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GENERAL AGREEMENT ON TARIFFS AND TRADE

WORKING PARTY ON BORDER ADJUSTMENTS

Meeting of 18 to 20 June 1968

Note by the Secretariat

The Working Party held its second meeting from 18 to 20 June 1968. This note, which has been prepared by the secretariat, summarizes the main points raised at the meeting.

Discussion of point 1(a) of the Terms of Reference

The Working Party took up discussion of point 1(a) of the Terms of Reference relating to the provisions of the General Agreement relevant to border tax adjustments.

The Working Party had before it a paper prepared by the secretariat giving the relevant GATT rules, their legislative history and interpretation. This paper is annexed to this document.

Several delegates stated that they were not in a position at that stage to make comments on behalf of their governments, and that they would therefore be speaking in their personal capacities.

The relevant provisions of the GATT

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

The rationale behind the present GATT rules

There was general agreement that the main provisions of the GATT represented the codification of practices which existed at the time these provisions were drafted, re-examined and completed.

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 note of secretariat did not seem to lead to conclusion that there were substantial inconsistencies between the various provisions dealing with the subject, that there seemed to have been a coherent approach even if question was examined in different articles, and that it seemed that the philosophy behind these provisions was a preoccupation of ensuring a certain trade neutrality.

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

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.

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, it was difficult to ascribe significance to 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 exact language.

Article II

It was pointed out that Article II was a fundamental article for adjustments on the import side.

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 at that time.

(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.

Interpretation of Article XVI

(a) Paragraphs 30 and 31 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 the agreement referred to in paragraph 30 of the paper.

It was suggested that, in paragraph 31 of the paper, it would have been preferable simply to note that the Working Party had made a distinction between indirect and direct taxes and, in doing so had used the terms given in paragraph 30.

(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.

Article VI

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

Points on which the GATT rules are silent

(a) 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.

(b) It was noted that the GATT contained no provision relating to border tax adjustments along the lines of Article II, paragraph 3.

Documentation on point 1(b) of the Terms of Reference

Since the last meeting documentation has been received from the Organisation for Economic Co-operation and Development on the practices of OECD members in relation to border tax adjustments. The following had been distributed in advance of the meeting: Spec(68)57, with Fact-Finding Report as attachment, Spec(68)57/Add.1, reproducing two further OECD documents, and Spec(68)57/Add.2, reproducing certain corrections to the Fact-Finding Report. The report on the OECD consultation on changes in border tax adjustments in the Federal Republic of Germany was also distributed to the Working Party during the meeting.

It was noted that the OECD Secretariat would also be supplying information distinguishing the tax revenues of State and local governments for the majority of OECD countries.

It was noted that the documentation had been made available for the internal use of the Working Party. The Working Party expressed its thanks to the Secretary General of the OECD and to the Council of the OECD for their co-operation in this matter.

As agreed in the last meeting a letter had been sent to the contracting parties members of OECD inviting them to supply short papers setting out any new developments since the time covered by the Fact-Finding Report and any plans which they might have for changes in border tax adjustments.

It was noted that a questionnaire had also been sent to contracting parties not members of OECD with a view to obtaining information similar to that contained in the Fact-Finding Report. The questionnaire was contained in document Spec(68)56.

Developing countries participating in the Working Party requested that information should be collected on a short list of products of interest to developing countries. Information should be collected, inter alia, on changes which have occurred in the border tax adjustments on these products in the past few years.

It was agreed that the secretariat would get in touch with the delegations concerned with a view to drawing up a short list of products, to ascertaining exactly what information was requested and its availability. The secretariat would, if necessary, send out a request to delegations for the information.

The United States proposal for a standstill

The representative of the United States recalled that at the previous meeting of the Working Party his delegation had proposed, in view of what it deemed to be an urgent situation brought about by the present and planned changes in border tax adjustments by some countries and the balance-of-payments implications of these changes, that all countries refrain from increasing border tax adjustments pending completion of the work of the Working Party. His delegation recognized that this request might have created some difficulties for some countries but considered that such a limited standstill would be a modest step compared with the general difficulties that would soon be faced.

There were various ways in which a standstill could operate. Countries planning increases in indirect taxes and border tax adjustments could delay the changes in their entirety. Alternatively they could proceed with the internal changes but delay any increases in adjustments at the border. His delegation believed that this alternative was technically feasible and had studied the matter in depth. Another possibility would be to proceed with both the tax changes and the adjustments at the border, but to take other action to offset the trade effects of the increases in border tax adjustments.

