REPORT OF SUB-GROUP B TO WORKING PARTY I

1. In accordance with its terms of reference the sub-group considered the various proposals which were submitted for amending Articles XII to XIV. As the Chairman of the sub-group explained in his progress report (W.9/106) the sub-group also considered proposals relating to the provisions of paragraphs 2, 6 and 7 of Article XV, which were directly connected with the subject matters of Articles XII to XIV.

2. Although agreement was not reached on all points the sub-group thought that sufficient progress had been made to enable it to submit to the Working Party for further consideration a revised text of the Articles in question. The revised version resulting from the deliberations in the sub-group is given in Annex A, in which the provisions or words which have not been generally accepted are reproduced within square brackets. Other provisions which have been proposed by delegations for inclusion but which have not been fully discussed in the sub-group are similarly included in square brackets, but with a footnote indicating the origin of the proposal. Specific reservations to certain provisions are also recorded in footnotes. There were certain agreed points of clarification which in the view of the sub-group did not call for amendments or the inclusion of interpretative notes but should be mentioned in the Report of the Working Party to the CONTRACTING PARTIES. The proposed texts for such statements are included in Annex B.

3. On examining the various proposals put forward, in particular those submitted by the United Kingdom (W.9/74) and the United States (W.9/73), the group found that their general tendency was to establish stricter rules for the introduction and maintenance of quantitative restrictions for balance-of-payments purposes through the institution of fixed time limits and approval by the Organization. In view of the opposition encountered within the group and taking into consideration the known views of other contracting parties, the group considered that the proposals aimed at instituting fixed time limits and prior or immediate post facto approval of restrictions would probably not be generally accepted by the contracting parties. On the other hand it was found that opinion generally favoured strengthening and widening of the scope of consultations under Article XII as well as under Article XIV. The group, therefore, concentrated on formulating new rules to this effect which it hoped might be acceptable to the great majority of the contracting parties.
4. In consequence, the amendments proposed in the text of the Agreement mainly affect paragraph 4 of Article XII, which as revised would provide for annual consultations with all contracting parties maintaining restrictions after a certain date. Under the revised text consultations under Article XII and Article XIV would be subject to the same conditions and procedures.

5. The present provisions requiring consultations in cases where a contracting party is applying new or substantially intensifying existing restrictions are left unchanged, and the same is the case with regard to the possibility for the Organization of inviting any contracting party applying restrictions to enter into consultations with it. Likewise, the provisions making it possible for a contracting party who has a legitimate complaint to demand such consultations remain unchanged. On the other hand the group proposes that some strengthening of the provisions should be carried out with regard to the ultimate result of consultations. Thus in paragraph 4(c) of the draft Article XII it is proposed that if it should be determined by the Organization that the restrictions applied involve an inconsistency of a serious nature with the relevant provisions of the Agreement it shall make recommendations aimed at securing compliance with those provisions. If those recommendations are not complied with the Organization may then release any contracting party from such obligations towards the contracting party applying restrictions as it determines to be appropriate in the circumstances. The last phrase of this paragraph is intended to be interpreted in the same manner as the identical expression included in Article XXIII.

6. The amendments proposed with regard to paragraphs 1 to 3 of Article XII are not intended to introduce any substantial changes in the present provisions, but aim mainly at improving the language and setting out the provisions in a better logical sequence. A new sentence has been added, in paragraph 3(a), to give recognition to the desirability of adopting measures which expand international trade, in order to restore or maintain equilibrium on a sound and lasting basis.

7. No amendment is proposed to the text of Article XIII. The Dominican delegation had proposed an interpretative note to paragraph 4, but withdrew the proposal on the understanding that the Working Party's Report would include the explanatory note set forth in Annex B regarding the measuring of "previous representative period" in paragraph 2 of that Article.

