

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Fourteenth session

REPORT BY THE PANEL ON SUBSIDIES AND STATE-TRADING

- (i) The terms of reference of the Panel are set out in document L/925.
- (ii) The Panel met in Geneva from 6 to 11 April 1959.
- (iii) The Panel consisted of the following members:
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| Mr. L. Corkery (Australia) | Mr. F. Manhart (Austria) |
| Mr. J.W. Evans (United States) | M. G. Paquet (France) |
| Mr. C. Johansen (Denmark) | Mr. S.D. Wilks (United Kingdom) |
| Mr. W. Le Mair (Netherlands) | |
- Mr. S.D. Wilks was elected Chairman of the Panel.
- (iv) Observers were present from the following countries and organizations: Czechoslovakia, Italy, Japan, Switzerland; EEC and OEEC. Some of the observers took an active part in the discussions.
- (v) The report of the Panel is presented in two parts; the first part relates to subsidies and the second part to State-trading.

I. SUBSIDIES

1. The Panel carried out a detailed examination of the notifications submitted by individual contracting parties in response to the request contained in document L/809¹ and the request for additional information contained in the Note by the Executive Secretary (document L/951)². During the course of this detailed examination of the individual notifications², points emerged on which the Panel considered that further clarification and information was required and the Panel agreed that the countries concerned should be approached by the secretariat with requests for the necessary additional information.

¹ Also contained in BISD, Third Supplement, page 225.

² L/964 and Addenda and L/980 and Addenda.

2. The Panel had detailed discussion on whether notifications should be confined to information on subsidies which, in the view of the country concerned, were likely to increase exports or to reduce imports of the subsidized products or whether comprehensive information about all subsidies operated by countries should be included in future notifications even where the country concerned considered that they were not obliged by the provisions of the Agreement to notify them. The Panel discussed the difficulties of close definition of the indirect effects of subsidies (or any form of income or price support) on imports and exports and agreed that it was not in a position to formulate a clear-cut line of demarcation between subsidies which countries were required to notify under the provisions of Article XVI and other subsidies, nor to form a judgment as to whether each and every arrangement contained in the submissions which were examined was clearly notifiable under Article XVI. In view of this, and because there had been cases in which there had been no notification by some contracting parties of subsidy arrangements which it was considered should have been notified under the provisions of Article XVI, the Panel agreed that it was essential that information on all subsidy arrangements should be notified and accordingly recommended that the CONTRACTING PARTIES should request that, for the future, contracting parties should supply information on all subsidy arrangements whether or not, in the view of the country concerned, these were likely to increase exports or decrease imports. The Panel agreed that, in making such a request, the CONTRACTING PARTIES might indicate that it would not be necessary for contracting parties to notify arrangements covering research, education, free distribution of literature or similar normal service operations by governments.

3. In the course of its discussion on the problems involved in determining the types of subsidy arrangements which are clearly notifiable under Article XVI, the Panel discussed the question of levy/subsidy arrangements. In this connexion, the Panel wishes to recommend that contracting parties operating subsidy schemes which involve the collection of sums by levy should, in their notifications, state precisely the sources from which the levy is raised (i.e. whether on producers, importers, exporters, etc.).

4. The Panel agreed that the type of information requested (as set out in BISD, Third Supplement, page 225) would in general meet the requirements of the CONTRACTING PARTIES, but that in certain respects it would be advisable to specify more clearly the type of information required on specific points in order to meet more fully the intentions of the CONTRACTING PARTIES when they drew up the form of notification at their ninth session. In their examination of the country submissions, the Panel noted that it was frequently the case that countries were not in a position to indicate the subsidy per unit because the measure of the subsidy was related to fluctuating prices or was based not on the product but on some other criterion (e.g. acreage). In such cases, the Panel recommended that governments should (1) notify the sum, if any, which is budgeted for the purpose, and (2) give detailed figures for the operation of the measure in the previous year, indicating the total amount, the quantity of the product, and the average subsidy per unit. The Panel observed that where countries had in their notifications adopted the practice

of giving itemized information on the four sections under paragraph 1 of the questionnaire in L/809 (i.e., background and authority, incidence, amount of subsidy and estimated amount of unit) separately under each specific commodity heading, the task of absorbing and analysing the information provided was rendered much easier than where countries had adopted the practice of grouping commodities together and had given information on all commodities under each section of the questionnaire. In this connexion, the Panel recommended that countries conform so far as possible to the headings and sequence in the agreed form of notification.

5. The Panel had detailed discussion on Section II of the questionnaire (BISD, Third Supplement, page 225) which requires countries to notify the effects of subsidy (the estimated effect on the quantity imported or exported in relation to a previous representative period). The Panel noted that little or no attempt had been made by countries to give information on this Section, and that where information had been given it was doubtful whether this reflected fully the intentions of the CONTRACTING PARTIES when they drafted this section of the questionnaire. The Panel considered that the CONTRACTING PARTIES, in drawing up this Section had had it in mind that countries should give some indication of the quantitative effects of subsidy arrangements, i.e. the effects on actual volumes of imports and exports, and noted that where countries had responded to the request for information on this Section they had not supplied a quantitative assessment of the effects in relation to imports and exports but had instead confined their information to the philosophies on which their internal policies were based and justification for their subsidy arrangements. The Panel agreed that the advice of the CONTRACTING PARTIES should be sought as to whether enquiries as to the effects of subsidies should be pursued by the Panel or whether such enquiries should be the task of another body; in the view of the Panel, the question as drawn up in 1955 was not framed in a sufficiently precise fashion to reflect fully the intentions of the CONTRACTING PARTIES. The Panel considered that the CONTRACTING PARTIES would now wish the question to be framed in a different way. In view of the limited time available for its discussions, the Panel was not able to propose a redraft of this question.