His delegation attached considerable importance to this proposal since it did not seem appropriate for countries to make further increases in border adjustments while the GATT was conducting a fundamental re-examination of the validity of the present rules and practices. He concluded by expressing the hope that delegations would reply to this proposal in due course through diplomatic channels.

Date of next meeting

After discussion it was agreed that the date of the next meeting would be fixed by the Chairman in consultation with delegations. The next meeting will commence on 16 July.

ANNEX

THE GATT RULES ON BORDER TAX ADJUSTMENTS

Note by the Secretariat[1]

1. At its first meeting the Working Party requested the secretariat to prepare an "analytical paper giving the relevant GATT rules, examining the legislative history of these rules and the way in which they have been interpreted during the past twenty years" (L/3009, paragraph 25).

2. The principal GATT article dealing with border tax adjustments which may be made on the import side is Article III. The principal article relating to the export side is Article XVI. Other articles relevant to this question include Articles I, II, VI and VII.

3. The discussions leading to the drafting of the Havana Charter are an important source of legislative history for the GATT. Many of the provisions of the GATT are drawn from the Havana Charter, the original text of the GATT, which was drawn up at the second session of the Preparatory Committee, having been modified to bring certain of its provisions into line with the wording of the Havana Charter. The proceedings of the Review Session of 1954-55 are, of course, also of great importance. Finally, cases which have been brought to the CONTRACTING PARTIES also provide guidance as to the interpretation of the Agreement.

Article III

4. In paragraph 1 of Article III the contracting parties recognize that "internal taxes and other internal charges ... should not be applied to imported or domestic products so as to afford protection to domestic production".

5. The more detailed provisions of paragraph 2 give effect to this recognition, providing that "the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1." A note to the paragraph, which like other notes in Annex I is an

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[1] Originally circulated as Spec(68)55.

integral part of the General Agreement, makes it clear that a tax conforming to the requirements of the first sentence of this paragraph would be considered to be inconsistent with the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

6. Paragraph 3 of the Article deals with the special case of internal taxes which are inconsistent with the provisions of paragraph 2 but which are specifically authorized under a trade agreement in force on 10 April 1947.

7. The following paragraphs of the Article deal with matters other than internal taxes but paragraph 8(b) may be noted. This provides that "the provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article ...".

8. A note to this Article specifies that "any internal tax or other internal charge ... which applies to an imported product and to the like domestic product and is collected ... in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge ... and is accordingly subject to the provisions of Article III". A further note makes it clear that the application of this paragraph to internal taxes imposed by local governments and authorities within the territory of a contracting party is subject to the provisions of the final paragraph of Article XXIV which provides that "each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional or local governments or authorities within its territory" and gives guidance as to the interpretation of the term "reasonable measures" for the purposes of Article III.

9. Discussions leading up to the Havana Charter, on the provisions which became Article III of the GATT, centred on changes in drafting and the need for certain exceptions. The principles embodied in the GATT that taxes on products would normally be levied in the country of destination and not in the country of origin, and that adjustments would not normally be made at the border in respect of other taxes were contained in the United States' Draft Charter, on which the discussions leading to the drafting of the Havana Charter were based, and were taken into the Charter and the GATT without major modification.

10. The Article of the Draft Charter headed National Treatment on Internal Taxation and Regulation (Article 9, corresponding to Article III of the GATT) provided, inter alia, that "the products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges higher than those imposed on like products of national origin ...".

This wording was taken over from bilateral agreements negotiated in the 1930's. The bilateral agreement between the United States and France signed on 6 May 1936 provided, for instance, that "natural or manufactured products of the United States of America or of the French Republic shall, after their importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like products of national origin or any other foreign origin".[1] Similar provisions occur in other bilateral agreements concluded by the United States. In this respect, therefore, the provisions of the Draft Charter reflected accepted practice and there was no discussion of the philosophy behind them.

11. Perhaps the main question relating to the interpretation of Article III as it stands at present has been the exact meaning of the phrase in paragraph 2 of the Article which provides that adjustments may be made at the border in respect of "internal taxes or other internal charges of any kind ... applied, directly or indirectly, to like domestic products".

12. At Havana it was recorded that "neither income taxes nor import duties fall within the scope of Article 18 (of the Havana Charter - Article III of the GATT) which is concerned solely with internal taxes on goods".[2]

13. The words "directly or indirectly" were added during the drafting leading up to the Havana Charter and were used in place of "in connexion with" as suggested by the United Kingdom delegate for which it had been difficult to find an exact equivalent in the French text.[3]

14. Further discussions on this question took place at the Review Session, at which the delegate of the Federal Republic of Germany proposed the insertion of the following interpretative note to paragraph 2 of the Article:

> "the words 'internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products', as employed in the first sentence of paragraph 2, shall be construed to denote the overall charge, including the charges borne by like domestic products through being subjected to internal taxes or other internal charges at various stages of their production (charges borne by the raw materials, semi-finished products, auxiliary materials, etc. incorporated in, and by the power consumed for the production of, the finished products)."

