

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

DIVISION LEGAL/1146

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PANEL ON SUBSIDIES AND STATE TRADING

Final Report on State Trading

1. The Panel met in Geneva from 6 to 11 April 1959 and from 22 to 26 February 1960. In respect of State-trading enterprises, the terms of reference were:

"To examine the notifications sent to the CONTRACTING PARTIES concerning the products imported to or exported from their territories by enterprises of the kind described in paragraph 1(a) of Article XVII, and to make practical suggestions to the CONTRACTING PARTIES with a view to improving the procedure for notifications under that Article."

2. The present report includes in substance the contents of the interim report presented by the Panel¹ to the fourteenth session of the CONTRACTING PARTIES². At that session the CONTRACTING PARTIES took note of the interim report and approved the recommendation which is now contained in paragraph 10 of the present final report.

I. First Meeting of the Panel

3. The Panel at its first meeting in April 1959 examined the notifications (as contained in addenda to L/784) 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).

4. In the course of this examination 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;

¹ The composition of the Panel is shown in the appendix to the present report.

² The full text is contained in BISD, Eighth Supplement, page 142.

- (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).

5. 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.

6. 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.

7. 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 the best solution would be to prepare a new, comprehensive questionnaire, which all the contracting parties would be asked to complete. Nevertheless, the Panel considered that certain countries should be asked, through the secretariat, to submit information on specific enterprises which had been omitted from their notification.

8. In discussing which enterprises were 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 points¹:

- (a) not only State enterprises are covered by the provisions of Article XVII, but in addition any 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 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.

¹

See also paragraphs 20 to 23.

9. 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.

10. As indicated in paragraphs 4 to 6 above, some of the notifications examined at the first meeting did not include sufficient information, either because of lack of details of the enterprises or because of lack of statistical background. The Panel therefore recommended that the CONTRACTING PARTIES:

- (a) invite all contracting parties to furnish the information requested on the questionnaire contained in Annex A to this Report, in the light of the remarks contained in paragraphs 2, 4, 6 and 7 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 1 September 1959;
- (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.

11. As indicated in paragraph 2 above, the CONTRACTING PARTIES approved the recommendation contained in the preceding paragraph and the annexed questionnaire (Annex A).

II. Second Meeting of the Panel

12. At its second meeting the Panel examined the notifications submitted in accordance with the new questionnaire. A list of these notifications is contained in Annex B attached hereto.

13. With respect to some of the notifications mentioned in the previous paragraph the Panel requested the secretariat to ask the governments concerned to supply certain additional information which the Panel felt was lacking.

14. Canada, France, Italy, Pakistan and the United States had made notifications under the old questionnaire; and at the time of the Panel's second meeting replies to the new questionnaire had not been received from those countries, but it was understood that they would be submitted in the near future.

15. The CONTRACTING PARTIES at their fourteenth session had approved a recommendation by the Panel that contracting parties which do not maintain enterprises covered by Article XVII should be invited to submit a statement to that effect. Reports in this sense have been submitted at the time of reporting by the Governments of Luxemburg and the Netherlands.

16. The Panel draws the attention of the CONTRACTING PARTIES to the fact that the following had not - at the time of the Panel's final report - submitted notifications:

Brazil	Haiti
Burma	Indonesia
Chile	Israel
Cuba	Nicaragua
Dominican Republic	Peru
Greece	Switzerland
	Uruguay

In this connexion the Panel believes that certain of these countries maintain State-trading enterprises and recalls the obligation contained in Article XVII:4(a) for contracting parties to "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."

17. The Panel recommends that the secretariat should assemble a basic document, as proposed in paragraph 10(c) above, consisting of the replies to the latest questionnaire on State-trading enterprises. In view of the fact that the operations of State-trading enterprises are not generally subject to frequent change, the Panel considers that it would be sufficient if contracting parties notified any changes as and when they occur. The CONTRACTING PARTIES may, however, wish to consider from time to time whether the basic documentation needs to be reviewed, and the Panel recommends that the CONTRACTING PARTIES should consider in the autumn of 1962 whether it would then be appropriate to initiate such a review.

18. In the report of its first meeting the Panel had noted that the purpose and effect of the various State-trading enterprises did not emerge from the notifications which had been submitted and the Panel therefore recommended that a specific question should be asked about the effects of State trading. Despite this the Panel wishes to place on record its view that the responses to question 2 of the new questionnaire did not, with rare exceptions, clearly indicate the reasons and purposes which led contracting parties to institute and to maintain State-trading enterprises, particularly in terms of their effect on trade, so as to permit the CONTRACTING PARTIES to judge the extent to which such enterprises serve as a substitute for other measures covered by the General Agreement, such as quantitative restrictions, tariffs and subsidies.

