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Report to Congressional Requesters

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STATE TRADING ENTERPRISES

Compliance with the General Agreement on Tariffs and Trade

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Congressional Requesters

The Uruguay Round of multilateral trade negotiations, conducted from 1986 to 1994 under the auspices of the General Agreement on Tariffs and Trade (GATT), resulted in a variety of "disciplines" designed to liberalize trade in agricultural products.[1] Agricultural trade in some GATT member countries is directed through entities called "state trading enterprises" (STE).[2] Several trade experts have identified STEs as one of the most important aspects of agricultural trade left unresolved by the Uruguay Round. While STEs are generally subject to GATT disciplines, some U.S. agricultural producers are concerned that STEs may operate in ways that bypass these disciplines.

You asked us to review several issues related to the activities of other countries' agricultural STEs. This report is one in a series of products in which we plan to provide information to Congress regarding the nature of state trading in other countries and the treatment of STEs in GATT and by the new World Trade Organization (WTO). As agreed with you, this report addresses (1) GATT members' reporting of STE activities from 1980 to 1994, (2) Uruguay Round results contained in GATT 1994[3] that relate to STEs, (3) Uruguay Round results contained in the Agreement on Agriculture that relate to STEs, (4) the potential for increase of STEs under GATT/WTO, and (5) U.S. efforts to monitor the activities of other countries' STEs with respect to GATT/WTO requirements.

Background

When GATT came into force in 1948, some member countries[4] had active state trading programs and wanted to ensure their governments' right to

[1]Disciplines as used in this report refers to rules, commitments, and procedures contained in GATT and related agreements.

[2]STEs are generally considered to be governmental or nongovernmental enterprises that are authorized to engage in trade and are owned, sanctioned, or otherwise supported by the government.

[3]"GATT 1994" refers to GATT as modified by the Uruguay Round, while the original version of GATT is known as "GATT 1947." Unless otherwise specified, the term "GATT" in this report refers to all aspects of GATT prior to the implementation of the Uruguay Round agreements. GATT 1994 is part of WTO. The Uruguay Round created WTO as a formal organization encompassing all GATT disciplines to replace the provisional GATT organizational structure. GATT was an interim agreement to the International Trade Organization (ITO). Plans for ITO were abandoned in 1948, leaving GATT as the only multilateral trade organization. Because some GATT members have not yet joined WTO, however, the GATT organization still exists.

[4]Participants in GATT were known as "contracting parties" until 1994 when WTO was established. In this report, however, we refer to contracting parties, as well as particpants in WTO, as member countries.

engage in market activities. However, governments with a dual role as market regulator and market participant can act in ways that protect domestic producers and disadvantage foreign producers. While the drafters of GATT 1947[5] accepted STEs as legitimate participants in trade, they recognized that STEs, especially those with a monopoly of imports or exports, could be operated to create serious obstacles to trade.

GATT 1947 addressed STEs in article XVII (see app. I for the complete text). However, article XVII did not define the term "state trading enterprise," and as discussed later in this report, GATT members have had problems understanding which entities were subject to the provisions of article XVII. As a result of the Uruguay Round, GATT 1994 defined STEs in the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 (the "Understanding"—see app. III for the complete text or page 11 of this report for the definition). All entities covered by this definition are subject to article XVII.

Article XVII establishes a number of guidelines and requirements with respect to the activities of STEs and the obligations of member countries. For example, it stipulates that

- STEs shall act in a manner consistent with the principles of nondiscriminatory treatment;[6]
- STEs shall make any purchases or sales in accordance with commercial considerations and shall allow enterprises from other member countries the opportunity to compete;
- member countries shall provide certain information to the GATT/WTO secretariat[7] about their STEs' activities; and
- member countries are not required to provide confidential information that (1) would impede law enforcement, (2) would be contrary to the public interest, or (3) would prejudice the legitimate commercial interests of their STEs.

[5]See footnote 3.

[6]Under GATT and WTO, nondiscriminatory treatment generally encompasses most-favored-nation (MFN) and national treatments. MFN requires granting to all GATT/WTO member countries the most favorable treatment granted to any single member. National treatment requires treating domestic and foreign producers equally. In article XVII, however, the meaning of nondiscriminatory treatment is less clear. The United States maintains that STEs should provide both MFN and national treatment, but other GATT/WTO members maintain national treatment is not required.

[7]The term "GATT/WTO secretariat" is used throughout this report to refer to the secretariat staff that currently support both GATT and WTO.

Information is provided to the GATT/WTO secretariat about STEs and their activities on the basis of a questionnaire adopted in 1960.[8] (The full text of the questionnaire is contained in app. II.) GATT/WTO members are to provide responses, called "notifications," to the questionnaire. Ideally, the notifications should provide enough transparency (openness) about STE operations to determine whether or not they are adhering to GATT disciplines. The questionnaire asks members to list their STEs, the products for which STEs are maintained, and the reasons for maintaining STEs. It also asks them to provide certain information about how their STEs function and statistics that indicate the extent of trade accounted for by STEs.

Other portions of GATT 1947 and GATT 1994 also contain references to STEs. For example, countries that have negotiated with other GATT/WTO members to provide a certain level of protection for domestic producers cannot allow their STEs to operate in a way that affords a level of protection greater than was negotiated.[9] Also, references made in certain GATT articles to import or export restrictions include those made effective through STEs.[10]

Results in Brief

Some information on state trading in GATT member countries has been obtained through the notification process, but compliance with the reporting requirement has generally been poor. From 1980 to 1994, the highest annual response rate to article XVII's reporting requirement was about 21 percent of GATT members. GATT/WTO and member country officials attributed the lack of compliance to definitional problems, the lack of a systematic review of notifications received, the low priority some member countries assigned to article XVII reporting, and the overall burden of GATT reporting. As a result, the GATT/WTO secretariat may not have current information about the activities of STEs in most GATT/WTO member countries, and members therefore are hindered in determining whether all STEs in GATT/WTO member countries operate in accordance with GATT disciplines.

