

# WORLD TRADE ORGANIZATION

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## Working Party on State Trading Enterprises

### ILLUSTRATIVE LIST OF RELATIONSHIPS BETWEEN GOVERNMENTS AND STATE TRADING ENTERPRISES AND THE KINDS OF ACTIVITIES ENGAGED IN BY THESE ENTERPRISES

#### I. INTRODUCTORY COMMENTS

1. Pursuant to paragraph 5 of the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 ("the Understanding"), this Illustrative List shows the kinds of relationships which exist between governments and state trading enterprises and the kinds of activities which such enterprises engage in, which may be relevant for the purposes of Article XVII. It is based on the Article XVII notifications made since 1980.

2. The List does not represent a definition of what constitutes a state trading enterprise or an attempt to further refine or interpret the definition of "state trading enterprise" as provided in Article XVII of GATT 1994 and its Interpretative Notes or the working definition contained in the Understanding<sup>1</sup>. Rather, the List is based on a catalogue of those relationships and entities which have been previously included in notifications and, as such, reflects examples of relationships with governments and activities which various individual Members considered relevant in their notification of state trading enterprises. While this List reflects the past practice of individual Members rather than consensus standards, Members could find the List useful in guiding their notification decisions.

3. While the List is as comprehensive as possible, it is not exhaustive. There may be other relationships or activities that may be relevant for the purposes of Article XVII. Conversely, none of the elements listed necessarily identifies a state trading enterprise, as certain of the relationships/activities listed could involve, or be engaged in by, entities which do not meet the criteria set out in the agreed definitions of "state trading enterprise".

4. It remains the prerogative and responsibility of each Member to determine whether an enterprise under its jurisdiction falls within the agreed WTO definitions and thus should be notified under Article XVII. Equally, any Member which has reason to believe that another Member has not adequately met its notification obligation has the right to proceed as provided for in paragraph 4 of the Understanding. This list in no way affects the rights and obligations of Members under the Understanding and under Article XVII of GATT 1994 and its Interpretative Notes.

#### II. USER'S GUIDE TO THE ILLUSTRATIVE LIST

5. It is recalled that three fundamental elements are identified in the working definition of "state trading enterprise" contained in paragraph 1 of the Understanding:

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<sup>1</sup> See attached Annex for the full text of GATT Article XVII paragraphs 1(a) and (b), the Interpretative Notes to Article XVII, and the working definition in paragraph 1 of the WTO Understanding on Article XVII.

- (i) a governmental or non-governmental entity, including marketing boards;
- (ii) the granting to the enterprise of exclusive or special rights or privileges; and
- (iii) a resulting influence, through the enterprise's purchases or sales, on the level or direction of imports or exports.

6. Thus, a notifiable state trading enterprise has a relationship to the government through the latter's granting of a right or privilege and conducts an activity which influences the level or direction of imports or exports. It is suggested that, by looking at the type of relationship the entity has with the government as a result of the latter's granting of an exclusive or special right or privilege, at the type of activity the enterprise engages in and through which it influences the level or direction of imports or exports, and finally by examining the interaction between the two, the Member may be better able to determine whether the enterprise should be notified. The lists in Sections III and IV which follow are included for this purpose. It should be noted that the activities of a state trading enterprise may not be limited to those derived from the rights/privileges granted to it and may include other activities.

7. This preliminary guidance as to the basic elements of a state trading enterprise should help Members' consideration of the two sections which follow.

### **III. RELATIONSHIPS WITH GOVERNMENT**

8. The following types of relationships between enterprises and governments should be considered as possible indications of the existence of a state trading enterprise. As mentioned in the section on "Introductory Comments", no one relationship described necessarily identifies an enterprise as falling within the agreed WTO definitions of "state trading enterprise".

The enterprise<sup>2</sup> which is granted exclusive or special rights or privileges in the exercise of which it influences through its purchases or sales the level or direction of imports or exports is:

- (a) a branch of government or a government-owned (or partially owned) enterprise; *or*
- (b) entirely separate from government (i.e. neither a branch of government nor fully or partially owned by the government), whether established to carry out government-mandated policies or programmes subject to legislated controls, or whether established for commercial purposes; this includes entities which are established and maintained under legislation and financed and controlled by the producers of the product over which they have marketing authority.

*In addition*, the enterprise purchases or sells a given product or group of products, either directly or indirectly through third parties under contract or transfer of right; *and* one or more of the following applies:

- (i) the enterprise is specially authorized or mandated by the government to do one or more of the following:
  - control and/or conduct import or export operations;
  - distribute imports;
  - control domestic production, processing, or distribution.

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<sup>2</sup> Not included are entities, or government Ministries, that have only regulatory authority in areas relevant to international trade.

- (ii) all or part of the enterprise's activities are supported by government in one or more of the following ways, and the support afforded is specific or more favourable to the enterprise and not generally available to other entities, or is not warranted by purely commercial considerations:
  - budget allocations;
  - interest rate/tax concessions;
  - guarantees (e.g. for loans or against business failure);
  - revenue from the collection of tariffs;
  - preferential access to foreign exchange;
  - any off-budget support or assistance.

#### **IV. ACTIVITIES<sup>3</sup> ENGAGED IN BY STATE TRADING ENTERPRISES**

9. The following activities are of the kind which might be engaged in by a state trading enterprise. An enterprise might engage in one or more of these activities, which can be directly related to importation, exportation, or the trade regime, or which can be related to trade in an indirect way. As mentioned in the section on "Introductory Comments", no one activity or combination of activities necessarily identifies an enterprise as falling within the agreed WTO definitions of "state trading enterprise".

- (a) Controls or conducts imports or exports;
- (b) Administers multilaterally or bilaterally agreed quotas, tariff quotas or other restraint arrangements, or other import or export regulations;
- (c) Issues licences/permits for importation or exportation;
- (d) Determines domestic sales prices of imports.
- (e) Enforces the statutory requirements of an agricultural marketing scheme and/or stabilization arrangement;

The following activities were included in some notifications:

- (i) Authorizes or manages domestic production and/or processing of domestic production;
- (ii) Determines the purchase price and/or sales price of domestic production;
- (iii) Manages domestic distribution of domestic production and/or imports;
- (iv) Undertakes purchases and sales of domestic production based on pre-determined floor and ceiling prices (intervention purchases/sales);
- (v) Issues credit guarantees for producers, processors, exporters, or importers;

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<sup>3</sup> The list refers to activities of a state trading enterprise for a given product or group of products.

- (vi) Engages in export- and support-related activities such as storage, shipping, processing, packaging, and insurance;
- (vii) Controls or conducts marketing or distribution of processed products through subsidiaries or joint ventures in import markets;
- (viii) Exercises quality control functions for imports or domestic production, including for export;
- (ix) Engages in promotional activities for exports and/or domestic consumption;
- (x) Procures and maintains emergency stocks of certain strategic and/or agricultural goods;
- (xi) Negotiates or administers long-term bilateral contracts (including government-to-government) for exports and/or imports;
- (xii) Undertakes purchases or sales necessary to fulfil contractual obligations entered into by the government.

## ANNEX

Article XVII:1(a) of GATT 1994 reads as follows: "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."

Article XVII:1(b) of GATT 1994 reads as follows: "The provisions of sub-paragraph (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."

The Interpretative Notes to Article XVII read as follows:

*"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 sub-paragraphs (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."

Paragraph 1 of the Understanding reads as follows:

"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."

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