

**MULTILATERAL TRADE
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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 31 July 1989, has been received from the delegation of the European Communities with the request that it be circulated to members of the Group.

ARTICLE XVII

Introduction

The Community believes that more transparent application of Article XVII is an important objective. There is also a need for more widespread acceptance of its obligations by all contracting parties irrespective of their economic structure. However, because of a number of ambiguities in its provisions including the absence of a widely accepted uniform definition of the term State-trading enterprises, and inadequate transparency in its implementation, this is an Article of GATT which appears not to have worked satisfactorily.

This paper addresses this problem by proposing the adoption of an agreement designed to strengthen and improve the provisions relating to the key discipline of transparency. Any such agreement, if it is to be successful, must be applied by all contracting parties.

Further consideration may need to be given to the question whether state trading entities acting in a competitive environment or whose activities entail only a minimum involvement in international trade should be excluded from the application of the agreement.

The paper concentrates on the following concepts:

- A. COVERAGE
- B. DOMESTIC REVIEW OF NOTIFICATION POLICY
- C. QUESTIONNAIRE
- D. COUNTER-NOTIFICATION
- E. REVIEW BY THE CONTRACTING PARTIES
- ANNEX I DRAFT AGREEMENT - MAIN PROVISIONS
- ANNEX II QUESTIONNAIRE ON STATE TRADING

A. COVERAGE

The Community does not think that at this stage it is opportune to seek adoption of a new definition of State-trading enterprises - which is a contentious matter on which it is difficult to reconcile the positions of contracting parties of quite disparate economic and social structures. This should be considered later, in the light of the application of a new agreement on transparency. Moreover, the tendency towards privatisation or similar types of economic reform mean that the notion of State-trading enterprises is undergoing a period of rapid and radical development.

The Community is of the opinion that the CONTRACTING PARTIES have already carried out very useful work with regard to coverage of Article XVII, drawing in particular on the work of the Panel on Notifications of State-Trading Enterprises (1959-60) and the 1970-71 Committee on Industrial Products. The Community proposes that the CONTRACTING PARTIES should inter alia reaffirm their commitment to this work. In particular, the term State-trading enterprise should be interpreted as covering:

- governmental bodies which have the power to make purchases or sales involving imports or exports or otherwise influence the level or direction of imports or exports;
- non-governmental bodies with such powers and to which the government has granted exclusive or special privileges related to their trading activities. This aspect of the coverage of Article XVII is of particular importance in the context of privatisation programmes.

State-trading enterprises within the meaning of Article XVII can therefore be enterprises in both the public and private sector. The term "government" means all levels of government, whether national/federal, regional or local.

B. DOMESTIC REVIEWS OF NOTIFICATION POLICY

An important step towards greater transparency would be a reappraisal by all contracting parties of their policy with regard to notification of State-trading enterprises both in terms of the State-trading enterprises notified and the information provided. In this connection, notifications should reflect the broad coverage of Article XVII already accepted by the CONTRACTING PARTIES. The objective would be to ensure the greatest possible transparency in notifications.

C. QUESTIONNAIRE

Contracting parties should undertake to make notifications to GATT in accordance with the questionnaire on state trading adopted by contracting parties in 1960 and which should become an integral part of any new agreement on Article XVII.

D. COUNTER NOTIFICATION

Article XVII:4(c) permits the CONTRACTING PARTIES to request information about the operations of a State-trading enterprise where they have been asked to do so by a contracting party which feels that its interests are being adversely affected by the operations of a State-trading enterprise in another contracting party.

There is no record of this provision having been used. However, it involves a somewhat cumbersome, two stage procedure and should be supplemented by allowing a contracting party after first consulting the contracting party authorising the State-trading enterprise concerned to notify the existence of that state enterprise to the CONTRACTING PARTIES. Furthermore, the counter-notification facility should not be confined to those cases where a contracting party's interests had already been adversely affected, but should be permitted where a contracting party has reason to believe that the operations of a State-trading enterprise have an impact on international trade.

The purpose of counter-notifications is essentially two-fold: to increase the degree of transparency and secondly to provide an opportunity for possible multilateral discussion and clarification of the operations of the enterprise which is the subject of the notification in addition to bilateral consultations.

E. REVIEW BY THE CONTRACTING PARTIES

The question of a review of notifications by the CONTRACTING PARTIES was last discussed in the GATT Council in 1986, in response to a proposal by Chile. No agreement was reached.

The Community regards the opportunity for multilateral discussion and examination of notifications as a crucial component of improved transparency. The review procedure need not be a permanent feature of the GATT system. Its purpose is to help promote the transparency necessary to allow informed decisions to be taken with regard to a future régime for the application of Article XVII.

It is proposed that the CONTRACTING PARTIES should make appropriate recommendations to contracting parties with regard to the adequacy of notifications and the need for further information. The Community suggests that the review should also extend to counter-notifications.

In addition, the GATT Secretariat should be invited to provide analytical background with regard to general developments in the area of state trading and its impact on international trade.

ANNEX I

TEXT OF MAIN PROVISIONS OF AN AGREEMENT ON ARTICLE XVII

COVERAGE

Contracting parties reaffirm their commitment to the broad coverage of the provisions of Article XVII. To this end the terms "enterprise" or "State-trading enterprise" shall mean an instrumentality of government including marketing boards which has the power to make purchases or sales involving imports or exports or otherwise influence the level or direction of imports or exports, or a non-governmental body with such a power and to which the government has granted exclusive or special privileges related to its trading activities.

"Government" shall include national, provincial, regional or local government.

DOMESTIC REVIEW OF NOTIFICATION POLICY

Contracting parties agree to conduct a review of their policy with regard to the notification to the CONTRACTING PARTIES of State-trading enterprises within their territory, taking account of the provisions of this agreement.

In carrying out such a review contracting parties shall have regard to the need to ensure the maximum transparency possible in their notifications, so as to enable an adequate idea to be obtained of how State-trading enterprises in their territory operate and the effect of such operation on international trade.

NOTIFICATIONS IN ACCORDANCE WITH QUESTIONNAIRE

Contracting parties undertake to make notifications to GATT in accordance with the questionnaire on state-trading which is annexed to this agreement.

COUNTER NOTIFICATION

Without prejudice to Article XVII:4(c), where a contracting party has evidence that another contracting party maintains a State-trading enterprise it may, after having held consultations with that contracting party for the purpose of examining jointly that evidence, notify the matter to the CONTRACTING PARTIES.

REVIEW BY THE CONTRACTING PARTIES

The CONTRACTING PARTIES shall meet at least once a year to carry out a review of all notifications, including counter-notifications. The CONTRACTING PARTIES may, in the light of that review make recommendations, in particular with regard to the adequacy of notifications and the need for further information.

The GATT Secretariat will also provide as background to the review analytical information on general tendencies identified with regard to the impact of the operations of State-trading enterprises on international trade.

ANNEX II

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. Reasons 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.