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Group of Negotiations on Goods (GATT)
Negotiating Group on GATT Articles

ARTICLE XVII (STATE TRADING ENTERPRISES)

Note by the Secretariat

1. At its meeting of 18 May 1987, the Negotiating Group on GATT Articles agreed that the secretariat prepare factual background papers on the GATT Articles proposed by contracting parties for review. The present note attempts to provide such factual background information on Article XVII. It first surveys the negotiating history of Article XVII and of the notification procedures pursuant to Article XVII:4(a) and gives information on previous occasions when multilateral consideration has been given in GATT to Article XVII and related matters. It then provides background information on four aspects of Article XVII of relevance to many of the points made in the Group concerning Article XVII, namely the types of enterprises covered by its provisions, negotiations on the reduction of obstacles to trade in connection with state-trading enterprises, import and export restrictions effected through the operation of state-trading enterprises, and transparency on the operations of state-trading enterprises.

Overview of the Negotiating History of Article XVII

2. The drafters of the General Agreement recognized that state-trading enterprises, especially those with a monopoly of imports or exports, could be operated so as to create serious obstacles to trade, for example by discriminating between other contracting parties, by raising the resale price of imports or by limiting the amount imported or exported, and that this could be done without the need for the use of the normal trade policy instruments regulated by GATT provisions. Hence, they saw the need for special rules and procedures on state-trading enterprises. In the General Agreement, these are presently found in Articles XVII, II:4, XX(d) and the interpretative note to Articles XI, XII, XIII, XIV and XVIII (these provisions are reproduced at Annex I). These special rules concern obligations on:

- non-discrimination (Article XVII:1);
- negotiations to limit or reduce obstacles to trade (Article XVII:3);

- the preservation of the value of concessions (Article II:4);
- import and export restrictions effected through the operation of state-trading enterprises (interpretative note to Articles XI-XIV and XVIII); and
- transparency (Article XVII:4).

Article XX:(d) permits, subject to the qualifications set out in the introduction to the Article, measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of the General Agreement, including those relating to the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII.

3. Two points about the background to the drafting of Article XVII should be mentioned. First, the provisions in question were not originally conceived of as dealing with the situation of countries which maintained a complete or substantially complete monopoly of their import trade. In the London and New York drafts of the charter of an International Trade Organization a separate draft Article was proposed to deal with such situations, but then was not pursued, mainly because no major country with such a monopoly of its import trade participated in the work. The second point is that there was a widespread concern that the obligations relating to the trade of state-trading enterprises and those relating to private trade should be in parallel with each other.

4. The Havana Charter contained, in addition to the rules now in paragraphs 1 and 2 of Article XVII, an Article 31 (reproduced at Annex II) which laid down in some detail:

- an obligation to negotiate, in the manner provided for in respect of tariffs, on the activities of import and export monopolies with other members having a substantial interest in the products concerned;
- details of how such negotiations should be carried out; and
- an obligation, in any case where a maximum import duty is not negotiated, to make public or notify the International Trade Organization of the maximum import duty (which was defined to include protective elements of the mark-up on imports).

5. These provisions of Article 31 of the Havana Charter were not included in the General Agreement, mainly it would seem because the GATT at that time was conceived of as an instrument to safeguard the value of concessions already negotiated pending the coming into force of the Havana Charter, and not as providing a framework for future negotiations aimed at trade liberalization. Instead of Article 31 of the Havana Charter, Article II:4 was included in the General Agreement laying down obligations

related to the preservation of the value of concessions on products subject to import monopolies.

6. In the 1954-55 review session, the provisions on state trading were re-examined in the light of the knowledge that the Havana Charter would not come into force and of the desire to provide in the GATT a permanent framework for negotiations. Proposals were made to incorporate all or parts of the Havana Charter provisions on state trading. Some points in these proposals were not accepted; for example, the incorporation in the General Agreement of an obligation to negotiate with the object of limiting protection afforded by export and import monopolies was rejected by some contracting parties on the grounds that it would go beyond the corresponding obligations on tariffs. A proposal to oblige contracting parties to notify, in the case of unbound items, the maximum margin of protection for the item concerned was also not adopted (W.9/99).

