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Working Party on State Trading Enterprises

MINUTES OF THE MEETING OF THE WORKING PARTY HELD ON 27 JUNE 1996

Chairman: Mr. Peter May (Australia)

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| A. <u>Adoption of agenda</u> | |
| 1. The Working Party <u>adopted</u> the agenda proposed in WTO/AIR/357. | |
| B. <u>Review of notifications submitted by Members pursuant to the request for notifications in G/STR/N/1</u> | |
| (1) <u>New notifications</u> | |
| 2. The <u>Chairman</u> recalled that according to paragraph 5 of the Understanding on the Interpretation of Article XVII (the "Understanding"), the Working Party was tasked to review the notifications and counter-notifications on state trading submitted by Members, and that in the light of this review, the Council for Trade in Goods could make recommendations with regard to the adequacy of notifications and the need for further information. The Council for Trade in Goods, at its meeting on 20 February 1995, had established a deadline of 30 June 1995 for new and full notifications by Members on their state trading enterprises ("STEs"), and a formal request for such notifications had been circulated in G/STR/N/1 of 13 March 1995. | |
| 3. He said that once again, compliance with this obligation - leaving aside the issue of the 30 June deadline - was still far from complete, and noted that a request for updating notifications - which were to be based on the full notifications due in 1995 - had already been circulated (G/STR/N/2). These updating notifications, required of all WTO Members, were due by 30 June 1996. | |

4. A total of 56 Members (counting each of the EU Member states individually) had submitted a full notification in response to the March 1995 request, and only three updating notifications had been received for 1996. He stressed that this situation was of serious concern, given that there were 122 Members of the WTO, and in light of the need for greater transparency in the trade conducted by state trading enterprises. Furthermore, the information in the notifications was essential to the process of revising the questionnaire and developing an illustrative list, in the context of determining what notifiable state trading was. To date, no counter-notifications had been received by the Secretariat.

5. The representative of Venezuela said that his country's notification would be submitted within the week.

6. The Chairman noted that the airgram divided the review exercise into two sections: one dealing with new and as yet unreviewed notifications, and the other with notifications on which written questions, and in some cases written answers, had been submitted. He suggested that the Working Party conduct the review in the same manner as at the previous meeting, i.e. with a focus on two main elements: (1) whether the notification responded adequately to the information requested in the questionnaire; and (2) whether more information was needed in order to permit - in the language of paragraph 2 of the Understanding - "a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade".

(i) Barbados (G/STR/N/1/BRB)

7. As the representative of Barbados was not present at the meeting, the Working Party agreed to revert to this notification at its next meeting.

(ii) Brazil (G/STR/N/1/BRA)

8. As the representative of Brazil was not present at the meeting, the Working Party agreed to revert to this notification at its next meeting.

(iii) Malta (G/STR/N/1/MLT)

9. As Malta's notification had only recently been circulated, due to an error in the WTO processing of the document, the Working Party agreed to revert to it at its next meeting.

(iv) Morocco (G/STR/N/1/MAR)

10. The representative of the United States said that his country had submitted a number of questions in writing to Morocco (G/STR/Q1/MAR/1).

11. The representative of Morocco said that its notification did not maintain that Morocco had notified all state trading enterprises in the country, but only those that had a monopoly or exclusive right in a given market, as his authorities had understood that only the latter had to be notified. The US questions covered both notified and non-notified enterprises, and Morocco was willing to provide information on all of its state trading enterprises.

12. The representative of the United States said that his delegation looked forward to receiving Morocco's written replies. In the US view, any enterprise that benefited from any exclusive or special privilege should be notified, and not just those that were monopolies.

(v) Israel (G/STR/N/1/ISR)

13. The representative of New Zealand asked for further information on a number of agricultural organizations listed in Israel's most recent Trade Policy Review Report, and for clarification as to whether certain marketing boards fit the definition of state trading enterprise.¹

14. The representative of the United States said that his delegation would submit a written question (G/STR/Q1/ISR/1) and expressed interest in New Zealand's questions.

15. As the representative of Israel was not present at the meeting, the Working Party agreed to revert to this notification at its next meeting.

(vi) Pakistan (G/STR/N/1/PAK)

16. The representative of New Zealand asked for an explanation of Pakistan's decision not to notify a number of agencies that played a major role in the marketing of agricultural products.²

17. The representative of the United States asked questions regarding the Trading Corporation of Pakistan and for clarification of certain entities operating in agricultural trade (G/STR/Q1/PAK/1).