Although state trading was not a major issue during the Uruguay Round, the Understanding addressed certain problems related to article XVII. The

[8]The first questionnaire under article XVII was implemented in 1957. A revised questionnaire was adopted in 1960 but not implemented until 1962.

[9]See GATT article II:4.

[10]See the interpretive note to GATT articles XI, XII, XIII, XIV, and XVIII.

Understanding provided a definition of STEs, implemented procedural measures designed to improve compliance with article XVII's reporting requirement, and created a working party to review STE notifications. The questionnaire used for collecting information about STEs remains unchanged since 1960, but WTO member countries have agreed to examine the adequacy of the questionnaire. Some member countries are interested in revising the questionnaire, but members have different opinions about the nature and extent of information that should be provided to GATT/WTO about STEs. Several U.S. and GATT/WTO officials expect compliance with article XVII's reporting requirement to increase. However, it is too early to tell whether the amount of information available about STEs will increase or its quality will improve.

STEs that engage in agricultural trade are also subject to the disciplines contained in the Uruguay Round Agreement on Agriculture. The agreement required member countries to reduce market access restrictions, export subsidies, and internal support, including any such measures provided through STEs. In order to demonstrate their compliance with these commitments, STEs must provide certain information about their operations to WTO. Because the first implementation year of the agreement will not be completed until 1996, it is also too early to tell whether countries with agricultural STEs will comply with Uruguay Round commitments regarding agricultural trade.

The effectiveness of article XVII is especially important given the potential for increase in STEs if countries like the People's Republic of China (China), Russia, and Ukraine join GATT/WTO, as they have applied to do. National and local governments in these countries, and others like them, have a prominent role in economic and trade affairs. While some of these countries are undertaking privatization efforts to move towards more market-oriented economies, the role of STEs in GATT/WTO will likely increase if these countries become members.

Monitoring STE activities and their compliance with Uruguay Round commitments is coordinated by the U.S. Trade Representative (USTR) with participation from other U.S. agencies. U.S. officials participate in the WTO Working Party on STEs and the WTO Committee on Agriculture. These bodies are responsible for monitoring implementation of Uruguay Round commitments regarding STEs and agricultural trade, respectively. In addition, staff in the U.S. Department of Agriculture's Foreign Agricultural Service (USDA/FAS)and the Department of Commerce's Foreign Commercial

Service are responsible for monitoring STE activities in the countries where they are located and reporting on their activities as needed.

Scope and Methodology

We prepared this report for congressional requesters to provide information about the nature of state trading in other countries and the treatment of STEs in GATT/WTO. To determine the extent of STEs in GATT member countries, the type of information available about STEs, and the level of compliance with article XVII, we reviewed article XVII notifications provided to the GATT/WTO secretariat from 1980 to 1994. (Details on our analysis of STE reporting are contained in apps. IV and V.) We also reviewed reports of the Panel on Notifications of State Trading Enterprises, member country position papers on article XVII presented during the Uruguay Round, and GATT/WTO secretariat notes on article XVII prepared for the Uruguay Round. Finally, we discussed the effectiveness of article XVII prior to the Uruguay Round with officials from the United States, GATT/WTO, and other countries.

We discussed the results of the Uruguay Round as contained in GATT 1994 and the Agreement on Agriculture with officials from the United States, GATT/WTO, and other countries, including the chairmen of the WTO Working Party on State Trading Enterprises and the WTO Committee on Agriculture. We also reviewed relevant documents, including the Understanding and the Uruguay Round Agreement on Agriculture.

We discussed the potential for an increase of STEs in GATT/WTO with relevant officials from the United States, GATT/WTO, the United Nations, and other countries. We also reviewed studies of economies in transition by the Organization for Economic Cooperation and Development (OECD) and other expert organizations.

We discussed U.S. efforts to monitor the activities of STEs in other countries with respect to GATT/WTO requirements with officials from USTR, USDA/FAS, the Department of Commerce, and the International Trade Commission.

We obtained oral comments on a draft of this report from the U.S. Trade Representative and the Department of Agriculture. Their comments are discussed on page 19.

We conducted our review in Washington, D.C., and Geneva, Switzerland, from April 1995 to July 1995 in accordance with generally accepted government auditing standards.

Compliance With Article XVII Reporting Requirements Has Been Poor

A central objective of article XVII is the collection of information about STEs in member countries in order to provide transparency about their activities and ensure they operate in accordance with GATT disciplines. However, according to GATT/WTO and member country officials, article XVII has generally been ineffective in meeting this objective. The notifications we reviewed provided much of the information requested in the questionnaire, including sectors in which STEs operate, their purposes and activities, and some statistics about their operations. However, compliance with the notification requirement was limited during 1980 to 1994, as 79 percent of GATT members did not submit STE notifications during 1981, the best year of reporting. The evidence we obtained suggested the lack of compliance could be attributed to (1) confusion over the definition of STEs, (2) the lack of systematic review of notifications received, (3) the apparent low priority some GATT members assigned to article XVII's reporting requirement, and (4) the overall burden associated with GATT reporting requirements. Under these circumstances, it is impossible to determine whether article XVII has yielded information on the full nature and extent of STE activity in GATT/WTO member countries. Moreover, the lack of notifications from most member countries has hindered GATT/WTO members in identifying all STEs in GATT/WTO member countries and determining whether they operate in accordance with GATT disciplines.

