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Negotiating Group on GATT Articles

ARTICLE XVII (STATE TRADING ENTERPRISES)

Note by the Secretariat

Addendum

As requested by the Negotiating Group on GATT Articles at its seventh meeting, the secretariat has complemented its previous note on Article XVII in connection with a number of questions raised at that meeting (MTN.GNG/NG7/7, para. 31).

A. Proposals on the table before provision on "complete or substantially complete monopoly of trade" was deleted (clarification of para. 3 of NG7/W/15)

1. The United States Proposals for Expansion of World Trade and Employment (November 1945) in their Section F, State Trading, contained three Articles, the last of which (Article 28) was entitled "Expansion of Trade by Complete State Monopolies of Import Trade" and which read:

> "Any Member establishing or maintaining a complete or substantially complete monopoly of its import trade shall promote the expansion of its foreign trade with the other Members in consonance with the purposes of this Charter. To this end such Member shall negotiate with the other Members an arrangement under which, in conjunction with the granting of tariff concessions by such other Members, and in consideration of the other benefits of this Chapter, it shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon. This purchase arrangement shall be subject to periodic adjustment."

2. It was argued that the rationale for this provision was to provide a counterpart to reductions in duties and other trade barriers by countries whose trade was handled largely or mainly by private enterprise. For these countries the effect of these reductions was to bring about an increase in imports relative to domestic production. So the point was made that the analogous requirement for a country with a complete monopoly of trade would be an undertaking that total imports should not be less than some figure to be agreed upon, subject to periodic adjustment (EPCT/CII/PV.5 at 37).

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3. During the first session of the Preparatory Committee of the United Nations Conference on Trade and Employment held in London (October-November, 1946) it was considered impracticable to deal with Article 28 in the absence of the state chiefly concerned, the USSR. The Article was therefore not discussed as to substance and it was decided to retain it provisionally in the Draft Charter subject to possible consideration at a later stage. Article 28 in the United States Proposals became Article 33 - within square brackets - in the Draft Charter emerging from London. In its report the Preparatory Committee explicitly mentioned the following[1]:

> "Although the substance of Article 28 of the United States Draft Charter was not discussed, the Preparatory Committee has decided that it should remain provisionally as it appears"

4. The situation concerning Article 33 during the New York Drafting Session of the Preparatory Committee (January-February, 1947) remained unaltered (EPCT/C6/29 at 3). In its report the Drafting Committee maintained Article 33 within square brackets while indicating that "it did not feel itself called upon to consider this Article"[2].

5. During the Second Session of the Preparatory Committee in Geneva (April-October 1947) New Zealand proposed to make an addition to Article 33 so as to cover a "serious gap in the Charter which provided for free trading and for a complete monopoly of trade, but had no provision for a country like New Zealand which planned and controlled its foreign trade". (EPCT/W/101 and EPCT/A/SR 17 at 9). In its proposal New Zealand was aiming at broadening the scope of Article 33 by adding to it a new paragraph which had little to do with countries maintaining a complete or substantially complete monopoly of trade. The proposal therefore left basically intact the first paragraph of Article 33. The new paragraph proposed gave rise to a discussion on the special difficulties for certain countries of refraining from maintaining "quantitative regulation of their foreign trade". In the opinion of the Preparatory Committee the provisions elsewhere in the chapter dealing with restrictions to safeguard the balance of payments and those dealing with export controls fully met the positions

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[1]Final Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, London, 1946, EPCT/33, pages 18 and 33

[2]Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment, New York, 1947. EPCT/34 page 29.

of these countries. New Zealand however reserved its position on this point.[3]

6. The provision referring to members maintaining a complete or substantially complete monopoly of their import trade (Article 33 in the London and New York Drafts) was eliminated in Geneva during the Second Session of the Preparatory Committee. The United States in explaining the reasons for proposing the deletion of this Article said that (EPCT/A/SR 17 at 8):

> "Many forceful objections to negotiations on global purchase commitments of individual products had been voiced, and these arguments applied even more forcibly to negotiations contemplated under Article 33. He therefore considered that the provisions of this Article would not be practicable. Article 32, as conceived in the United States amendment, contained provisions for additional negotiations, different from those on marginal mark-ups, and that made Article 33 redundant".

