penalties, which include fines and confiscation, because the seizure of goods, just referred to by my Australian colleague, is in fact confiscation, and since any kind of penalty like imprisonment is excluded from this context, I think "penalités pecuniaires" would be the appropriate term.

CHAIRMAN: In that case, the French text will be altered accordingly. Is that agreed? (Agreed).

We pass on to page 29, Paragraph 3. You will remember we had a discussion with the representative of the International Monetary Fund, and as a result of that discussion we adopted this text, which I take it we maintain.

The Delegate of Canada.

Mr. G.B. URQUHART (Canada): Mr. Chairman, should that not be paragraph 2, due to the re-numbering?

Mr. J.M. LEDDY (United States): I really think it arose under paragraph 5, in connection with the reference to fees on
imports and exchange control in paragraph 5. Perhaps it would be better to put it after paragraph 5.

Mr. G.B. URQUHART (Canada): That would also involve a change in the sixth line from the bottom.

CHAIRMAN: Yes. I will ask the Secretariat to kindly see to that. We pass on to paragraph 5. There are practically no drafting amendments by the Legal Drafting Committee. I take it that it is approved? (Agreed).

Article 20 - Marks of Origin, paragraph 1.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, concerning Article 20, the Belgian Delegation believes that there still remains here a confusion as to the text of the Charter which we were hoping would be eliminated in the course of our preparatory work. I am referring now to the discrimination and the difference which should be made between marks of origin and statements of origin, because we feel that marks of origin are a hindrance to international trade, whereas statements of origin may be a hindrance to fraud and irregular procedures. I would like the desire for a distinction to be made between those two concepts to be mentioned here.

CHAIRMAN: Do you want this to go on record, or to be put in the text itself?

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, could we not have a footnote, as there are so many footnotes already, saying that it is desirable, as far as possible, that marks of origin and statements of origin should be dealt with separately in the Charter?
CHAIRMAN: It is rather late to take up this new point, so I do not think we can get the Commission as such to express such a view. I think we should confine ourselves to saying in a footnote that one Delegate expressed the view that—and so on.

Mr. MUNOZ (Chile): I just wanted to ask the Belgian Delegate what he means by "statement of origin". Does he mean certificate?

MARON DE GAIFFIER (Belgium) (Interpretation): No, not certificate of origin; but certain names of origins, perhaps. I do not know exactly how you would translate that into French. But it is certain that words like, for instance, regional mark...

Mr. MUNOZ (Chile): Oh, I see.

Mr. LEDDY (United States): Belgium proposes a separate Article for paragraph 7?

CHAIRMAN: I am sorry, but I do not think we shall be able to finish our work entirely to-day, so I would suggest that the Delegate for Belgium should submit a written Draft before we continue the discussion.

CHAIRMAN (Interpretation): And then we shall see whether we are able to answer the proposal in the text, or whether it might be placed in the comments.

We pass on to Article 20, paragraph 1.
I ask if there is any comment? Approved.
Paragraph 2? Approved.
Paragraph 3.
The Delegate of Canada.
Mr. URQUHART (Canada): Mr. Chairman, on paragraph 3, the Legal drafting Committee has suggested that the word "imposed" be changed to "affixed". I would suggest that it be changed to "applied".

Mr. LEDDY (United States): I think paragraph 6 has the desired effect.

Mr. URQUHART (Canada): Paragraph 6 might be wrong.

Mr. LEDDY (United States): No, I think it means the fixing of the marking.

Mr. URQUHART (Canada): Well, marks can be fixed by other means than by "affixing". (Laughter.) They may be done by dyeing.

Mr. LEDDY (United States): We do not care what word is used.

CHAIRMAN: Further on, on the French text, there is a query by the Legal Drafting Committee. They say that the French text imposes an obligation. The English text does not impose such obligation. The difference should not be resolved by drafting. Well, I remember that we decided that the English text should be worded "Members should permit", and in order to bring the French text into line with that, we might say: "Chaque fois que cela sera possible du point de vue administratif, les Etats Members permettront l'apposition, au moment de l'importation, des marques d'origine."