18. The representative of Canada said that Pakistan's 1994 Trade Policy Review Report listed a number of STEs, and asked for an explanation of these.

19. The representative of Pakistan said that his delegation would provide written replies to the questions. He said that the Trading Corporation of Pakistan (TCP) was not an STE in terms of Article XVII. It was a private limited company whose shares were owned by the government, but it had not been granted any exclusive or special privileges. The government could assign it specific tasks regarding import or export in the case of emergencies. The Board of Directors had the authority to run the TCP, which had no exclusive production or manufacturing facilities; procurement and distribution were made through the private sector. No government official participated in the workings of the TCP. It acted as an intermediary between the buyer and seller and thus was not a trading enterprise in the sense of Article XVII. The Rice Export Corporation (RCP) did not fall under the provisions of XVII as it did not act as an STE; it too was a limited company owned by the government and had been granted no exclusive or special rights or privileges through which it could influence, through purchases or sales, the level or direction of rice exports. There was unhindered competition between private and public sector enterprises. The Ministry of Agriculture neither procured nor traded in grain.

20. The representative of the United States asked what percentage of export trade in rice was handled by the Rice Export Corporation, as this would help his delegation to understand whether any special privilege had been granted.

21. The representative of Pakistan said that he would come back to this question.

22. The Chairman invited delegations having raised questions to submit these in writing directly to the Member concerned not later than 19 July, with a copy to the Secretariat for circulation. Written answers to those questions should be submitted directly to the enquiring country, with a copy to the

¹ These questions were subsequently submitted in writing (G/STR/Q1/ISR/2).

²The question was subsequently circulated in G/STR/Q1/PAK/2.

Secretariat, as soon as possible. He said that to date, 67 sets of written questions had been submitted to individual Members, and 33 sets of written answers had been provided. Delegations which had not yet submitted written answers were encouraged to do so as soon as possible. The question-and-answer exercise was an essential element in the review of the notifications and was critical to the Working Party's accomplishment of its tasks - i.e. to revise the questionnaire and to develop an illustrative list.

23. The representative of the United States said that while the US had received many written replies within the last few days, several were still outstanding from the following Members: Cyprus, the Czech Republic (on one question), India and Malaysia. He said that in general, Members had made an effort to be thorough and transparent in their replies; however, the replies, while satisfactory, underscored that perhaps the questionnaire was not asking the right questions.

24. The representative of Canada said that the conclusion his delegation had drawn from the question-and-answer exercise was that it was particularly significant for the development of the illustrative list. If Members were deciding not to notify certain types of activities, that was in itself a significant factor in trying to delineate what an exclusive or special privilege was in the sense of Article XVII, and what was beyond that Article's reach and thus not subject to notification.

25. The representative of Uruguay said that his country had not yet responded in writing to the questions from the United States but would do so shortly. In addition, Uruguay's updating notification would indicate that the monopoly on import of oil, oil-based products and alcohol was no longer operative; starting in November, import, distribution and marketing of alcohol would be carried out by the private sector.

(2) Previously reviewed notifications

26. The Chairman said that the objective of listing on the Airgram all the notifications on which there had been written questions was to provide an opportunity for delegations to revert to those of interest to them.

(i) Canada (STR/N/1/CAN+ Add.1; G/STR/W/8, 10, 23, 24)

27. The representative of Argentina said that some of Canada's written replies were not sufficient. For example, regarding Australia's questions (G/STR/W/8), how would tariff quotas be administered in future and did the Canadian Wheat Board (CWB) guarantee wheat sales? The 1.1 per cent deficit in the CWB's current account was, in his view, not trivial. He asked whether there was an implicit policy of domestic price support when there was a deficit, and if so, how this was recorded in the context of Canada's notifications to the Agriculture Committee.

28. The representative of Canada said that it would help to have the questions in writing, and written replies would be supplied.

29. The representative of Argentina said Canada had indicated that at a later date it would notify the manner in which the procedures on imports by the CWB would be applicable, and asked if this notification had been made either to the Market Access or Agriculture Committees. The written replies (G/STR/W/24) to the questions from Australia generated more questions than clarification.