7. In its report the Preparatory Committee indicated that the text of the revised Article 32 was sufficiently flexible to permit negotiations with a Member which maintained a complete or substantially complete monopoly of its external trade, and that since no representative of such a country had attended the sessions of the Committee, the question of whether Article 32 provided the basis for participation of a such a Member remained an open question to be dealt with at the World Conference (EPCT/186, page 29).

8. The proposed Article 33 was not retained in the Havana Charter nor in the General Agreement. A similar obligation can however be found in the Protocols of Accession of Poland and Romania. The former country "undertakes to increase its imports from the territories of contracting parties by not less than 7 per cent per annum" (BISD,15S/52). The latter country "intends to increase its imports from the contracting parties as a whole at a rate not smaller than the growth of total Romanian imports provided for in its Five-Year Plans". (BISD,18S/10).

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[3]Report of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Geneva, 1947. EPCT/186, page 29.

B. Drafting history of the distinction between different kinds of marketing boards in the note Ad Article XVII:1

9. The relevant part of the footnote to paragraph one of Article XVII of the General Agreement is the following:

> "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."

10. During the London Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (October-November, 1946), Committee II discussed, inter alia, the question of whether government agencies which appeared to be more like control boards than actual monopolies, would be covered by the Charter, and whether activities of such boards would be consistent with the Charter. Discussions in Committee II were very preliminary, in the sense that delegations asked questions and requested clarifications. It would seem that the general feeling was that the subject of state-trading was complex and that the task of drafting provisions on this subject was difficult in view of the limited experience of members of the Committee. The Committee decided that the provisions on state-trading should be referred to a "Drafting Sub-Committee consisting of the United Kingdom, the United States, New Zealand, China and Czechoslovakia with the understanding that the United States, the Netherlands and South Africa should first study the question of control boards" (EPCT/C.II/37 at 4).

11. There are no records of the discussions of the group composed by the latter three countries, also known as the "Sub-Committee on Marketing Boards", probably because it only met once, and informally. However, in its report it stated that it had

> "considered two kinds of activities of the Marketing Boards: as trading and as regulating bodies. In the first case, when such Boards buy and sell products, they would come under the provisions relating to state-trading. In the second case, when they lay down regulations governing private trade, their activities would be covered by the relevant Articles of the Draft Charter" (EPCT/C.II/ST/PV.6 at 4).

12. The report prompted a debate in the Drafting Sub-Committee as to whether marketing boards, before they would come under the definition of state-trading enterprises, would have to be within the effective control of a member government, as in the final paragraph of Article 26 of the United States Proposals. The Drafting Sub-Committee discussed the question of the control which Governments needed to exert over enterprises so as to make

them fall under the state-trading provisions. Two basic opinions were expressed: that of those who believed that if a Government conferred exclusive powers upon a certain enterprise it would automatically be responsible for seeing that such an enterprise follows the principles of commercial considerations and equality of treatment in its trading operations; and that of those who believed that it should be possible for a Government to give exclusive trading powers to an enterprise without taking any responsibility for the way in which it conducts its trading operations. The corollary of the latter opinion was that if a Member Government did not exercise effective control over the operations of a marketing board, the provisions of Article 26 should not apply to the operations of such a board. The point was however made that this second interpretation would create a "no-man's land". The question of control and responsibility over the operations of marketing boards was not pursued any further. The matter was later taken up again but in connection with state enterprises in general[4]. In the event, upon the suggestion of New Zealand, it was agreed that it was necessary to explicitly acknowledge that those "marketing boards" mentioned in the report of the "Sub-Committee on Marketing Boards" were confined to boards established by express governmental action (EPCT/C.II/ST/PV.6 at 29).