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[1] League of Nations Treaty Series, Volume 199, page 260.

[2] Havana Reports, page 63 (Analytical Index, page 19).

[3] E/PC/T/C.II/W.5, page 5 (Analytical Index, page 22).

The following is the complete text of the Working Party's report of the discussions on this proposal:

> "The Working Party considered the significance of the phrase 'internal taxes or other internal charges' in relation to taxes which are levied at various stages of production, and in particular whether the rule of national treatment would allow a government to tax imported products at a rate calculated to be the equivalent of the taxes levied at the various stages of production of the like domestic product or only at the rate of the tax levied at the last stage. Several representatives supported the former interpretation, while the representative of the United States, on the other hand, thought the reference to internal taxes covered only a tax levied on the final product competitive with the imported article. Against the latter view it was argued that that interpretation would establish a discrimination against countries which chose to levy taxes at various stages and in favour of those which levy a single turnover tax on finished products. Some other representatives were of the opinion that the equivalent of the taxes on the final product and on its components and ingredients would be permitted, but not taxes on power consumed in manufacture, etc. In view of these differences of opinion, the Working Party does not recommend the insertion of an interpretative note, it being understood that the principle of equality of treatment would be upheld in the event of a tax on imported products being challenged under the consultation or complaint procedure of the Agreement."[1]

15. This clearly brings out the differences of opinion that existed at that time. No cases which are relevant to this point have been brought to the CONTRACTING PARTIES under the consultation procedures of the Agreement.[2] The uncertainty which existed at the time of the Review Session therefore still exists.

16. There appear to have been no major outstanding problems with regard to the interpretation of the other present provisions of Article III. Some points relating to the history of these provisions may, nevertheless, be of interest.

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[1] BISD, 3rd Supplement, page 210.

[2] For cases relating to Article III see:

Brazilian Internal Taxes; BISD, Volume II, page 181,
Greek Special Import Taxes; BISD, 1st Supplement, page 48.

17. The second sentence of Article III:2 prohibits the imposition of a higher tax on an imported product which, while not being a "like product", is directly competitive with, or substitutable for, the domestic product. During the drafting of the Havana Charter, and thus the GATT, it was felt that this might occur where there was no, or negligible, domestic production of the imported product. Various examples were quoted; it was for instance suggested that a country which did not produce coffee could not impose a tax on coffee, unless it placed a similar tax on chicory, a competitive product.[1] It was agreed that the decision as to whether products were "directly competitive or substitutable" would have to be made on each case as it arose and in relation to the facts of the situation.[2]

18. It was, however, agreed that "a general tax, imposed for revenue purposes, uniformly applicable to a considerable number of products, which conformed to the requirements of the first sentence of paragraph 2 would not be considered to be inconsistent with the second sentence".[3] At Havana it was also agreed that under the provisions of Article 18 (of the Havana Charter - Article III of the GATT) regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against domestic production of another product (say, domestic oleomargarine) of which there was a substantial domestic production as they are against imports (say, imported oleomargarine).[4] At the Review Session the representative of Sweden said that his Government continued to interpret the provision in this way and this view was not challenged.[5]

19. Sub-paragraph 8(b) of Article III was redrafted at Havana "in order to make it clear that nothing in Article 18 (of the Havana Charter - Article III of GATT) could be construed to sanction the exemption of domestic products from internal taxes imposed on like imported products or the remission of such taxes. At the same time the Sub-Committee recorded its view that nothing in this sub-paragraph or elsewhere in Article 18 (III) would override the provisions of Section C of Chapter IV (Article XVI)."[6]

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[1] First Session of Preparatory Committee, London, E/PC/T/C.II/W.2, page 6.

[2] Havana Conference, E/CONF.2/C.3/SR.40, page 2. (Analytical Index, page 27.)

[3] Havana Reports, page 62. (Analytical Index, page 21.)

[4] Havana Reports, page 64. (Analytical Index, page 24.)

[5] BISD, 3rd Supplement, page 210.

[6] Havana Reports, page 66. (Analytical Index, page 27.)