Some STE Information Available

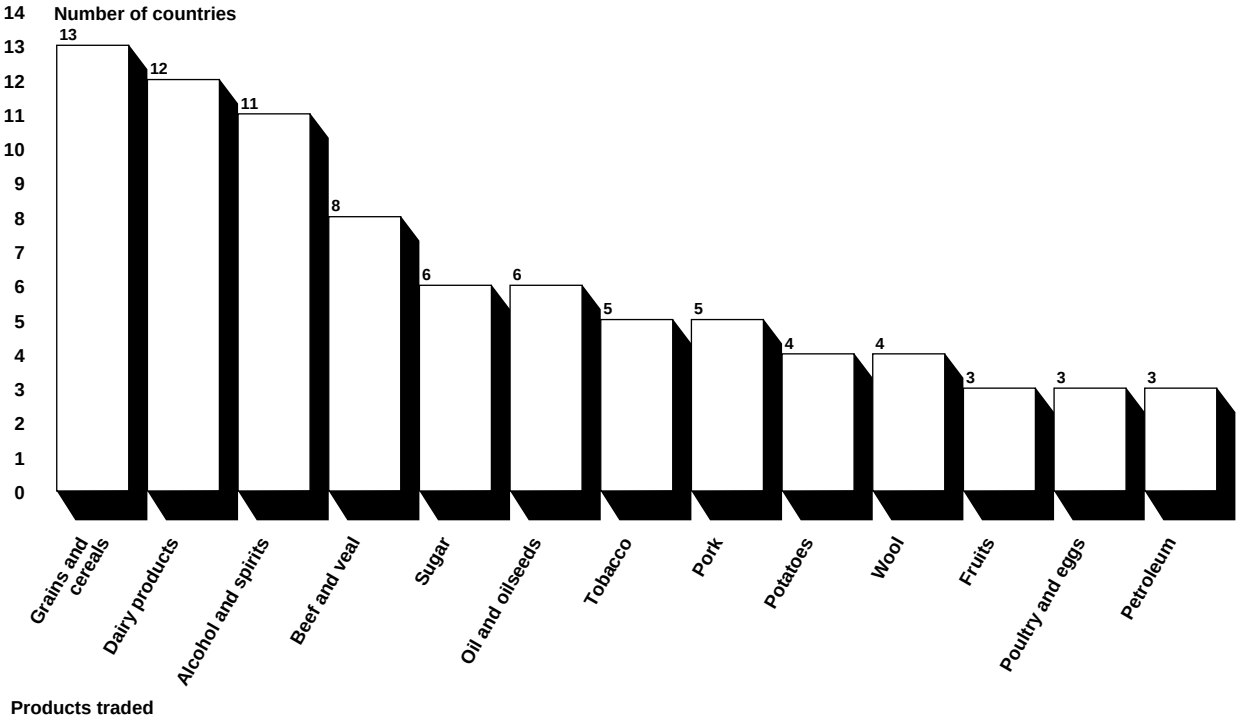
Twenty-nine member countries[11] submitted STE notifications to the GATT/WTO secretariat at least once during the period 1980 to 1994, with 21 of the countries reporting some form of state trading.[12] These notifications provided some insight into the activities of STEs in member countries. For example, the majority of STEs described in these notifications operated in the agriculture sector, covering such products as grains and cereals, dairy products, beef and veal, and sugar (see fig. 1). Member countries also reported that they maintained state trading in alcoholic beverages and petroleum products. In addition to the products listed in figure 1, a few

[11]The number of GATT members rose from 85 in 1980 to 114 in 1994.

[12]Although we reviewed STE notifications during a 15-year period, only 14 years were included in the sample. Notifications were not solicited from GATT members in 1992 due to a GATT/WTO secretariat oversight.

countries also provided notifications about state trading in salt, coal, inflammables, aircraft, and nuclear fuel.

Figure 1: State Trading Notifications by Product Sector, 1980-1994



Note: Data are for 20 countries reporting STEs. No sector-specific data for Romania were provided.

Source: GAO analysis of STE notifications.

The notifications also provided information related to the purpose of STEs and how they operate. With respect to purpose, some member countries have reported using STEs to help agricultural producers "achieve their full potential in overseas markets," to ensure "protection of the domestic agricultural production against low-priced imports," and to ensure a "stable and adequate supply" of certain agricultural commodities as part of "national defense preparedness." Regarding operations, member countries

have reported that STEs acted as sole agents for production, imports, and/or exports in the sectors covered. Additionally, the STEs assessed levies on production and/or imports, issued export licenses, and received government guarantees on borrowed funds. Other state trading practices reported included government-guaranteed minimum prices and subsidized exports. The variety of state trading practices reported to GATT makes comparisons between countries difficult since the level of state involvement, and therefore impact on trade, may differ in each case.

In general, most notifications have contained statistical information on STE operations, but the information has occasionally been less than requested in the questionnaire. For example, although the questionnaire asked that statistics be furnished on the value and quantity of imports, exports, and national production for the products notified where possible, several countries did not provide information covering national production. In addition, some countries provided information on the quantity, but not the value, of trade and production.

Most GATT Members Did Not Submit STE Notifications

In accordance with article XVII, each GATT/WTO member country should provide new and full responses to the questionnaire on state trading activities every 3 years, called "full notifications," even if the country does not have any STEs.[13] Additionally, GATT/WTO members should provide notifications of any changes to their state trading regimes in intervening years, called "updating notifications." Nonetheless, compliance with article XVII was poor during the period we reviewed. Regular, full notifications of STEs by GATT members were the exception and not the rule. Even during 1981, the full notification year with the best response rate, approximately 79 percent of GATT member countries failed to submit a notification. (Article XVII notifications by year and by country from 1980 to 1994 are contained in apps. IV and V, respectively.)