6. In its discussions on Section II of the questionnaire, the Panel observed that contracting parties notifying production subsidies frequently stated that these did not fall under Article XVI because there were no exports of the product. The Panel wished to record its view that even if there were no exports, the subsidy must have the effect of increasing production and, therefore, reducing imports, and such effects were clearly contemplated by Article XVI.

7. The Panel also noted that in some cases contracting parties had stated that their subsidy arrangements were in force to enable their exporters to share equitably in world trade in the products concerned. The Panel considered whether it was appropriate or possible for it to consider the problem of whether subsidies had been granted to such an extent as to give more than an equitable share of world trade, but concluded that the CONTRACTING PARTIES should determine whether the study of this problem should be dealt with by the Panel, by Committee II on Expansion of Trade or by some other body. The

Panel wishes to draw attention to the fact that arrangements have already been proposed by Committee II for the assembly of certain of the material on which the study of this problem would have to be based (CCM.II/5). The CONTRACTING PARTIES might also wish to ask each notifying contracting party to indicate the basis on which it judges that it is not obtaining more than any equitable share of world trade.

8. In the course of the examination of notifications of contracting parties, some members of the Panel and some observers undertook to suggest to their governments that their notification be brought up to date, re-arranged and completed in detail so as to take account of the recommendations of the Panel. This group included Austria, France, Japan, Italy and the Netherlands. The Panel suggested that the Governments of Cuba, Germany and Luxemburg might be asked to consider replacing their latest notifications by submissions drafted in accordance with the recommendations contained in this report. In certain other cases, the Panel, while leaving it open to governments to submit a redraft if they wished, limited itself to asking the secretariat to request certain additional information from the governments concerned. The Panel recommended that contracting parties which have made no notification should review their position in the light of this report. The Panel also suggested that the secretariat should be asked to undertake the assembly of a consolidated set of notifications.

9. In the course of its examination of notifications, the Panel noted that some contracting parties had interpreted approval by the International Monetary Fund of multiple exchange arrangements as absolving them from the obligation to notify such arrangements under Article XVI. The Panel wished to record its view that interpretative note 1 to Section B of Article XVI was intended not to preclude the use by a country of multiple exchange rates which were approved by the International Monetary Fund, but that there was a clear obligation to notify to the CONTRACTING PARTIES multiple exchange rates which have the effect of a subsidy. In this connexion the Panel noted paragraph 21 of the Report of Working Party III at the Review Session (BISD, Third Supplement, page 226).

10. In considering that part of its terms of reference which relate to the assembly of material for the draft report on the operation of the provisions of Article XVI the Panel concluded that the study and analysis of existing notifications and the collection and study of the further information which the secretariat has been asked to request from individual contracting parties would be an important element in the preparation of the draft report which, in their view, should serve as a basis of the review of the operations of Article XVI. It would, however, form only one element in the preparation of the draft report since both sections of Article XVI would need to be studied. The Panel wished to report that it has begun the process of collecting the necessary material on Section A of Article XVI and has indicated (see paragraph 7) that one of the problems arising under Section B has been given some preliminary consideration. It wished, however, to record its view that since some of the additional material will not be available until contracting parties have replied to questions which will be put to them by the secretariat and since further material will only be made available if the CONTRACTING PARTIES agree that it should be requested (see paragraph 8), the CONTRACTING PARTIES may wish to postpone the review of the operation of Article XVI. In connexion with the standstill provisions of

Article XVI, for the extension of which a Declaration¹ was drawn up in the autumn of 1957, the Panel noted that this Declaration still required the signature of one contracting party before it could come into force; the Panel further noted that the Procès-Verbal² extending the validity of this Declaration still required signature by two contracting parties.

II. STATE-TRADING ENTERPRISES

11. The Panel examined the notifications³, submitted by twenty-one contracting parties under the provisions of Article XVII of the General Agreement and pursuant to a Decision of 22 November 1957 of the CONTRACTING PARTIES (BISD, Sixth Supplement, page 23).

12. In the course of the examination of the notifications the Panel considered that some contracting parties had not submitted information in sufficient detail to enable a judgement to be made as to:

- (a) whether the enterprises notified properly fell within the scope of paragraph 1(a) of Article XVII;
- (b) what were the purposes for which the enterprises had been established;
- (c) how the various enterprises functioned in practice (in particular, in those cases where the enterprise was given general powers, it was not always possible to determine the extent to which these powers were exercised or which products were affected).