7. As a result of the consideration of these and other matters, the substantive amendments to the provisions of the General Agreement on state-trading enterprises made as a result of the 1954-55 review Session were the addition of the present paragraphs 3 and 4 of Article XVII (BISD 3S/228). These constitute respectively an invitation, without obligation, to contracting parties to negotiate on the limitation or reduction of any obstacles to trade resulting from the operation of state-trading enterprises and requirements concerning the provision of information by contracting parties about state-trading enterprises and their operations.

8. In 1959 and 1960, a Panel established by the CONTRACTING PARTIES examined the notifications received under the new notification procedure in Article XVII:4(a) with a view to making practical suggestions for improving the procedure for notifications under that Article. This Panel, which submitted its final report in May 1960 (BISD, 9S/179), drew up the questionnaire on state trading which is still in force (reproduced at Annex III). In November 1962, the CONTRACTING PARTIES decided on the present arrangement by which new and full responses to the questionnaire should be made every third year and changes in state trading measures be notified in intervening years (BISD, 11S/58).

9. Part IV of the General Agreement, which came into effect in 1966, contains in Article XXXVII:3(a) an obligation on developed contracting parties to "make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels".

Previous multilateral consideration of Article XVII

10. When the GATT rules relating to state trading were last reviewed in GATT, by the Committee on Trade in Industrial Products in 1970 and 1971, it was generally agreed that "the existing rules of Articles XVII and II:4, as

well as the Interpretative Note ad Articles XI to XV, regarding non-discrimination and limitation of protection, seemed reasonably adequate as far as basic principles were concerned, and that the problems appeared to lie in the area of implementation, where some elaboration of procedures might be considered" (L/3496, page 27). Proposals were made that a strengthening of the effectiveness of Article XVII would be desirable through (L/3496, page 9):

- (a) an improvement in the quality, frequency and coverage of reports under the Article;
- (b) consultations along the lines of Articles XXII and XXIII; and
- (c) negotiation of concessions on state-trade products, including global purchase commitments.

In its subsequent work, the Committee did not pursue the question of state trading, giving priority to a number of other issues.

11. In recent years, considerable attention has been given to rules on state trading as it concerns trade in agriculture, particularly in the Committee on Trade in Agriculture (for example AG/W/9/Rev.3, pages 7-8 and AG/W/12-16).

12. Specific state-trading practices have been considered by the CONTRACTING PARTIES on relatively few occasions, the main examples being in regard to Article XVIII and the Haitian tobacco monopoly (1955, L/454), the Uruguayan recourse to Article XXIII concerning measures maintained by fifteen contracting parties (1962, 1965, BISD, 11S/95 and 13S/35), Article XXII:2 consultations on the United Kingdom steel rebate (1967, L/2958), an Article XXIII:2 action on Japanese measures on imports of thrown silk (1978, BISD, 25S/107), and an Article XXIII:2 action on Japanese restraints on imports of manufactured tobacco from the United States (1981, BISD, 28S/100). In the last three cases, the matter was resolved without the Working Party/Panel concerned having to report on its findings. Issues concerning state trading are presently under consideration in the Panels established on the EEC's recourse to Article XXIII:2 on the import, distribution and sale of alcoholic drinks by Canadian provincial marketing agencies (C/M/186, C/M/195 and C/143) and the United States' recourse to Article XXIII:2 on Japanese restrictions on imports of certain agricultural products (C/M/202, C/145).