8. The amendments proposed with regard to Article XIV are principally such as are consequential upon the amendments proposed in Article XII with regard to the consultation procedure. In paragraph 1, which otherwise corresponds to the present text of Article XIV:1(b) a reference to Article VIII of the Articles of Agreement of the International Monetary Fund has been inserted with a view to providing for a situation when the provisions of Article XIV of the Fund Agreement are less widely invoked than at present. In connection with this amendment a new interpretative note to be included in Annex I to the Agreement is proposed. Paragraphs 3(b) and 4 of the present Article XIV have been deleted in the draft as being obsolete or unnecessary. An Italian proposal to amend Article XIV so as to allow bilateral arrangements not otherwise permitted under the Agreement (W.9/133) was considered by the Group to be beyond its competence; the Italian delegation should raise the matter in the Working Party if it still wished it to be pursued.
9. The sub-group proposes no change in the provisions of paragraphs 2, 6 or 7 of Article XV. It agreed, however, that if Article XVIII were amended as has been suggested by another sub-group to cover balance-of-payments restrictions, the last sentence of paragraph 2 of Article XV would have to include a reference to the relevant provision of that Article, along with that to paragraph 2(a) of Article XII. The group discussed a proposal by Czechoslovakia (W.9/142) to amend Article XV so as to exempt a contracting party whose foreign trade is completely governed by a state monopoly from the obligations under paragraph 6 of that Article, but the proposal met with no support in the group. A proposal by New Zealand (L/270) to delete paragraphs 6 and 7 of Article XV was subsequently withdrawn by that delegation following consultations with the group.

10. It was originally suggested to the group that the amendments to Articles XIII to XIV should only enter into force when the major currencies had become convertible. However, in view of the character of the amendments now proposed the group concluded that there was no reason why, in general, these amendments should not be put into effect at the same time as the revised Agreement. In the opinion of some members of the group this would not apply to the provisions of Article XIII:4(b)(ii) where a general review of restrictions followed by an obligation for all countries maintaining restrictions to consult annually with the Organization is envisaged. In their opinion this sub-paragraph should expressly provide for a later determination by the Organization on this point, and an explanatory note with regard to the date on which that provision would come into effect should be included in the Report of the Working Party. The Belgian, German and the United States delegations reserved their position on the insertion of this proviso holding that this amendment should be made effective simultaneously with the other proposed amendments. The entry into force of paragraph 1 of Article XIV would in any case be suspended until a later date which should be the same as was envisaged by some members of the group for the application of Article XIII:4(b)(ii). Until then the present provisions of this paragraph shall remain in force. The conditions which should determine the entry into force of paragraph 1 of Article XIV (and possibly of sub-paragraph 4(b)(ii) of Article XIII) have not yet been fully considered by the sub-group. The sub-group will make recommendations to the Working Party on this matter as soon as possible.

11. The group did not discuss in general the relationship between the Organization and the International Monetary Fund since this problem had been specifically referred to a special group. Neither was the United Kingdom proposal (W.9/82) for provisions to deal with the situation where there exists a general scarcity of a particular currency discussed in detail. The proposal, however, is included in square brackets in the draft under Article XIII:5. The United States delegation has reserved its position on the whole of this paragraph. The group also wishes it to be noted in this connection that it has not discussed the proposals submitted by Australia (W.9/132), New Zealand (W.9/79) and Norway (W.9/112) which deal with questions of a similar kind. The question was raised by the Canadian delegation of the possibility of reports from the Organization to the International Monetary Fund
relating to the implications of the phrase "equivalent in effect" in paragraph 1 of Article XIV, but it was agreed that this should be taken up in regard to paragraph 5 of Article XV which was not discussed in the sub-group.

12. The group has not gone into the question of the applicability of the proposed rules to under-developed countries since their particular problems were being dealt with in another sub-group. The sub-group would stress the necessity of avoiding inconsistencies between the texts of Article XVIII:B and that of Articles XII - XV.

13. In concluding the group would like to draw attention to the suggestion put forward by the delegate of Denmark at meetings of the CONTRACTING PARTIES and the Working Party, to the effect that consultations should be conducted through a group of persons chosen for their particular competence in dealing with questions connected with import restrictions. This proposal seems to the group to be of considerable interest and it is hoped that it will be elaborated further in the appropriate working party during this session of the CONTRACTING PARTIES.
ANNEX A

REDFRAFT OF ARTICLES XII TO XV

ARTICLE XII

Restrictions to safeguard the Balance of Payments

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

2.(a) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary

 (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or

 (ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the contracting party's reserves or need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(b) Contracting parties applying restrictions under sub-paragraph (a) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph.
3. (a) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources. They recognize that in order to achieve these ends, it is desirable so far as possible to adopt measures which expand rather than contract international trade.