As shown in appendix IV, compliance with the full notification requirement every 3 years was poor. The number of countries responding during full notification years varied from a high of 18 notifications in 1981 (about 21 percent of GATT members) to a low of 7 notifications in 1990 (about 7 percent of GATT members). Only Finland, Norway, and Sweden provided full notifications for all five of the full notification years occurring during the period we reviewed.

[13]Full notification years between 1980 and 1994 were 1981, 1984, 1987, 1990, and 1993.

Between 1980 and 1994, a total of 29 countries responded at least once to article XVII, providing either full or updating notifications. In several cases, the updating notifications provided the same amount of information contained in some member countries' full notifications. As shown in appendix V, Austria, Norway, South Africa, and Yugoslavia were the most regular reporters, providing notifications in at least 11 of the 14 years under review. However, of the 29 countries submitting any notification, about 62 percent of the countries reported 3 or fewer times during the 1980 to 1994 period. Eight countries, including the United States, reported once during the 14 years.

Due to poor compliance by most countries over the period reviewed, the GATT/WTO secretariat may lack current information about STEs in GATT/WTO member countries. For example, in our review of notifications we found that 6 of the 29 countries that provided notifications during this period had not updated their notification since 1981, and another 5 countries had not updated their notifications since 1984. Whether or not the level of state trading in these countries has increased or decreased over the past 15 years remains unclear. In addition, the lack of information hinders GATT/WTO members in determining whether other member countries' STEs are adhering to GATT disciplines.

Various Problems May Explain the Lack of STE Reporting

We reviewed documents that indicated that some GATT members were uncertain about the definition of STEs and the coverage of article XVII and that this uncertainty may have caused some countries to not report STEs. The GATT Panel on Notifications of State Trading Enterprises emphasized in a 1960 report that STEs encompass a variety of activities or entities. However, our review of STE notifications confirmed what GATT/WTO and member country officials told us—that some member countries continued to struggle with the definition of STEs. In one case, for example, a country decided not to report at all since "the meaning and coverage of the term 'state enterprise' in Article XVII:1(a) of the General Agreement are not clear."

Inconsistent responses to the questionnaire further illustrate this possible lack of understanding of the definition of STEs. For example, two Central European countries submitted notifications in 1984 claiming that they had no state trading in the meaning of article XVII. However, two other Central European countries with similarly structured economies both reported extensive STE activity during this same period. Considering that all four countries operated command economies in which most aspects of trade

involved the government, the inconsistent answers demonstrated a possible lack of agreement regarding the article XVII questionnaire.

The lack of article XVII reporting by some member countries may also be attributed to the absence of a regular process within GATT for reviewing the notifications submitted. For example, one member country, in explaining its decision not to submit a notification, noted "the absence of any regular procedure for examining notifications so as to afford greater transparency." The member country went on to state that "one may also note that because of the absence of such a procedure, many countries do not see themselves in some way as 'motivated' to notify." A U.S. official told us countries did not report STEs because there was no review of the notifications and thus no scrutiny over the notification process.

Similar perceptions that article XVII reporting was not a priority may exist among other member countries. For example, an official of one country's permanent mission told us that some countries have been lax in meeting their reporting responsibilities because they felt the disciplines on article XVII were not as rigid as other GATT disciplines.

Finally, a USTR official suggested that the low response rate among developing countries might also have been linked to the burden of reporting under GATT. The official said many of the developing and smaller GATT member countries may not have the administrative capacity in their governments to comply fully with the multiple reporting requirements under the various GATT articles. Discussions with an official from one country's permanent mission confirmed this observation. However, this explanation does not address why some of the larger GATT members either did not report during the period we reviewed or had low response rates.

Uruguay Round Improved Some Aspects of Article XVII, but Weaknesses Remain

Although state trading was not a major negotiating issue during the Uruguay Round, GATT member countries agreed to clarify article XVII to address some of the problems previously described. The clarifications are contained in the Understanding, which is part of GATT 1994. The Understanding provided a definition of STEs and contained several measures to address procedural weaknesses of article XVII. The Understanding did not change the questionnaire used to collect information about STEs, but WTO members have agreed to review the questionnaire and the adequacy of information provided about STEs. Because these measures have not been fully implemented, it is too early to assess whether Uruguay Round changes will improve compliance with

article XVII and, thereby, increase the amount of information available about STE activities and improve the quality of such information.

United States and Others Proposed Clarifications to Article XVII

Officials from the United States, GATT/WTO, and other countries we contacted recalled that state trading and the revision of article XVII were not major issues during the Uruguay Round. Nevertheless, the United States and other countries identified problems with article XVII and proposed modifications during the late 1980s to correct these problems. The United States proposed clarifying the application of all GATT disciplines to STEs, particularly marketing boards,[14] and increasing the transparency about state trading practices. The United States suggested transparency could be improved by creating a working party to clarify the definition of STEs, review and revise the questionnaire, and conduct periodic comprehensive reviews of STE notifications. Other countries noted the need to clarify the definition of STEs, improve the notification process, and better understand the role of STEs in trade.

According to U.S. officials, the text of the Understanding was made final in 1990 with the expectation that the Uruguay Round would end shortly thereafter. Although negotiations did not end until December 1993, they said article XVII was not revisited after 1990. One U.S. official told us if the United States had known in 1990 that negotiations were to continue for 3 years, it might have sought additional improvements to article XVII.

