

DECISION

*D. Joseph
66 M* 120073

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-207994**DATE:** December 6, 1982**MATTER OF:** International Natural Rubber Organization--Return
of United States Contribution

- DIGEST:**
1. Repayments of money the United States has contributed to the International Natural Rubber Organization (INRO), which have been returned as excess due to the contributions of new members to the INRO or due to a reduction in the amount of rubber imported by the United States are refunds and may be credited to the appropriation enacted for contributions to INRO. Repayments which constitute proceeds of the sale of rubber may not be credited to the account but must be deposited into the Treasury as miscellaneous receipts.
 2. GAO has no legal objection to the retention of excess funds in an account where they will be invested by the INRO for the benefit of individual member governments, as the fund will be in custody of the INRO itself rather than of the United States. However, any earnings or interest from these investments received by the United States must be deposited in the Treasury as miscellaneous receipts.
 3. GAO has no legal objection to the establishment of a separate account for deposit of excess funds pursuant to the International Natural Rubber Agreement under which the United States has management and investment control yet physical custody of the funds remains with the INRO. However, any funds actually received by Treasury must be deposited into miscellaneous receipts.

The Deputy General Counsel of the Department of the Treasury has requested this Office's advice on the disposition of certain temporary excess funds now held by the International Natural Rubber Organization (INRO) and available for distribution to several INRO member countries, including the United States. The funds in question include a portion of the United States' initial contribution to the INRO's buffer stock account for the acquisition and maintenance of a stockpile of natural rubber as provided for in the International Natural Rubber Agreement, U.N. Doc. No. TD/Rubber/15/Rev. 1 (effective October 1, 1980). Funds currently are available to return to the original member countries either (1) because additional members have joined the Agreement and their initial contributions have increased the total organization funds beyond what is immediately necessary for current buffer stock operations; or (2) because

the United States' proportionate share has been reduced based on a comparison of the amount of rubber it has imported in relation to the amount imported by other member countries (a "reduction in trade share," as termed by the Department of Treasury). It is also possible that proceeds from the sale of rubber might be returned to the United States, although it is not clear that the INRO has the authority to do so prior to the termination of the Agreement.

The Department of the Treasury anticipates that in the future, the INRO will ask member countries for additional contributions to the buffer stock fund. It also expects that from time to time the INRO will continue to distribute excess funds resulting from buffer stock operations.

The Treasury Department received an appropriation for \$88 million for contributions required by the Agreement, under Pub. L. No. 96-369, 94 Stat. 1351 (1980), Pub. L. No. 96-536, 94 Stat. 3166 (1980), and Pub. L. No. 97-12, 95 Stat. 95 (1981) (each incorporating H.R. 7583, 96th Cong., 2d Sess. (1980)). The full amount has been obligated for the United States' fulfillment of its obligations under the Agreement. The appropriation was charged with the initial United States contribution of about \$5 million to the INRO.

The issue on which Treasury has requested our opinion involves the treatment of excess funds. The INRO has offered its members three options for the distribution of excess funds. At the request of the members, the INRO will (1) physically return the funds to the member country; (2) retain the funds in an account where they will be invested by INRO for the benefit of individual member governments or (3) establish a separate account for the particular member's excess funds, over which the member will retain investment control.

The Treasury Department would prefer Option One, but only if the funds could be redeposited into the account set up to fund the INRO. If Option One would necessitate the deposit of the monies into the general fund of the Treasury, it is our understanding that the Treasury Department would prefer either Option Two or Option Three.

In our opinion, the Treasury Department may legally exercise any of the three options. If Option One is exercised, the returned funds may be recredited to the appropriation account only if they represent a reduction in the United States contribution due to increased membership in the INRO or the reduction of the United States trade share. If, on the other hand, any portion of the

repayment is derived from the sale of rubber, the entire repayment must be deposited in the Treasury as miscellaneous receipts. Our reasons are discussed below.

Option One

As a general proposition, absent specific statutory authority all funds received for the use of the United States must be deposited in the general fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 3302 (formerly § 484).^{1/} However, there are two instances in which this general rule does not apply. The first is in the case of a revolving fund. In a revolving fund, Congress authorizes the continuous provision of a service and, after an initial capital contribution to the fund, permits the continuing services to be financed by the income generated by the activity itself. By specific statutory authority, payments to a revolving fund are recredited to the fund account and are immediately available for obligation.

The appropriation for United States contributions to the INRO's buffer stock account does not contain authority to set up a revolving fund. Further, such authority was not sought at the time the appropriation was requested. See, FY 1981 Budget Estimate, Treasury Department, reprinted with, 4 Hearings on H.R. 7583 Before H. Subcomm. on Treasury, Postal Service and General Government Appropriations, 96th Cong., 2d Sess. 431-32 (1980) ("House Hearings").

The second exception to the general rule requiring deposit of funds into miscellaneous receipts relates to certain permitted repayments to appropriations. These repayments to appropriations are classified into two specific categories: reimbursements and refunds. See GAO Policy and Procedures Manual for the Guidance of Federal Agencies, Title VII, section 13. Reimbursements are sums received as a result of commodities sold or services furnished either to the public or to another Government account, which are authorized by law to be credited directly to a specific appropriation. GAO, Glossary of Terms Used in the Federal Budget Process, p. 74 (PAD-81-27, March 1981). In the case of the INRO Agreement, the return of money directly to the appropriation has not been authorized by law. Thus, the question narrows itself to whether the funds returned by INRO are refunds.

