

GENERAL AGREEMENT ON TARIFFS AND TRADE

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STATUS OF YUGOSLAV ECONOMIC ORGANIZATIONS (ENTERPRISES)

Memorandum submitted by the Yugoslav Government for the information of the Working Party

1. This statement is based upon the assumption that the existence of a market economy, as well as competition between economic entities within a Member State, constitute the basic pre-requisites for the application of GATT regulations,

The statement also considers that for a market economy and competition to operate, economic enterprises must enjoy autonomous legal status and economic independence.

2. The primary instrument for the operation of a planned economy involving detailed production and distribution plans, together with a special price formation system, is obviously a type of enterprise that can facilitate control of the economy by administrative authorities.

The main features of this type of enterprise are to be found in the State hold upon matters effecting its establishment and liquidation, as well as the raising, increasing or reduction of its capital, and, in general, the whole of its machinery of management. The Director of the enterprise himself is a government official, acting as administrative and operational head, and receiving his directives from a higher economic body. The enterprise possesses no independent administrative machinery and is not independent economically. The administrative and operational management controls its means of production and can even divert them to another sector of the economy.

3. As this method of planning no longer exists in Yugoslavia, enterprises of the type just described are also non-existent. The passage of the law on the management of economic enterprises opened the way in 1950 to a new method of planning and to a completely new type of enterprise.

The main features of this new method of planning are that it confines itself to defining the general lines along which economic activity is to develop together with the rates for the formation and distribution of the national income, general trends in production and trade, the increase in the standard of living to be achieved, and so forth. Economic organizations, including enterprises, are no

longer charged with specific tasks in matters relating to the type, variety and volume of production. On the contrary, their activities are provided with the necessary guidance by means of economic measures intended to prevent them from deviating from pre-established proportions.

4. In this respect it is important to stress:

- (a) that the present status of enterprises in Yugoslavia is totally different from that of the State enterprises that existed up to 1950 during the phase of State control of the economy;
- (b) that the present status of enterprises in Yugoslavia is based upon the principle of legal and economic independence allowing competition between enterprises, and that, to the extent that other import and export measures provide for identical treatment to be accorded to foreign goods, the regime to which these enterprises are submitted make it possible for certain foreign articles to compete on the Yugoslav market;
- (c) that the Yugoslav foreign trade system does not include any de jure or de facto monopoly;
- (d) that foreign enterprises and firms doing business with Yugoslav enterprises encounter no restrictions under identical conditions of competition.

5. Yugoslav legislation rests on the principle of the existence of a market economy and of free competition between enterprises. Article 55 of the Decree on commercial activity states that the Yugoslav economy is to develop "according to market conditions". Similarly Article 67 of the same Decree prohibits any restraint of free competition, while Article 199 of the Law on economic associations dated 20 December 1957 expressly states; "the fact of setting up business associations must never be allowed to restrain free competition in the production and sale of goods or in the provision of services of an economic nature to enterprises outside the association".

In addition to these general principles, reference must be made to Article 48 of the Decree on the establishment of enterprises and shops, stating that the style of the enterprise shall be protected by law, as well as to Article 38 of the law relating to the assets of economic organizations which states that patents and licences shall be considered as the basic economic factors for any enterprise. Courts of Honour at the Chambers of Commerce pass judgment on offences against accepted commercial practice on the part of the economic organizations. Such offences are defined as follows in Article 131 of the law upon associations within the economic system: "Any action by economic organizations which, being contrary to commercial practice, causes prejudice either to society at large or to other economic organizations or to private individuals, as well as any action which evades the contents of the regulations or is damaging to the country's reputation abroad, may, according to the circumstances of the case, be considered as violations of accepted

commercial practice". This definition also covers unfair competition, as is clearly indicated in paragraph 8 of Article 37 of the Decree on foreign trade activity, which prescribes penalties for unfair competition.

6. Within the framework of a market economy and the machinery of free competition, certain institutions and types of institution have been established in order to ensure the purely technical operation of this machinery. From the formal point of view these types of institutions are the same as those existing in both the capitalistic and the socialistic economic systems and are based on the principles of free competition. However, from the substantive point of view, and in terms of the objectives to be achieved, there may be fundamental differences. The history of legal institutions reveals many examples where certain of these institutions which were established for a specific purpose have deviated from the original purpose and have become the technical instruments for attaining social objectives of a different nature. The particular features of any legal system normally depend upon the type of social order involved, which can borrow or take over certain legal institutions from other social systems in order to attain its specific objectives.

