SUMMARY CONCLUSIONS OF WORKING PARTY ON ITEM I(a) OF THE TERMS OF REFERENCE AT MEETINGS HELD ON 6 AND 7 JULY 1970

Item 2 of the Agenda (GATT/AIR/805), under which the discussion was held, read as follows:

"Continuation of the discussion on the interpretation and the application of the provisions of the General Agreement with regard to border tax adjustments; in particular the terminology of the General Agreement as mentioned in paragraph 21 of the interim report (L/3290). In this connexion, members of the Working Party are invited to indicate:

- whether they apply the provisions of the General Agreement identically to imports and exports, and
- which taxes are subject to adjustments at the border".

1. The Working Party noted that the following Articles of the General Agreement were relevant: Articles I, II, III, VI, VII and XVI. The Working Party also noted that there were differences in the terms used in these Articles, in particular with regard to the provisions regarding importation and exportation. It was established that these differences in wording had not led to any differences in interpretation of the provisions. It was agreed that GATT provisions on fiscal adjustment applied identically to imports and exports.

It was further agreed that these provisions set maxima limits for adjustment (compensation) which were not to be over passed, but below which every contracting party was free to differentiate in the degree of compensation applied.

However, one delegation stressed that the question of the degree of compensation, regardless of its consistency with GATT rules, was relevant to the issue in terms of the actual or potential effect on trade.
2. On the question of eligibility of taxes for fiscal adjustment, the discussion took into account the term "... directly or indirectly ..." (inter alia Article III:2).

(a) The Working Party concluded that there was convergence of views to the effect that taxes directly levied on products were eligible for fiscal adjustment. Examples of such taxes comprised the sales tax and the tax on value added. It was agreed that the TVA, regardless of its technical construction (fractioned collection), was equivalent to a tax levied directly - a retail or sales tax.

(b) The Working Party concluded that there was convergence of views to the effect that certain indirect taxes were not eligible for fiscal adjustment. Examples of such taxes comprised social security taxes, labour taxes and payroll taxes.

(c) The Working Party noted that there was some divergence of views with regard to the eligibility for adjustment of certain categories of taxes, such as specific taxes on energy and transport taxes. It was noted that while a majority of countries did not compensate for these taxes, a few countries did. The Working Party further noted that this area of divergence of views and practices was marginal.

(d) The Working Party noted that there were some taxes which, while generally considered eligible for adjustment, presented a problem because of the difficulty of calculating their incidence. Examples of such difficulties were encountered in cascade taxes. In this context, it was noted that most cascade-tax systems were to be replaced by TVA systems, and that therefore the area in which such problems occurred was diminishing and not significant.

3. The Working Party felt that it was not opportune to attempt to define further the terms in the General Agreement relating to fiscal adjustment.

4. It was generally agreed that countries adjusting taxes should, at all times, be in a position to account both for the reasons for adjustment and for the methods used.
5. With regard to the interpretation of the term "... like or similar products...", which occurs some sixteen times throughout the General Agreement, it was recalled that considerable discussion had taken place in the past, both in GATT and in other bodies, but that no further improvement of the term had been achieved. The Working Party concluded that problems arising from the interpretation of the term should be examined on a case-by-case basis. This would allow a fair assessment in each case of the different elements that constitute a "similar" product, (e.g. consumer tastes and habits, which vary from one country to another).

One delegation was of the opinion that it would be desirable to improve on the term and reserved its position to revert to the question in the future.