The types of enterprise covered

13. While the title of Article XVII is "State Trading Enterprises", Article XVII:1(a) makes clear that the main obligations contained in the Article apply to any "state enterprise, wherever located", established or maintained by a contracting party; and any enterprise to which a contracting party has granted, "formally or in effect, exclusive or special privileges" (referred to hereinafter as "privileged enterprises"). These

expressions are not specifically defined in the General Agreement. The interpretative notes to Article XVII:1 give some guidance to their application to Marketing Boards and to what are not "exclusive or special privileges". Import monopolies, established, maintained or authorized by a contracting party, referred to in Article XVII:4(b) and in Article II:4, are clearly one type of privileged enterprise (they may, of course, be state enterprises as well). At the Geneva session of the Preparatory Committee, an understanding was also recorded that a government exemption of an enterprise from certain taxes as compensation for its participation in the profits of the enterprise should not be considered as "granting exclusive privileges" (EPCT/160, page 4). Article XVII:2 makes it clear that government procurement imports are not covered by Article XVII:1.

14. The London and New York drafts of what subsequently became Article XVII of the GATT had essentially defined state and privileged enterprises as enterprises over whose operations the government of a Member exercised effective control (EPCT/34, page 28). This definition was deleted at the Geneva session of the Preparatory Committee on the grounds that the language presently figuring in Article XVII:1(a) defined the enterprises in question as precisely as practicable (EPCT/160, pages 4 and 6; EPCT/A/PV.15, pages 9-24). The reports of the drafting work at the Havana Conference reaffirmed this view but added that it was the general understanding that the term "state enterprises" included, *inter alia*, any agency of government that engages in purchasing or selling (Havana Reports, page 114, paragraph 10). Thus, there is no specific requirement in the General Agreement for enterprises to be actually controlled by governments if they are to be considered to fall under the provisions of Article XVII:1(a).

15. The question of the coverage of Article XVII was subsequently considered by the Panel that drew up in 1960 the present questionnaire on state trading. The Panel thought that there was sufficient guidance as to which enterprises were covered by Article XVII in the Article itself and in the interpretative notes, but drew attention to a number of points in this connection in paragraphs 8, 20, 21, 22 and 23 of its report (reproduced as Annex IV).

16. In 1985, the question of the desirability of a better understanding of what is meant by state and privileged enterprises within the meaning of Article XVII:1(a) was raised in the Group on Quantitative Restrictions and Other Non-Tariff Measures (NTM/W/13, page 3). In 1986, this matter was discussed in the Council on the basis of communications from Chile (L/5955; C/W/495; C/M/195, pages 24-25; C/M/196, pages 6-7; C/M/198, pages 11-12).

17. As regards the types of enterprise actually notified by contracting parties as falling under Article XVII:1(a), an examination of the

notifications received since 1981 (26 contracting parties) shows the following:

- 8 contracting parties have notified that no state trading in the meaning of Article XVII:1(a) exists in their territories (Belgium, Hong Kong, Hungary, Ireland, Luxembourg, Poland, United States and Yugoslavia);
- 2 contracting parties have notified that in their countries foreign trade is a state monopoly (Czechoslovakia and Romania);
- the remaining sixteen countries notifying in this period have notified a range of enterprises; mostly concerned with agricultural products; mostly having monopoly control over the import and/or export trade in particular products (whether exercised through actual importing and exporting operations and/or through control of the operations of private traders); and, with few exceptions, engaged in essentially trading or marketing functions rather than the production of goods.

Non-discrimination

18. Article XVII:1(a) requires state or privileged enterprises, in their "purchases or sales involving either imports or exports", to "act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the General Agreement for governmental measures affecting imports or exports by private traders". This is elaborated in sub-paragraph (b) of Article XVII:1, which states that the above shall be understood to require that the enterprises in question "shall, having due regard to the other provisions of the General Agreement, make any purchases or sales" involving either imports or exports (i) "solely in accordance with commercial considerations", and (ii) "shall afford the enterprises of other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales". It should also be noted that sub-paragraph (c) of Article XVII:1 forbids contracting parties from preventing any enterprise (whether or not a state or privileged enterprise) under its jurisdiction from acting in accordance with these principles.

19. The drafting history of Article XVII:1(a) records that the phrase "involving either imports or exports" was understood to cover, within the terms of the Article, any transactions through which a state or privileged enterprise could intentionally influence the direction of total import or export trade in the commodity in a manner inconsistent with the other provisions of the Charter (EPCT/160, page 4).

