GENERAL AGREEMENT ON
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COMMITTEE ON ROME TREATY

REPORT OF SUB-GROUP B ON QUANTITATIVE RESTRICTIONS

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, particularly those used for balance-of-payments purposes, in the light of Articles 30 to 37, 108, 109, 110, 111 and 113, both as regards their application in the transitional period and thereafter.

2. Members of the Sub-Group expressed concern that under the Rome Treaty provisions a Member State would be permitted to use quantitative restrictions not justified by its own balance-of-payments position. They recognized that this cause for concern would be removed if at some future stage the integration of the economies of the Six proceeded to the point where in effect they held their foreign exchange reserves in common.

3. The Six considered that the opening phrase of paragraph 5 of Article XXIV provided a general exception under which they were entitled to deviate from the other provisions of the General Agreement, including Articles XI to XIV, insofar as the application of these provisions would constitute obstacles to the formation of the Customs Union and to the achievement of its objectives. In their opinion, Article XXIV imposed an obligation on the Member countries of a customs union to eliminate insofar as possible - but only to that extent - quantitative restrictions existing between them, without necessarily extending such elimination to countries which are not members of the Union, which as a corollary, implied that the Member States may maintain or impose restrictions applying to non-Member countries only. With respect to the relationship of countries within the Union to third countries, the Six consider that the provisions of Article XXIV:8(a)(ii) required the States forming a customs union to apply "substantially the same duties and other regulations of commerce". The Six recall in this respect that the phrase "other regulations of commerce" appearing in paragraph 8(a)(ii) should be interpreted in the light of the provisions of paragraph 5(a) which represent, as will be shown, a supplement to the rules set forth in paragraph 8(a)(ii) and which therefore has the same object. In their view paragraph 5(a) of Article XXIV refers expressly to restrictive regulations of commerce. It is therefore clear that the words "other regulations of commerce" appearing in paragraph 8(a)(ii) refers in particular to restrictive regulations of commerce. It was pursuant to paragraph 8(a)(ii) that the Six had

adopted provisions relating to the establishment of a common external tariff and common regulations of commerce which may be applied notably in the field of quantitative import restrictions. In their opinion, paragraph 5(a) of Article XXIV defines the scope of these common regulations of commerce: they must not on the whole be more restrictive than those applicable in the constituent territories prior to the formation of the Union, all things being otherwise equal. By implication this rule gives the countries which are members of a customs union the right to apply restrictive measures other than those which they would have been able to apply if the Union had not been established. Otherwise, the overall incidence of the quantitative restrictions applied by the Member States of the Union should be nothing more than the sum of the restrictions applied by each of these countries and there would be no object in stipulating in Article XXIV that this overall incidence should not be more restrictive than those restrictive regulations applied before the formation of the Union. Now, the General Agreement has been reviewed only two years ago, and the Six are of the opinion that all the sentences included in Article XXIV are meaningful. Accordingly, the Six are of the opinion that the restrictive measures which should be taken by one or more members of the Community, irrespective of the level of their balance of payments, do not constitute a measure of additional protection for the Community as a whole. These additional measures may, moreover, affect commodities which are not produced in the country or countries which take these measures, in which case they cannot be considered as "protective" measures taken by that country or those countries.

4. Most members of the Sub-Group had a different interpretation of Article XXIV. In their view countries entering a customs union would continue to be governed by the provisions of Article XI prohibiting the use of quantitative restrictions as well as by the other provisions of the Agreement which provided certain exceptions permitting the use of quantitative restrictions where necessary to deal with balance-of-payments difficulties. Further, adherence to these provisions would in no case prevent the establishment of a customs union. Since paragraph 8(a)(i) permitted where necessary the use of quantitative restrictions for balance-of-payments reasons, it followed that the use of quantitative restrictions by individual countries within the Union for these reasons could not be regarded as preventing the formation of a customs union as defined in Article XXIV.

5. Most members of the Sub-Group could not accept the interpretation of the Six of paragraph 5(a). In their view the use of the term "regulations" in this paragraph and in paragraph 8(a)(ii) does not include quantitative restrictions imposed for balance-of-payments reasons. An examination of the provisions of the Agreement indicates that the term "regulation" is consistently used to describe such matters as customs procedures, grading and marketing requirements, and similar routine controls in international trade. This interpretation is reinforced by the fact that in 8(a)(i) the term "regulation" is qualified by the word "restrictive" in the one instance where Article XXIV specifically

refers to the balance-of-payment Articles. Moreover, the term "regulation" does not appear in the balance-of-payment Articles of the General Agreement. The General Agreement prohibits the use of quantitative restrictions for protective purposes and permits their use only in exceptional circumstances and mainly to deal with balance-of-payments difficulties. Accordingly the notion that paragraph 5(a) would require that temporary quantitative restrictions should be treated in the same way as normal protective measures such as tariffs in determining the trade relations between countries in a customs union and third countries would be contrary to the basic provisions of the Agreement which preclude the use of quantitative restrictions as an acceptable protective instrument.