13. The Panel also found that the text of the relevant statutory authority, which in some cases was the only information provided, was not always sufficient to permit an understanding of the purpose and the functioning of the enterprise.

14. The Panel also considered that the statistics included in the notifications of some contracting parties did not enable an estimate to be made of the proportion of trade covered by the enterprise as compared with total trade. Moreover, the presentation of some of the statistics did not enable production, imports and exports to be compared product by product, or by groups of products.

¹ Contained in BISD Sixth Supplement, page 24.

² Contained in document L/935.

³ See addenda to document L/784; no notifications have been received from Belgium, Brazil, Burma, Chile, Cuba, the Dominican Republic, Ghana, Greece, Haiti, Indonesia, Luxemburg, Malaya, Netherlands, Nicaragua, Peru and Uruguay.

15. The Panel considered that the inadequacy of many of the notifications resulted from the form of the questionnaire which had been circulated to the contracting parties (BISD, Sixth Supplement, page 24). The Panel felt that it would be impracticable and invidious to ask individual contracting parties to supplement their notifications by more detailed information and considered that the best solution would be to prepare a new, comprehensive questionnaire, which all the contracting parties would be asked to complete. Nevertheless, the Panel considers that certain countries should be asked, through the secretariat, to submit information on specific enterprises which had been omitted from their notification.

16. In discussing which enterprises are covered by Article XVII it was thought that there was sufficient guidance in the Article itself and in the Interpretative Notes. The Panel, however, drew special attention to the following points:

- (a) not only State enterprises are covered by the provisions of Article XVII, but all enterprises which enjoy "exclusive or special privileges";
- (b) Marketing Boards engaged directly or indirectly in purchasing or selling are enterprises in the sense of Article XVII paragraphs 1(a) and 1(b), but the activities of Marketing Boards which do not purchase or sell must be in accordance with the other provisions of GATT;
- (c) the requirement in paragraph 4(a) of the Article XVII that contracting parties should notify products "imported into or exported from their territories" should be interpreted to mean that countries should notify enterprises which have the statutory power of deciding on imports and exports, even if no imports or exports in fact have taken place.

17. The Panel felt that contracting parties should be encouraged to provide as much information as was necessary to enable an adequate idea to be obtained of how enterprises covered by Article XVII operate and the effect of such operation upon international trade.

Recommendations with a view to improving the Procedure for Notifications

18. As indicated in paragraphs 12 to 14 above, some of the notifications did not include sufficient information, either because of lack of details of the enterprises or because of lack of statistical background. The Panel therefore recommends that the CONTRACTING PARTIES:

- (a) invite all contracting parties to furnish the information requested on the attached questionnaire in the light of the remarks contained in paragraphs 12, 14, 16 and 17 of this report and to invite any contracting party which does not maintain an enterprise in the sense of Article XVII to submit a statement to that effect;
- (b) invite contracting parties to answer the questionnaire by a date to be determined by the CONTRACTING PARTIES;
- (c) request the secretariat to assemble a basic document, using the information provided by the answers to the questionnaire; and

- (d) invite contracting parties, when they make any subsequent changes in enterprises covered by the questionnaire to notify those changes along the lines of the questionnaire.

ANNEX

PROPOSED NEW QUESTIONNAIRE ON STATE-TRADING

1. Does your country maintain enterprises covered by the provisions of Article XVII? If so, list the products or groups of products for which a State enterprise is maintained or for which an enterprise has exclusive or special privileges.
2. State for each product the reason and purpose for introducing and maintaining the enterprise (it should be indicated, for example, whether the purpose or the effect of the enterprise is to prevent prices to consumers from exceeding certain maximum limits, or to protect domestic producers by the control of imports and/or the purchase of domestic supplies at above world price levels, or to facilitate export sales, or to make it possible to establish or administer a stabilization arrangement). A description of the legal provisions should be included insofar as this has not been submitted in earlier notifications.
3. Describe, item by item, the functioning of such enterprises and state in particular¹:

Whether the enterprise deals with exports or with imports; or both.

Whether private traders are allowed to import or export and, if so, on what conditions. Whether there is free competition between private traders and the State-trading enterprise.

The criteria used for determining the quantities to be exported and imported.

How export prices are determined. How the mark-up on imported products is determined. How export prices and the resale prices of imports compare with domestic prices.

Whether long-term contracts are negotiated by the State-trading enterprise. Whether State-trading methods are used to fulfil contractual obligations entered into by the government.

¹ These questions are identical to those in the questionnaire on State-trading prepared by Committee II on Expansion of Trade. Insofar as contracting parties have reported to Committee II on State-trading in agricultural products they need, in respect of these products, merely to provide a copy of their relevant replies.

4. Furnish statistics (where possible by quantity and value) of imports, exports and national production on the products notified, on the following lines:
 - (a) the figures should cover the last three available years;
 - (b) the figures for the three groups (imports, exports and national production) should be given, where possible, in a comparable form;
 - (c) the figures should be broken down so as to show:
 - (i) trade by the enterprise;
 - (ii) other trade.
5. In cases where no foreign trade has taken place in the products affected, state the reasons.
6. Provide any additional information that may be appropriate.