20. An issue that has arisen in recent years is the extent to which the reference to the phrase "the general principles of non-discriminatory treatment" refers to the principles of national treatment in Article III as well as to those of "most-favoured-nation" type treatment. The London and

New York drafts of the Havana Charter make explicit that the principles in question were those of most-favoured-nation treatment only, and the records do not indicate any intention at the Geneva session of the Preparatory Committee, which adopted the present language, to incorporate the national treatment concept as well. This interpretation was subsequently confirmed by the CONTRACTING PARTIES in the Belgian Family Allowances case of 1952 (BISD, 1S/60, paragraph 4) and in the consideration in 1955 of the Haitian Tobacco Monopoly (L/454, paragraph 8). The matter was recently considered by the Panel on the Administration of the Canadian Foreign Investment Review Act which said in its report (BISD, 30S/163, paragraph 5.16):

"The Panel saw great force in Canada's argument that only the most-favoured-nation and not the national treatment obligations fall within the scope of the general principles referred to in Article XVII:1(a). However, the Panel did not consider it necessary to decide in this particular case whether the general reference to the principles of non-discriminatory treatment referred to in Article XVII:1 also comprises the national treatment principle since it had already found the purchase undertakings at issue to be inconsistent with Article III:4 which implements the national treatment principle specifically in respect of purchase requirements."

21. Of course, the question of whether Article XVII:1 embraces a national treatment as well as an "m.f.n." type obligation is one issue, and the extent of the applicability of Article III to the operations of state-trading enterprises is another.

Negotiations on the reduction of obstacles to trade

22. Article XVII:3 and its interpretative note are an exhortation to be willing to negotiate to limit or reduce any obstacles to trade resulting from the operations of state or privileged enterprises, through the reduction of duties and other charges on imports or exports or through the conclusion of other mutually satisfactory arrangements consistent with the provisions of the GATT.

(i) Reduction of duties or other charges on imports or exports

23. The interpretative note to Article XVII:3 refers the reader to Article II:4 of the General Agreement. Article II:4 is basically aimed at ensuring that import monopolies are not operated in such a way as to afford protection in excess of that provided for in Schedules of concessions. Article II:4 is to be applied, except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, in the light of the provisions of Article 31 of the Havana Charter i.e. to the extent that it is pertinent to the text of the General Agreement. Under paragraph 4 of Article 31 of the Havana Charter, the import duty for the purposes of concessions is basically defined as the maximum margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes, transportation, distribution and other

expenses and a reasonable margin of profit) may exceed the landed cost. Thus, under Article II:4, if a contracting party has negotiated a binding in its Schedule on the maximum rate of import duty chargeable on a product on which it maintains a monopoly of importation, the combined total of the actual import tariff charged and what may be termed the protective element of the mark-up on resale of the product by the monopoly must not exceed the bound level. This, however, is subject to the qualification in Article II:4 of "except as provided for in that Schedule or as otherwise agreed between the contracting parties which initially negotiated the concession"; the interpretative note also contains a qualification - that the provisions of Article II:4 are to be applied in the light of the provisions of Article 31 of the Havana Charter "except where otherwise specifically agreed between the contracting parties which initially negotiated the concession".

24. As regards concessions on export duties and other charges on exports, the General Agreement does not contain any provision, other than that in Article XVII:3, specifically referring to export monopolies or other state or privileged enterprises.

25. In practice, most of the concessions negotiated concerning state or privileged enterprises have taken the form of bindings of import tariffs.