(b) Contracting parties applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.

(c) Contracting parties applying restrictions under this Article undertake:

(i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party;

(ii) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade;

(iii) to reduce, to the greatest extent possible, the incidental protective effects of the restrictions; and

(iv) not to apply restrictions which would prevent the importation of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(d) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2(a). Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4. (a) Any contracting party applying new or substantially intensifying existing restrictions under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the Organization as to the nature of its balance-of-payments difficulties, alternative corrective measures which may be available and the possible effect of the restrictions on the economies of other contracting parties.

(b) (i) The Organization may at any time invite any contracting party which is applying import restrictions under this Article to enter into such consultations with it.
(ii) On a date to be determined by the Organization, the Organization shall review all restrictions still applied under this Article on that date. Thereafter, contracting parties applying import restrictions under this Article shall enter into such consultations with the Organization annually.

(iii) The Organization shall invite any contracting party which is applying import restrictions under this Article to enter into such consultations with it at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of paragraph 2 or 3 of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. If, as a result of such consultations the Organization determines that the restrictions are being applied inconsistently with those provisions, it may release the contracting party bringing the complaint from specified obligations under this Agreement towards the contracting party applying the restrictions.

(c) In the course of consultations with a contracting party under this paragraph, the Organization shall indicate any respects in which the restrictions are not fully consistent with the provisions of paragraph 2 or 3 of this Article or with those of Article XIII (subject to the provisions of Article XIV) and may make recommendations for the modification of the restrictions. If, as a result of the consultations, the Organization determines that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions referred to above, it shall so inform the contracting party and shall make appropriate recommendations for securing compliance within a specified period of time with the provisions of the Agreement. If the contracting party does not comply with these recommendations within the specified period, the Organization may release any contracting party from such obligations under this Agreement towards the contracting party applying the restrictions as it determines to be appropriate in the circumstances.

(d) In the consultations foreseen in this paragraph the Organization shall take into consideration the difficulties encountered by a contracting party in withdrawing or modifying restrictions due to adverse effects upon its exports through obstacles in other countries, such as quantitative restrictions maintained for other than balance-of-payments reasons, excessive tariffs, etc.

(e) Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations. The Organization shall make provision for the utmost secrecy in the conduct of any consultation.

1 The delegations of Belgium, Germany and the United States reserved their position on this point; see paragraph 10 of the report of the sub-group.

2 Norwegina proposal.
If there is a widespread application of import restrictions under this Article, or other circumstances indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall consider whether remedial measures might be taken, either by those contracting parties whose balance of payments are under pressure or by those whose balance of payments are tending to be exceptionally favourable, or by any appropriate intergovernmental organization, to remove the underlying causes of the disequilibrium. Following such consideration, if the circumstances appear to warrant it, the Organization may request the International Monetary Fund to make a finding and a report under Article VII, Section 1, of its Articles of Agreement. If the Fund finds that a general scarcity of a particular currency is developing, the Organization may, notwithstanding the provisions of Articles XI to XV of this Agreement, authorize the application of quantitative restrictions against imports from the contracting party concerned. In authorizing such restrictions, the Organization shall have due regard to the need to avoid unnecessary damage to the commercial interests of the contracting party concerned.

ARTICLE XIII

Non-discriminatory Administration of Quantitative Restrictions

(Unchanged from the existing text in the Agreement; see paragraph 7 of the report)

ARTICLE XIV

Exceptions to the Rule of Non-Discrimination

1. A contracting party which applies restrictions under Article XII may, in the use of such restrictions, deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time apply under Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.

(Note: The provisions of the preceding paragraph shall come into force on a date to be determined by the Organization. Until then the text of paragraph 1 of Article XIV of the Agreement as amended by the Special Protocol of 24 March 1948 Modifying Article XIV shall remain in force.)

2. A contracting party which is applying import restrictions under Article XII may, with the consent of the Organization, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.