Refunds are defined in Title VII, section 13.2(2) of the Policy and Procedures Manual as follows:

^{1/} Title 31 was recodified by Pub. L. 97-258, September 13, 1982.

"Refunds are repayments for excess payments and are to be credited to the appropriation or fund accounts from which the excess payments were made. * * * [R]efunds must be directly related to previously recorded expenditures and are reductions of such expenditures."

Refunds are also explained in Treasury Department - GAO Joint Regulation No. 1, reprinted as Appendix B to Title VII of the Policy and Procedure Manual. The Joint Regulation description is as follows:

"Refunds to appropriations * * * represent amounts collected from outside sources for payments made in error, overpayments, or adjustments for previous amounts disbursed * * *."

If the funds to be distributed by the INRO can be classified as refunds, they may be recredited to the appropriation account to be available for obligation when future contributions are required.

When the return of funds is due to the reduction of the initial United States contribution, either because of the addition of new member countries or the lowering of the United States trade share, the return can be considered an adjustment to an amount previously disbursed, and, therefore, a refund. Thus, amounts returned from the INRO for those reasons may be credited to the appropriation and used for future contributions without congressional action. Cf. 39 Comp. Gen. 647 (1960) (amounts refunded to the United States due to contract violations may be credited to the appropriation from which the payments were made. Deposit of the funds into Treasury as miscellaneous receipts would deplete the appropriation and defeat the purpose of the program).

However, a return of funds which results from the buying and selling of natural rubber by the INRO may not be considered a refund. Proceeds from a sale are not excess payments. Once a contribution has been used to purchase rubber, its purpose is fulfilled. Were the money returned to the appropriation account, a revolving fund would be established without Congressional authority. The proceeds from the purchase and sale of natural rubber are more like interest earned on trust funds (B-108439, April 13, 1978) or user fees received from AID employees for Government-provided overseas housing (B-192035, August 25, 1978), both of which we required to be deposited in miscellaneous receipts.

Thus, if Treasury chooses Option One, proceeds of sales must be deposited in miscellaneous receipts. However, returns due to the additional membership of countries or the reduction of the United States trade share may be credited to the appropriation.

We understand that the Treasury Department's intention is to establish a single procedure to be followed for all future disbursements by the INRO. Clearly, if all the funds returned at a given time are due to additional members or a reduction of the trade share (and adequate tracing exists to verify this), the money can be re-deposited into the appropriation account. However, as has been informally discussed with the Treasury Department, a problem exists when these funds are commingled with the proceeds of sales of rubber and returned to the U.S. without an adequate means of tracing the basis for the returns. If the basis for the funds cannot be determined, all commingled funds must be deposited into the general fund of the Treasury as miscellaneous receipts.

Option Two

Option Two involves the retention and investment of excess contributions and future earnings by the INRO for the benefit of member nations which elect such treatment. Under Option Two, the INRO would retain the excess funds in the Buffer Stock Account. The INRO would invest the excess funds for the benefit of individual member governments, with income resulting from the retained funds accruing to the individual accounts. Reinvestment of the earnings presumably would result in reduced need for future contributions and increased distribution at the end of the Natural Rubber Agreement.

We have no legal objection to this proposal. In fact, the Congress appears to have contemplated that the INRO would retain accumulated excess funds. During the appropriations hearings at which the Natural Rubber Agreement contribution was discussed, the following interchange occurred between Subcommittee Chairman Steed and two State Department witnesses:

"Mr. STEED. * * * [S]uppose you find yourself in a lucrative profitable position. Now you have enough stock on hand to meet your future needs, and you have a lot of cash, what happens with the cash?

"Mr. CALINGAERT. Before termination of the agreement?

"Mr. ODGEN. Any profits the organization makes would be invested in high-yield bonds or whatever investment the agreement felt was most appropriate. Then at the end of the agreement, any profits would be redistributed to all the member countries on the basis of their contributions to the agreement. So the money would stay in the agreement until the end." House Hearings, cited above, at 416.

The INRO itself has not yet determined whether it is authorized to pay out either principal or accrued interest to member countries under Option Two prior to the termination of the agreement. Assuming that the INRO does have this authority, any funds disbursed to the United States, including earnings or interest, must be deposited as miscellaneous receipts (excluding refunds, as discussed above). See B-108439, April 13, 1978.

Option Three

Option Three involves retention of credits in the Buffer Stock Account, with the establishment of a separate account in which the investment of funds is controlled by the individual member country. It is basically indistinguishable from Option Two except that INRO would not maintain control over the investments. We have no legal objection to Option Three, as long as INRO maintains physical custody of the funds. As with Option Two, any funds over which Treasury gains physical control must be deposited into miscellaneous receipts.

Conclusion

In summation, the Department of the Treasury may choose Options One, Two, or Three. If it selects Option One, monies returned to the United States due to increased membership in the INRO or the reduction of the United States trade share may be recredited to the appropriation account. However, if any of the returned funds constitute proceeds from the sale of rubber which cannot reasonably be segregated from refunds due to increased membership or reduction of trade share, the entire amount of the return must be deposited as miscellaneous receipts. Options Two and Three present no legal difficulties, as INRO would maintain custody of the funds. However, any funds paid out to the United States prior to the termination of the agreement as a result of the investment, such as earnings or interest, must be deposited as miscellaneous receipts.

Shelton J. Rowland
for Comptroller General
of the United States