

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Government Procurement

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QUESTION OF NATIONALIZED ENTERPRISES

Note from the Delegation of Switzerland

The following note has been received from the delegation of Switzerland by letter dated 5 October 1983.

At the meeting of 25-26 May 1983 the Swiss delegation suggested discussion in the Committee of the question of nationalizations. The Committee invited the Swiss delegation to present its suggestion in writing. Below is a brief description of the problem followed by suggestions concerning the points the Committee might wish to discuss.

1. Description of the problem

The provisions of the General Agreement address themselves to governments. They concern the framework of conditions which GATT countries are to establish for the trading activities of economic agents beyond their borders. In principle, therefore, the General Agreement does not address itself directly to the economic agents of the private sector. Within the framework established, enterprises operate in response to purely commercial considerations, whose free interplay is one of the major objectives of the GATT. The Government Procurement Code, for its part, seeks to make the State as "consumer" behave in response to the same commercial considerations as well. In the light of both the General Agreement and the Code, it would be logical for the behaviour of the State as "entrepreneur", i.e. in the nationalized sector, to respond to those same criteria. Nothing in the General Agreement or the Code excludes this, but neither is there as yet anything in either of the two instruments that specifically ensures it. In view of the fact that nationalized enterprises can differ greatly in character, it would seem useful for the Committee to examine, before deciding on the principle, to what extent the rules both of the General Agreement and of the Code might concern such enterprises and by what means their application should, where appropriate, be ensured.

2. Questions for discussion

The Committee might discuss in particular the following questions:

- 2.1 Can nationalized enterprises that do not produce goods for sale on the market be compared with other, administrative, branches of the government and, consequently, be made subject to the Agreement? (E.g. banks, which procure such things as furniture, computers, office machines, paper, etc.).

- 2.2 Could not nationalized enterprises that do produce goods for sale apply at least the principles of non-discrimination and national treatment, if not all of the provisions of the Agreement - including the tendering procedures - either for all their products or for some of them?
- 2.3 Would not governments have (legal) ways and means of imposing the rules of the Code on such enterprises, since the State assumes control of them when they are nationalized?

3. Procedural suggestion

For a better grasp of the problem, it would be advisable first to know the factual situation. Accordingly, a survey might be made in each signatory country, which would furnish the necessary information, including the following:

- Nationalized sectors/enterprises; since when; volume of purchases of capital goods and production materials (commodities, semi-processed goods, finished goods).
- Form of the State's control or influence and how they are exercised: direct participation in decisions; regulations or directives concerning procurement by nationalized enterprises.
- Nationalized enterprises or government branches - producing or procuring goods sold on the market - which are at present subject to the Code, and particular problems encountered with the rules of the Agreement.