Mr. ROUX (France) (Interpretation): Mr. Chairman, I think the remark of the Legal drafting Committee was aimed at substituting the word, s, permettront, in the French version, and I have no objections to that.
CHAIRMAN: I take it we all agree to the text of paragraph 3 as it now stands.

Mr. HOLMES (United Kingdom): With that alteration in the French text.

Paragraph 5. No observations?

Mr. JOHNSEN (New Zealand): Mr. Chairman, I have a suggestion to make there. The Legal Drafting Committee have recommended a change from the words "agree to" in the first line. It seems to me that the words "agree to" or "undertake to" are preferable in the text to the words shown. To undertake to do something is better than a direction in that case, and I think also that in the fifth line it would have been preferable to have retained the original text, that is, the reference as to marks of origin, instead of just "marking requirements"- as they may be marking requirements other than marking requirements in respect of marks of origin.

CHAIRMAN: Is there any objection to the remarks just made by the Delegate of New Zealand?
CHAIRMAN: This not being the case, we will revert to the former reading: "The Members agree to ... unnecessary requirements as to marks of origin" and we will adopt the whole of Paragraph 5.

There is a footnote on Paragraph 5. That has already been discussed and agreed unanimously. Are there any objections? (Agreed).

Paragraph 6. Are there any objections? (Agreed).

Paragraph 7. Are there any objections?

The Delegate of Chile.

Mr. J. A. MUNOZ (Chile): I am once again unhappy at having to reserve our position on this paragraph, on account of lack of instructions from my Government. We are waiting for them and I hope that before the meeting closes, or before the final meeting, we shall be able to withdraw our reservation.

CHAIRMAN: May I at the same time ask the Delegate of Chile whether he is now in a position to withdraw the reservation on Article 18, Paragraph 1, that we should strike out "and also vessels and other means of transport." You will find it on Page 2 of Document T/154.

Mr. MUNOZ (Chile): Yes, Mr. Chairman.

CHAIRMAN: Thank you very much.

With regard to the second Note: "The Preparatory Committee considered that the wording of this paragraph is intended to cover transit from one point to another in a given country across the territory of another country." I think you were instrumental in bringing in that Note, but I take it that you consider it entirely superfluous.

Mr. J. A. MUNOZ: Yes, that is so.
CHAIRMAN: May I ask whether the Delegates are prepared to continue for some time. I am afraid we shall not be able to finish, but it is a question of whether there will arise any serious problems. For my part, I am quite prepared to continue.

The Delegate of Chile.

Mr. J. A. MUNOZ (Chile): I agree with you, Mr. Chairman, but perhaps we might have 15 minutes' recess.

Mr. C. E. MORTON (Australia): Mr. Chairman, may I remark that we have already missed our afternoon tea, and I suggest a postponement.

CHAIRMAN: We cannot postpone the meeting until later on this evening; that is impossible, but we might meet tomorrow morning.

Mr. E. L. RODRIGUES (Brazil): Mr. Chairman, I suggest we continue our work until 7:30 without any recess.

CHAIRMAN: Let us say that we will continue for another half an hour.

With regard to Article 21, Paragraph 1; is there any objection? You will see that the text is practically unaltered by the Legal Drafting Committee. Is that agreed?

(Agreed).

Paragraph 2, Page 37. Is that approved?

(Agreed).

Mr. J. MILLEDY (United States): In the fourth line, there is the phrase "import duty or other charge." This relates solely to import questions.
CHAIRMAN: If that is agreed to, a slight adjustment of the French text will be necessary. Is that agreed?

(Agreed)

Are there any objections on Paragraph 3 (a)?

(Agreed)

There is a footnote by the Legal Drafting Committee, but in their White Paper they say the Note has become unnecessary because of the change made by the French Delegation in the French text. May I take it that we will agree on Paragraph 3(a)?