(ii) Other mutually satisfactory arrangements consistent with the provisions of the General Agreement

26. Negotiations under Article XVII:3 may also be directed towards the conclusion of "other mutually satisfactory arrangements consistent with the provisions of the General Agreement". Concessions other than in the form of bindings of import duty rates are also referred to in Article II:4 on import monopolies in the clause "except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession". Article II:4 is to be applied, except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, in the light of the provisions of Article 31 of the Havana Charter. Paragraph 2(b) of Article 31 of the Havana Charter incorporated the principles, in regard to import monopolies, that "other mutually satisfactory arrangements consistent with the provisions of the Charter" should only be negotiated if the negotiation of a maximum import duty would be impracticable or ineffective in liberalizing trade, and that any member entering into such negotiations shall afford to other interested members an opportunity for consultation. The Committee on Trade in Industrial Products, which was the last GATT body to examine the general issue of state-trading enterprises and the provisions of Article XVII, reported in 1971 that among the proposals made for strengthening the effectiveness of Article XVII was the negotiation of concessions on state-traded products, including global purchase commitments. A number of commitments on minimum import quantities or other arrangements were negotiated in the early days of GATT, but these have been superseded now by the common Schedule of the European Communities. For example, the French

Schedule contained a minimum import commitment for leaf tobacco and cigarettes to be imported by the French tobacco monopoly, and also a commitment on the relationship between the selling prices of foreign cigarettes and those of de luxe brands of the monopoly. It also contained a concession on the maximum margin by which the resale price of wheat imported by the French import monopoly, exclusive of internal taxes, of transportation, distribution and other expenses incidental to its purchase and sale and of a reasonable margin of profit, could exceed the duty paid landed price.

Import and export restrictions

27. The interpretative note to Articles XI, XII, XIII, XIV and XVIII states that, throughout these Articles, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations. Consideration of these matters has thus mainly taken place in the context of GATT's work on quantitative restrictions, whether generally or in particular product areas, such as agriculture or tropical products. A summary of these activities can be found in document MTN.GNG/NG2/W/1, Annex I. Document NTM/W/6/Rev.3 and addenda contain the most recent detailed information on quantitative restrictions presently applied through the operation of state-trading enterprises. Document NTM/W/17, pages 79 and 86, contains an index to the information in NTM/W/6/Rev.3 on measures notified as a "quantitative restriction made effective through state-trading operations" or simply as "state trading". NTM/W/17 also contains a listing of quantitative restrictions for which Article XVII has been invoked as a justification of the measure in question (page 106).

Transparency

28. Article XVII:4(a) requires CONTRACTING PARTIES to notify the products imported into or exported from their territories by state or privileged enterprises. This requirement has been amplified by a questionnaire, adopted by the CONTRACTING PARTIES in 1960 (BISD, 9S/184). The text of this questionnaire can be found at Annex III of this note. Under the procedures adopted by the CONTRACTING PARTIES in 1962, contracting parties are invited to submit every third year new and full responses to the questionnaire and notify changes to the basic notifications in the intervening years (BISD, 11S/58). The Panel also suggested that the CONTRACTING PARTIES may wish to consider from time to time whether the basic documentation needs to be reviewed. The 1962 procedures envisaged three-yearly reviews of the notifications, but, apart from the requirement on contracting parties to make new and full responses every three years, no such review has taken place.

29. Annex V of this note indicates the documents in which can be found the notifications received under the 1962 procedures and Annex VI indicates the contracting parties which have notified in the last two full trienniums and so far this year (1981-1987). In the most recent triennium (1984-86)

14 contracting parties provided responses to the questionnaire. In previous trienniums, the number of contracting parties supplying responses was 21 (1981-83), 20 (1978-80), 18 (1975-77) and 18 (1972-1974). It is apparent that not all contracting parties are fulfilling the notification requirements.

30. Article XVII:4(b) requires a contracting party operating an import monopoly of a product that is not the subject of a concession to inform, on the request of another contracting party having a substantial trade in the product concerned, the CONTRACTING PARTIES of the import mark-up on the product, or, when this is not possible, the price charged on resale of the product. The term "import mark-up" is defined in the interpretative notes. This provision has been rarely used. The only recent example is the request by Australia to Japan with regard to beef imported by the Japanese Livestock Industry Promotion Corporation (C/M/205, page 15-16; C/M/206, page 15; L/5937/Add.2/Suppl.2).