13. The report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment included in its Section E on State Trading the following:

> "It was agreed that when marketing boards buy or sell they would come under the provisions relating to state-trading; where they lay down regulations governing private trade, their activities would be covered by the relevant Articles of the Charter. It was understood that the term "marketing boards" is confined to boards established by express governmental action" (EPCT/33, page 17 paragraph (vii)).

14. The wording of the provision on marketing boards which emerged from the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, in the form of a footnote to Article 30, is very similar (EPCT/186 page 28):

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

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[4] EPCT/33 page 17 paragraph I(a)(ii). As indicated in paragraph 14 of NG7/W/15 the question of control of enterprises in general was not retained in the General Agreement. Enterprises are thus not required to be actually controlled by governments in order to be considered to fall under the provisions of Article XVII:1(a).

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

15. In the Havana Charter, the provision ceased to be a footnote and became Article 30 (Marketing Organisations):

"If a Member establishes or maintains a marketing board, commission or similar organisation, the Member shall be subject:

(a) with respect to purchases or sales by any such organisation, to the provisions of paragraph 1 of Article 29;

(b) with respect to any regulations of any such organisation governing the operations of private enterprises, to the other relevant provisions of this Charter."

16. From a comparison of the various drafts of the note above and the final version in the General Agreement, it would appear that the distinction between marketing boards acting as trading and as regulating bodies has withstood the passage of time. A panel constituted to review notification of state-trading measures, whose report was adopted by the CONTRACTING PARTIES in 1960, also reaffirmed the distinction (BISD, 9S/179).

C. Relationship between Article XVII and Article III (clarification of paragraph 21 of W/15)

17. Paragraph 21 of NG7/W/15 suggests that the question whether Article XVII:1 embraces a national treatment obligation as well as an "mfn-type" obligation is separate from the question whether Article III applies to the operations of state-trading enterprises. This difference is not merely one of form: even if it is accepted that Article XVII does not include a national treatment obligation, as the drafting history below suggests, it might still be true that contracting parties are required to respect Article III in the administration of any laws or regulations bearing upon state-trading enterprises. The Panel examining the Canadian FIRA (BISD,30S/163) therefore addressed two questions; whether the notion of non-discriminatory treatment in Article XVII comprised national treatment, and whether the Canadian practices at issue were inconsistent with Article III:4. However, having found that inconsistency with Article III:4 did exist, the Panel did not consider it necessary to pronounce on the question regarding Article XVII. These issues are further discussed below.

(i) Does Article XVII embrace National Treatment?

18. The Analytical Index to the General Agreement, referring to the "general principles of non-discriminatory treatment" in Article XVII:1(a), recalls that:

> "Under Article 26 of the US Suggested Charter, State trading enterprises were to accord "non-discriminatory treatment, as compared with the treatment accorded to the commerce of any country other than that in which the enterprise is located". In the London draft, the non-discrimination obligation was reformulated to read: ... "the commerce of other Members shall be accorded treatment no less favourable than that accorded to the commerce of any country, other than that in which the enterprise is located"... (London Report, p.32). At Geneva, the present words "general principles of non-discriminatory treatment" were inserted in order to allay the doubt that "commercial principles" (in paragraph 1(b)) meant that exactly the same price would have to exist in different markets. This point is covered in the third paragraph of the interpretative note to paragraph 1. During the discussion at Geneva, one delegate said that the Article on State trading referred only "to most-favoured-nation treatment and not to national treatment". EPCT/160 p.5-6 EPCT/A/PV.14 p.24 EPCT/A/SR.14 p.3 EPCT/A/SR.10 p.34"

19. In paragraph 20 of NG7/W/15 mention is made that "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, in respect of Article XVII:2 (BISD, 1S/60, paragraph 4), and in the consideration in 1955 of the Haitian Tobacco Monopoly (L/454, paragraph 8). Reference is also made to the fact that the Panel on the Canadian FIRA "saw great force in Canada's argument that only the most-favoured-nation and not the national treatment obligations fell within the scope of the general principles referred to in Article XVII:1(a)".