Uruguay Round Defined STEs and Addressed Procedural Weaknesses of Article XVII

The Understanding defined STEs as

> "governmental and nongovernmental 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 Understanding addressed procedural weaknesses of article XVII by improving the process for obtaining and reviewing information. For example, the Understanding required member countries to review their policies on submitting notifications about STEs and consider the need to ensure transparency in order to permit a clear appreciation of STEs'

[14]Marketing boards are quasi-governmental agencies that have the capacity to exercise control over individual transactions in the domestic sale or export of a certain commodity. In some cases marketing board activity may be limited to the promotion or marketing of that commodity. They may operate as monopsonists (sole buyers) in their domestic market and oligopolists (one of few sellers) in external markets.

operations and their effect on international trade. It also gave member countries the opportunity to question information provided by another member country. If a member country believes another member country has not adequately met its notification obligation, it can raise the matter for discussion among WTO members and can submit a counternotification to the WTO Council for Trade in Goods if its concerns are not resolved.[15]

The Understanding further addressed procedural weaknesses by establishing the WTO Working Party on State Trading Enterprises (the Working Party). The Working Party's responsibilities include (1) reviewing notifications and counternotifications; (2) in light of notifications received, reviewing the adequacy of the questionnaire and the coverage of STEs notified; and (3) developing an illustrative list of the kinds of relationships between governments and STEs and the kinds of activities engaged in by STEs. One U.S. official said the creation of a regular process in the Working Party to review STE notifications was an important step towards improving compliance with article XVII. The Working Party met for the first time on April 6, 1995, to discuss the timetable for its work program during the next year. Some Working Party members told us they expect to meet informally through the summer to prepare for their next official meeting in the fall of 1995, when they will begin formal work on meeting their responsibilities.

Finally, in order to improve member countries' knowledge about STEs, the Understanding authorized the GATT/WTO secretariat to produce a background paper on the operations of STEs as they relate to international trade. GATT/WTO members told us they expect the paper to describe the countries that engage in state trading, the products traded, and the attributes of their STEs. The paper, which is due at the next official Working Party meeting, is to consider information provided so far to GATT/WTO about STEs as well as the next set of full STE notifications that were due on June 30, 1995.

The Understanding did not change the form or content of the questionnaire used to collect information about STEs. Officials from the United States, GATT/WTO, and other countries told us the questions in the questionnaire can be answered with very specific or very general information and, as a result, the information provided so far about STEs does not provide sufficient transparency about STE activities to ensure they are adhering to GATT disciplines. However, GATT/WTO members differed on the exact information necessary to achieve such transparency. For example, officials from the United States and some other countries told us

[15]The changes contained in the Understanding apply only to WTO members.

they are interested in obtaining more detailed information about transaction prices. Other GATT/WTO members maintained that such information is confidential and related to an STE's commercial interest and that countries are not required by article XVII to disclose this type of information.

The Understanding obligated the Working Party to study the adequacy of the questionnaire. Some Working Party members, including U.S. officials, told us they hope their discussions will produce a revised questionnaire that could be implemented at the ministerial conference scheduled for late 1996.

It Is Premature to Assess Whether Compliance With Article XVII Will Improve

Several U.S. and GATT/WTO officials said they expect that compliance with article XVII's notification requirement will increase. Although the next set of article XVII notifications was due June 30, 1995, the majority of WTO member countries, including the United States, did not meet the deadline. More notifications were expected to be submitted during the summer of 1995. Until all or most notifications have been received and the Working Party can begin to review them, it would be premature to assess whether the addition of a definition and procedural measures would increase compliance with article XVII's reporting requirements and improve the information available about STEs.

A GATT/WTO official suggested that the general willingness to comply with article XVII's notification requirement would be affected by the notification decisions of major trading countries, such as Canada, European Union (EU) member countries, or the United States.[16] For example, a representative from one country, which views its own level of state intervention in trade as comparable to the EU's, told us his country would probably postpone its own notification of STEs until it saw how the EU interpreted the notification requirement. In addition, representatives from several countries' permanent missions to GATT/WTO told us they think the United States should provide an STE notification for USDA's Commodity Credit Corporation (CCC).[17] Representatives from other countries' missions

[16]EU member countries include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

[17]CCC is a wholly owned federal corporation within, and managed by officials of, USDA. CCC stabilizes, supports, and protects U.S. farm income and prices, assists in maintaining balanced and adequate supplies of agricultural commodities and their products, and facilitates the orderly distribution of commodities. Commodities acquired under the stabilization program are disposed of through domestic and export sales, commodity certificate exchanges, transfers to other government agencies, and donations for domestic and foreign welfare use.

told us they were not sure whether CCC would come under the Understanding's definition of an STE. The United States reported CCC as an STE in 1979 but subsequently reported no state trading in 1984.[18]

No decisions have yet been made about enforcing compliance with article XVII and related procedural issues. For example, it is not clear how the Working Party will handle situations in which countries (1) do not comply with the notification requirement, (2) do not respond to all questions in the questionnaire, or (3) submit a counternotification about another country's STEs. Officials from GATT/WTO and other countries said that in general, enforcing compliance with article XVII is up to the Working Party and therefore is dependent on the will of member countries.

Agreement on Agriculture Applies to STEs

According to officials from the United States and other countries, the treatment of STEs was also discussed during Uruguay Round agriculture negotiations because of the prevalence of STEs engaged in agricultural trade. STEs that trade agricultural products are subject to all disciplines contained in the Uruguay Round's Agreement on Agriculture, including several specific references made to STEs. WTO members are asked to provide certain information to the WTO Committee on Agriculture regarding implementation of their Uruguay Round commitments, including those made effective through STEs. However, because the first implementation year will not be completed until 1996, it is too early to tell whether countries with agricultural STEs are meeting their commitments.

