I. INTRODUCTION

1. The Working Party was set up, by decision of the CONTRACTING PARTIES on 17 January 1955, (SR.9/29) with the following terms of reference:

"To examine in the light of the discussion in Plenary Session the proposal of the United Kingdom relating to the special problems of the dependent overseas territories, and to submit recommendations thereon to the CONTRACTING PARTIES."

The membership comprised representatives of Belgium, Brazil, Canada, Denmark, Dominican Republic, France, India, Indonesia, Italy, Federation of Rhodesia and Nyasaland, United Kingdom and the United States. Dr. Enderl (Austria) was appointed Chairman.

2. The decision to set up the Working Party originated from a discussion in Plenary Session of a proposal by the United Kingdom Government (L/296) to introduce in an appropriate article of the General Agreement the following paragraph:

"A metropolitan country may take any action, or invoke any procedure under this Agreement, on behalf of the economic interests and development of a dependent territory for those external relations it is responsible, and the provisions of the Agreement shall apply for this purpose as if the dependent territory were within the customs area of the metropolitan country; provided always that any measures taken by virtue of this paragraph shall operate substantially to the exclusive benefit of the dependent territories of the metropolitan country concerned."

This proposal was taken as the basis for discussion in the Working Party. The United Kingdom delegate was asked to explain and clarify the proposal and in particular to show how it would apply to the relevant Articles of the General Agreement. A further paper by the United Kingdom (W.9/153) enabled the Working Party to discuss the proposal in greater detail and to arrive at certain general conclusions upon it.

3. Two main kinds of difficulty were foreseen by the Working Party to the United Kingdom proposal. The first was that it was too broad, both in respect of its application to all dependent overseas territories
and in respect of the field of products covered by it. The second was that to proceed by way of a rule in the General Agreement would recognize the problem with which the proposal was intended to deal as a permanent one, whereas the Working Party felt it to be a transitional one. Moreover, it was considered that the adoption of a new article in the General Agreement in the form proposed by the United Kingdom would constitute in effect an amendment to Article I and would therefore require unanimous acceptance by the CONTRACTING PARTIES. Lastly, as it was not expected that amendments to the Agreement would become effective before eighteen months after the close of the Session, and as the United Kingdom problem was apparently one for which a solution had to be found in the near future, the Working Party felt that procedure by way of a new article in the Agreement as proposed by the United Kingdom would not provide an effective solution of the problem. For these reasons, although no firm conclusions were formulated at that stage of the discussion, the general consensus in the Working Party was that further discussion of the United Kingdom proposal was not likely to lead to fruitful results and that it would be more appropriate to proceed by way of a waiver.

4. After informal discussions between members of the Working Party, the United Kingdom delegate informed the Working Party that his Government had agreed, in the light of their study of the previous discussions in the Working Party, that a new approach on the lines suggested in these discussions might be explored, and submitted a draft of a waiver in terms which were designed to meet the main difficulties foreseen in earlier discussions. This draft waiver formed the basis of the Working Party's further study. Changes were made in the draft to meet points raised by members of the Working Party. The final form of the waiver as agreed by the Working Party and as now recommended to the CONTRACTING PARTIES for acceptance in accordance with the procedures of Article XXV of the General Agreement is given in Annex I.

II. COMMENTS AND RECOMMENDATIONS

(1) Objectives of the waiver

5. The basic objective of the waiver is to enable the United Kingdom to fulfill, in a manner consistent with the economic relationship existing between it and the dependent overseas territories, and with the broad objectives of the General Agreement, its responsibilities for the economic and social well-being of the overseas territories for whose international relations it is responsible. A list of these overseas territories is given in Annex II. This list includes Colonies, Protectorates and Trust Territories. The proposed waiver is designed to cover a limited range of problems which arise in the trade field because of the dependence of certain territories on the United Kingdom market for their exports; and the general concept behind it is that the United Kingdom should be enabled to find a solution of these problems by according to the trades concerned measures of protection and assistance of a kind similar to those which it can, consistent with its obligations under the General Agreement, provide to industry and agriculture in the United Kingdom itself. The United Kingdom representative explained that, while the provisions of Article XVIII are available to dependent territories to promote the establishment of industries to serve their own domestic markets, the United Kingdom could not have recourse to that Article to give special assistance to an industry in such territories in relation to the metropolitan market.
6. The Working Party, having accepted this broad objective in principle, considered carefully whether it could be so defined in the waiver itself as to limit the use of the action proposed to specified territories and specified products. In the end, however, it accepted the explanation of the United Kingdom that there were both constitutional and practical difficulties and proceeded on the alternative basis of introducing into the waiver strict criteria and detailed procedures which would ensure that action under it by the United Kingdom was restricted to a defined field of trade problems and was brought under the close supervision of the CONTRACTING PARTIES. In particular, limitations were introduced in paragraph 2 of the waiver to ensure that action under it would be confined to colonial products which depend wholly or in large measure upon the United Kingdom as a market and that no benefit from action under the waiver could be derived either by United Kingdom industries or exports or by countries other than the United Kingdom dependent overseas territories. In addition, and in recognition of the fact that the problems to be dealt with are in large measure transitional, the Working Party agrees that the application of the waiver should be confined to products which are at the present time dependent on the United Kingdom market.