20. The Panel on Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies (L/6304), whose report was adopted by the CONTRACTING PARTIES on 22 March 1988, considered inter alia "the contention of the European Communities that the practices under examimation contravened a national treatment obligation contained in paragraph 1 of Article XVII". In its findings the Panel noted that two previous panels had examined similar matters: the Panel on Belgian Family Allowances and the Panel on the Canadian FIRA. Having quoted the pertinent conclusions

of each panel report[5], it considered, however, that "it was not necessary to decide in this particular case whether the practices complained of were contrary to Article XVII because it had already found that they were inconsistent with Article XI".

(ii) Does Article III apply to State Trading Enterprises?

21. Article III relates to actions by governments - the levying of internal taxes and other internal charges and the application of laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products. There is nothing in Article III to suggest that its requirements do not apply where goods are imported, produced or sold by state-trading enterprises. For example, there seems no reason to conclude that the requirement that imported goods shall not be subject to internal taxes in excess of those applicable to like domestic products should not apply where the goods are imported or produced both by a state-trading enterprise and by a private enterprise.

22. A more specific question is whether laws, regulations or requirements directed particularly at the internal operations of state-trading enterprises are subject to the provisions of Article III. This question is likely to be one of practical significance mainly where a state-trading enterprise has a monopoly of internal distribution, since otherwise competitive forces would constrain the extent to which internal measures could be used as a means of protection of domestic production. The question was considered by the Panel on Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies in examining practices concerning listing/delisting requirements and the availability of points of sale which discriminate against importation of alcoholic beverages. The Panel saw great force in the argument that Article III:4 was applicable to state-trading enterprises, at least when the monopoly of importation and the monopoly of distribution in the domestic markets were combined, as was the case of the provincial liquor boards in Canada. However, the Panel did not need to make a finding on the basis of Article III:4 since it had already found that these practices were inconsistent with Article XI:1 of the General Agreement (L/6304, paragraph 4.26).

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[5]Namely: "as regards the exception contained in paragraph 2 of Article XVII, it would appear that it referred only to the principle set forth in paragraph 1 of that Article, i.e. the obligation to make purchases in accordance with commercial considerations and did not extend to matters dealt with in Article III" (Belgian Panel), and "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)" (Canadian Panel).

23. The Panel's report brought out the difficulty in the case of enterprises enjoying a monopoly of both importation and distribution in the domestic market of making the distinction normally made in the General Agreement between measures affecting the importation of products, which would for example be subject to Articles II and XI of the GATT, and measures affecting imported products, which would be subject to Article III of the GATT. In this respect, the Panel considered it significant that the note on Articles XI, XII, XIII, XIV and XVIII referred to "restrictions made effective through state-trading operations" and not to "import restrictions". The Panel therefore based its findings on the practices concerning restrictions on the points of sale and on listing on Article XI:1 of the GATT, even though these practices were applicable internally to the imported products rather than at the border to the importation of the products (paragraph 4.24).

24. The same kind of question in distinguishing between measures affecting importation and internal measures affecting imported goods arises in relation to differential mark-ups on imported goods. These are governed under the General Agreement by Article II:4, and thereby clearly assimilated to measures affecting importation rather than those affecting imported products. The Panel on Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies based its findings on differential mark-ups on Article II:4. However, the Panel also found that fiscal elements of mark-ups could be considered as internal taxes and subject to Article III where they met the requirements of Article III, e.g. where they were not to be applied to imported or domestic products so as to afford protection to domestic production, and therefore did not form part of the mark-up for the purposes of Article II:4. The Panel also considered it important that, if fiscal elements were to be considered as internal taxes, mark-ups would have to be administered in conformity with other provisions of the General Agreement, in particular Article X dealing with the Publication and Administration of Trade Regulations (paragraph 4.20).

