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**1 ARTICLE XVII**

**1.1 Text of Article XVII**

**Article XVII**

*State Trading Enterprises*

1\* (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,\* such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports and exports by private traders.

(b) The provisions of subparagraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations,\* including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) No contracting party shall prevent any enterprise (whether or not an enterprise described in subparagraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods\* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

3. The contracting parties recognize that their enterprises of the kind described in paragraph 1 (a) of this article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.\*

4. (a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1 (a) of this article.

(b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the

CONTRACTING PARTIES of the import mark-up\* on the product during a recent representative period, or when it is not possible to do so, of the price charged on the resale of the product.

(c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1 (a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

## **1.2 Text of note *ad* Article XVII**

### ***Ad Article XVII***

#### *Paragraph 1*

The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of sub-paragraphs (a) and (b).

The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.

The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

#### *Paragraph 1 (a)*

Governmental measures imposed to ensure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

#### *Paragraph 1(b)*

A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

#### *Paragraph 2*

The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

#### *Paragraph 3*

Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement. (See paragraph 4 of Article II and the note to that paragraph.)

#### *Paragraph 4 (b)*

The term "import mark-up" in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes within the purview of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

### **1.3 Text of the Understanding on the Interpretation of Article XVII of the GATT 1994**

*Members,*

*Noting* that Article XVII provides for obligations on Members in respect of the activities of the state trading enterprises referred to in paragraph 1 of Article XVII, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in GATT 1994 for governmental measures affecting imports or exports by private traders;

*Noting* further that Members are subject to their GATT 1994 obligations in respect of those governmental measures affecting state trading enterprises;

*Recognizing* that this Understanding is without prejudice to the substantive disciplines prescribed in Article XVII;

Hereby *agree* as follows:

1. In order to ensure the transparency of the activities of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods, for review by the working party to be set up under paragraph 5, in accordance with the following working definition:

"Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports."

This notification requirement does not apply to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

2. Each Member shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the Council for Trade in Goods, taking account of the provisions of this Understanding. In carrying out such a review, each Member should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

3. Notifications shall be made in accordance with the questionnaire on state trading adopted on 24 May 1960 (BISD 9S/184-185), it being understood that Members shall notify the enterprises referred to in paragraph 1 whether or not imports or exports have in fact taken place.

4. Any Member which has reason to believe that another Member has not adequately met its notification obligation may raise the matter with the Member concerned. If the matter is not satisfactorily resolved it may make a counter-notification to the Council for Trade in Goods, for consideration by the working party set up under paragraph 5, simultaneously informing the Member concerned.

5. A working party shall be set up, on behalf of the Council for Trade in Goods, to review notifications and counter-notifications. In the light of this review and without prejudice to paragraph 4(c) of Article XVII, the Council for Trade in Goods may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the above-mentioned questionnaire on state trading and the coverage of state trading

enterprises notified under paragraph 1. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the Secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all Members indicating their wish to serve on it. It shall meet within a year of the date of entry into force of the WTO Agreement and thereafter at least once a year. It shall report annually to the Council for Trade in Goods.

*(footnote original)* <sup>1</sup> The activities of this working party shall be coordinated with those of the working group provided for in Section III of the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

#### **1.4 Article XVII:4 Notification requirements**

1. At its meeting of 20 February 1995, the Council for Trade in Goods decided that "all new and full notifications dealt with under Article XVII of *GATT 1994* and Paragraph 1 of the Understanding on the Interpretation of Article XVII of *GATT 1994*, should be submitted not later than 30 June in every third year after 1995 and that the updating notifications due in each of the two intervening years should be submitted not later than 30 June of the respective year."<sup>1</sup> The Council for Trade in Goods then clarified that the deadlines for future notifications would be established by the Working Party on State Trading Enterprises itself.<sup>2</sup>

