DRAFT RESOLUTION DEALING WITH THE PROBLEMS RAISED FOR CONTRACTING PARTIES IN ELIMINATING IMPORT RESTRICTIONS APPLIED FOR BALANCE-OF-PAYMENTS REASONS

(Drafted by the secretariat at the request of Sub-Group (C))

CONSIDERING that all contracting parties have accepted an obligation not to institute or maintain any prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, export or import licences, or other measures, except in so far as resort to such restrictions is specifically provided for in the General Agreement and that any deviation from the general intent of that obligation would seriously impair the value of tariff concessions enjoyed by contracting parties and generally prejudice the interests of all contracting parties,

AGREEING therefore that contracting parties which had been obliged, for balance-of-payments reasons, to maintain restrictions, shall, without delay, take all the necessary measures which enable them to remove all restrictions which would no longer be justified for balance-of-payments reasons under the relevant provisions of the General Agreement or under other specific provisions of the same Agreement,

RECOGNIZING however that, in certain cases, restrictions may have been maintained during a period of persistent balance-of-payments difficulties spreading over a number of years, and that some transitional measure of protection may be required for a limited period to enable an industry having received incidental protection from restrictions maintained for balance-of-payments reasons to adjust itself to the situation created by the removal of these restrictions,

the CONTRACTING PARTIES

RESOLVE to give sympathetic consideration to any request for a temporary waiver of the provisions of Article XI within the terms of Article XXV paragraph (a) of the General Agreement with respect to the import of one or more products, provided that they are satisfied that the conditions outlined in paragraph 1 below are fulfilled, and that the applicant contracting party is prepared to accept the undertakings set forth in paragraph 2 below:

1. The applicant contracting party shall satisfy the CONTRACTING PARTIES

   (a) that the sudden removal of restrictions justified by balance-of-payments reasons would result in exceptional hardship for a domestic industry having received incidental protection from those restrictions, and that the temporary maintenance of restriction on the import of a product of that industry is necessary to enable such an industry to adjust itself to the situation created by the removal of such restrictions;
(b) that it would not be practicable at the time the request for the waiver is put forward to resort to any measure consistent with the provisions of the General Agreement to achieve the objective set forth in sub-paragraph (a) above;

(c) that there is a reasonable chance of eliminating the restriction over a comparatively short period of time, as stated in the application;

2. The applicant contracting party shall agree to undertake:

(a) to develop and apply appropriate measures (including measures of internal policy wherever appropriate) designed to ensure the elimination of the restriction within the period referred to in paragraph 1(c) above;

(b) to grant to the other contracting parties, as from the time the waiver is operative, a fair and reasonable share of the market for the product concerned and at least to grant to imports a total share of the market as favourable as that obtaining during a representative period;

(c) that it will not thereafter intensify the restrictive effect of the measure on the export trade of the other contracting parties as compared with that prevailing on 1 January 1955 or at the time the application is made, whichever is more favourable to the export trade of the other contracting parties; and

(d) that it will carry out a policy for a progressive increase in the total imports of the product concerned and the complete elimination of the measure before the end of the period referred to in paragraph 1(c) above.

3. The applicant contracting party shall communicate its request for a waiver to the CONTRACTING PARTIES not later than one month before it expects that it will cease to be entitled to maintain the restrictions under the relevant provisions of the General Agreement to safeguard its external financial position and its balance of payments. That request shall be accompanied by the necessary information to enable the CONTRACTING PARTIES to satisfy themselves that the request meets the conditions laid down in this Resolution.

The CONTRACTING PARTIES RESOLVE further that any waiver of the provisions of Article XI which they may grant to meet the exceptional circumstances outlined in the preamble of this Resolution shall be subject to such conditions and limitations of scope or time as they shall determine to be reasonable and necessary. Any such conditions and limitations shall include the following:

(a) No restriction the maintenance of which is authorized under such a waiver shall be administered in a way inconsistent with the provisions of Article XIII or, in the case of a restriction made effective through State trading, with the provisions of Article XVII of the General Agreement.
(b) The contracting party concerned shall communicate regularly to the CONTRACTING PARTIES the total amounts of the product the importation of which will be authorized by it during the following licensing period in order to satisfy them that these amounts are fair and reasonable, due account being taken of the imports during a preceding representative period, of the relative importance of domestic production, or the trade in domestic consumption and of the improvement achieved in the efficiency of domestic producers, and of other relevant factors;

(c) The Government concerned shall further submit an annual report to the CONTRACTING PARTIES in such detail as may be required, and setting out:

(i) the progress made in the relaxation of the restriction authorized;
(ii) the result of the internal measures taken to ensure the elimination of the restriction;
(iii) the need for the maintenance of the restriction for a further period; and
(iv) any change it may be proposing in the method of application of the restriction.

(d) On the basis of that report and of any other data which may be submitted to them by other contracting parties, the CONTRACTING PARTIES shall review annually the operation of the restrictions authorized under any waiver granted in accordance with this resolution. If, on the course of such a review, they find that the maintenance or application of any restriction is no longer consistent with the conditions and limitations imposed by it or with the undertakings given by the contracting party concerned in accordance with this resolution, they may require that the measure be withdrawn or modified by a specified date.

The CONTRACTING PARTIES AGREE, finally, that the granting of a waiver with respect to a measure affecting imports of a product the rate of which is bound under Article II of this Agreement shall not limit in any way the right of another contracting party substantially interested in the binding of that rate of duty to resort to the provisions of Article XXIII of this Agreement.

This Resolution shall cease to have effect on 31 December 1959, and any restrictions maintained in accordance with it shall be eliminated before that date.
It is agreed that the granting of a waiver by the CONTRACTING PARTIES to a measure affecting imports the rate of duty on which is NOT bound under Article II of this Agreement would not deprive a contracting party affected of its right to lodge a complaint under Article XXIII. It is recognized, however, that the CONTRACTING PARTIES in assessing the extent of the impairment of benefit will have to take into consideration all the facts of the case and, in particular, the fact that they have agreed after a thorough examination of the case to waive temporarily and for a specific product or products the obligations of Article XI. It would not be likely, therefore, that the CONTRACTING PARTIES could 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 measures concurred in proved to be substantially different from what could reasonably have been foreseen at the time the waiver was granted or unless the maintenance or administration of the measure is not consistent with the conditions and limitations imposed by the CONTRACTING PARTIES when they granted the waiver or the requests for modification or withdrawal made by them in accordance with the Resolution.