GENERAL AGREEMENT ON
TARIFFS AND TRADE

WORKING PARTY ON BORDER TAX ADJUSTMENTS

Meeting of June 1968

MAIN POINTS RAISED IN DISCUSSION OF POINT 1(a)
OF THE TERMS OF REFERENCE

Note by the Secretariat

1. The relevant provisions of the GATT

There was general agreement that those were Articles I, II, III, VI, VII
and XVI.

2. The rationale behind the present GATT rules

There was general agreement that the main provisions of the GATT represented
the codification of existing practices.

It was suggested that the rules did not represent a coherent code and that
the rules often represented practical solutions to specific problems. In the
case of Article III, the rules were designed to safeguard tariff concessions and
to prevent hidden discrimination.

The suggestion was made that the destination principle had been embodied in
the General Agreement only for indirect taxes because the GATT rules merely
represented the codification of existing practices.

Another suggestion was made that the rules represented a coherent code
designed to achieve trade neutrality.

It was, however, pointed out that no reference had been found in the
legislative history to the concept of trade neutrality.

3. The relationship between the GATT provisions on border tax adjustments on the
export side and the import side

It was suggested that the fact that these provisions had been discussed
separately in the past implied that there was in practice no connexion between
them.

Another suggestion was made, however, that this connexion was necessary if
equality of treatment was to be achieved, and that there did not seem to be any
contradiction between these provisions.
4. Variations in the wording of the different GATT provisions

Reference was made to the use of the word "products" in some cases and "goods" in others, and to the use of the expressions "applied to", "borne by", "levied on" and "effectively levied on".

The view was expressed that, given the way in which the General Agreement was drafted, there was probably no significance in these variations.

It was, however, suggested that the words "borne by" in the note to Article XVI had been adopted because it had not been possible to agree on more restrictive language.

5. Interpretation of Article III

(a) Treatment of direct taxes (paragraph 12 of secretariat paper)

It was noted that the established interpretation of the rules as they stood at present was that no adjustments could be made at the frontier in respect of direct taxes, such as income taxes.

It was suggested that this was among the questions which should be re-examined by the Working Party.

(b) The words "directly or indirectly" in Article III:2 (paragraph 13 of secretariat paper)

It was suggested that, if the reason for the use of these words instead of "in connexion with" was a difficulty of translation, this suggested a broader interpretation than had usually been given to them.

It was, however, suggested that the words "directly or indirectly" had been preferred in order to exclude this broader interpretation.

At the ninth meeting of Commission A on 13 June 1947, the United States' representative stated that the word "indirectly" would cover taxes levied not only on the product as such but on the processing of the product. This view was not challenged.
(c) Paragraphs 14 and 15 of secretariat paper

The differences of opinion with regard to the interpretation of Article III referred to in these paragraphs were noted.

The view was expressed that the differences of opinion were mainly of academic interest since few problems had arisen in the operation of these provisions.

It was suggested, however, that problems had arisen, but that for various reasons these had not been discussed multilaterally.

(d) Paragraph 18 of secretariat paper

It was suggested that the question referred to in the first sentence of this paragraph might be re-examined.

6. Interpretation of Article XVI

(a) Paragraph 30 of secretariat paper

It was suggested that the fact that several members of the Group which reached the agreement reproduced in this paragraph had felt it inappropriate "to seek to deal with problems of subsidization in Article VII" reduced the significance of this agreement.

(b) Treatment of direct taxes (paragraph 33 of secretariat paper)

It was suggested that there was an apparent contradiction between the way in which direct taxes are treated in the provisions relating to subsidies and in the provisions relating to border tax adjustments on the import side. If the remission of direct taxes was considered to constitute a subsidy this was presumably because it was felt that this would have an effect on the price of exported products. But if direct taxes had an effect on price, it could be argued that adjustments should be made in respect to them at the border.

(c) Paragraph 35 of secretariat paper

Several delegations suggested that the conclusion drawn in this paragraph was not necessarily correct. In addition there was a good deal of legislative history in the OEEC which suggested that the question was a complex one.
7. **Article VI**

It was noted that, while Article XVI refers to "subsidies", Article VI refers to "bounties and subsidies".

8. **Points on which the GATT rules are silent**

It was noted that there was no provision in the General Agreement dealing with the basis of valuation for the imposition of border tax adjustments. It was suggested that a provision relating to border tax adjustments along the lines of Article II, paragraph 3 might be desirable.