I. INTRODUCTION

1. In accordance with its terms of reference, the Working Party considered the request received from Belgium, France, the Federal Republic of Germany, Italy, Luxemburg and the Netherlands for a waiver of certain of their obligations under the General Agreement, in order to permit the six countries to fulfill their obligations under the Treaty constituting the European Coal and Steel Community and the annexed Convention. The Working Party had before it initially the statement of the Netherlands Government (L/17), the joint note of the six member States (L/38), and the record of the discussion which took place at the meeting held by the CONTRACTING PARTIES on 6 October 1952. It also had before it a note prepared by the Executive Secretary on the legal aspects of the problem (W.7/2).

II. APPLICABILITY OF THE PROVISIONS OF PARAGRAPH 5(a) OF ARTICLE XXV

2. The Working Party took note of the statement made by the Czechoslovak representative in the plenary meeting, circulated under the symbol W.7/47. The Working Party considered, in particular, whether it would be appropriate to grant a waiver under paragraph 5(a) of Article XXV, in order to permit the six countries to participate in the European Coal and Steel Community without violating their obligations under the General Agreement. The Working Party concluded, after consideration of the contentions of the Czechoslovak representative, that such action was appropriate. The Working Party is of the view that the text of paragraph 5(a) of Article XXV is general in character; it allows the CONTRACTING PARTIES to waive any obligations imposed upon the contracting parties by the Agreement in
exceptional circumstances not provided for in the Agreement, and places no limitations on the exercise of that right. In this connection, the Working Party noted that the report of the First Session of the Preparatory Committee of the Havana Conference, referred to in the statement of the Czechoslovak representative, states with respect to the analogous provision of the Charter that "it was finally agreed that all the obligations undertaken by members should come within the purview of this general provision". The Report does not contain any other agreed statement on the scope of the Article.

3. The Working Party recognised, however, that it would be appropriate for the CONTRACTING PARTIES, before granting a waiver under paragraph 5 (a) of Article XXV, to consider whether the objectives of the European Coal and Steel Community were consistent with those of the General Agreement. The Working Party examined the provisions of the Treaty, which define the objectives of the European Coal and Steel Community and it appeared to the Working Party that those objectives were broadly consistent with the objectives of the General Agreement.

4. The Working Party came to the conclusion, therefore, that nothing in the General Agreement prevented the CONTRACTING PARTIES, if they so desired, from granting the necessary waivers to enable the States members of the Community to set up a common market in coal and steel products.

III. PRINCIPLES UNDERLYING THE WAIVER

5. The Working Party, having agreed on the desirability of modifying certain obligations of the member States in order to enable them to accomplish the objectives of the Treaty and the related Convention, considered the principles on the basis of which a waiver should be granted.

6. The representatives of the member States stated that the development of a close integration of their economies brought about by the elimination of barriers to the free movement of
coal and steel products among their territories would result in an increase in the supply of products available to outside countries and in a widening of the opportunities for the sale of products by other contracting parties within the common market. In their view, the creation of a Community devoted to the expansion of the production and exchange of coal and steel products and to the improvement of the conditions of production in the industries in question, would benefit not only the member States, but all contracting parties. Those representatives also pointed out that the governments of the member States had assumed major risks in launching such an unprecedented experiment, and felt that other contracting parties should give support to the Community. On the other hand, other members of the Working Party pointed out that the setting up of a common market would introduce uncertainties and risks for countries which relied to a large extent on the production of the members of the Community for vital supplies of coal and steel, and on the markets of the member States as an important outlet for the exports of some of their steel products. Before agreeing to the surrender of some of their rights under the Agreement, their governments needed definite assurances that the Community would follow a liberal policy and that their vital interests would be fully safeguarded.

7. The Working Party decided, in recognition of the points of view expressed above, that it would be desirable to set out as part of the Decision, the considerations on which the Decision was based, notably the objectives of the Treaty and the intentions and commitments of the Community to pursue constructive trade policies towards outside countries. The Working Party also decided that the Decision should be based upon the principle that the Governments of the member States should be enabled to act for the purposes of the General Agreement, insofar as this may be shown to be necessary to the accomplishment of the objectives of the Treaty and the Convention and of the tasks of the Community and its institutions under those instruments, as if the European territories of those States constituted the territory of a single contracting party insofar as coal and steel products are concerned.
8. The Working Party also felt that there would be a distinct advantage for the other contracting parties if the scope and effect of Article 71 of the Treaty, which defines the powers granted to the Community concerning commercial policy, could be clarified by formal statements of the member States and the Community. It noted with satisfaction that both the High Authority and the member States were prepared to give appropriate assurances to the CONTRACTING PARTIES. These statements have been incorporated as an integral part of the Draft Decision.