19. The Panel, whilst being aware that paragraph 4(b) of Article XVII only requires that information about mark-up need be provided upon request by a contracting party, had nevertheless included a question to this effect in its questionnaire, which was approved by the CONTRACTING PARTIES. The Panel noted in particular, however, that few contracting parties had attempted any precise answer to that question, and noted that information about import, export and domestic prices had been inadequate.

20. The Panel noted an apparent difference of interpretation among the contracting parties as to the activities that should be reported in response to the request of the CONTRACTING PARTIES. In this connexion they wish to call the attention of the CONTRACTING PARTIES to the discussion of the scope of Article XVII at their first meeting, recorded in paragraph 8 above, and particularly to the interpretation in sub-paragraph 8(c) of that report to the effect 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."

21. In this phrase the Panel did not use the word "enterprise" to mean any instrumentality of government. There would be nothing gained in extending the scope of the notification provisions of Article XVII to cover governmental measures that are covered by other articles of the General Agreement. The term "enterprise" was used to refer either to an instrumentality of government which has the power to buy or sell, or to a non-governmental body with such power and to which the government has granted exclusive or special privileges. The activities of a marketing board or any enterprise defined in paragraph 1(a) of Article XVII should be notified where that body has the ability to influence the level or direction of imports or exports by its buying or selling.

22. It is clear from the interpretative note to paragraph 1 of Article XVII that the activities of a marketing board or any enterprise covered by paragraph 1(a) of the Article and not covered by paragraph 21 of this report would not be notifiable solely by virtue of a power to influence exports or imports by the exercise of overt licensing powers; where such measures are taken they would be subject to other Articles of the General Agreement.

23. Where, however, an enterprise is granted exclusive or special privileges, exports or imports carried out pursuant to those privileges should be notified even if the enterprise is not itself the exporter or importer.

ANNEX A

NEW QUESTIONNAIRE ON STATE-TRADING

I. Enumeration of State-Trading Enterprises

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.

II. Reason and Purpose for Introducing and Maintaining State-Trading Enterprises

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.

III. Description of the Functioning of the State-Trading Enterprises

Describe, item by item, the functioning of such enterprises and state in particular :

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 re-sale prices of imports compare with domestic prices.

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.

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.

IV. Statistical Information

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.

V. Reason Why no Foreign Trade has Taken Place (if this is the case) in Products Affected

In cases where no foreign trade has taken place in the products affected, state the reasons.

VI. Additional Information

Provide any additional information that may be appropriate.

ANNEX B

List of the notifications received in reply to the new questionnaire
and published in addenda to document L/1014

Australia	Add.9
Austria	Add.14
Belgium	Add.12
Ceylon	Add.7
Czechoslovakia	Add.18*
Denmark	Add.5
Federation of Malaya	Add.10
Federation of Rhodesia and Nyasaland	Add.4
Finland	Add.11 Add.11/bis
Germany (Federal Republic of)	Add.15
Ghana	Add.8
India	Add.2
Japan	Add.16
New Zealand	Add.3
Norway	Add.17*
Sweden	Add.6
Turkey	Add.19*
Union of South Africa	Add.1
United Kingdom	Add.13

* The Panel was unable to examine these documents since they were distributed towards the end or after the close of the meeting.

APPENDIX

Members and Observers

1. The Panel consisted of the following experts:

Mr. L. Corkery (Australia)
Mr. J.W. Evans (United States)
Mr. C. Johansen (Denmark)
Mr. W. Le Mair (Netherlands)¹
Mr. F. Manhart (Austria)
Mr. G. Paquet (France)
Mr. S.D. Wilks (United Kingdom)

Mr. S.D. Wilks was elected Chairman of the Panel.

2. Observers were present from the following countries and organizations: Australia, Austria, Belgium, Czechoslovakia, Finland, the Federal Republic of Germany, Italy, Japan, Peru, Turkey, United States, Yugoslavia; OEEC, EEC (Commission and Council). Some of the observers took an active part in the discussions.

¹ At the second meeting, Mr. H.J. van Tuinen replaced Mr. W. Le Mair, who was unable to attend.