Article XVI

20. Some border tax adjustments are regarded as subsidies for the purpose of Article XVI and some are not.

21. With regard to the second of these categories, the note to Article XVI provides that "exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy".

22. The provisions of Article XVI itself do not automatically prohibit border tax adjustments which are regarded as subsidies. In this respect the GATT provisions relating to border tax adjustments on the export side are different from those on the import side, where certain border tax adjustments are prohibited. It should be noted, of course, that under Article VI subsidized products may be subjected to countervailing duties in export markets if the conditions of that Article (relating, for instance, to material injury) are met. Moreover, industrialized contracting parties have agreed, through a Declaration, not to make use of export subsidies on non-primary products.

23. The main provisions of Article XVI are given below.

24. Paragraph 1 of Article XVI provides a notification and consultation procedure relating to both production and export subsidies.

25. Section B of Article XVI, which was added at the Review Session of 1954-55, lays down additional provisions on export subsidies.

26. Paragraph 3 establishes some limitation on the use of subsidies on the export of primary products.

27. Paragraph 4 provides that "as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing subsidies." A Declaration giving effect to the provisions of paragraph 4 has entered into force for the contracting parties which have signed it. These are: Austria, Belgium, Canada, Denmark, France, Federal Republic of Germany, Italy, Japan, Luxemburg, the Kingdom of the Netherlands, New Zealand, Norway, Rhodesia, Sweden, Switzerland, the United Kingdom and the United States. A number of instruments extending the stand-still provisions of paragraph 4 have been drawn up by the CONTRACTING PARTIES. The last of these which had been accepted by only one contracting party (Finland) expired at the end of 1967.

28. Perhaps the most important question regarding the interpretation of Article XVI as this relates to border tax adjustments has been the precise meaning of "duties or taxes borne by the like product" in the note to the Article. This question appears in the past to have been dealt with separately from the question as to precisely what border tax adjustments are permitted under Article III, although there seems to be a necessary connexion between the two.

29. It may be mentioned in passing that the language of the note to Article XVI is somewhat different from the language of the corresponding Article of the Havana Charter, referring to "duties or taxes borne by the like product" rather than "duties or taxes imposed in respect of like products". At Havana, a proposal to insert in this phrase the words "directly or indirectly" between the words "taxes" and "imposed" was withdrawn on the understanding that the text - particularly the phrase "remission of such duties or taxes ... which have accrued" - covers the case of remission of duties or taxes imposed on raw materials and semi-manufactured products subsequently used in the production of exported manufactured goods.[1]

30. Discussions at the Review Session on Article VII are relevant to the interpretation of the note to Article XVI. During these discussions it was agreed by implication that this note would permit the exemption from, or remission of "only (i) internal taxes of the kind which are levied directly on the goods exported (or directly on the materials going into the manufacture of such goods), as distinct from (ii) other taxes (income tax, etc.)".[2]

31. This provides some guidance, but does not say whether exemptions from, or remission of "hidden taxes" (taxes imposed not on the exported product itself, nor on materials incorporated in it, but on other factors of production such as capital goods and services) is permitted under the note, since the distinction which the Working Party appears to be making is essentially one between indirect and direct taxes.

32. Discussions in the Working Party which, in 1960, drew up the Declaration giving effect to the Provisions of Article XVI:4 are more helpful in this respect. The Working Party noted that the governments prepared to accept the Declaration agreed that, for the purpose of that Declaration, a list of practices were "generally to be considered as subsidies in the sense of Article XVI:4", although the list was not considered exhaustive nor to limit in any way the generality of the provisions of the paragraph.

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[1] Havana Reports, page 109. It was also understood that the term "like products" was intended to mean closely similar products in the corresponding stage of production, allowing for such differences as are necessary for export purposes.

[2] BISD, 3rd Supplement, page 213.

33. Point (c) on this indicative list refers to "the remission, calculated in relation to exports, of direct taxes or social welfare charges on industrial or commercial enterprises" and point (d) to "the exemption, in respect of exported goods, of charges or taxes, other than charges in connexion with importation or indirect taxes levied at one or several stages on the same goods if sold for internal consumption; or the payment, in respect of exported goods, of amounts exceeding those effectively levied at one or several stages on these goods in the form of indirect taxes or of charges in connexion with importation or in both forms".[1] The representatives of governments which were not prepared to accept the Declaration were not able to subscribe to a precise interpretation of the term "subsidies", but had no objection to the above interpretation being accepted by the parties to the Declaration for the purposes of its application.