30. The representative of Canada said that the administration of wheat and wheat imports would disappear entirely from the state trading notification because the WTO commitments required tariffing that exclusionary power. As a result, there was no STE administering imports of wheat, barley, wheat products and barley products. He said that as Australia had not followed up on its written question on guarantees, Canada had assumed that its response was satisfactory. Regarding the 1.1 per cent

deficit, he said that given the volatility and size of the global grain market, this was for Canada well within the norm for commercial activities. He said that he would have to take under notice the question on domestic support for prices,

(ii) Czech Republic (G/STR/N/1/CZE; G/STR/W/2, 10, 13, 19, 25)

31. The representative of the Czech Republic said that his delegation fully intended to notify the enterprise mentioned in the US question, and noted that his country was in the process of passing a law on state enterprises.

(iii) India (G/STR/N/1/IND; G/STR/W/10)

32. The representative of India said that all written questions had been sent to his authorities and that written replies would be submitted within two weeks.

(iv) Indonesia (G/STR/N/1/IDN; G/STR/W/2, 8, 10, 13, 16)

33. The representative of Indonesia said that his delegation would soon submit written replies to all of the written questions put to it.

(v) Japan (G/STR/N/1/JAP; G/STR/W/8, 10, 13)

34. The Chairman noted that since the circulation of the Airgram, Japan had submitted written answers to the questions from Australia and Canada (G/STR/W/28) and to the questions from the United States (G/STR/Q1/JPN/1).

35. The representative of Australia said that her delegation would have liked to have received greater transparency on the administration of tariff quotas by STEs and that this showed a need for more work on the questionnaire.

(vi) Korea (G/STR/N/1/KOR; G/STR/W/2, 3, 8, 10, 13)

36. The representative of Korea said that Korea's written replies to the questions from Australia, Canada and the United States had recently been submitted.

37. The representative of Argentina said that Korea's written replies did not answer all of the questions put to Korea by Australia in G/STR/W/13.

38. The Chairman said that there would be an opportunity at a later stage to assess whether Korea's responses were adequate. If Argentina wanted more information than what had been provided in the written replies, it could submit its own written questions.

(vii) Malaysia (G/STR/N/1/MYS; G/STR/W/2, 4)

39. The representative of Malaysia said that his country would not be able to submit written replies to the questions from Japan and the United States until after the Olympic Games.

(viii) Norway (G/STR/N/1/NOR; G/STR/W/2, 5, 8, 13, 18+ Corr.1, 27)

40. The representative of Norway said that his authorities had just sent written replies to the last two questions from the United States.

(ix) Philippines (G/STR/N/1/PHL; G/STR/W/10, 11, 13)

41. The representative of the Philippines said that his country would soon submit written replies to the questions from Canada, Japan and the United States, and noted that the National Sugar Refining Corporation now had a diminished role.

42. The Chairman suggested that this latter information be submitted in the form of an updating notification for 1996 from the Philippines.

(x) Switzerland (G/STR/N/1/CHE; G/STR/W/8, 10, 13)

43. The Chairman noted that since the circulation of the Airgram, Switzerland had submitted written answers to the questions from Australia, Canada and the United States (G/STR/Q1/CHE/1).

44. The representative of New Zealand said that Switzerland's recent Trade Policy Review Report (segment by the Secretariat) contained a description of the Swiss Cheese Union (SCU) and that the latter seemed to qualify as a notifiable STE under Article XVII for the following reasons: it had an obligatory delivery scheme which purchased the main Swiss cheese varieties (emmentaler, gruyère and sbrinz) at fixed prices; it was guaranteed a commission regardless of the actual terms of sale, and any losses were picked up by the government. In New Zealand's view, the SCU should be notified, and he asked whether Switzerland intended to do so.

45. The representative of Switzerland said that the SCU was a private body to which the government had handed over the exclusive administration of export subsidies for the three cheeses. Trade, as such, was not the object of any state monopoly in Switzerland, and this had been made clear in the Chairman's conclusions at the close of the Trade Policy Review. In the light of ongoing developments, a notification of the SCU under Article XVII might be made in 1997.