7. In a further effort to limit the extent to which the waiver may be applied in relation to the provisions of the General Agreement, paragraph 1 of the draft refers to specified articles of the Agreement and to specified Decisions of the CONTRACTING PARTIES. The effect of this paragraph is that the procedures of these Articles and Decisions will apply to all action taken under the waiver as if the colonial product receiving the facilities were a domestic product of the United Kingdom. Additional procedures for notification, consultation and, in the case of Article I, prior concurrence are included in paragraphs 3 and 4 and provision is made in paragraph 5 for annual reports to the CONTRACTING PARTIES.

8. Later paragraphs of this report describe the range of action permitted to the United Kingdom under the waiver and the procedures in accordance with which such action will be taken. The following paragraphs record further clarifications and assurances provided by the United Kingdom in respect of the definition of certain terms used in the preamble and in paragraphs 1 and 2 of the draft waiver.

"Industries or branches of agriculture"

9. The Working Party sought for closer definition of this expression but accepted the view of the United Kingdom that it would not be possible to provide such a closer definition in the text of the waiver itself. The United Kingdom did, however, explain that the expression, taken in conjunction with the limitation of action under the waiver to establish trades and applied to the existing pattern of production and trade in the dependent overseas territories, meant in fact no more than a range of agricultural and forest products, mostly tropical or sub-tropical in character, and a limited range of processed goods, based on local supplies of these primary products, which are largely dependent on the United Kingdom market at the present time.
"Wholly or in very large measure dependent on the United Kingdom as a market"

10. As already stated, the Working Party accepted the view that a comprehensive list of products would not be covered by the waiver. It agreed instead to refer in this report to statements made by the United Kingdom in Plenary Session and in meetings of the Working Party to the effect that the special facilities provided for in the waiver would not be available for those colonial products which find outlets to any substantial degree in markets other than in the United Kingdom and hence would not apply to the major products which enter into international trade such as rubber, tin and cocoa. Nor was it the intention to apply the facilities to such commodities as sugar, in respect of which special marketing arrangements between the Colonies and the United Kingdom are already in force. The words "in large measure" are intended to limit action by the United Kingdom to products of which the exports from the dependent territories to the United Kingdom comprise the whole or predominant part of their total exports of these products.

(3) Field of action permitted by the waiver

11. In order to explain the types of action permitted to the United Kingdom (within the field defined in paragraph 2 of the waiver and commented on in the preceding paragraphs), the various methods of assistance foreseen in paragraph 1 of the waiver are set out in this paragraph. Assistance to a colonial industry or branch of agriculture could be provided

(i) by affording protection for products imported into the United Kingdom market through increases in margins of preference beyond the limits permitted by the provisions of the General Agreement;

(ii) by providing, or assisting in the provision of, subsidies for products exported to the United Kingdom market as if such subsidies were provided for a domestic product of the United Kingdom;

(iii) by employing countervailing and anti-dumping duties to protect production for the United Kingdom market under the same conditions as apply to the employment of such duties to protect domestic production in the United Kingdom;

(iv) by taking emergency action, in the interests of exports to the United Kingdom in the same manner and to the same extent as such action may be taken in the interests of domestic production of the United Kingdom; and

(v) by continuing, within the terms and under the procedures of the Decision of March 1955, dealing with the problems raised for contracting parties in eliminating import restrictions maintained during a period of balance-of-payments difficulties, quantitative restrictions on imports from other countries into the United Kingdom market of products imported into that market from the dependent overseas territories.
(4) Conditions and procedures for action under the waiver

In the following paragraphs each of these types of assistance is examined in relation to the conditions to be observed and the procedures to be followed in giving effect to them.

