1. In accordance with the directive of the CONTRACTING PARTIES, the Working Party took as its point of departure the United States proposal embodying a draft decision on German Import Restrictions (W.14/24).

2. At the outset of the discussions, the representative of Czechoslovakia drew attention to the situation that might arise for any contracting party which was unable to agree to the terms of a settlement with Germany. If the CONTRACTING PARTIES accepted that the problem of German import restrictions was in order for a certain period it was likely, in his view, that the support of the CONTRACTING PARTIES would be withdrawn from any contracting party not accepting this view even though that country would not be demanding anything more than its rights under the terms of the General Agreement. The representative of Czechoslovakia reserved his country's position on the final result of any settlement with Germany.

3. The representative of France pointed out that the Federal Republic of Germany, in discussing over a period of time with the CONTRACTING PARTIES, the continued maintenance of certain import restrictions, had put forward a number of considerations of a commercial or economic character which were much broader than the very restricted considerations referred to in paragraph 3 of the Preamble to the proposed Decision. He therefore suggested that there should either be some reference to these broader considerations or that the words "inter alia" should be inserted after "the Federal Republic believes that" in order to recognize that such considerations existed and were part of the motives underlying German policy. The Working Party felt that its task was to select such considerations only as it felt would be relevant to a Decision by the CONTRACTING PARTIES. Accordingly, they were unable to accept the suggestion of the representative of France who reserved the right to revert to the matter when it came to be discussed by the CONTRACTING PARTIES.

4. Several members of the Working Party stressed their view that, while they recognized that the German authorities claimed that they were unable to dismantle entirely the restrictions imposed by the Marketing Laws,
nevertheless, since these laws do not impose a mandatory requirement that restrictions on the products covered by the laws must be maintained at a certain level, there was no legal impediment to firm assurances of increased access to the German market being given by the German Government. They strongly urged that the German Government should undertake that, in exercising its powers to influence supply and demand (e.g., through price fixing functions) it would provide progressively increasing opportunities of access to the German market for the products concerned. The representative of the Federal Republic of Germany stressed that it was not the intention of the German Government to administer the price policy regulations in such a way as to keep out all imports but to keep these regulations within such limits as would best serve the interests of the German nation and provide for trade with Germany’s traditional trading partners. When the German Government reviewed its Marketing Laws within the framework of the establishment of a common agricultural policy in the European Economic Community it would endeavour to bring about conditions that would take into account the interests of all its trading partners but no undertakings or assurances could now be given about future commercial policy as it affected agriculture.

5. In regard to the non-discriminatory administration of import restrictions dealt with in the proposed Decision the Working Party discussed a proposal to include a reference in Para. 2(b) to Article XXIV of the General Agreement. Some members of the Working Party held the view that such a reference was inappropriate and would in any case appear to cast doubt on the scope and extent of the specific obligations to be undertaken by Germany in the administration of import restrictions and they could not accept such a reference unless its implications, both for countries inside and outside the European Economic Community, were clearly drawn. The Working Party noted that discussion on the legal issues raised by Article XXIV had for the time being been laid aside but that it had been recognized that it was open to any contracting party to invoke the benefit of Article XXIV in so far as it considered that this Article provided justification for any action which might otherwise be inconsistent with a provision or provisions of the General Agreement (BISD 7th Supplement, page 71). Accordingly, the absence of any specific reference in the
Decision to Article XXIV could not have the effect of preventing Germany from resorting to the provisions of that Article as relevant. The Working Party also recorded its agreement that resort to Article XXIV could not be interpreted so as to exclude bilateral consultations about the administration of import restrictions or to require that consultations on these matters should be conducted with Germany and the rest of her partners in the European Economic Community. There was agreement that consultations concerning quotas should be held with regard to Germany’s imports from all sources.