Mr. J.P.D. JOHNSON (New Zealand): I have just one small observation, Mr. Chairman, regarding the eighth line from the bottom of that paragraph. There is a full stop and a small "p" for "provided". I think it is customary, in a case like this, to use a semi-colon.

CHAIRMAN: Before "provided"?

Mr. JOHNSON: Yes.

CHAIRMAN: I think we accept that.

Are there any objections on sub-paragraph (b)?

The Delegate of Belgium.
BARON P. de GAIFFIER (Belgium) (Interpretation): The Belgian delegation believe that there is a strong contradiction between sub-paragraph (a) and (b) now that they appear in two columns because sub-paragraph (a) deals with certain procedures and in sub-paragraph (b) it is said that the paragraph shall not require the substitution of procedures in force, and therefore there seems to be an inconsistency, and the Belgian delegation wonders if it is the intention of the sub-Committee to go as far as that. Perhaps sub-paragraph (b) may need to be redrafted.

CHAIRMAN: Are there any suggestions?

BARON P. de GAIFFIER (Belgium) (Interpretation): We would prefer the deletion of sub-paragraph (b). However, if that is impossible, we suggest that the Organisation should allow a period of time for the concerned countries to readjust themselves to the requirements of sub-paragraph (a).

M. ROUX (France) (Interpretation): Mr. Chairman, as we all know, this sub-paragraph was added to provide for a certain transition and to enable the retention of some legislation which so far has not given rise to any difficulties. However, as my Belgian colleague has pointed out, there arises a drafting point here if we compare sub-paragraph (a) and (b). This is simply a drafting difficulty which would be settled, I believe, maybe by altering sub-paragraph (b) by a reference to the intervention or the authorisation of the Organisation. It might be premature to attempt to settle this to-day and if we meet again at the beginning of next week we might perhaps submit another draft which would meet the objections that have been made. However, the substance of sub-paragraph (b) would have to be retained.
Mr. J.M. LEDDY (United States): I know that a discrepancy between the English and French texts in sub-paragraph (b) may cause some difficulty. The sub-paragraph (b) laid down the requirements that the procedures concerned must provide for an objective review of administrative action. Now the French text simply says it must provide for a review of the action. The whole point of having the Organisation look at the procedures under (b) is to see whether or not they provide for an objective review.

BARON PIERRE DE GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I refer to the last sentence of this sub-paragraph. We agree that "Members employing such procedure shall, upon the request of the Organisation, furnish the Organisation with full information thereon in order that the Organisation may determine whether such procedures conform to the requirements of this sub-paragraph." Now, Mr. Chairman, I submit that these sentences leave us entirely in the dark as to what the Organisation has to do if these procedures do not conform to the requirements of the sub-paragraph.

CHAIRMAN: In the light of this I think we had better pass over (b) and take it at our next and last meeting. Meanwhile I venture to suggest that the delegates will have expressed their views in a private talk and see whether they can attempt to redraft the sub-paragraph.

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, our delegation is particularly interested in this particular provision which was put in at our suggestion, and we would certainly like to be informed of any consultation that there might be on this point.

CHAIRMAN: I would suggest that the delegates of France, Belgium and New Zealand should form an unofficial sub-Committee to talk the matter over. We pass on to Article 22.
BARON P. de GAIFFIER (Belgian) (Interpretation): Mr. Chairman, before we go any further I wonder whether you will allow me to come back to our decision which was taken by the Committee a few moments ago regarding paragraph 5 in Article 20 which concerns marks of origin. It was decided by the Committee to eliminate the Draft which was presented by the Legal and Drafting Committee and to revert to the original text. However, before this decision became final the Belgian delegation would like to insist upon the conservation of the modification brought by the Legal and Drafting Committee. As you know, the Belgian delegation was always in favour of the suppression of all unnecessary marking requirements. We consider that this only leads to the spoiling of the goods, and therefore should be eliminated since it creates unnecessary obstacles in the same way, and the original trade marks might create obstacles for goods of national origin. That is why we consider that the modification which was introduced by the Legal and Drafting Committee was a very happy one, and we would like to insist upon its retention.

