

URUGUAY ROUND

OF MULTILATERAL TRADE NEGOTIATIONS

NUR 040
1 August 1990

NEGOTIATORS AGREE DECISION TO ENSURE TRANSPARENCY OF THE ACTIVITIES OF STATE TRADING ENTERPRISES

Uruguay Round negotiators have provisionally agreed to enhance GATT disciplines and surveillance to enable a clear appreciation of the effect of state trading enterprises on international trade. The agreement, which relates to Article XVII, is provisional pending the final outcome of the Round.

This is the second decision to be finalized by the group negotiating on GATT Articles (with one participant accepting it ad referendum) in the past two months. The first decision, dealing with certain import charges under Article II(1)b, was adopted in June (see NUR 037).

The text of the decision provides a working definition of state trading enterprises on which notifications shall be made. These are: "Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports".

The decision also provides for the creation of a counter-notification mechanism for situations in which parties consider the notifications of other GATT members inadequate. It also envisages a new GATT working party to review notifications and counter-notifications.

Attached is the text of the decision and that of Article XVII to which it relates.

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State-Trading Enterprises

Decision

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

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

Recognising that this decision is without prejudice to the substantive disciplines prescribed in Article XVII;

1. It is agreed that in order to ensure the transparency of the activities of state trading enterprises, such enterprises shall be notified to the CONTRACTING PARTIES, for review by the working party to be set up under paragraph 5 below, in accordance with the following working definition:

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

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

2. It is agreed that each contracting party shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the CONTRACTING PARTIES, taking account of the provisions of this decision. In carrying out such a review, each contracting party should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

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

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

5. A working party shall be set up, on behalf of the CONTRACTING PARTIES, to review notifications and counter-notifications. In the light of this review and without prejudice to Article XVII:4(c), the CONTRACTING PARTIES may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the 1960 questionnaire on state trading and the coverage of state trading enterprises notified under paragraph 1 above. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the GATT secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all contracting parties indicating their wish to serve on it. It shall meet before the end of 1991 and thereafter at least once a year. It shall report annually to the CONTRACTING PARTIES.

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Article XVII

State Trading Enterprises

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