12. (i) Increases in margins of preference. The original United Kingdom request was that the waiver should provide for action under it leading to an increase in a margin of preference for the benefit of the dependent overseas territories to be subject to post-facto notification to, and consultation with, the contracting parties affected, with appropriate provisions for the CONTRACTING PARTIES to determine, if necessary, adequate compensation. The United Kingdom representative pointed out that there were severe practical limitations implied in such a request. In the first place, as most United Kingdom tariff items of interest to the Colonies are bound, it would be necessary in practically all cases for the United Kingdom to negotiate an increase in a tariff under the relevant provisions of the Agreement before it could give an increased tariff preference to a colonial industry. In the second place, the Ottawa Agreements provide for duty-free entry of these items from the independent Commonwealth countries. Thus the United Kingdom would be compelled to limit the items selected for this form of assistance to items in which there was no material Commonwealth interest; otherwise independent Commonwealth countries would benefit from the action, contrary to the provisions of paragraph 2 of the waiver. On this latter point, the reference in paragraph 1 of the draft waiver to the Decision of 24 October 1953 [as amended], is included so as to enable the United Kingdom, in introducing a new margin of preference for a colonial industry to maintain duty-free entry for all Annex A countries where no diversion of trade from foreign countries to independent Commonwealth countries is thereby involved.

13. The Working Party, while recognizing the practical limitations imposed by the terms of the waiver itself and by the other factors referred to in the preceding paragraph, considered that any waiver which provided in general terms for deviation from the provisions of Article I of the General Agreement should provide for action under it to be subject to the prior concurrence of the CONTRACTING PARTIES in each case. In consequence, paragraph 3(1) of the waiver as now recommended contains this provision. In addition, it contains procedures for consultation with a view to arriving at a mutually satisfactory settlement or compensatory adjustment with contracting parties suffering damage and makes action on bound items subject to the procedures of the Agreement governing the withdrawal or modification of tariff concessions. Some members of the Working Party opposed the inclusion of provision for complete authorization for action not permitted by Article I. However, it was considered that the requirement of prior concurrence went far towards meeting their objectives on this point. Notification of the intention of the Government of the United Kingdom to take action under paragraph 3(1) of the waiver will be submitted to the Executive Secretary who will inform all contracting parties. A time limit of thirty days is provided for a contracting party which considers that its interests are likely to suffer damage to request consultation with the United Kingdom or a meeting of the CONTRACTING PARTIES. If no request for consultation or meeting is
received, the United Kingdom Government will be free to take the action proposed. Further, it is provided that, if no mutually satisfactory settlement or compensatory adjustment is agreed upon in such consultation, the matter may be referred to the CONTRACTING PARTIES.

14. (ii) Subsidies. The effect of the waiver, so far as subsidies are concerned, is to classify as domestic subsidies under the provisions of Article XVI any subsidies paid in accordance with the terms of the waiver on exports of a colonial product to the United Kingdom market. The United Kingdom representative assured the Working Party that to the extent that any subsidy were paid in such a way as to effect exports of a colonial product to third countries, the subsidy would be regarded to the same extent as an export subsidy and would fall within the appropriate procedures of Article XVI.

15. (iii) Countervailing and anti-dumping duties. The Working Party noted that under the terms of Article VI of the General Agreement as they now stand provision is made for the waiving of obligations to the extent necessary to permit a contracting party to impose countervailing or anti-dumping duties for the benefit of imports into its territory from a third country and also took note of the amendment of this Article recommended by Working Party III.

16. (iv) Emergency action. Article XIX of the Agreement sets out the conditions under which emergency action may be taken by a contracting party in the interests of its domestic production and lays down procedures for retaliatory action by other contracting parties. The effect of the waiver is to enable the United Kingdom to apply the procedures of paragraph 1(a) of Article XIX for the benefit of a colonial industry dependent on the United Kingdom market.

17. (v) Quantitative restrictions. One effect of the waiver is to extend the application of the Decision of March 1955, dealing with the problems raised for contracting parties in eliminating import restrictions maintained during a period of balance-of-payments difficulties, so as to enable the United Kingdom to continue, within the terms and procedures of the latter, quantitative restrictions on imports from third countries in order to give protection to a colonial industry. Having regard to the detailed conditions and procedures contained in that Decision, the Working Party reached the conclusion that there was no need to specify additional procedures in the waiver submitted herewith.