D. Intended relationship in the drafting of Article XVII between obligations for State Trading Enterprises as compared to those for private enterprises

25. It has already been mentioned that the United States Proposals for Expansion of World Trade and Employment contained three articles on State Trading: Article 26 - Non-discriminatory Administration of State-Trading Enterprises, Article 27 - Expansion of Trade by State Monopolies of Individual Products, and Article 28 - Expansion of Trade by Complete State Monopolies of Import Trade. In explaining the purpose of these Articles in the First Session of the Preparatory Committee, the United States drew a parallel between the provisions governing state-trading enterprises and those governing private enterprises: the obligation in Article 26 on non-discrimination "is the counterpart of the most-favoured-nation clause as applied to, we may say customs duties"; the purpose of Article 27 was to provide for negotiations on reductions of margins between the price paid

to foreign suppliers and the price at which goods are sold to domestic consumers, so that "the margin between the purchase and sales price would be subject to negotiation in the same way as tariffs under Article 18"; and the provision in Article 28 was intended to be the "counterpart of tariff reductions and other actions to encourage an expansion of multilateral trade" by members having a complete state monopoly[6].

26. Similar expressions were heard from other delegations: "Article 27 is designed to impose upon State monopolies obligations corresponding to the provisions in Article 18" (EPCT/C.II/ST/PV/1 at 4); provisions on export prohibitions are similar for State trading enterprises and for private enterprises (EPCT/C.II/ST/PV//2 at 19), and "State trading enterprises should not be subject to any obligations which are not applied to private enterprises which are in the same situation" (EPCT/C.II/ST/PV/2 at 30). In respect of the issue of notifications the London Report (page 17) notes that a State trading enterprise should not be called upon to provide more information than a private enterprise trading under the same or similar conditions.

27. During the Geneva Session of the Preparatory Committee the view was expressed by Canada that "Provisions regulating the operations of State trading should in general not be more loose or provide wider scope than those set up for private enterprises. If certain general principles and rules were not applied to state trading the Charter would be seriously out of balance" (EPCT/A/SR/14 at 5). Czechoslovakia made the point that "Since a private enterprise would not be obliged to state why, where and at what price a commercial operation had been concluded, it should not be mandatory on state trading enterprises to disclose to a competitor such details. That would be discrimination against state enterprises" (EPCT/A/SR/14 at 6). This delegation had said before that it felt that it was very easy to impose a greater degree of restriction on the activities of state enterprises than upon private enterprises (EPCT/A/PV.14 at 28). The United Kingdom Delegation indicated that "..some rules should govern the activities of state trading in a mixed economy country and that these rules should be analogous to those established for private trading" (EPCT/A/SR/14 at 5).

28. At the Ninth Session of the CONTRACTING PARTIES in 1954, in the Report of the Chairman of Sub-Group B (State Trading) -Review Working Party III on Barriers to Trade other than Restrictions or Tariffs (W.9/99) mention is made of the Danish proposal (L/273) involving inter alia the incorporation into the General Agreement of the provisions of Article 31 of the Havana Charter. The Report notes that delegations were "about evenly divided between those who favoured the obligation to negotiate the margins of protection afforded by state monopolies and those who opposed such an obligation. A number based their opposition on the fact that the Agreement does not include a comparable obligation to negotiate on tariffs".

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[6]United States Proposals, page 9 and EPCT/CII/PV.5 at 36.

29. Also relevant to the discussion is, perhaps, the reaction to the proposal made in March 1964 by the representative of the United Arab Republic to the Committee on the Legal and Institutional Framework of the GATT in Relation to Less-Developed Countries, which was designed to ensure that "in interpreting the provisions contained in Article XVII of the General Agreement, contracting parties should give sympathetic consideration to the need for developing contracting parties to make use of State-trading enterprises as one means of overcoming their difficulties in their early stages of development". The Committee recognized that "there was nothing in Article XVII which prevents a contracting party from establishing or maintaining State-trading enterprises, nor does the General Agreement sanction discrimination against State-trading enterprises which are, in this regard, placed on the same basis as any other enterprise". (L/2281, paras. 9,10)

30. It would thus seem that a certain parallelism between the rules governing state and private enterprises was intended.

