

CHAPTER 16

State trading

Summary of the main rules

The GATT rules impose two main obligations on member countries in regard to State trading enterprises. First, they require these enterprises to conduct their business on the basis of commercial considerations. Second, in order to ensure transparency in the products imported and exported by such enterprises, they require member countries to notify the WTO secretariat of relevant information on their activities.

Understanding on the Interpretation of Article XVII of GATT 1994, 1

1. General

Although with the increasing trend towards privatization, countries are reducing their reliance on State trading, it still continues to play an important role in at least some countries in the import and export of certain goods, particularly food and food products and commodities traded in bulk. State trading enterprises are broadly defined as:

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.

State trading needs to be distinguished from government procurement, which is discussed in chapter 15. Under government procurement, the domestically produced or imported product is purchased by a government agency for its own use or consumption or for the production of goods or services for sale. In the case of State trading, imports are obtained primarily for sale in the home market and domestic products are purchased for sale in the home market and for export to foreign markets.

The GATT rules on State trading basically apply to State trading enterprises engaged in the import and export of goods.

2. Main obligations

2.1 To conduct business in accordance with commercial considerations

GATT 1994, Article XVII:1

The basic obligation the GATT imposes on State trading enterprises is to require them to “act in

a manner consistent with the general principles of non-discriminatory treatment". It states that, in practice, this can be achieved by:

- ❑ Making "purchases or sales solely in accordance with commercial considerations, including price, quality, availability and marketability, transportation and other conditions of purchase or sale"; and
- ❑ By affording adequate opportunity to enterprises in other countries to "compete for participation in such purchases and sales."

2.2 Transparency

The other major obligation under the Agreement is transparency. The notification obligations that the GATT imposes for this purpose have been further strengthened by the adoption of the Understanding on the Interpretation of Article XVII of GATT 1994 (State trading) in the Uruguay Round. The Understanding requires member countries to notify the Council for Trade in Goods of:

- ❑ State enterprises engaged in foreign trade;
- ❑ The products imported or exported by them; and
- ❑ Other information (given in accordance with a questionnaire) so as to permit a clear appreciation of the manner in which the enterprises conduct their trade.

The notifications are to be reviewed by a working party established by the Council for Trade in Goods in accordance with the provisions of the Understanding. The deliberations of the working party are expected to result in the preparation of a

compendium of State trading enterprises in different countries, the products which they import and export, and their relationship with their governments. The establishment of the working party will also enable member countries to exercise a greater degree of surveillance over the activities of these enterprises with a view to ensuring that in practice they conduct their business strictly in accordance with commercial considerations.

Understanding on Article
XVII, 4

It is also open to a country to make a counter-notification to the Council for Trade in Goods when it considers that a State trading enterprise in another country has not met its notification obligation with respect to its State trading activities.