46. The representative of New Zealand said this raised the question as to whether STEs had to necessarily be the exporters or importers of products, or whether they engaged in activities such that they had a significant impact on the level and direction of trade. The latter was New Zealand's interpretation of the Understanding on Article XVII. The fact that the SCU did not export was not the relevant factor, as it did purchase from producers of Switzerland's main cheese varieties, and by its purchases and sales had a significant impact on the level and direction of trade in these products. Thus, there was a notification obligation.

47. The representative of Argentina read out the text of the definition in paragraph 1 of the Understanding on Article XVII and said that New Zealand's comments were on point. Switzerland's response that it might notify this STE's activities was constructive.

48. The representative of the United States said that his delegation shared New Zealand's and Argentina's interpretation of the notification obligation and coverage of Article XVII. In the context of developing the illustrative list, it would be wrong to assert that an STE had to engage in trade, as it was very possible for it to have an effect on trade without engaging in importation or exportation.

49. The representative of Switzerland said that it was not an easy matter to notify a regime that was undergoing transformation, as was the SCU.

(xi) Thailand (G/STR/N/1/THA; G/STR/W/2, 4, 10, 13)

50. The representative of Thailand said that his delegation had recently submitted written replies to the questions received.

(xii) Turkey (G/STR/N/1/TUR; G/STR/W/2, 10, 13)

51. The representative of Turkey recalled that at the November meeting of the Working Party, her delegation had responded orally to the questions from the United States and Canada. Written responses would soon be submitted.

52. The Chairman stressed the need for Members to whom written questions had been addressed to respond in writing to those questions at the latest by 19 July.

53. The Secretary explained that a new document symbol was being used for the question-and-answer documents relating to the state trading notifications. From this point forward, the symbol "G/STR/Q#/MBR/#" would carry all questions and answers relating to a particular notification: "Q1" in the symbol would indicate a question or answer relating to a notification submitted in the G/STR/N1 series (with "Q2" corresponding to a notification in the G/STR/N/2 series); the number following the abbreviation for the Member would be that assigned to each of the question or answer documents submitted on that Member's notification.

54. The Working Party took note of the statements.

C. Review of the adequacy of the 1960 questionnaire and the coverage of state trading enterprises notified under paragraph 1 of the Understanding

55. The Chairman recalled that at the February meeting, it was agreed that work on revision of the 1960 questionnaire would be most efficiently pursued in an informal setting, rather than in formal plenary meetings of the Working Party. Since the plenary meeting in February, three informal meetings had been held for the purpose of advancing work on both the revision of the questionnaire and on the development of an illustrative list. In his view, considerable progress had been made in those meetings, and there was now a working text which had recently been circulated to all delegations in G/STR/W/30.

56. He made a brief report to the Working Party on the informal meetings, for the benefit of those who had not participated in them. The meetings had been held on 2 April, 9 May and 23 May. The two items under consideration were the revision of the 1960 questionnaire and the development of an illustrative list. These two tasks had been seen by participants as inextricably linked. The basis of work on the revision of the questionnaire had been, in the absence of any other proposals, a text submitted by the United States in December 1995. That delegation had recently submitted a revised text which attempted to take into account the concerns raised and comments made by participants in the course of the informal meetings. At the most recent of these meetings, the United States had suggested, and the group had agreed, that once the December draft was revised, it would be turned over to the Chairman and henceforth would be the latter's responsibility, in the context of any further changes. This revised draft had been circulated to all Members in G/STR/W/30. Thus, the draft text should no longer be considered to be a US proposal but rather, from this point forward, a Chairman's text.

57. He emphasized that participation in the informal meetings was open to any delegation wishing to attend, and asked delegations having comments or questions on the substance of the text in G/STR/W/30 to reserve those for the next informal meeting, which would be held in September.

58. The representative of New Zealand welcomed the revision prepared by the United States even if his delegation did not agree on certain areas, such as the pricing information to be sought.

59. The representative of the United States said that the draft in G/STR/W/30 was a big improvement over what had been tabled in December. He hoped that the process could be expedited in the autumn, and an informal US goal was to complete this work, as well as work on the illustrative list, by the end of the year. This did not seem an unrealistic goal in light of the importance of this work in the context of pending accessions.

60. The representative of the EC said that his delegation intended to continue to participate in this work in the autumn. This was an important subject for the Community, which also hoped to complete the work by the end of the year so that the next round of notifications for 1997 would be done on the basis of a revised questionnaire.