The Agreement on Agriculture contained a variety of disciplines designed to liberalize trade in agricultural products.[19] GATT/WTO members are required to make specific reductions in three types of agricultural support—market access restrictions, export subsidies, and internal support—over a 6-year period beginning in 1995. In the area of market access restrictions, countries are required to convert all nontariff barriers, such as quotas, to tariff equivalents and reduce the resulting tariff equivalents (as well as old tariffs) during the implementation period. In the area of export subsidies, countries are required to reduce their budgetary expenditures on export subsidies and their quantity of subsidized exports. Finally, countries are required to reduce an aggregate measurement of

[18]The U.S. officials we contacted were unable to explain why the United States changed the content of its STE notification.

[19]See The General Agreement on Tariffs and Trade: Uruguay Round Final Act Should Produce Overall U.S. Economic Gains (GAO/GGD-94-83a and 83b, July 29, 1994).

selected internal support policies.[20] In addition, the agreement established a WTO Committee on Agriculture to monitor implementation of Uruguay Round commitments.

The disciplines on market access restrictions contain two specific references to STEs. First, the definition of nontariff barriers subject to conversion to tariff equivalents includes nontariff measures maintained through STEs.[21] Second, when providing information to the Committee on Agriculture regarding implementation, GATT/WTO members are asked to explain the administration of market access commitments. Where such commitments are administered by STEs, details about the STE and its relevant activities should be provided.[22]

The Chairman of the Committee on Agriculture told us it is premature to assess whether commitments on market access restrictions are being met. The first year of implementation of the Agreement on Agriculture will be completed during 1996, depending on member countries' implementation dates. A USDA official emphasized the importance of STE notifications submitted to the Working Party on STEs, as this information could help determine whether GATT/WTO members with agricultural STEs are meeting their market access commitments.

A GATT/WTO official told us that references to STEs in the export subsidy disciplines are less specific than those in the market access disciplines. The agreement defines the types of export subsidies subject to reduction.[23] If any such subsidies were paid to or received by an STE, they would be subject to reduction. Moreover, export subsidies not targeted for reduction cannot be applied in a manner that allows member countries to circumvent their commitments to reduce export subsidies.[24] This would include export subsidies provided to or by STEs.

[20]Internal support policies targeted for reduction include budgetary expenditures and revenue forgone by governments or their agents. However, several policies are exempt from reduction, including direct income payments under production-limiting programs, general services to the agriculture community, food aid, income insurance, retirement programs, disaster relief, and environmental programs.

[21]See Agreement on Agriculture article 4:2.

[22]This requirement is contained in the forms recently adopted by the Committee on Agriculture that will be used to provide information on how WTO members are meeting their Uruguay Round commitments.

[23]See Agreement on Agriculture article 9:1.

[24]See Agreement on Agriculture article 10:1.

According to a GATT/WTO official, it should be relatively easy to determine whether countries are meeting their commitments to reduce export subsidies, because the relevant subsidies tend to be quantifiable and easily identified. The official suggested it may be more difficult to know whether countries are circumventing these commitments because other types of export subsidies, including some that could be provided through STEs, are not as easily identified.

Officials from the United States, GATT/WTO, and other countries recalled that during the agriculture negotiations, obtaining disciplines on STEs was not considered to be as important as obtaining disciplines on market access restrictions, export subsidies, and internal support. GATT members focused on the latter group of policy tools because of their distortive effect on trade. U.S. officials told us the United States viewed the EU's agricultural policies as particularly problematic.[25] During the negotiations, the United States relied on the support of countries in the Cairns Group to achieve meaningful concessions from the EU.[26] Because some countries in the Cairns Group use STEs in the agriculture sector, U.S. officials said it would have been counterproductive to ask these countries to support U.S. efforts and challenge their agricultural policies at the same time.

Role of STEs in GATT/WTO May Increase

The role of STEs in GATT/WTO may increase as countries whose governments play major or dominant roles in their economies apply to join GATT/WTO. A number of such countries have already applied to join GATT/WTO, including China, Russia, and Ukraine.[27] Officials in current member countries and at the GATT/WTO secretariat observed that integrating these countries into the GATT/WTO trading system would be a tremendous challenge because their economic traditions and attitudes towards state trading differ significantly from those of most current members. Several of these officials said that the role of state trading in GATT/WTO is a key issue for future discussion. Some GATT/WTO members told us they are interested in strengthening the disciplines contained in article XVII, but they also said that substantive changes to the article's text will not likely occur until the next round of

[25]At the time of the negotiations, the EU was known as the European Community.

[26]The Cairns Group consists of 14 countries that are exporters of agricultural products: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Uruguay.

[27]The former Republic of China was an original member of GATT in 1948, but the nationalist government of Taiwan withdrew from GATT in 1950 after the Communist revolution. The People's Republic of China and Taiwan are currently conducting separate negotiations to join GATT/WTO.

multilateral trade negotiations that is expected to begin in 1999 or the year 2000.

Studies and other available information indicate that STEs play a more significant role in these applicant countries than in countries that have provided STE notifications to GATT/WTO. According to an official at the United Nations Economic Commission for Europe (ECE), STEs still play a large role in the economies of countries in the former Soviet Union (FSU), particularly in the case of exports.[28] For example, at the beginning of 1994 Ukraine still maintained STEs in a number of sectors, including machine building, transportation, agriculture, coal, oil, and gas. However, this official said the FSU countries are also committed to follow the example of the Central and East European countries and slowly eliminate state trading regimes. Thus, it is also possible the role of STEs in these countries will decline over time.