9. The specific waivers which appeared necessary for the achievement of the objectives of the European Coal and Steel Community were drafted in the light of the considerations set out above and embodied in the Draft Decision.

V. CERTAIN PARTICULAR ASPECTS OF THE DECISION

10. With respect to the waiver of the most-favoured-nation clause contained in paragraph 1 of the Draft Decision, the Swedish representative stated that the foregoing by contracting parties of their most-favoured-nation right constituted a concession on their part. The Swedish representative therefore proposed that the member States should declare that they stand ready to give adequate compensation in cases where the waiver involves an economic sacrifice for other contracting parties. As this point of view was not shared by the majority of the Working Party, the Swedish representative reserved his position on paragraph 1. In this connection, the Working Party agreed that the adoption of the Decision would not debar any individual contracting party from having recourse to the provisions of Article XXIII, if it considered that any benefit accruing to it under the Agreement was being nullified or impaired.

11. In the second subparagraph of paragraph 4, the Working Party introduced the phrase "for the purposes specified in section 15, paragraph 7 of the Convention, and under the circumstances specified in that paragraph". It was felt that this insertion was necessary to guarantee that the authorized increase in the duties
on tariff items bound under the General Agreement would only take place if the member States gave effect to their intention of harmonizing their customs duties and of bringing them down to a level which would be lower than the general level of their present duties on coal and steel products. The Working Party agreed to the second sub-paragraph of paragraph 4 on the understanding that, if negotiations, on the lines indicated in Section 15, paragraph 1 of the Convention, are undertaken by States members of the Community with other contracting parties, in any assessment of the advantages accruing to those contracting parties as a result of the reduction of any duties imposed by the member States, any increase in the Benelux duties, should it take place, should also be taken into account.

12. The Working Party noted that the Treaty, while affording some assurances as regards the future level of import duties of the member States, did not provide equal assurances as to the policy to be followed by the Community as regards export duties. It was also pointed out that no precise assurances existed in the Treaty regarding other barriers to the export of coal and steel products from the Community. The representatives of the member States stated that they could not, in this matter, accept limitations to their freedom of action which would go beyond the obligations which apply to contracting parties generally. They agreed, however, to the insertion of a reference to those matters in the Preamble of the Decision. This proposal was accepted by the Working Party.

13. The Working Party agreed that, on the analogy of the procedure adopted with respect to interim agreements leading to the formation of customs unions and free-trade areas, it would be appropriate for the governments of the member States to submit an annual report to the CONTRACTING PARTIES until the end of the transitional period on the measures taken towards the full application of the Treaty.

14. The Working Party agreed that if urgent matters arose between sessions with respect to the operation of the Decision, the arrangements which had been approved by the CONTRACTING PARTIES for the consideration of any urgent matter during the intersessional period would afford the necessary machinery.
15. The Working Party agreed that it would be useful to include as an Annex to the Resolution the list of the "coal and steel products" contained in Annex I to the Treaty.

16. In addition, the Working Party has received from the representatives of the member States a list of the tariff items in the Benelux, French, German and Italian tariffs corresponding to the products covered by the Decision. This schedule has been reproduced in an appendix to this Report for the information of the CONTRACTING PARTIES.

VI. CONCLUSION

17. The Working Party submits to the CONTRACTING PARTIES, for consideration and approval, the following Draft Decision.
CONSIDERING that the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Republic of Italy, the Grand Duchy of Luxemburg and the Kingdom of the Netherlands (hereinafter referred to as "the member States") have concluded on 18 April 1951, a Treaty constituting the European Coal and Steel Community (hereinafter referred to as "the Treaty") and an Annexed Convention containing the Transitional Provisions referred to in Article 85 of the Treaty (hereinafter referred to as "the Convention");

that the member States have specifically undertaken to eliminate and prohibit within the Community import and export duties, or charges with an equivalent effect, and quantitative restrictions on coal and steel products, and to prevent any restrictive or discriminatory practices impeding normal competition so far as they relate to coal and steel products;

that the stated objective of the member States in removing the barriers to the free movement of coal and steel products among their territories is not only to develop closer integration of the economies of those States and to contribute to the maintenance of good understanding among them, but also to contribute to the economic expansion, the development of employment and the improvement of the standard of living in the member States;

that the realisation of these aims, if accompanied by appropriate trade policies on the part of the Community, could benefit other contracting parties to the General Agreement by increasing supplies of coal and steel products, and by providing increased markets for commodities used by the coal and steel industry and for other products and thereby would contribute to the objectives of the General Agreement as defined in the Preamble;

that the Community has undertaken to take account of the interests of third countries both as consumers and as suppliers of coal and steel products, to further the development of international trade, and to ensure that equitable prices are charged by its producers in markets outside the Community;
that the member States propose to harmonize their customs duties and other trade regulations applicable to coal and steel products originating in the territories of the other contracting parties to the General Agreement, upon a basis which shall be lower and less restrictive than the general incidence of the duties and regulations of commerce now applicable; and

that, in order to fulfil the undertakings referred to above, it will also be necessary for the Community to avoid placing unreasonable barriers upon exports to third countries, including specifically unreasonable duties and unreasonable quantitative restrictions;

