

**Chair's Reference Paper<sup>1</sup>**

EXPORTING STATE TRADING ENTERPRISES

***Background***

Paragraph 6 of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC) states, *inter alia*, that:

"As a means of ensuring that trade-distorting practices of STEs are eliminated, disciplines relating to exporting STEs will extend to the future use of monopoly powers so that such powers cannot be exercised in any way that would circumvent the direct disciplines on STEs on export subsidies, government financing and the underwriting of losses."

Paragraph 17 of Annex A of the Agreed Framework (WT/L/579) states that:

"The Doha Ministerial Declaration calls for "reduction of, with a view to phasing out, all forms of export subsidies". As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date."

Paragraph 18 states, *inter alia*, that:

The following will be eliminated by the end date to be agreed:

"Trade distorting practices with respect to exporting STEs including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses. The issue of the future use of monopoly powers will be subject to further negotiation."

Paragraph 19 states:

"Effective transparency provisions for paragraph 18 will be established. Such provisions, in accordance with standard WTO practice, will be consistent with commercial confidentiality considerations."

Paragraph 20 states:

"Commitments and disciplines in paragraph 18 will be implemented according to a schedule and modalities to be agreed. Commitments will be implemented by annual instalments. Their phasing will take into account the need for some coherence with internal reform steps of Members."

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<sup>1</sup> The headings used in this reference paper are indicative only.

Paragraph 21 states:

"The negotiation of the elements in paragraph 18 and their implementation will ensure equivalent and parallel commitments by Members."

Paragraph 25 states :

"STEs in developing country Members which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status."

## Structure for Discussion

### *Introduction*

1. Recalling that state trading enterprises are already the subject of various GATT/WTO provisions, it is useful to make reference to the fact that exporting STEs will still be subject to such provisions where they are operated in a manner consistent with the disciplines that we are negotiating in the context of the Doha Round. To put it more clearly, to the extent that there is any arguable daylight between what went before and what is to apply henceforth it would need to be explicit which language should prevail when and if it came to a matter of interpretation over how the varying provisions should be read together. To this end, it may be possible for the following language along the following lines to be used as a chapeau:

*Members shall ensure that agricultural exporting state trading enterprises are operated in conformity with the provisions specified below and, subject to these provisions, in accordance with Article XVII, the Understanding on the Interpretation of Article XVII and other relevant provisions of GATT 1994, the Agreement on Agriculture and other WTO agreements.*

### *Definition*

2. From the last discussion that I convened on exporting STEs in developed Members, it was clear that there are three different options that Members favour with respect to the definition. Some Members believe that the current definition, as provided in the Understanding on the Interpretation of Article XVII, remains sufficient. Others however believe differently. One Member believes that this definition is too broad and would prefer a more targeted definition while another Member believes that this definition is too narrow and should be broadened. From the discussions, it appears that in the latter two cases, the Members concerned have the same end-point in mind, but different perspectives on how to get there.

3. Therefore, further guidance is required on how to bridge the divide between the following two options:

- (i) the existing definition in the Understanding the Interpretation of Article XVII modified slightly to take account of the fact that we are only talking about agricultural exporting STEs;

*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~~ agricultural exports.*

- (ii) an alternative definition. Here I believe we need to ask ourselves, what is it about the existing definition that is not sufficient to capture all agricultural exporting STEs that Members are concerned about – is it definitional or operational? Definitional issues are of course notoriously difficult to resolve in a negotiating sense and we need to be sure that they are an operationally efficient way to achieve the perhaps more evidently specific and commercially concrete negotiating objectives explicitly in the minds of Members. In the past, the following words have been proposed as an alternative:

*Any governmental or non-governmental enterprise, including a marketing board, which has been granted, or which enjoys de facto as a result of its governmental or quasi-governmental status, exclusive or special rights, privileges, or advantages with respect to exports of agricultural products, including any such statutory or*

*constitutional powers, in the exercise of which the enterprise influences exports of agricultural products.*

### ***Direct Disciplines***

4. The Agreed Framework and the Hong Kong Ministerial Declaration are clear that there will be direct disciplines for exporting STEs on export subsidies, government financing and the underwriting of losses. Therefore, as a starting point, Members need to agree on possible language regarding the following three disciplines. This language could be based on the following:

*In order to ensure the elimination of trade distorting practices with respect to exporting state trading enterprises, Members shall eliminate by the end of 2013, in parallel with the elimination of all other forms of export subsidies:*

- (a) *Export subsidies, as defined by Article 1(e) of the Agreement on Agriculture as may be amended, provided to or by exporting state trading enterprises, consistent with the provisions of Article 9.4 of the Agreement on Agriculture as may be amended;*
- (b) *government financing of exporting state trading enterprises, including any preferential access to capital or other special privileges with respect to government financing or re-financing facilities, including inter alia, borrowing or lending at below market rates, debt write downs or debt write-offs, or government guarantees for commercial borrowing or lending;*
- (c) *the underwriting of losses, either directly or indirectly, including losses or reimbursement of the costs or debts owed by export state trading enterprises on their export sales.*

5. While our mandates are clear on the need for direct disciplines on the above three issues, our mandates are also clear that our objective is to eliminate all trade-distorting practices. The use of the word "including" is difficult to reconcile with a view that the above constitutes an exhaustive list, but it is equally difficult to discern any consensus agreement on what else specifically would be at issue. Therefore, in addition to the above and bearing in mind the negotiating status of competition policy issues under the WTO, are there any other trade-distorting practices that must also be disciplined? To this point, there has not seemingly been any other specific issue raised. If not, should we not reach a clear understanding that is a fact? Of course, the specific case of 'monopoly powers' is to be dealt with, and we turn to that below.

### ***Monopoly Powers***

6. The Hong Kong Ministerial Declaration makes it now explicit that the future use of monopoly powers is a trade distorting practice and that disciplines will indeed extend to them. This, it might be added, now provides a rationale for the use of the word "including" in the original July framework and would also, if this is the view of Members, mean that there is no contradiction in considering the list of trade distorting issues now closed, as canvassed above.

7. Of course, differences in approach remain, despite the convergence in Hong Kong. One view is that the discipline at issue is how to ensure that monopoly powers cannot be used to circumvent explicit disciplines on export subsidies, government financing and the underwriting of losses. Another view is that there should be explicit and unambiguous provision that monopoly powers should be eliminated. Indeed, proponents of the latter view may well not see a fundamental contradiction between the two rationales: they simply consider that their approach is the most reliable way to ensure the former in any case.

8. From the discussions to this point, I believe that, textually speaking, the issue is not particularly complicated. It comes down to choosing between two basic approaches. In this vein, we have two options along the following lines, which will require fundamental decision at a certain point.

Either:

(d) *prohibit/eliminate the granting/maintenance of monopoly power to any exporting state trading enterprise.*

Or

*Furthermore, any use of monopoly powers by an exporting STE cannot be exercised in a manner which, either directly or indirectly, effectively circumvents, or threatens to circumvent, the obligations established above.*

### ***Special and Differential Treatment with Respect to Monopoly Powers***

9. In addition to longer implementation periods for the phasing out of all forms of export subsidies, paragraph 25 of the Agreed Framework notes that developing countries will receive "special consideration" for maintaining monopoly status where the exporting STEs enjoys special privileges to preserve domestic consumer price stability and to ensure food security. Therefore, in the absence of a decision regarding the future use of monopoly powers for developed country exporting STEs, it is difficult to determine the precise need for special provisions for developing countries.

10. That said, one issue which has been raised in the context of maintaining monopoly status for developing and least-developed countries, but is arguably outside the scope of paragraph 25 of the Agreed Framework, is for exporting STEs with low shares of world exports. Without wanting to prejudge the outcome on the future use of monopoly powers, I believe it is worth Members reflecting on the following:

*Any exporting state trading enterprise maintained by a developing or least-developed country, for which monopoly powers have been granted, and whose share of world exports of the agricultural product or products concerned is less than [...] percent shall be exempt from the provisions of paragraph [...], such that the entity's share of world exports of the product or products concerned does not exceed that level in [...] consecutive years.*

### ***Other Issues***

11. To-date, the discussions have not focused on issues relating to implementation (the phasing-in of rules on exporting state trading enterprises in parallel with the elimination of all forms of export subsidies) and transparency provisions. While important in their own right, it is difficult at this stage to move ahead with these issues until we have clarity on the operational disciplines for exporting STEs.

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