I believe that the French text does not entirely correspond to the English text and we could modify it... (and then the Belgian delegates suggests a proper modification of the French text).
Mr. J.M. LEMMY (United States): We would prefer the Legal Drafting Committee's text as it was recommended complete.

CHAIRMAN: Does the Committee, after this exchange of views, accept the Legal Drafting Committee's text?

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, this Article, as far as I can see, deals entirely with marks of origin. It seems to me that in order to keep within the context, the original draft should stand. In other words, it should refer to unnecessary requirements as to marks of origin. I do not see that there is any necessity to alter the context of this Article, namely, to provide for other mark requirements. I would suggest that the original draft be retained.

CHAIRMAN: Any further remarks?

Baron P. de GAFFIER (Belgium) (Interpretation): Mr. Chairman, to meet the remark of the Delegate of New Zealand, I would like to observe that the spirit of Article 20 tends to eliminate all unnecessary obstacles, and the trade marking requirements are one of these obstacles. Therefore, Mr. Chairman, we submit that our proposal is entirely within the spirit of Article 20.

CHAIRMAN: May I take it that the Commission now agrees to the text proposed by the Legal Drafting Committee?

(Interpretation) This remark concerns the English text. The French text ought to be re-drafted in order to be quite correct. That is agreed?

Mr. C.E. MORTON (Australia): Mr. Chairman, I think it is getting late and we are getting a little hasty in our decisions.
CHAIRMAN: We go back to Page 39, Article 28, paragraph 1. You will find that is in practically the same form as we adopted previously. Is that agreed? (Agreed).

Paragraph 3. Agreed? (Agreed).
Paragraph 5. Any observations? (Agreed)
Paragraph 6. Agreed?

Mr. J.M. LEDDY (United States): Mr. Chairman, I am sorry! I suggest that the word "may" in the seventh line should be brought down to the thirteenth line, because you want the Organization to collaborate with the other international organizations with respect to everything provided for in the paragraph, so that it should read: "The Organization, in collaboration with the Economic and Social Council of the United Nations and with any other organization deemed appropriate, may engage in studies with a view to..." The same change should be made in paragraph 7.

CHAIRMAN: I think we all agree to that drafting amendment. Paragraph 6 is approved? (Approved).

Paragraph 7, with the amendment just submitted by the Delegate of the United States. Approved? (Approved).

Article 23, Boycotts. I take it the text is approved? We have a note that two Delegates reserved their position on this Article. I think they reserved their position for the time being, but I am not sure of that.

Mr. J.M. LEDDY (United States): Mr. Chairman, we would be happy to see the Article deleted.

CHAIRMAN: Any support for the suggestion of the United States?

Mr. S.L. HOLMES (United Kingdom): Mr. Chairman, I should
rather like time to consider that interesting but wholesale suggestion on the part of my United States colleague. Perhaps the matter might be left for the moment on the basis of the suggestion as made.
Mr. RANGANATHAN (India): If the idea is that the whole Article should be deleted, I support it.

CHAIRMAN: Well, we cannot decide this here today, but we can pass over Article 23 and take a decision at our next meeting, at the same time as we consider the question we have reserved now; and then we have only Article 37 left, and I think it is too late now to start on that.

I have an announcement to make.

Commission A will meet at 10.30 on Monday morning next for the discussion of Articles 34, 35 and 38. This will be instead of the Tariff Committee. Monday morning at 10.30.

As for our Committee, I cannot decide when it can meet again. I must submit that to the Secretariat.

Mr. VAN DER POST (South Africa): Mr. Chairman, Dr. Hollow who has been called away to London, has asked me to make a statement about the Notes that might result in some discussion. Could I be given the opportunity, if you please. The special Note, for example, on Article 18. He has asked me to make a special statement in order to draw the attention of the Commission to it.

CHAIRMAN: That terminates our work tonight.

The Meeting rose at 6.55 p.m.