2. On 11 November 2003, the Working Party adopted a recommendation regarding the frequency of notifications.<sup>3</sup> This recommendation, approved by the Council for Trade in Goods on 26 November 2003<sup>4</sup>, modifies the frequency of state trading notifications so that new and full notifications on state trading are now due every two years instead of every three years, but there is no requirement to update notifications in the intervening years. This new frequency of notifications was implemented for a trial phase of four years ending 30 June 2008. On 5 July 2010, the Council for Trade in Goods approved the recommendation by the Working Party to extend this trial phase until 30 June 2012.<sup>5</sup> Then on 22 June 2012, the Council for Trade in Goods approved the recommendation by the Working Party to definitively set the frequency of new and full notifications to two years.<sup>6</sup>

3. For information regarding the questionnaire used as a basis for notifications, see paragraph 5 below.

#### **1.5 Understanding on the Interpretation of Article XVII of the GATT 1994**

##### **1.5.1 Paragraph 1: Notifications**

4. With respect to the notification requirements set forth in paragraph 1 of the Understanding, see section 1.4 above.

##### **1.5.2 Paragraph 3: Questionnaire for notifications**

5. At its meeting of 21 April 1998, the Council for Trade in Goods approved a revised questionnaire to be used as a basis for notifications on state trading.<sup>7</sup>

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<sup>1</sup> G/C/M/1, paras. 5.6-5.7.

<sup>2</sup> G/C/M/1, para. 5.5. The Working Party accordingly set forth the following deadlines: (i) 30 June 1995 for the 1995 notifications (G/STR/N/1); (ii) 30 September 1998 for the 1998 new and full notifications (G/STR/N/4); and (iii) 29 June 2001 for the 2001 new and full notifications (G/STR/N/7).

<sup>3</sup> G/STR/M/13, item D. The text of the recommendation can be found in G/STR/5.

<sup>4</sup> G/G/M/71, item IV.

<sup>5</sup> G/C/M/103, item II. The text of the recommendation can be found in G/STR/7.

<sup>6</sup> G/C/M/111, item III. The text of the recommendation can be found in G/STR/8.

<sup>7</sup> G/C/M/33, section 3. Text of approved questionnaire: G/STR/3. The questionnaire was revised again in 2003 to reflect the Working Party's decision to modify the frequency within which Members are required to make notifications. The text of the revised questionnaire can be found in G/STR/3/Rev.1.

### **1.5.3 Paragraph 5: Working Party on State Trading Enterprises**

6. As mandated in paragraph 5, the Council for Trade in Goods established a Working Party on State Trading Enterprises at its meeting of 20 February 1995, "to carry out the tasks described in paragraph 5 of the Understanding on the Interpretation of Article XVII of GATT 1994".<sup>8</sup> The Working Party reports annually on its work.<sup>9</sup>

#### **1.5.3.1 Illustrative list**

7. At its meeting of 15 October 1999, the Council for Trade in Goods completed the mandate of paragraph 5 by adopting an illustrative list, prepared by the Working Party, "showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII".<sup>10</sup> The illustrative list states that "[t]his list in no way affects the rights and obligations of Members under the Understanding and under Article XVII of GATT 1994 and its Interpretive Notes."<sup>11</sup> To assist this work, the Secretariat prepared and circulated a background note by the Secretariat, entitled "Operations of State Trading Enterprises as they Relate to International Trade."<sup>12</sup>

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<sup>8</sup> G/C/M/1, subsection 5(A).

<sup>9</sup> G/L/35 for 1995; G/L/128 for 1996; G/L/198 for 1997; G/L/281 for 1998; G/L/335 for 1999; G/L/418 for 2000; G/L/491 for 2001; G/L/591 for 2002; G/L/660 for 2003; G/L/716 for 2004; G/L/749 for 2005; G/L/788 for 2006; G/L/829 for 2007; G/L/857 for 2008; G/L/898 for 2009; G/L/934 for 2010; G/L/971 and Rev.1 for 2011; G/L/1007 for 2012; G/L/1046 for 2013; G/L/1090 for 2014; G/L/1124 for 2015; G/L/1156 for 2016; G/L/1196 for 2017.

<sup>10</sup> G/C/M/41, section 3. The text of the adopted illustrative list can be found in G/STR/4.

<sup>11</sup> G/STR/4, para. 4.

<sup>12</sup> G/STR/2.