31. Article XVII:3(c) concerns the situation where a contracting party believes that its interests under the General Agreement are being adversely affected by the operations of a state or privileged enterprise. At the request of such a contracting party, the CONTRACTING PARTIES may request the contracting party establishing, maintaining or authorizing the enterprise in question to supply information about its operations related to the carrying out of the provisions of the General Agreement. This provision does not appear to have been used.

32. On the last occasion that the provisions of the GATT on state-trading enterprises were subject to review, in the Committee on Trade in Industrial Products, the Working Party of this Committee which examined the matter recorded in its report that among the ideas expressed with regard to the principal elements towards a solution to the problems raised were (L/3496, page 27):

"With a view to strengthening the effectiveness of Article XVII, consideration should be given to improving the quality, frequency and coverage of reports by contracting parties on State-trading enterprises. (It was noted that only a handful of contracting parties report with anything like the prescribed regularity and that reports were in some cases incomplete as to coverage or failed to respond in the detail envisaged by the questionnaire.) A possible device, which might be applicable here, would be to invite countries who consider their trade interest affected to obtain, through the secretariat, notifications on subjects not covered by regular notifications. The view was expressed that lack of information regarding the margin by which prices are increased (mark-ups) in State trading, including failure to state whether a country is meeting full demands for imported products in accordance with the Interpretative Note to Article II:4, made it difficult for

foreign firms and trade partners to determine the extent of discrimination."

As mentioned earlier, this matter was not pursued since the Committee decided to give priority to other issues.

33. In 1986 the Council considered the notification procedures and their implementation in the context of suggestions for the establishment of a periodic review procedure which would allow notifications to be evaluated and uniform criteria to be defined as to what has to be notified and the clarification of which enterprises are covered by Article XVII:1(a) (L/5955, C/W/495, C/M/195, 196 and 198). Most speakers were of the view that the coverage of Article XVII:1(a) needed clarification and that this would facilitate notifications. Some thought that the desirability of a periodic review procedure should be examined. Some speakers, however, were not ready to agree on the establishment of a working party to consider these matters, partly because Article XVII was under discussion in the context of the preparatory work for the new round.

ANNEX I

PROVISIONS OF THE GENERAL AGREEMENT RELATING TO
STATE-TRADING ENTERPRISES

1. Article XVII

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 or exports by private traders.

(b) The provisions of sub-paragraph (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 sub-paragraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of sub-paragraphs (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 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 interests 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.

Interpretative note 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.

2. Article II:4

If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement.

Interpretative note ad Article II:4

Except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, the provisions of this paragraph will be applied in the light of the provisions of Article 31 of the Havana Charter.

3. Interpretative note to Articles XI, XII, XIII, XIV and XVIII

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms "import restrictions" or "export restrictions" include restrictions made effective through state-trading operations.

4. Article XX(d)

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII.....;

ANNEX II

ARTICLE 31 OF THE HAVANA CHARTER

Expansion of Trade

1. If a Member establishes, maintains or authorizes, formally or in effect, a monopoly of the importation or exportation of any product, the Member shall, upon the request of any other Member or Members having a substantial interest in trade with it in the product concerned, negotiate with such other Member or Members in the manner provided for under Article 17 in respect of tariffs, and subject to all the provisions of this Charter with respect to such tariff negotiations, with the object of achieving:

- (a) in the case of an export monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic users of the monopolized product, or designed to assure exports of the monopolized product in adequate quantities at reasonable prices;
- (b) in the case of an import monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic producers of the monopolized product, or designed to relax any limitation on imports which is comparable with a limitation made subject to negotiation under other provisions of this Chapter.

2. In order to satisfy the requirements of paragraph 1(b), the Member establishing, maintaining or authorizing a monopoly shall negotiate:

- (a) for the establishment of the maximum import duty that may be applied in respect of the product concerned; or
- (b) for any other mutually satisfactory arrangement consistent with the provisions of this Charter, if it is evident to the negotiating parties that to negotiate a maximum import duty under sub-paragraph (a) of this paragraph is impracticable or would be ineffective for the achievement of the objectives of paragraph 1; any Member entering into negotiations under this sub-paragraph shall afford to other interested Members an opportunity for consultation.

