1. The Sub-Group considered in the light of the discussions in the Committee those provisions of the Rome Treaty relating to the use of quantitative restrictions for balance-of-payments purposes, particularly Articles 30 to 37, 108, 109, 111 and 113, both as regards their application in the transitional period and thereafter.

2. The majority of the Sub-Group expressed concern at the fact that these provisions appeared to imply that the signatories of the Rome Treaty (who are referred to hereafter in this report as the Six) would no longer be observing the obligations of the provisions of Articles XII to XIV of the General Agreement. They maintained that there was nothing in Article XXIV which would justify any change in the obligations of the Six under these provisions and that each of the Six countries would continue to be required to justify the maintenance of restrictions solely upon the basis of the criteria laid down in Articles XII to XIV of the General Agreement. In these circumstances they were disturbed at the possible implications of paragraph 5 of Article 111. The maintenance or imposition of any restrictions not justified by the individual balance-of-payments position of the countries concerned, in order to achieve a common level of liberalization would in their view be completely contrary to the provisions of the General Agreement. They considered that the same reasoning applied to the establishment of common quotas. Whatever form such common quotas might take, they would inevitably involve an element of restriction which would be unjustified except insofar as it was based upon balance-of-payments difficulties in the country imposing the restrictions. This reasoning applied not only to the transitional period, but also thereafter. The situation would, of course, be different if at some future stage the integration of the economies proceeded to the point where common reserves were kept.

3. The majority of the Sub-Group considered that contracting parties operating under Article XXIV were entitled to take action contrary to other provisions of the General Agreement only insofar as the observance of such provisions would prevent the formation of a customs union. They could not see any reason why the strict application by each of the Member States of the provisions of Articles XII to XIV of the General Agreement could be held to have such an effect. If the Six were individually no longer to be bound by the balance-of-payments provisions of the Agreement permitting the use of quantitative restrictions only in carefully defined circumstances, then the balance of rights and obligations under the Agreement would be impaired.
4. The representatives of the Six stated that they did not agree to this interpretation of Article XXIV. So far as the position inside the Common Market was concerned, the formation of a customs union required that restrictions should be eliminated on substantially all of the trade between the member countries. The exception in parenthesis in Article XXIV:8(a) was permissive and not mandatory. In other words it is permissible for members of the customs union to maintain restrictions as between themselves if the balance-of-payments situation so required, without compromising the status of the customs union. They thought that it would be directly contrary to the concept of a customs union to interpret this provision as requiring the Member States of the customs union to maintain restrictions on their trade between themselves. As regards the application of restrictions to the outside world, they believed that the position was defined clearly in paragraph 5(a) of Article XXIV. The other members of the Committee did not accept that the use of quantitative restrictions vis-à-vis third countries was governed by paragraph 5(a) of the Article; in their view, the parenthetical phrase in paragraph 8(a)(i) made it clear that restrictions for balance-of-payments reasons were to be governed by the ordinary balance-of-payments provisions of the Agreement.

5. The Sub-Group considered in further detail the provisions of Article III(5) relating to common levels of liberalization. The Sub-Group noted that the provision in question related not to the maintenance of a common quota list, but a common liberalization list, and according to the representatives of the Six, the purpose of this provision was to promote the attainment of the highest level of common liberalization without preventing individual members from going further. The representatives of the Six pointed out that apart from its salutary effect in promoting the liberalization of individual items which might otherwise remain restricted, the common list was mentioned as an objective and not as a mandatory requirement under the Treaty. This was one of the instances of the provisions of the Rome Treaty under which action could be taken by the institutions of the Community, but which did not require that such action in all circumstances be actually taken. Other instances included the provision, during the transitional period, for quota adjustments to facilitate imports from within the Community (Article 108:2).

6. In the course of this discussion the situation in the transitional period was compared by the representatives of the Six to the liberalization programme which has been applied for some years in the Organization for European Economic Cooperation and had not been considered as being in conflict with the General Agreement. Other members of the Sub-Group pointed out, however, that the fact that they had not raised the question of the compatibility of the discriminatory liberalization programme of the OEEC with the General Agreement should not be considered as meaning that they had by implication accepted that it was in full compliance with GATT. Their silence on this point was to be attributed to their feeling that as a practical matter this programme was on the whole moving in the right direction. In the absence of a clear idea of the meaning and still more of the manner of application of the provisions of the Rome Treaty they could not at this stage view the prospective arrangements with the same confidence.
7. As a result of this exchange of views the Sub-Group noted that, whilst the Rome Treaty provided for the possibility of action being taken by the Community which was inconsistent with GATT, it would be for the institutions of the Community to decide in the light of circumstances whether such action should be taken. This led the majority of the Sub-Group to place emphasis on future close liaison and co-operation between the CONTRACTING PARTIES and the Six and the institutions of the Community.

8. The representatives of the Six did not consider that it would be appropriate to envisage any consultation procedures as regards their use of quantitative restrictions other than those applicable to contracting parties generally. If in the application of the provisions of the Rome Treaty, any member country found it necessary to take action which would bring into play the consultation provision of the General Agreement then the country concerned would fulfil its obligations under GATT. They could not accept that any contracting party by virtue of its adherence to the Rome Treaty should be subjected to additional requirements or obligations as to consultation. This applied particularly to prior consultation regarding the application of the provisions of the Rome Treaty. They pointed out that many contracting parties had domestic legislation which would enable them to impose restrictions in a manner contrary to Articles XII to XIV. These countries were not, however, required to consult about their possible future intentions as regards action pursuant to such legislation. In these circumstances the Six could not accept that they alone should be subjected to a measure of control which was not applicable to contracting parties generally.

9. The other members of the Sub-Group felt that in view of the importance to international trade of action which might be taken by the Six and of the absence of a clear understanding shared between the Six and the other contracting parties on the meaning of Article XXIV in relation to the provisions of Articles XI to XIV, the safeguard that is provided in Article 234 of the Rome Treaty might have only limited value. They felt, therefore, that there was a real need for the Six to keep in close contact with the other contracting parties as their policy in relation to the use of quantitative restrictions developed. In the meantime, it would be of interest to the contracting parties as a whole if the Six could give a more definite assurance that the spirit of GATT would be observed to the full and that, in the light of paragraph 4 of Article XXIV and the declared basic objectives of the Treaty, the Six would do the utmost possible to avoid in the use of quantitative restrictions any action which might damage the interest of the other contracting parties or to upset the balance of rights and obligations under the GATT.

10. The Sub-Group considered that at this time there was no need for the CONTRACTING PARTIES to take a formal decision but that the closest possible co-operation should be arranged with the Six and the institutions of the Community in order to avoid insofar as possible any action which might give rise to difficulties to the CONTRACTING PARTIES. If the CONTRACTING PARTIES should decide to establish mechanism for liaison with the Six and the institutions of the Community, it is recommended that its terms of reference should include the discussion of the problems in the field of quantitative restrictions mentioned above. In addition, the Sub-Group recognized that under the provisions of Article XII (Revised) of the General Agreement regular consultations would be held with contracting parties applying balance-of-payments imports restrictions, and any special problems that might arise in the application of import restrictions by the individual countries of the Common Market would be suitable subjects to be taken into account in such consultations.