TAKING NOTE of the undertakings made by the High Authority on this date that, in the exercise of the powers which the Treaty confers upon it and to the extent that such powers permit, it will act in accordance with the obligations which would apply if the Community were a single contracting party consisting of the European territories of the member States, and, further, that within the limits of these same powers, upon invitation of any of the member States issued at the request of any other contracting party or the CONTRACTING PARTIES, it will participate together with the member State or States concerned in all consultations undertaken in accordance with the provisions of the General Agreement:

of the undertakings of the member States that if, in accordance with the provisions of the General Agreement, a consultation is to take place with one or more member States of the Community with respect to a question on which the High Authority possesses any powers, and if any other contracting party or the CONTRACTING PARTIES so request, the High Authority will be invited to be represented at such consultation;

of the representations of the member States (a) that Article 71 of the Treaty prevents any of the institutions of the Community from requiring such member States to take actions which are inconsistent with their obligations under the General Agreement, as modified by this waiver, and (b) that, whenever a question arises as to the consistency of any action of the Community or of the member States, taken or proposed to be taken, with the obligations of the member States to other contracting parties under the General Agreement, any recommendation, finding or decision by the CONTRACTING PARTIES with
respect to such action or proposed action of the Community or the member States shall have the same force and effect as it would have if the recommendation, finding or decision were made in respect of such action or proposed action on the part of any other contracting party under the General Agreement.

I

THE CONTRACTING PARTIES,

DECIDE, in accordance with paragraph 5(a) of Article XXV of the General Agreement and with the principle that the Governments of the member States should be enabled to act for the purposes of the General Agreement, insofar as this may be shown to be necessary to the accomplishment of the objectives of the Treaty and the Convention and of the tasks of the Community and its institutions under those instruments, as if the European territories of those States constituted the territory of a single contracting party insofar as coal and steel products are concerned, that:

1. The Governments of the member States, notwithstanding the provisions of paragraph 1 of Article I of the General Agreement, will be free to eliminate, or, as regards imports of coke and steel products into the territory of the Italian Republic, to reduce by stages and ultimately to eliminate, customs duties and other charges imposed on or in connection with the importation or exportation of coal and steel products from or to the territories of any other of the member States, without being required to extend the same treatment to the like products imported from or exported to the territories of any other contracting party;

2. The French Government, notwithstanding the provisions of paragraph 1 of Article I of the General Agreement, will be free to extend to coal and steel products originating in the metropolitan territories of the other member States, when imported into the territories of the French Union listed in Annex B to the General Agreement, such preferences as are extended, in accordance with paragraphs 2 and 4 of Article I of the General Agreement, to coal and steel products originating in that part of metropolitan France which is in Europe or when imported into Algeria, the same treatment as that extended to coal and steel products originating elsewhere in metropolitan France in accordance with the status of Algeria as a part of metropolitan France;
3. The Governments of the member States, notwithstanding the provisions of paragraphs 1 and 2 of Article XIII of the General Agreement, will be free to refrain from imposing any prohibitions or restrictions on the importation or exportation of coal and steel products from or to the territories of any other member State, although instituting or maintaining such prohibitions or restrictions upon the importation or exportation of coal and steel products from or to the territories of other contracting parties; provided that the prohibitions or restrictions so instituted or maintained are in all other respects consistent with the General Agreement;

4. The Belgian, Luxembourg and Netherlands Governments will be free to modify the concessions contained in Schedule II annexed to the General Agreement to the extent necessary to establish and maintain, for a period which shall expire not later than five years after the date of the creation of the common coal market, tariff quotas for items ex 697 (carburised ferro-manganese), 703a, 704c and 705a, by raising the duties on such imports of products specified under these items as exceed the said quotas, provided that such duties shall not be higher than