61. The representative of Romania emphasized that the work on the questionnaire was closely linked to work on the illustrative list and hoped that work on the two issues would move in parallel.

62. The Working Party took note of the statements and agreed that the Chairman would continue to hold informal consultations, open to any interested delegation, on the revision of the 1960 questionnaire, using the draft text in G/STR/W/30 as a basis for further work.

D. Development of an illustrative list showing the kinds of relationships between governments and enterprises and the kinds of activities engaged in by these enterprises

63. The Chairman recalled that at the Working Party's February meeting, it was agreed that work on the illustrative list would be most efficiently pursued in an informal setting along with the revision of the 1960 questionnaire, to which it was closely linked. At that time he had invited delegations wishing to do so to submit written proposals regarding the illustrative list for circulation to Members. However, and while this issue had been discussed to some extent in the informal meetings, to date no such proposals had been submitted.

64. In light of this situation and in order to advance work on this issue, he suggested that the Working Party take as a starting point Paragraphs 101 and 102 of the Secretariat background paper (G/STR/2). He suggested that delegations reflect on the elements in these paragraphs and invited specific comments on them. He welcomed and encouraged those wishing to comment at the next informal meeting or to put forward a written proposal to do so.

65. He stressed the importance of this exercise in the context not only of work on a revised questionnaire, but also - and perhaps more fundamentally - in the context of developing a clearer and more precise understanding of what notifiable state trading was in the WTO regime. The delegation of Australia would shortly circulate a text that put down some views on how to get through the maze in this area.

66. The representative of Canada agreed with those who had said that this exercise had to move in parallel with work on the revision of the questionnaire. He stressed that the goal was an illustrative, and not a definitive, list of activities and relationships; thus, it could be revised in light of future experience.

67. The representative of the United States said that while it was true that work on the illustrative list would have implications for notification obligations, conceptually it was a very difficult task. For example, not all of the activities listed in paragraph 102 of the Secretariat paper could be considered to be of equal importance. This hierarchy had to be recognized and was the basis of most of his delegation's ideas on the illustrative list. The US was trying to develop a conceptual approach to the illustrative list that recognized the manner in which some of these activities, including the non-trade

ones, could have an impact on trade. His delegation intended to table a proposal at the next informal meeting.

68. The representative of New Zealand said that the previous discussion highlighted a significant distinction between this and other illustrative lists, in that this list was to be a guide to help governments to determine whether the operations of an enterprise which it granted some privilege fell within the definition of state trading. His delegation had noted in the informal meetings that it supported the two paragraphs from the Secretariat paper as the basis for an illustrative list. The list of both activities and relationships should be as comprehensive as possible without attempting to be exhaustive. His delegation hoped to make a further contribution on this issue at the next informal meeting.

69. The representative of Mexico said that any work in this area had to hew to the definition laid down in Article XVII and the Notes thereto, and in the Understanding. Care should be taken in developing the list not to change this definition. He stressed that, as Mexico had said at previous meetings, activities by STEs related to domestic production could not be considered to be notifiable state trading operations. Thus, paragraphs iii, iv, v and vi of paragraph 102 in the Secretariat paper should not be included on the list. These activities, in respect of domestic production, were not those which could identify or typify an enterprise as an STE.

70. The Chairman suggested that Mexico put its views in writing, and said that the Working Party would have a clearer idea of what Mexico thought appropriate for the list when its notification was received.

71. The representative of Argentina agreed that accepted definitions should not be modified. However, the coverage should be ample and the burden of proof as to whether or not an agency or organization - which was either a state monopoly or enjoyed certain privileges - had an impact on trade would depend on each country and on the replies given to the questionnaire. Argentina believed that the elements in paragraphs 101 and 102 were a useful basis for an illustrative list, but was open to other views on this matter. It should be kept in mind that this was only an illustrative list; activities could be included on which there was consensus.

72. The representative of Mexico said that this work would be important in future in terms of helping Members to determine what enterprises they would notify. He said that the Secretariat background paper had been neither accepted nor rejected, but was merely on the table for analysis.

73. The representative of Cuba said that his delegation shared the concerns expressed by Mexico and Argentina.

74. The Working Party took note of the statements and agreed that this issue would continue to be considered, along with the revision of the questionnaire, in informal consultations.

E. Date of next meeting

75. The Chairman proposed that the next meeting be held on 26 and 27 September 1996.