18. The Working Party draws attention to two general points which emerge from the description in the preceding paragraphs of the types of action permitted under the draft waiver and the procedures pertaining thereto. In the first place, it is clear that the draft waiver preserves intact the conditions and procedures of the relevant Articles of the General Agreement and of the Decisions referred to above. All it seeks to do is to enable the United Kingdom to apply the provisions of the relevant Articles and of those Decisions to colonial products dependent on the United Kingdom market as if these products were domestic products of the United Kingdom. It follows from this that the provisions of paragraph 4 of the draft waiver now being recommended are additional to and not in substitution for the procedures of the relevant Articles of the Agreement and of the Decisions referred to. Secondly, it will be seen that some
of the action foreseen by the draft waiver is of a type already foreseen in the relevant Articles of the Agreement itself or involves only slight deviations from the provisions of these Articles. The Working Party draws this fact to the attention of the CONTRACTING PARTIES in order to demonstrate the limited field of deviation involved by the draft waiver from some of the provisions of the General Agreement.

19. Under paragraph 5 of the waiver the United Kingdom is required to submit an annual report to enable the CONTRACTING PARTIES to review all action taken under it.

20. It is further provided that the right of contracting parties affected of recourse to Article XXIII is not prejudiced.

21. The Working Party intends that the provisions of the waiver should be understood to relate to Articles I, VI, XVI, XIX and XXIII as they stand in the Agreement at present and to the amended texts of those Articles after the amendments enter into force for the United Kingdom.
ANNEX I

DECISION CONCERNING SPECIAL PROBLEMS
OF DEPENDENT OVERSEAS TERRITORIES OF THE UNITED KINGDOM

HAVING RECEIVED from the Government of the United Kingdom of Great Britain and Northern Ireland a request for certain facilities to assist them, in pursuit of the objectives of the General Agreement, in fulfilling their special responsibilities to promote the economic development and social well-being of the overseas territories for whose international relations they are responsible (hereinafter referred to as the dependent overseas territories),

HAVING NOTED the explanation of the Government of the United Kingdom that the sole purpose of the facilities sought is to enable them to assist and safeguard, in cases of special need, industries or branches of agriculture in the dependent overseas territories which depend wholly or in large measure upon the United Kingdom as a market for the export of their products,

HAVING FURTHER NOTED the assurance given by the Government of the United Kingdom that they will, in the use of these facilities, safeguard the interests of other contracting parties to the General Agreement,

RECOGNIZING that, whilst the dependent overseas territories have access to the facilities of Article XVIII of the General Agreement for purposes of economic development, additional facilities may, in special cases and in the light of the special relations existing between the United Kingdom and the dependent overseas territories, be needed in order to assure an outlet for certain of their products in the United Kingdom market,

The CONTRACTING PARTIES, acting pursuant to paragraph 5(a) of Article XXV of the General Agreement, and in consideration of the explanation and assurance recorded above,

DECIDE that:

1. Subject to the provisions of the following paragraphs of this Decision,

(a) the obligations of Article I shall be waived to the extent necessary to permit the Government of the United Kingdom to accord preferential tariff treatment to imports from the dependent overseas territories outside the limits permitted by the provisions of paragraph 4 of that Article; and
(b) the provisions of the General Agreement shall be waived to the extent necessary to permit the Government of the United Kingdom to take such action to assist an industry or branch of agriculture in the dependent overseas territories as they can, without breach of their obligations under the General Agreement, take to assist a domestic industry or branch of agriculture under the provisions of Articles VI, XVI and XIX, of the Decision of ___ March 1955 dealing with the problems raised for contracting parties in eliminating import restrictions maintained during a period of balance-of-payments difficulties and of the Decision of 24 October 1953 [as amended] granting a waiver to the United Kingdom from Article I.

2. The provisions of this Decision shall not apply in respect of any action taken by the Government of the United Kingdom which,

(a) would assist an industry or branch of agriculture in the dependent overseas territories which is not wholly or in large measure dependent on the United Kingdom as a market for the export of its product, or

(b) would also afford material benefit, either in the domestic or in export markets, to industries or branches of agriculture of the United Kingdom or of any territory other than the dependent overseas territories.

3. (1) No action shall be taken by the Government of the United Kingdom in virtue of paragraph 1 of this Decision which has the effect of introducing or increasing a margin of preference outside the limits permitted by the provision of Article I of the General Agreement without the prior concurrence of the CONTRACTING PARTIES in accordance with procedures annexed hereto. Furthermore, the Government of the United Kingdom shall, upon request at any time, promptly enter into consultations, with a view to arriving at a mutually satisfactory settlement or compensatory adjustment, with any contracting party which considers that such action is causing, or is likely to cause, material damage to its commercial interests and, if these consultations do not result in a mutually satisfactory settlement or adjustment, the contracting party or parties affected may refer the matter to the CONTRACTING PARTIES for a decision in accordance with the procedures annexed hereto.