Some GATT/WTO members told us the state's role in China's economy may not decrease. The state has been instrumental in opening China's economy and implementing market-oriented reforms. One aspect of reform has been the decentralization of trade authority from the national Ministry of Foreign Trade and Economic Cooperation to provincial governments. However, recent studies by OECD and the Brookings Institution note that this decentralization has not ended government control over trade.[29] U.S. officials told us that meetings concerning China's accession to GATT/WTO have been dominated by discussions of state trading, as member countries attempt to understand the government's economic role and negotiate disciplines on its ability to control trade.

Officials from the United States, GATT/WTO, and other countries told us China has agreed to abide by the requirements of article XVII regarding the activities of its STEs. However, several officials from the United States and other countries indicated that article XVII alone is not sufficient to help GATT/WTO members develop an understanding of China's STEs nor to discipline them should the need arise.

[28]The former Soviet Union, or Union of Soviet Socialist Republics, included 15 republics: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Latvia, Lithuania, Kazakhstan, Kirghizia, Moldova, Russia, Tadzhikistan, Turkmenistan, Ukraine, and Uzbekistan. Of these, Armenia, Belarus, Estonia, Latvia, Lithuania, Moldova, Russia, Ukraine, and Uzbekistan have applied to join GATT/WTO.

[29]See Kiichiro Fukasaku and David Wall, with Mingyuan Wu, China's Long March to an Open Economy, Development Center Studies (Paris, France: Development Center of the Organization for Economic Cooperation and Development, 1994); and Susan L. Shirk, How China Opened Its Door: The Political Success of the PRC's Foreign Trade and Investment Reforms (Washington, D.C.: The Brookings Institution, 1994).

Multiple Agencies Have STE Monitoring Role

USTR coordinates STE monitoring, with the participation of several U.S. agencies. USTR has primary responsibility for monitoring developments related to WTO and requests assistance from other agencies through an interagency group called the Trade Policy Staff Committee (TPSC).[30] Monitoring STE issues is the responsibility of the TPSC Subcommittee on WTO Market Access, which includes officials from USDA; the Departments of Commerce, Defense, Energy, the Interior, Labor, State, and the Treasury; and the Office of Management and Budget. The USTR official who chairs the subcommittee told us that because state trading is a broad subject, monitoring it requires a wide range of expertise. Therefore, these officials attempt to monitor the activities of STEs in other countries according to their areas of expertise and then provide this information to USTR. They are to help USTR review the next round of STE notifications.

In addition to these monitoring activities, U.S. officials participate in the WTO Working Party on STEs. USTR officials told us they would rely on the Working Party to monitor other countries' compliance with the reporting requirements of article XVII and the Understanding.

U.S. officials also participate in the WTO Committee on Agriculture. According to officials from the United States and other countries, the United States has been active in proposing agricultural STEs as a topic for discussion within the committee. In addition, USDA/FAS officials told us senior USDA officials have informed senior GATT/WTO officials of the importance the United States places on such discussions. One U.S. official told us USDA/FAS would monitor the extent to which STE notifications have enough information to determine whether countries are meeting the commitments contained in the Agreement on Agriculture. If the notifications do not allow such a determination, the United States can request that additional information be provided to the committee.

USDA/FAS and Foreign Commercial Service staff are also responsible for monitoring STE activities in the countries where they are located as part of their regular reporting responsibilities. For example, USDA/FAS reports on major commodity sectors like wheat and dairy have covered STE activities. A USDA/FAS official told us the reporting instructions are flexible, and more information can be requested from staff in the field as necessary.

[30]TPSC operates at the staff level, while a Trade Policy Review Group at the undersecretary level oversees TPSC.

Agency Comments

We requested comments on a draft of this report from the U.S. Trade Representative and the Secretary of Agriculture, or their designees. On August 1, we obtained oral comments from USDA/FAS officials, including the General Sales Manager of FAS; and on August 2, we obtained oral comments from USTR officials, including the Director, Office of Tariff Affairs. USDA and USTR officials generally agreed with the information presented in the draft report and noted that it presented an accurate picture of some of the problems with STEs in the WTO/GATT context. In addition, they provided some technical comments, which we incorporated into the report where appropriate.

We are sending copies of this report to the Secretary of Agriculture and to the U.S. Trade Representative. We will also make copies available to other parties upon request. If you have any questions about the information contained in this report, please contact me at (202) 512-5889. Major contributors to this report are listed in appendix VI.

JayEtta Z. Hecker, Director
International Trade, Finance,
and Competitiveness

List of Requesters

The Honorable Pat Roberts, Chairman
House Committee on Agriculture

The Honorable Steve Gunderson, Chairman
Subcommittee on Livestock, Dairy and Poultry
House Committee on Agriculture

The Honorable David R. Obey, Ranking Minority Member
House Committee on Appropriations

The Honorable Joe Skeen, Chairman
Subcommittee on Agriculture, Rural Development,
Food Administration, and Related Agencies
House Committee on Appropriations

The Honorable Tom Petri
The Honorable Tim Holden
The Honorable Robert Borski
The Honorable Sherwood Boehlert
The Honorable John M. McHugh
The Honorable Earl Pomeroy
The Honorable Tim Johnson
The Honorable Doug Bereuter
House of Representatives

The Honorable Herb Kohl
The Honorable Kent Conrad
The Honorable Larry Pressler
The Honorable Russ Feingold
The Honorable Larry Craig
The Honorable Byron L. Dorgan
United States Senate

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Abbreviations

CCC	Commodity Credit Corporation
ECE	Economic Commission for Europe
EU	European Union
FAS	Foreign Agricultural Service
FSU	former Soviet Union
GATT	General Agreement on Tariffs and Trade
ITO	International Trade Organization
MFN	most favored nation
OECD	Organization for Economic Cooperation and Development
STE	state trading enterprise
TPSC	Trade Policy Staff Committee
USDA	U.S. Department of Agriculture
USTR	U.S. Trade Representative
WTO	World Trade Organization

Article XVII of the General Agreement on Tariffs and Trade (GATT)

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 subparagraph (*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 subparagraph (*a*) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (*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 interest 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.