6. Some countries expressed concern that this Decision would be incorrectly interpreted as condoning the use of certain discriminatory measures because the Decision does not reaffirm the specific principles to be applied under Article XIII. These countries would accordingly have preferred that the Decision enter into effect subject to the outcome of the consultations referred to in paragraph 2(b) of the Decision and the Note to Section D of List III of Annex A. However, having regard to the impossibility of completing such consultations at this session and the importance of reaching a final decision at this time, these countries have concurred in the Decision, with the understanding that every effort will be made to resolve satisfactorily the issues of concern to them prior to the submission of the reports referred to in paragraph 3 of the proposed Decision.*

7. As a number of the contracting parties were not clear as to the manner in which Article XIII is administered by Germany, it was agreed that it would be desirable, in the course of the consultations referred to in paragraph 2 of the Decision, to discuss the administrative arrangements maintained by the Federal Republic of Germany in the context of Article XIII. Some members of the Working Party, in agreeing to the terms of paragraph 2(b) of the proposed Decision, stated that their agreement did not signify that they were satisfied that the administration of the German restrictions as at present applied were in conformity with the non-discriminatory provisions of the General Agreement.

8. In the light of their discussions the Working Party has drawn up the attached draft Decision which it presents to the CONTRACTING PARTIES.

*New paragraph 3.
GERMAN IMPORT RESTRICTIONS

DRAFT DECISION

CONSIDERING THAT

(1) at their twelfth session the CONTRACTING PARTIES, on the basis of the findings of the International Monetary Fund regarding monetary reserves and balance of payments of the Federal Republic of Germany, decided that the Federal Republic was no longer entitled to maintain import restrictions under Article XII;

(2) the Federal Republic contends that it is entitled to maintain restrictions on imports of products specified in the Agricultural Marketing Laws because (a) the German Marketing Laws impose on the German executive mandatory requirements for the application of restrictions on imports and (b) that in any case this legislation does not need to impose a mandatory requirement in order to be covered by paragraph 1(a)(ii) of the Torquay Protocol, but that most contracting parties do not accept this contention;

(3) the Federal Republic believes that the sudden removal of restrictions on certain imports both in the agricultural and industrial fields would cause serious injury to the domestic industries concerned which could be avoided if the removal of the restrictions were spread over a period of time;

TAKING NOTE THAT

(1) the Federal Republic has since the date of the findings and Decision referred to above from time to time proceeded by successive stages to reduce the number of import restrictions still maintained by it;

(2) the Federal Republic intends to take the further measures of liberalization set out in Annex A\(^1\) to this Decision;

(3) as regards the products listed in Annex B\(^2\) the Federal Republic will keep the restrictions on these products under constant review and will use its

\(^1\) This refers to the lists of products incorporated in Lists I, II, III and VIII in the SECRET document VA2-421/59 circulated by the Federal Republic of Germany plus tariff items 0405 11, 0406 00, 0702 10, 20, 30 and 90, 0810 90, 2003 00 and 0203 50ex formerly included in List VII of the same document.

\(^2\) This refers to List VII in SECRET document VA2-421/59 minus those items now incorporated in Annex A.
best endeavours to remove such restrictions at the earliest possible date, and meanwhile, endeavour to improve conditions of access to the German market for all contracting parties, according sympathetic consideration to such representations as interested contracting parties may make to the Federal Republic. The Government of the Federal Republic will administer any restrictions remaining on these products in accordance with the relevant provisions of the General Agreement.

Notes to paragraph 3

1. The German delegation proposes that the first paragraph of the Decision be amended so as to add in the last line thereof, before the words "Annex D", the letter "B" and transfer the above paragraph 3 to paragraph 2 in the operative part of the Decision as sub-paragraph (b). This proposal also involves the following consequential amendments:

(i) The deletion of the last sentence in paragraph 3 above.

(ii) Paragraph 2 (b) of the operative part would become paragraph 2 (c) and would be amended so as to read: "The restrictions covered by this Decision shall be administered in accordance with the relevant provisions of the General Agreement etc."

(iii) Paragraph 2 of the operative part would read: "Restrictions on the products covered by the following shall be subject to the following terms and conditions".

2. The Government of New Zealand proposes that paragraph 3 above be amended as follows:

"As regards the products listed in Annex B, the Federal Republic will keep the restrictions on these products under constant review and will provide progressively increasing opportunities of access to the German market for the products concerned. Furthermore, the Federal Government will accord sympathetic consideration to such representations as interested contracting parties may make to the Federal Republic. The Government of the Federal Republic will administer any restrictions remaining on these products in accordance with Article XIII of the General Agreement."

