1. In accordance with its terms of reference the Sub-Group considered the Executive Secretary's draft Article XVIII (W.9/17) with the exception of Section A which was referred to Working Party II. It examined the various proposals which were submitted for amending the draft article. Although complete agreement was not yet reached on all points, the Sub-Group thought that sufficient progress had been made to refer back to the Working Party for further consideration a revision of the text which resulted from the deliberations of the Sub-Group. The revised version is given in Annex A.

2. The Sub-Group considered a proposal by the New Zealand delegation relating to Section B, dealing with balance-of-payments restrictions imposed by under-developed countries. This proposal would be to the effect that Section B should not be a self-contained set of provisions but should embody a full recognition of the special factors to be taken into account in applying the general provisions of the Agreement on balance-of-payment restrictions to under-developed countries and record the points on which the application or interpretation of those general provisions would differ in order to take account of those special factors. The general feeling of the Sub-Group was that such an approach would have more drawbacks than advantages. Moreover, as those members of the Sub-Group which represented under-developed countries were not prepared to agree to it, the matter was not pursued further.

3. In the interest of shortening the text of the Article, the Sub-Group proposes that certain understandings and provisions relating to special points be inserted in Annex I to the Agreement which, as suggested, should contain interpretative notes and other regulations. This would not change the legal effect of those provisions since Article XXXIV provides that the Annexes form an integral part of the Agreement. The Sub-Group was also of the opinion that agreements reached on certain points of interpretation should be included in the permanent records of the CONTRACTING PARTIES to facilitate the application of the Agreement. It appeared unnecessary to burden the text of the Agreement or of the Annex with the inclusion of these points and consequently the Sub-Group proposes that they be included in the report of the Working Party which will accompany the new text of the Article when it is submitted to the CONTRACTING PARTIES for approval. The text of these notes is given in Annex B to the present report.

4. Finally the Sub-Group wishes to call attention of the Working Party to the following points which were made in the course of its deliberations.
5. The clause in sub-paragraph 4(b) reading "which is in the process of economic development" is intended to indicate the general nature and purpose of the measures covered by the provisions of Section D. It should not be construed as a legal limitation which would determine the Organization's consideration of any applications submitted under that section.

6. As indicated in paragraph 1 above, the Sub-Group has not considered Section A. It has, however, suggested certain drafting changes to make the text consistent with the other sections of the draft Article.

7. One member of the Sub-Group considered the provisions for consultation in paragraph 11 inadequate and proposed that the text should provide that restrictions maintained under Section B should be made the subject of annual consultation. Other members of the Group felt that the consultation requirements depended on what would be provided in Article XIII and agreed that the text of paragraph 11 would have to be reconsidered when the draft of that Article became available.

8. Several suggestions were made to incorporate in Section B a provision to the effect that bilateral agreements were allowed under that Section. The Sub-Group came to the conclusion that such an insertion was unnecessary since the proviso in the proposed draft of paragraph 12 was based on the same criteria as the present text of sub-paragraph 1(b) of Article XIV, under which bilateral agreements are allowed in so far as the measures permitting resort to such agreements are applied consistently with the Articles of Agreement of the International Monetary Fund. On the other hand, some representatives suggested that the Agreement should contain a provision enabling contracting parties which do not operate under Article XVIII to enter into bilateral agreements with other contracting parties resorting to Section B of Article XVIII. As this problem exceeds the terms of reference of the Sub-Group, it is suggested that it should be taken up by the Working Party.

9. The Sub-Group included tentatively the clause in square brackets in paragraph 12 which corresponds to the present text of paragraph 2 of Article XIV. The Sub-Group is however, of the opinion that this clause should be re-examined if Article XIV is modified on this point.

10. As regards the provision in paragraph 13 relating to measures of the type covered by Section C which affect bound items, the Sub-Group agreed in principle that the procedures of Section A should apply, but considered that no final conclusion on this could be reached until the revised version of Section A was known.

11. The Sub-Group considered that, in the case of a measure proposed under Section D which affected a bound item, the concurrence of the Organization should be conditional upon a satisfactory settlement being reached with the contracting parties affected by the impairment of the binding, and that the question of the inclusion of a provision in the text or in an interpretative note should be examined when the revised drafts of Article XVIII and of Section A of Article XVIII were available.
ANNEX A

TEXT OF THE PROPOSED DRAFT ARTICLE XVIII
AND TEXT FOR INSERTION IN THE ANNEX TO THE AGREEMENT
CONTAINING INTERPRETATIVE NOTES AND OTHER REGULATIONS.

ANNEX B

NOTES FOR INCLUSION IN THE REPORT OF THE WORKING PARTY
ACCOMPANYING THE TEXT OF ARTICLE XVIII

Re: Paragraph 5.

The review provided in paragraph 5 of Article XVIII is intended to provide an opportunity for discussing the effects of the measures applied under Sections C and D as well as the progress made by the industry in question. It is agreed that the Organization shall not modify the terms of its concurrence during the period of validity for which it has been given, or request the withdrawal or modification of a measure applied in full accordance with the terms of that concurrence.

Re: Paragraphs 8, 18 and 22.

It is the intent of the provisions relating to imports in "minimum commercial quantities" in paragraphs 8 and 18 that in applying a measure under Section B, C or D of Article XVIII, the contracting party concerned should avoid the complete exclusion of any product. It is recognized, however, that there might be circumstances where this would not be practicable, for instance when the minimum quantity that could be commercially shipped constitutes too high a proportion of the requirements of the domestic market.

Re: Paragraph 14.

It should be noted that any measure taken in accordance with the proviso of paragraph 14 should be only for the purpose specified therein and should not be a means of affording protection to the industry in question. The contracting party concerned should, therefore, refrain from irrevocable commitments in investment or building before the expiry of the specified period so as to avoid difficulties in the event that it should decide as a result of the consultation with the Organization, to modify or to withdraw the development project.

It is recognized that the "reasonable period of time" referred to in the Interpretative Note ad paragraph 14 should normally not exceed two years from the date on which the industry concerned started production.
Re: Paragraph 19

It is agreed that the concurrence of the Organization in a measure under paragraph 16, 20 or 21 or the failure of the Organization to request a contracting party to consult under paragraph 15 would not deprive a contracting party affected of its right to lodge a complaint under Article XXIII. Since, however, the Organization, in assessing the extent of the impairment of benefit, would have to take into consideration all the facts of the case and, in particular, the terms under which the benefit was obtained, including the provision embodied in Article XVIII, it is recognized that the Organization would not be in a position to allow a contracting party to resort to the withdrawal of concessions or suspension of obligations under paragraph 2 of Article XXIII, unless the effects of the measure concurred in proved to be substantially different from what could reasonably have been foreseen at the time the measure was considered by the Organization.