

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/55
Special Distribution
13 October 1989

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on GATT Articles

STATE TRADING

Proposal by the United States

The following proposal has been received from the delegation of the United States, with the request that it be circulated to members of the Negotiating Group.

Introduction

When the drafters of the General Agreement wrote the provisions on state trading in the late 1940s, they sought to ensure that the activities of state trading enterprises conformed with the overall principles and obligations of the General Agreement. At the same time, certain concepts and definitions were left vague. State trading was a relatively new realm of international trade and the drafters believed that practical experience with state trading would guide the contracting parties in understanding how specific GATT obligations were to apply to state trading activities.

With the passage of time, it has become evident that realization of the drafters' goals has fallen short of their expectations. While the international trading system has certainly witnessed an evolution of state trading activities, we still do not have a clear understanding of how state trading should be addressed by the General Agreement. This situation represents a deficiency in the GATT system, which if unaddressed during these Uruguay Round negotiations, could undermine the strength and credibility of the system in the future.

It is from this perspective that the United States submits this proposal on state trading. The proposal consists of two sections, clarifying disciplines and improving transparency over state trading practices.

State Trading Disciplines

1. Agreement by contracting parties that Article XVII is a complementary discipline, and that the activities of state trading enterprises are subject to all GATT disciplines.

GATT SECRETARIAT

UR-89-0280

As witnessed in this Negotiating Group and elsewhere, contracting parties have noted the uncertainty about the meaning of Article XVII obligations and how these obligations relate to other GATT disciplines. This proposal is meant to clarify the relationship of GATT state trading provisions to the rest of the General Agreement.

The drafters included specific provisions for state trading enterprises because it was believed that these types of entities could circumvent normal GATT rules. In our view, Article XVII was intended to be a complementary discipline to other GATT obligations and not a derogation or a lex specialis.

2. Agreement by contracting parties that (1) the national treatment obligation or Article III applies to state trading; (2) Article XI's prohibition against quantitative and other restrictions, both formal and informal, applies to state trading; and (3) the subsidies disciplines embodied in Articles VI and XVI apply to state trading as well.

These are the GATT disciplines that we view as particularly relevant to state trading activities. Other contracting parties may wish to highlight other articles of particular importance to them. Not highlighting a specific discipline by no means implies that the discipline does not pertain to state trading.

3. Agreement by Contracting Parties that the complementary discipline approach to state trading applies to all types of state trading enterprises, including all types of marketing boards. In other words, marketing boards are subject to all GATT disciplines.

The first two paragraphs of the interpretative notes of Article XVII refer to the different activities of marketing boards, distinguishing between those that purchase or sell and those that lay down regulations covering private trade. The precise state trading obligations of marketing boards are unclear in these notes. For example, many marketing boards perform a variety of activities so that it is not always easy to make the distinction as suggested by the footnotes. Moreover, this separation of functions creates uncertainty about how specific GATT obligations apply to the activities of marketing boards.

In particular, we believe that the notes create uncertainty about how Article XI's prohibition against quantitative and other restrictions applies to marketing boards. It is clear from the footnote to Article XI, and has been confirmed in panel reports, that Article XI disciplines apply to restrictions made effective through state trading. Certainly discriminatory purchasing and selling activities of marketing boards would be examples of such state trading restrictions. However, the Article XVII footnote raises some doubt about how disciplines contained in other articles would apply to such purchasing and selling activities of marketing boards. This proposal would eliminate this doubt.

Transparency over State Trading Practices

4. Agreement by Contracting Parties to establish a working party which would (a) develop an illustrative list of practices associated with state trading, (b) review the state trading questionnaire and make necessary revisions, and (c) conduct periodic comprehensive reviews of notifications and provide a forum for discussion and clarification of state trading issues and problems.

Although the notification obligations of Article XVII are quite clear, fulfilment of these obligations has been problematic. Establishment of a working party would provide a forum for clarifying the GATT's state trading obligations. The working party should work to clarify the definition of state trading, improve the notification process, foster compliance with state trading obligations, and serve as a forum for discussing all aspects of state trading. We propose that a working party be established to convene no later than 31 December 1991, and meet as often as necessary, at a minimum every three years (in coordination with the current triennial notification schedule).

As a first step, it would be useful for the working party to develop an illustrative list of practices associated with state trading. At present, the lack of clarity about what is and what is not state trading prohibits consistent and meaningful notification.

Another factor which may contribute to inadequate notification is the usefulness of the current state trading questionnaire. The contracting parties should examine the questionnaire and determine whether it needs to be revised to better reflect the realities of today's trading environment.

Although clarifying the definition of state trading and examining the questionnaire would help to improve transparency, the United States believes there is also a need for greater surveillance of compliance with the notification obligations. To this end, the working party would conduct periodic comprehensive reviews of notifications. The working party would also serve as a forum in which contracting parties could raise issues and problems related to state trading.

The United States believes that taking these steps would greatly enhance transparency over state trading by providing clearer guidance to contracting parties as to their obligations in this area. It would also greatly assist GATT members in assessing the extent of state trading practices in their economies and the international trading system at large.