Ad Article XVII

Paragraph 1

The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of subparagraphs (*a*) and (*b*).

The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.

The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 1 (a)

Governmental measures imposed to insure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

Paragraph 1 (b)

A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

Paragraph 2

The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

Paragraph 3

Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement. (See paragraph 4 of Article II and the note to that paragraph.)

Paragraph 4 (b)

The term "import mark-up" in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes within the purview of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

GATT Article XVII Questionnaire Adopted in 1960

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 insofar 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 [1]:

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 enterprise. Whether State-trading methods are used to fulfil contractual obligations entered into by the government.

IV. Statistical information

Furnish 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. Reason 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.

[1] These questions are identical to those in the questionnaire on State-trading prepared by Committee II on Expansion of Trade. Insofar as contracting parties have reported to Committee II on State-trading in agricultural products they need, in respect of these products, merely to provide a copy of their relevant replies.

The 1994 Understanding on the Interpretation of GATT Article XVII

Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs And Trade 1994

Members,

Noting that Article XVII provides for obligations on Members in respect of the activities of the state trading enterprises referred to in paragraph 1 of Article XVII, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in GATT 1994 for governmental measures affecting imports or exports by private traders;

Noting further that Members are subject to their GATT 1994 obligations in respect of those governmental measures affecting state trading enterprises;

Recognizing that this Understanding is without prejudice to the substantive disciplines prescribed in Article XVII;

Hereby *agree* as follows:

1. In order to ensure the transparency of the activities of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods, for review by the working party to be set up under paragraph 5, 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. Each Member shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the Council for Trade in Goods, taking account of the provisions of this Understanding. In carrying out such a review, each Member 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 questionnaire on state trading adopted on 24 May 1960 (BISD 9S/184-185), it being understood that Members shall notify the enterprises referred to in paragraph 1 whether or not imports or exports have in fact taken place.

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

5. A working party shall be set up, on behalf of the Council for Trade in Goods, to review notifications and counter-notifications. In the light of this review and without prejudice to paragraph 4(c) of Article XVII, the Council for Trade in Goods 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 above-mentioned questionnaire on state trading and the coverage of state trading enterprises notified under paragraph 1. 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 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 Members indicating their wish to serve on it. It shall meet within a year of the date of entry into force of the WTO Agreement and thereafter at least once a year. It shall report annually to the Council for Trade in Goods.[1]

[1] The activities of this working party shall be coordinated with those of the working group provided for in Section III of the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

Article XVII Notifications by Year, 1980-94

Date of notification	Number of notifications	Number of GATT member countries	Response rate to questionnaire (percent)
1980	13	85	15.3
1981(F)	18	85	21.2
1982	7	86	8.1
1983	10	88	11.4
1984(F)	11	90	12.2
1985	6	90	6.7
1986	8	90	8.9
1987(F)	9	92	9.8
1988	8	95	8.4
1989	7	96	7.3
1990(F)	7	96	7.3
1991	8	100	8.0
1992[a]	1	na	na
1993(F)	11	105	10.5
1994	9	114	7.9

Legend
F = A year during which full notifications were due.
na = Not applicable

[a]Due to an oversight, the GATT/WTO secretariat did not circulate a request for updating in 1992. India was the only country to submit a notification in 1992.

Source: Article XVII notifications provided to GATT/WTO secretariat.

Article XVII Notifications by Country, 1980-94

Country	Number years reported	Years reported	State trading reported[a]
Australia	9	1980,1981,1983,1984, 1986,1988,1990,1993, 1994	Yes
Austria	13	1980,1981,1982,1983, 1984,1985,1986,1987, 1988,1989,1991,1993, 1994	Yes
Belgium	1	1981	No
Canada	3	1980,1982,1983	Yes
Czech Republic[b]	1	1994	Yes
Finland	9	1981,1982,1983,1984, 1986,1987,1988,1990, 1993	Yes
West Germany	1	1981	Yes
Hong Kong	3	1987,1990,1991	No
Hungary	1	1984	No
India	2	1989,1992	Yes
Indonesia	2	1993,1994	Yes
Ireland	1	1981	No
Israel	1	1981	Yes
Japan	3	1980,1986,1987	Yes
Luxembourg	1	1981	No
New Zealand	4	1980,1981,1993,1994	Yes
Norway	11	1981,1984,1985,1986, 1987,1988,1989,1990, 1991,1993,1994	Yes
Peru	5	1980,1981,1985,1988, 1993	No
Poland	2	1984,1993	Yes
Romania	3	1980,1981,1983	Yes
Slovak Republic[b]	1	1994	Yes
South Africa	12	1980,1981,1983,1984, 1985,1986,1987,1988, 1989,1990,1991,1994	Yes
Spain	2	1983,1984	Yes
Sweden	10	1980,1981,1982,1984, 1987,1988,1989,1990, 1991,1993	Yes

(continued)

Country	Number years reported	Years reported	State trading reported[a]
Switzerland	9	1980,1981,1982,1983, 1985,1986,1987,1991, 1994	Yes
United Kingdom	8	1980,1981,1982,1983, 1989,1990,1991,1993	Yes
United States	1	1984	No
Yugoslavia	11	1980,1981,1983,1984, 1985,1986,1987,1988, 1989,1991,1993	No

[a]As reported in the country's latest notification.

[b]Also reported in 1980 and 1982 under the country name of Czechoslovakia.

Source: Article XVII notifications provided to GATT/WTO secretariat.

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