

25 February 1960

PANEL ON STATE-TRADING AND SUBSIDIESFinal Report on State Trading

1. The Panel met in Geneva from 6 to 11 April 1959 and from 22 to 26 February 1960.
2. The present report incorporates the contents of the interim report presented by the Panel to the fourteenth session of the CONTRACTING PARTIES. 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.
3. The Panel at its first meeting examined the notifications<sup>1</sup> 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 this course of the 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;
  - (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).

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<sup>1</sup> Contained in addenda to L/784; no notifications had then been received from Belgium, Brazil, Burma, Chile, Cuba, the Dominican Republic, Ghana, Greece, Haiti, Indonesia, Luxemburg, Malaya, the Netherlands, Nicaragua, Peru and Uruguay.

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 it would be impracticable and invidious to ask individual contracting parties to supplement their notifications by more detailed information and considered that the best solution would be to prepare a new, comprehensive questionnaire, which all the contracting parties would be asked to complete. Nevertheless, the Panel 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 points:

- (a) not only State enterprises are covered by the provisions of Article XVII, but all enterprises which enjoy "exclusive or special privileges";
- (b) Marketing Boards engaged directly or indirectly in purchasing or selling are enterprises in the sense of Article XVII paragraphs 1(a) and 1(b), but the activities of Marketing Boards which do not purchase or sell must be in accordance with the other provisions of GATT;

- (c) the requirement in paragraph 4(a) of the Article XVII that contracting parties should notify products "imported into or exported from their territories" should be interpreted to mean that countries should notify enterprises which have the statutory power of deciding on imports and exports, even if no imports or exports in fact have taken place.

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.

Recommendations with a view to improving the Procedure for Notifications

10. As indicated in paragraphs to above, some of the notifications did not include sufficient information, either because of lack of details of the enterprises or because of lack of statistical background. The Panel therefore 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 12, 14, 16 and 17 of this Report and to invite any contracting party which does not maintain an enterprise in the sense of Article XVII to submit a statement to that effect;
- (b) invite contracting parties to answer the questionnaire by 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.

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 instructed 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 who had made notifications under the old questionnaire, had not yet replied to the new questionnaire. It was understood that this would be done in the near future.

15. The Panel recommended in paragraph 10, approved by the CONTRACTING PARTIES at their fourteenth session that, contracting parties which do not maintain enterprises covered by Article XVII should be required 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 reporting - submitted notifications:

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

In this connexion the Panel recalls the explicit 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. Once the collection of replies is completed the secretariat will be able to assemble a basic document as required by paragraph 10(b) above.

18. In view of the character of State-trading legislation the Panel does not consider it necessary to recommend that contracting parties be asked to submit annual notifications. It would suffice in its view, if contracting parties were required to notify any changes as and when they occur.

19. 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 so far as other provisions of the General Agreement, such as quantitative restrictions, tariffs and subsidies, were affected by the State-trading activities.

Without attempting to amend the present questionnaire, the Panel considers that it would be advisable in case of any future action in this field that the governments be invited to bring out more clearly and more fully these reasons and purposes.

20. While being aware that paragraph 4(3) of Article XVII does not require a contracting party to notify the import mark-up on a product which is the object of State trading some members of the Panel felt that any information that could be included in notifications would be appreciated by other contracting parties.

21. 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 (concerning State-trading enterprises).

In this connexion they wish to call the attention of the CONTRACTING PARTIES to the discussion of the scope of Article XVII in their previous report (paragraph 16), and particularly to the interpretation in sub-paragraph 16(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."

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 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.

As should be clear from the interpretative note to paragraph 1 of Article XVII, a "Marketing Board" or other government instrumentality which influences exports or imports by the exercise of overt licensing power and not by its buying or selling activities (or by its decisions not to buy or sell) is not an enterprise in the meaning of Article XVII and is not subject to the notification requirement. Its licensing activities must be considered to be those of the government itself and are subject to the other relevant provisions of the General Agreement.

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 B

List of the notifications received in reply to  
the new questionnaire

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 (Fed.Rep. 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

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