(4) restrictions on products listed in Annex C will be progressively relaxed and liberalized in accordance with the terms and conditions set forth in that annex;

(5) the Federal Republic is ready to make all possible efforts to reduce the number of restrictions still maintained and, therefore, to lessen the scope of the problem. In particular, when reviewing the Marketing Laws, the Federal Republic will seek to ensure that any measures applied to products covered by these laws are consistent with the General Agreement;
The CONTRACTING PARTIES, pursuant to paragraph 5 of Article XV of the General Agreement

DECIDE THAT:

Without prejudice to the legal question referred to in the second paragraph of the Preamble to this Decision and subject to the conditions and procedures set out hereunder, the Federal Republic of Germany may, notwithstanding the provisions of Article XI, maintain restrictions on products enumerated in Annexes D¹ and E (Marketing Law negative list) to this Decision;

The conditions and procedures referred to above are:

(1) Restrictions maintained on the products listed in Annex D shall be so administered as to impose no practical impediment to imports from any contracting party to the General Agreement - that is to say - that these products shall be the subject of unlimited global tender arrangements without restrictions as to quantity or source of supply.

(2) Restrictions on the products enumerated in Annex E shall be subject to the following terms and conditions:

(a) The Government of the Federal Republic, in the application of the Marketing Laws and within the limitations imposed by those laws, will endeavour to establish conditions which will afford increasing opportunities of access to the German market for the products concerned. In this connexion, the Federal Republic will accord sympathetic consideration to representations made by interested contracting parties. The Federal Republic will keep the restrictions on products in Annex E under constant review with the object of liberalizing as many as possible of the products on the de facto basis set out in paragraph 1 of this Decision.

(b) They shall be administered in accordance with the relevant provisions of the General Agreement. As envisaged in paragraph 2 (d) of Article XIII, in cases in which a quota is allocated among supplying countries, the Federal Republic shall consult with all other contracting parties having a substantial interest in supplying the product concerned with respect to the allocation of shares in the quota.

(3) The Federal Republic shall consult with the CONTRACTING PARTIES annually regarding the application of the Decision, and for the first time at the fifteenth session, and in particular report on the progress achieved in the relaxation or elimination of the restrictions maintained on the products listed in Annexes A to E.

¹ This refers to List V in SECRET document VA2-421/59.
(4) The present Decision shall remain in effect until the close of the first regular session of the CONTRACTING PARTIES after it shall have been in effect for three years.

THE CONTRACTING PARTIES DECLARE

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

Note

The following note to be inserted in Section D of Annex A:

"D. Products which are still the subject of consultations.

"The removal of these restrictions is under continuous consideration by the Federal Republic. In order to achieve this objective at the earliest possible date, it is the intention of the Federal Republic to initiate and actively pursue consultations with the contracting parties principally interested. The Federal Republic will report to the fifteenth session of the CONTRACTING PARTIES on the action taken."
Paragraph for insertion in report by Working Party
on German Import Restrictions

Proposal by the United States Delegation

With reference to certain preserved fruits it was noted that liberalization was proposed by container size rather than by kinds. In particular, Annex A (Products which will be liberalized on 1 July 1960) includes apricots, peaches, and preserves of certain other fruits in containers of 5 kg or more. On the other hand, similar items in containers weighing less than 5 kg remain in Annex B (Agricultural products not covered by Marketing Laws which cannot be liberalized). The fact was emphasized during the discussions that the great bulk of trade in these commodities takes place in containers weighing less than 5 kg and that little or no fruit in the larger size containers was supplied by contracting parties. The discriminatory and superficial nature of such liberalization was viewed with much concern by some members of the Working Party; in fact, the proposal was even considered to be a backward step from the present system of import tenders because of its trade distorting tendency. Representatives of the Federal Republic were urged, in the light of these considerations, to make every effort to eliminate this discrimination by further liberalization of the fruit items in containers weighing less than 5 kg at the earliest possible date.