(2) No action under sub-paragraph (1) which involves an increase in a bound tariff shall be taken except in accordance with the provisions of the Agreement or of the Declaration of ___ March 1955 on the Continued Application of Schedules and of the Decision of ___ March 1955 on Authority to Renegotiate Concessions in Special Circumstances.
4. Whenever the Government of the United Kingdom take any action in virtue of the provisions of paragraph 1(b),

(a) they shall conform to the conditions and follow the procedures laid down in the Articles and Decisions specified therein, and

(b) where not already provided for in (a) above, they shall forthwith furnish to the contracting parties which appear to them to have a substantial interest in the trade in the product or products affected by the action, and to the CONTRACTING PARTIES, full particulars (including relevant statistical information) as to (i) the dependent territory or territories in respect of which action is being taken and the circumstances making the action necessary, and (ii) the nature of the action and the product or products to which it applies.

Thereafter, any contracting party which considers that serious prejudice to its interests is caused or threatened thereby may request consultation and the Government of the United Kingdom shall promptly enter into discussions with the contracting party or parties concerned as to the possibility of limiting or modifying the action. If agreement is not reached in such consultations, the contracting party or parties which requested the consultations may refer the matter to the CONTRACTING PARTIES for such action as may be appropriate having regard to the relevant provisions of the General Agreement.

5. The Government of the United Kingdom shall report annually not later than four weeks before each annual session, on all action taken in virtue of the provisions of this Decision,

and DECLARE that

This Decision shall not preclude the right of contracting parties to have recourse to the appropriate provisions of Article XXIII.

PROCEDURES RELATING TO PARAGRAPH 3(1)

1. Notification to the CONTRACTING PARTIES by the Government of the United Kingdom of any proposal to take action in virtue of paragraph 3(1) shall be made to the Executive Secretary who shall promptly inform all contracting parties in strict confidence.

2. If within thirty days of notification by the Executive Secretary any contracting party requests consultation or a meeting of the CONTRACTING PARTIES (or of the Intersessional Committee acting on their behalf), the CONTRACTING PARTIES shall make the necessary arrangements for such consultation or meeting with a view to reaching a decision at the earliest possible date on whether concurrence is granted or withheld.
3. If within thirty days of notification by the Executive Secretary no contracting party requests consultation or a meeting of the CONTRACTING PARTIES (or of the Intersessional Committee acting on their behalf) to take a decision on whether concurrence is granted or withheld, the Government of the United Kingdom shall be free to assume concurrence and to take the action proposed forthwith.

4. If, consultation having been requested by any contracting party at any time, no mutually satisfactory settlement or compensatory adjustment is agreed upon between that contracting party and the Government of the United Kingdom and the matter is referred to the CONTRACTING PARTIES, the CONTRACTING PARTIES shall make appropriate arrangements to ensure that they reach an early settlement or decision in the matter.

5. It is recognized to be essential that there should be no disclosure of a proposed modification of duty before such modification is publicly announced by the United Kingdom. Accordingly the CONTRACTING PARTIES agree to make provision for the observance of the utmost secrecy at every stage of these procedures.
ANNEX II

DEPENDENT OVERSEAS TERRITORIES OF THE UNITED KINGDOM

AFRICAN GROUP

Gambia
Gold Coast (excluding Togoland)
   Togoland
Nigeria (excluding Cameroons)
   Cameroons
Sierra Leone
Somaliland Protectorate
Kenya
Uganda
Tanganyika
Zanzibar and Pemba
Basutoland
Bechuanaland
Sierra Leone

ATLANTIC AND INDIAN OCEAN GROUP

Bahamas
Bermuda
Falkland Islands
St. Helena
   Ascension
   Tristan da Cunha
Aden Colony and Perin
Aden Protectorate
Mauritius and Dependencies
Seychelles

MEDITERRANEAN GROUP

Cyprus
Gibraltar
Malta and Gozo

WESTERN PACIFIC GROUP

Fiji
British Solomon Islands
Gilbert and Ellice Islands
New Hebrides
Pitcairn
Tonga

EASTERN GROUP

Federation of Malaya
Singapore
   Christmas Island
   Cocos-Keeling Islands
Brunei
North Borneo
Sarawak
Hong Kong

WEST INDIES GROUP

Barbados
British Guiana
British Honduras
Jamaica
   Cayman Islands
Turks and Caicos Islands
Leeward Islands:
   Antigua
   Montserrat
   St. Christopher Nevis and Anguilla
   Virgin Islands
Trinidad and Tobago
Windward Islands
   Dominica
   Grenada
   St. Lucia
   St. Vincent