

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

State Trading Enterprises

Communication from Hungary

The following communication, dated 23 April 1999, has been received from the Permanent Mission of Hungary.

Issue

1. Article XVII of GATT 1994 dealing with the activities of state trading enterprises stipulates the right of Members to grant special rights or privileges to a limited number of governmental or non-governmental enterprises. At the same time, it reminds Members that through their operation state trading enterprises can erect significant non-tariff barriers to trade.
2. Despite some decrease of the incidence of state trading in world trade over the years, it is still applied on a wide range of products by numerous Members as well as by several countries in the process of acceding to the WTO. The latter factor, together with the significant new concessions and obligations brought about by the Uruguay Round, underlines the necessity to review the adequacy of the present rules governing the activities of state trading enterprises in order to ensure that concessions are not nullified or impaired and commitments not circumvented.
3. The potential for trade distortion and the likelihood of the existence of non-tariff barriers is arguably the highest when state trading enterprises benefit from monopoly import/export rights. This is the instance where actual decisions of the state trading enterprises are although to varying degrees, directly or indirectly, but still influenced by government objectives which are not solely in accordance with commercial considerations. Furthermore, the need for granting such rights is seriously called into question as they do not seem to be indispensable for attaining their stated objectives.
4. Present rules that apply to state trading enterprises do not seem to be adequate, since unlike many other provisions of the WTO which constitute exceptions to general rules, they not only lack the necessary precision that would ensure that their enforcement is feasible but also do not take account of the implications of the new disciplines introduced as a result of the last round of multilateral trade negotiations. During the Uruguay Round there was an attempt to address the shortcomings of Article XVII, but the Understanding on the Interpretation of Article XVII of GATT 1994 that was negotiated appears to fall short of clarifying and strengthening the substantive requirements of Article XVII and focuses exclusively on the enhancement of transparency of state trading activities. Although there can be no denial of the importance of transparency in ensuring compliance with WTO rules in general, it has to be pointed out that in the particular case of state trading enterprises, such an

approach, if applied exclusively, does not seem to be sufficient since it is rather unlikely that any given government would notify that with or without its active involvement a state trading enterprise within its jurisdiction engages in activities that are contrary to the relevant rules of the WTO. In view of the special character of the relationship between governments and their state trading enterprises and of the fact that the burden of proof is at present on the aggrieved party, in the absence of strengthened rules, the latter will almost never be in the position to successfully challenge those practices that are not in conformity with the relevant rules.

Proposal

5. Participants shall review Article XVII of GATT 1994 and related provisions of the WTO (Understanding on the Interpretation of Article XVII of GATT 1994, Article II.4 of GATT 1994, Article 4.2 of the Agreement on Agriculture) with the aim to ensure non-discrimination (MFN and national treatment) and the balance of concessions and obligations, including through the elimination of de jure and de facto monopoly import/export rights.