3. In any case in which a maximum import duty is not negotiated under paragraph 2(a), the Member establishing, maintaining or authorizing the import monopoly shall make public, or notify the Organization of, the maximum import duty which it will apply in respect of the product concerned.

4. The import duty negotiated under paragraph 2, or made public or notified to the Organization under paragraph 3, shall represent the maximum margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes conforming to the provisions of Article 18, transportation, distribution and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) may exceed the landed cost; Provided that regard may be had to average landed costs and selling prices over recent periods; and Provided further that, where the product concerned is a primary commodity which is the subject of a domestic price stabilization arrangement, provision may be made for adjustment to take account of wide fluctuations or variations in world prices, subject where a maximum duty has been negotiated to agreement between the countries parties to the negotiations.

5. With regard to any product to which the provisions of this Article apply, the monopoly shall, wherever this principle can be effectively applied and subject to the other provisions of this Charter, import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at that time.

6. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for social, cultural, humanitarian or revenue purposes.

7. This Article shall not limit the use by Members of any form of assistance to domestic producers permitted by other provisions of this Charter.

ANNEX III

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 in so far 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.
- Whether long-term contracts are negotiated by the State-trading enterprises. Whether State-trading methods are used to fulfill contractual obligations entered into by the government.

IV. Statistical information

Furnished 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 IV

PANEL ON NOTIFICATIONS OF STATE-TRADING ENTERPRISES (1959-60)

Points made in Final Report (BISD, 9S/179) on the
Enterprises to be Notified

"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 points:

- (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 requirements 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."

"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 connection 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 V

NOTIFICATIONS RECEIVED ON STATE TRADING UNDER THE
PROCEDURES ADOPTED BY THE CONTRACTING PARTIES
IN 1962 (BISD, 11S/58)

<u>Year</u>	<u>Document reference</u>
1963	L/1949/Add.1-26
1964	L/1949/Add.27-28
1965	L/2313/Add.1-13
1966	L/2593/Add.1-13
1967	L/2593/Add.14-16
1968	L/3030/Add.1-10
1969	L/3177/Add.1-13
1970	L/3412/Add.1-7
1971	L/3514/Add.1-11
1972	L/3653/Add.1-18
1973	L/3833/Add.1-9
1974	L/3833/Add.10-13
1975	L/4040/Add.1-17
1976	L/4296/Add.1-11
1977	L/4466/Add.1-12
1978	L/4623/Add.1-16
1979	L/4764/Add.1-7
1980	L/4933/Add.1-13
1981	L/5104/Add.1-17
1982	L/5281/Add.1-7
1983	L/5445/Add.1-10
1984	L/5601/Add.1-11
1985	L/5765/Add.1-6
1986	L/5937/Add.1-8
1987	L/6107/Add.1-7

(as of 31 July 1987).

ANNEX VI

NOTIFICATIONS UNDER ARTICLE XVII:4(a)¹ - STATE TRADING

	1981 (full)	1982	1983	1984 (full)	1985	1986	1987 (full)
Australia	X		X	X		X	
Austria	X	X	X	X	X	X	X
Belgium	X						
Canada		X	X				
Czechoslovakia		X					
Finland	X	X	X	X		X	X
France	X						
Germany, F.R.	X						
Hong Kong							X
Hungary				X			
Ireland	X						
Israel	X						
Japan						X	X
Luxembourg	X						
New Zealand	X						
Norway	X			X	X	X	
Peru	X				X		
Poland				X			
Romania	X		X				
South Africa	X		X	X	X	X	X
Spain			X	X			
Sweden		X		X			X
Switzerland	X	X	X		X	X	
United Kingdom	X	X	X				
United States				X			
Yugoslavia	X		X	X	X	X	X

¹ No notifications have been received since 1981 from other contracting parties.