1 United Kingdom proposal; cf., however, Australian proposal in W.9/132.
3. The provisions of Article XIII shall not preclude restrictions in accordance with the provisions of Article XII which are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the International Monetary Fund, on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

4. A contracting party shall not be precluded by Articles XI to XV, inclusive, of this Agreement from applying quantitative restrictions:

(a) having equivalent effect to exchange restrictions authorized under Section 3(b) of Article VII of the Articles of Agreement of the International Monetary Fund, or

(b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

ARTICLE XV

Exchange Arrangements

(Paragraphs 2, 6 and 7 unchanged from the existing text in the Agreement; see, however, paragraph 9 of the report)

Interpretative Notes

Ad Article XII

Paragraph 3(c)(i)

Contracting parties applying restrictions will endeavour to avoid causing serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 3(c)(ii)

It is the intention of this provision that apart from exceptional circumstances the contracting party applying restrictions under Article XII will endeavour to avoid the complete exclusion of any product for which any other contracting parties have established a market in its territory.

Paragraph 4(c)

It should be noted that an inconsistency of a serious nature should normally be taken to mean an inconsistency which involves an element of damage toward one or more contracting parties.

1 United States proposal.
Ad Article XIII

Paragraph 2(d)

No mention was made of "commercial considerations" as a rule for the allocation of quotas because it was considered that its application by governmental authorities might not always be practicable. Moreover, in cases where it is practicable, a contracting party could apply these considerations in the process of seeking agreement, consistently with the general rule laid down in the opening sentence of paragraph 2.

Paragraph 4

See note relating to "special factors" in connection with the last subparagraph of paragraph 2 of Article XI.

Ad Article XIV

Paragraph 1

The provisions of this paragraph shall not be so construed as to preclude full consideration by the Organization, in the consultations provided for in paragraph 4 of Article XII, of the nature, effects and reasons for discrimination in the field of import restrictions.

Paragraph 2

One of the situations contemplated in paragraph 2 is that of a contracting party holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

Ad Article XV

Paragraph 2

It is the intention of the provisions of this Article that, in reaching its final decision in cases involving the application of restrictions under Article XII or under Section B of Article XVIII, the Organization shall consult
with the International Monetary Fund and that after such consultation it shall accept the determination of the Fund on whether the total foreign exchange economies proposed or imposed, on both visible and invisible imports, are commensurate with the requirements of the balance-of-payments situation of the contracting party invoking the Articles in question.\footnote{1}

Paragraph 4

The word "frustrate" is intended to indicate, for example, that infringements of the letter of any Article of this Agreement by exchange action shall not be regarded as a violation of that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus, a contracting party which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund will not thereby be deemed to contravene Article XI or Article XIII. Another example would be that of a contracting party which specifies on an import licence the country from which the goods may be imported for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls.

\footnote{1}{The United States has proposed the retention of this interpretative note which was included in the proposals of the Chairman of Working Party I (W.9/130).}
ANNEX B

Notes for inclusion in the Report of the Working Party
accompanying the text of Articles XII - XIV

Re Article XII:3(d)

It is understood that the provisions of this sub-paragraph should be interpreted inter alia, in the light of the undertaking set forth in subparagraph 3(a).

Re Article XII:4(b)(ii)

To be added later; see paragraph 10 of the sub-group's report.

Re Article XIII:2

The following suggestion was made for the inclusion of an interpretative note to sub-paragraph 2(d) of this article:

"The term 'previous representative period' should mean that in cases in which import restrictions for a product have already been in force during previous years, the contracting party applying the restrictions shall grant to the contracting parties having a substantial interest in supplying the product, a share in its market which might reasonably be expected to rule in the absence of restrictions."

The Working Party wishes it to be recorded in this connection that the inclusion of such an interpretative note seemed to them superfluous. It was the general opinion that the provisions of the various sub-paragraphs of Article XIII:2, including those of sub-paragraph (d) must be interpreted in the light of the general rule contained in the introduction to paragraph 2.

Re Article XIV:1

A contracting party which is deviating from Article XIII will not be considered to be in breach of its obligations under this paragraph if the International Monetary Fund has stated that corresponding restrictions on payments and transfers would have been authorized under the Articles of Agreement of the Fund or approved by the Fund if the contracting party in question had chosen to proceed by way of exchange restriction rather than trade restriction.