6. These members for the reasons mentioned above, could not accept the term "other regulation of commerce" in 8(a)(ii) included quantitative restriction. Moreover they pointed out that if paragraph 8(a)(ii) were interpreted to require a common level of quantitative restrictions against third countries, this would be incompatible with the explicit permission in paragraph 8(a)(i) for the use of quantitative restrictions within the system for balance-of-payments reasons since it would appear not to be practicable to have a common level of quantitative restrictions against third countries in a situation where countries within the Customs Union made use of their right to impose such restrictions against their partners. Moreover, the effect of such an arrangement would be that some country or countries in the Union would be imposing quantitative restrictions not required by their own individual balance-of-payments position and would, therefore, be raising barriers to trade with other contracting parties.

7. Most members of the Sub-Group believed that the imposition of common quotas by the Six, quite apart from being contrary to Article XII of the GATT, would be contrary to fundamental economic reasoning unless they held their reserves in common. Common quotas could mean that a member of the Customs Union in balance-of-payments difficulties would be unable to apply restrictions appropriate to its particular difficulties while other members would be applying restrictions not required or justified by their payments position. Under such a system, unless restrictions were also imposed between the Six, imports would tend to flow to the country not in a position to finance them at the expense of the other members who had no difficulty in financing them.

8. Most members of the Sub-Group emphasized that 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.

9. The Sub-Group next considered how the Customs Union was likely to develop insofar as the use of quantitative restrictions for balance-of-payments reasons was concerned. Some members suggested that the Six countries during the transitional period would be relaxing the restrictions between themselves. At the same time, as their payments position permitted, their restrictions against other countries would also be reduced. The representative of the Six compared this outlook with what had taken place under the OEEC programme of liberalization of trade which had never been the subject of a complaint under the Agreement. Other members of the Sub-Group pointed out that the fact that they had not formally raised the question of the compatibility of the OEEC liberalization programme should not be considered as meaning that they had by implication accepted that it was in full compliance with the General Agreement. 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.

10. Following an exchange of views on the provisions of the Rome Treaty in the field of quantitative restrictions, the Sub-Group noted that these provisions were not mandatory and imposed on the members of the Community no obligation to take action which would be inconsistent with the General Agreement. On the other hand because of the very general scope and competence conferred on the Institutions of the Community, it could be within their powers to take measures which could be inconsistent with the GATT whatever the interpretation given to the provisions of Article XXIV. The Six pointed out that many contracting parties had permissive domestic legislation of a general character which, if implemented in full, would enable them to impose restrictions in a manner contrary to Article XI. These countries were not, however, required to consult with the CONTRACTING PARTIES about their possible intentions as regards the implementation of such legislation. The Six 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 the consultations about the use of quantitative restrictions. This applied particularly to prior consultation regarding the relevant provisions of the Rome Treaty.

11. The Sub-Group took the view that Member States of the Six as regards their individual use of quantitative restrictions should be subject to the consultation procedures applicable to other contracting parties in like circumstances, and agreed with the representatives of the Six that it would not be proper to envisage any special consultations procedures. If in the application of the provisions of the Treaty any Member country found it necessary to take action which would bring into play the consultation provisions of the General Agreement, then the country concerned would fulfil its obligations under GATT.

12. The Sub-Group noted that Article XXIV, paragraph 7, lays down certain responsibilities for the CONTRACTING PARTIES in relation to proposals for a customs union. In view of the uncertainties about the way in which the provisions of the Rome Treaty would be implemented the members of the Sub-Group other than the Six considered that at this stage it was not possible to make a judgment that the application of the provisions of the Rome Treaty concerning the use of quantitative restrictions would or would not be compatible with the relevant provisions of the General Agreement. In these circumstances the

Sub-Group concluded that at the present time it was not possible to decide what recommendations it might deem appropriate under Article XXIV but this should not be construed to mean that the CONTRACTING PARTIES might not wish to take action at a later stage.

13. Accordingly the Sub-Group considered that there was no need for the CONTRACTING PARTIES to take a formal decision to set up special machinery to deal with the use of quantitative restrictions my members of the Six. However, the closest possible co-operation should be arranged with the Community in order that they might work together with the CONTRACTING PARTIES for the harmonious attainment of the objectives of the Common Market and the General Agreement. Because of the importance to international trade of action which might be taken by the Six and of the desirability of a clear understanding shared between the Six and the other contracting parties, it was agreed that discussion of the problem which might arise in the field of quantitative restrictions should be provided for in whatever arrangements are made for continued liaison with the Six and the Institutions of the Community. Any particular problems that might arise in the actual application of import restrictions by the individual members of the Community would be examined in the consultations under the provisions of the General Agreement. Furthermore, it was pointed out in the Sub-Group that it was desirable to keep a close collaboration with the International Monetary Fund - as is already provided for in paragraph 1 of Article XV - in relation to the problems which might arise as a consequence of action taken by the Six in matters of quantitative restrictions for balance-of-payments reasons.