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Duty</th>
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<tbody>
<tr>
<td>12 p.c.</td>
<td>for item ex 5.7</td>
<td>5.7%</td>
</tr>
<tr>
<td>8 p.c.</td>
<td>for iron or steel coils for re-rolling included under item ex 703a</td>
<td></td>
</tr>
<tr>
<td>11 p.c.</td>
<td>for universal plates of iron or steel included under item ex 703a</td>
<td></td>
</tr>
<tr>
<td>18 p.c.</td>
<td>for sheets and plates of iron or steel, flat, hot-rolled, not pickled (unworked sheets), of a thickness of not less than 2 millimeters and of a strength of less than 56 kg. per square millimeter, included under item ex 703a</td>
<td></td>
</tr>
<tr>
<td>20 p.c.</td>
<td>for sheets and plates of iron or steel, flat, hot-rolled, not pickled (unworked sheets), of a thickness of not less than 2 millimeters and of a strength of not less than 56 kg. per square millimeter, included under item ex 703a</td>
<td></td>
</tr>
<tr>
<td>22 p.c.</td>
<td>for other sheets and plates of iron steel, flat, hot-rolled, not pickled (unworked sheets), included under item ex 703a</td>
<td></td>
</tr>
<tr>
<td>18 p.c.</td>
<td>for item 704c</td>
<td></td>
</tr>
<tr>
<td>22 p.c.</td>
<td>for item 705a</td>
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</tbody>
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and that these quotas shall be sufficient to satisfy the domestic demand for these products.
These Governments will also be free, for the purposes specified in Section 15, paragraph 7, of the Convention, and under the circumstances specified in that paragraph, to raise by not more than 2 per cent ad valorem the duties contained in Schedule II annexed to the General Agreement for tariff items ex 697, 703a, 704c and 705a, as soon as the system of tariff quotas is abandoned.

5. The Belgian Government, notwithstanding the provisions of paragraph 1 of Article XI, will be free to maintain or institute quantitative restrictions, otherwise consistent with the General Agreement, on the import of coal products, to the extent necessary to avoid sudden and harmful shifts in production during the transition period as defined in Section 1, paragraph 4, of the Convention; provided that such restrictions shall be eliminated not later than seven years from the date on which the common market for coal products is created.

6. Insofar as the General Agreement permits contracting parties to take certain measures pursuant to Articles VI and XIX to protect their domestic production or pursuant to Article XI to prevent or relieve critical shortages of products essential to them, or requires contracting parties when acting pursuant to Articles XVII and XX to observe the rules of non-discrimination or of equitable treatment, the Governments of member States, acting singly or as a Community, shall exercise those rights or fulfill those obligations as if the European territories of those States constituted the territories of a single contracting party insofar as coal and steel products are concerned.

II

7. From the date of the creation of the common market for coal products and until the end of the transitional period, as defined in Section 1, paragraph 4, of the Convention, the Governments of the member States will submit an annual report to the CONTRACTING PARTIES on the measures taken by them towards the full application of the Treaty.

III

For the purpose of this Decision:

8. The territories of the member States shall be the European territories of those States; subject to the provisions of paragraph 2 of Section 1 above, this Decision shall not apply to the other territories of those States, even if those territories are part of the customs territory of the metropolitan country for the purposes of the General Agreement.
9. The phrase "coal and steel products" shall mean the products listed in the Annex to this Decision.

10. The waivers set forth in this Decision shall apply to each coal and steel product from the date on which the common market is established with respect to such product.

IV

11. The CONTRACTING PARTIES, in considering any question relating to this Decision, will pay full regard to the considerations and the undertakings set out in the preamble and to the principle set out at the beginning of Section I of this Decision.
ANNEX

COMBUSTIBLES

Pit-coal

Briquettes of pit-coal

Coke, except coke for electrodes and petroleum coke
    Semi-coke of pit-coal

Lignite briquettes

Lignite
    Semi-coke of lignite

STEEL

Raw materials for the production of pig-iron and steel
    Iron ore (except pyrites)
    Scrap iron
    Manganese ore

Pig-iron and ferro-alloys
    Pig-iron for the manufacture of steel
    Foundry pig-iron and other raw pig-irons
    Spiegeleisen and carburetted ferro-manganese

Raw and semi-finished products of iron, ordinary steel or special steel,
    including re-used and reclaimed products
    Liquid steel poured or not poured in ingots, including ingots destined
    for iron-works

    Semi-finished products; blocks, billets, blooms, slabs, wide hot-rolled
    coils (other than coils considered finished products)

Hot finished products of iron, ordinary steel or special steel
    Rails, sleepers, tie plates and splice bars, beams, heavy sections and
    bars of 80 mm. or more, and sheet pilings
    Bars and sections of less than 30 mm. and plates of less than 150 mm.
    Wire rod
    Rounds and squares for tubes
    Strips and hot rolled strips (including strips for tubes)
    Hot rolled sheets less than 3 mm. (not covered and covered)
    Plates and sheets 3 mm. thick or more, wide plates of 150 mm. or more

Finished products of iron, of ordinary steel or of special steel
    Tinplate, lead sheets, black iron, galvanized sheets, other covered
    sheets
    Cold rolled sheets less than 3 mm.
    Magnetic sheets
    Strips for making tinplate