34. The indicative list had originally been adopted in the Organization for European Economic Co-operation[2] but was brought to the GATT following the establishment of the Organization for Economic Co-operation and Development with its modified structure and competence. As originally drafted in the OEEC, point (d) read: "The remission or repayment, in respect of exported goods, of indirect taxes, whether levied at one or several stages, or of charges in connexion with importation, to an amount exceeding the amount paid on the same product if sold for internal consumption." The wording of this point was changed to ensure that a country could not "consider itself entitled to pay exporters amounts corresponding to the import charges and indirect taxes levied at one or several stages on products - identical to those exported - sold on the domestic market, even when not all these charges and taxes were in fact levied on the exported products during their manufacture. In such cases, these products would, in fact, be benefitting from more aid than the sum total of the indirect fiscal charges effectively levied on them, i.e. from a State subsidy".[3]

35. This explanation and the wording of point (d) of the indicative list seem to indicate that contracting parties which have accepted the Declaration giving effect to Article XVI:4 agree that the exemption from, or repayment of "hidden taxes" would constitute a form of export subsidy.

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[1] BISD, 9th Supplement, page 186.

[2] OEEC Council Decision C(59)202, as amended by Decision C(60)130.

[3] OEEC document C(60)105, noted in Council Decision C(60)130.

36. During the above discussions in the OEEC reference was also made to the use of average or standard rates for reimbursement of taxation on exported products. It was agreed that "these rates must be calculated very carefully for each product in respect of which a repayment is applied, so as to prevent individual export operations from benefiting from a State subsidy".[1]

Other articles of the Agreement

37. Paragraph 1 of Article I prescribes unconditional most-favoured-nation treatment with respect to all matters referred to in paragraph 2 of Article III by reference to that paragraph. A note to Article I provides that this obligation shall be considered as falling within Part II of the Agreement for the purposes of the Protocol of Provisional Application. Contracting parties have therefore undertaken to apply this provision "to the fullest extent not inconsistent with existing legislation".

38. In an amendment of Article I provided for in the Protocol Amending Part I and Articles XXIX and XXX of 10 March 1955, (now abandoned), the words "and with respect to the application of internal taxes to exported goods" would have been added to paragraph 1 of the Article. The Working Party at the Review Session proposed this "because the words 'with respect to all matters referred to in paragraphs 2 and 4 of Article III' might be construed as relating only to taxes on imported goods".[2] This modification was intended to confirm the ruling given by the Chairman of the CONTRACTING PARTIES at the Second Session[3], and to remove any uncertainty on this point.

39. Paragraph 2(a) of Article II also contains a cross-reference to paragraph 2 of Article III, providing that the inclusion of a concession in its GATT schedule shall not prevent any contracting party "from imposing at any time on the importation of any product ... a charge equivalent to an internal charge imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part".

40. At the Second Session of the Preparatory Committee at Geneva in 1947 the Legal Drafting Committee agreed on the following interpretation of the word "equivalent" in paragraph 2(a) of what is now Article II of the GATT; "the word 'equivalent' means here that if a /charge/ is imposed on an article because a /charge/ is imposed on part of the content of this article, then the /charge/ should only be imposed regarding the particular content of this article; for example, if a /charge/ is imposed on perfume because it contains alcohol, the /charge/ to be imposed must take into consideration the value of the alcohol and

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[1] OEEC document C(60)105.

[2] BISD, 3rd Supplement, page 206.

[3] BISD, Volume II, page 12.

not the value of the whole".[1] Little other guidance can be found on the basis for the imposition of border tax adjustments. The interpretative note to Article VII which was added at the Review Session concerning the words "or other charges" was intended by the Working Party to "make it clearly understood that the wording does not require internal taxes (or their equivalents) which are charged on imported goods to be assessed on the same basis as that established for the purpose of charging customs duties. While some countries assess internal taxes on imported goods on the customs value or the customs value inclusive of duty, certain countries establish the value on which such internal taxes are charged on a different basis, being the same basis as is adopted for the charge of such internal taxes on domestically produced goods."[2]

41. Paragraph 4 of Article VI provides that "no product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes".

42. Article VII dealing with valuation for customs purposes is also indirectly connected with the question of border tax adjustments on the import side since a note to the Article makes it clear that the Article does not apply to valuation for the purpose of levying border tax adjustments.

43. Article VII also contains an indirect reference to the question of the border tax adjustments made with respect to exported products. Paragraph 3 of the Article provides that "the value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund". Reference to discussion of this provision at the Review Session has been made in the section of this paper dealing with Article XVI.

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[1] EPCT/TAC/PV/26, page 21. (Analytical Index, page 13.)

[2] BISD, 3rd Supplement, page 212.