E. Review of the CONTRACTING PARTIES' Decisions of 1960 and 1962 and of the work of the 1970-71 Committee on Industrial Products.

31. The Panel on Notifications of State-Trading Enterprises (1959-60) (BISD, 9S/179) in its discussion of enterprises falling under Article XVII considered that the Article itself and the interpretative notes offered sufficient guidance. However, it "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 thet 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."

32. In considering the meaning of the term "enterprises" for the purpose of notification the panel noted that it 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 a power and to which the government has granted exclusive or special privileges". The other important point

mentioned by the Panel was that not only the activities of marketing boards but those of any "enterprise defined in Article XVII:1(a) should be notified where that body has the ability to influence the level or direction of imports or exports by its buying or selling". Furthermore, the activities of a marketing board or any enterprise covered by paragraph 1(a) of Article XVII and not covered by the previous interpretation "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." However, where "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".

33. The Panel also considered that the inadequacy of many of the notifications examined (L/784) resulted from the form of the original questionnaire[7] and consequently prepared a new comprehensive questionnaire which is still being used (see Annex III of NG7/W/15).

34. The Panel further noted that at the time of its second meeting replies to the new questionnaire had not been received from thirteen contracting parties and that five more had made notifications under the original questionnaire. It also put on record that the responses to question two of the questionnaire (reason and purpose for introducing and maintaining state trading enterprises) "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." On the provisions of Article XVII:4(b) the Panel said that although this paragraph only requires information about mark-ups to be provided upon request, it had included a question to this effect in the new questionnaire. It 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" (BISD, 9S/183).

35. Under the procedures adopted by the CONTRACTING PARTIES at their twentieth session in 1962 (BISD, 11S/59), contracting parties are invited to submit every third year new and full responses to the questionnaire and notify changes in their state-trading measures in the intervening years. In this Session it was also agreed that during 1963 the Council "will take whatever steps it considers necessary to examine the adequacy of the notifications received, re-establishing the Panel or setting up a working party, if necessary, to conduct these examinations."

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[7]The original questionnaire stems from a Decision of the CONTRACTING PARTIES IN 1957 entitled "Procedures for Submissions of Notifications under Article XVII:4(a)" (BISD, 6S/24).

36. In its 19-21 June 1963 meeting the Council agreed to transmit the notifications received to the Kennedy Round Trade Negotiations Committee "for such further action as the Committee sees fit", as proposed by the Director General, with the understanding that the Council could revert to this item if desired. (C/M/16, Item 9). The question of notifications did not find a place in the legal instruments which constituted the final product of the Kennedy Round (TN.64/104) nor was it taken up again in the Council until 1986 (See paragraph 33 of NG7/W/15).

37. The Committee on Trade in Industrial Products noted that "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". With regard to the principal elements towards a solution the following ideas were expressed, inter alia, (L/3496, pages 27 and 28):

> "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 (also in NG7/W/15, paragraph 32).
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> Inclusion of specific reference to the possibility of bilateral and multilateral consultations along the lines of Articles XXII and XXIII might be useful on the understanding that, if no satisfaction were obtained through such consultation, the injured country could be granted compensatory concessions or, failing that, be authorized to suspend the application of equivalent concessions or obligations.
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> The view was expressed that the effectiveness of the provisions on State-trading might be enhanced if countries sought to negotiate to a greater extent than heretofore, concessions - including possible global purchase commitments - on State-traded products in which they have a trade interest."

The Committee further suggested that light might be shed on the notifications question by a study capable of distinguishing to what degree the problems in this area had been caused by "governmental restriction of quantity purchased rather than by the nature of state trading as such." (L/3496, paragraph 25).