Although the principles of free competition constitute the basis of the Yugoslav economic system, Yugoslav legislation is not yet sufficiently developed and does not contain all the necessary technical and legal provisions to regulate these questions in relation with the operation of the machinery of free competition. It can nevertheless be stated that the machinery of free competition between economic organizations is a part of the Yugoslav economic system even if it is as yet insufficiently developed. The predominant tendency in the Yugoslav economic system today is to provide a socialist economy with conditions which, mutatis mutandis, allow the machinery of a market economy and free competition to operate in so far as they do not affect the basic nature of this economy or jeopardise its fundamental objectives.

7. As regards the status of Yugoslav enterprises it is important to mention the basic aspects of the organization of these enterprises which confer upon them the characteristics of independent and self-managed economic entities capable of being integrated to a system of free competition. These aspects are as follows;

- (a) legal and economic independence of the enterprises (legal and financial capacity);
- (b) autonomous status of the management bodies of the enterprises;
- (c) method of constitution and liquidation of the enterprises.

8. Within the framework of the present system and especially during its last phase governed by the law dated 23 December 1957 on the assets of economic organizations, the enterprises are granted full autonomy in matters relating to the management and employment of the facilities they receive from the community or acquire during the course of their activity. In this respect, reference should be made to certain essential provisions of the above-mentioned law.

Article 1 is worded as follows: "Economic organizations shall, through the operations they perform, provide themselves with the necessary means for the permanent exercise of their activity".

Article 5 provides that the granting of financial facilities, upon any grounds whatsoever, to an economic organization does not imply any rights to a distribution of the profits of this organization, or any other rights resulting from the operation of the organization.

Article 8 states that an economic organization has the right to employ any facilities that it has acquired, either through its own activity, through a loan, through other forms of credit operation or by any other means permitted by the law in question and in accordance with its provisions.

The right of employing facilities also covers the right to dispose of facilities within the limits of the law. The rights of an economic organization in this respect can only be restricted by a Federal law or by Federal social planning.

Article 9 gives economic organizations the right to enjoy legal protection against any violation of the right to employ its facilities. No action by any State organ, except Federal legislation, can deprive economic organizations of their facilities.

9. Finally, economic organizations must allocate their net profits, part of which is distributed as workers' income, the rest being ploughed back into reserves.

The logical outcome of this autonomy from the point of view of the utilization of means of production is that economic organizations are committed to meet their obligations to the full extent of their assets, unless the law provides otherwise. Similarly, in matters of trade, economic organizations enjoy a wide degree of autonomy which they could never possess under a system of administrative economic management, or a system of "State enterprises", in the strict sense of the term;

- (a) the economic organization is allowed to dispose of its means although it may not sell such of its basic assets as machinery, plant and so forth, to private individuals;
- (b) commercial transactions relating to basic assets, such as the working fund and common consumption goods, are performed under sale/purchase agreements or under other rules relating to patrimonial assets;
- (c) the workers council of the organization decides upon the purchase or sale of items included under basic assets and common consumption goods. However, the rules of the organization may authorize the Management Committee or the Director of the organization to take decisions relating to the purchase or sale of goods not exceeding in value the amount stipulated in the regulations. Any contracts entered into by the Director is valid regardless of the above-mentioned authorizations which are of a purely internal nature.

10. The financial autonomy of economic organizations is also reflected in the method used to determine and to distribute net profits.

Economic organizations also possess financial autonomy. They pay taxes and discharge other financial obligations resulting from existing legal provisions. They determine their profits after deduction of overhead expenses, depletion charges and contributions to professional bodies and associations. Before profits can be determined, economic organizations must pay interest on fixed assets as well as land tax. This tax, although, on principle, a flat rate tax, varies according to the organizations in the different sectors or groups, as defined by law.

Economic associations are required to pay a contribution based on profits (a form of income tax). This contribution is of a progressive nature and varies according to the minimum individual workers' income, as established by the Assembly for categories of workers employed in the different economic sectors, and total profits. The rate of the contribution to be paid out of profits has been established by a statute of the Peoples' Assembly at Federal level. This method of determining the amount of the contribution has been designed as an incentive to economic organizations to make maximum profits, a fact that depends largely upon the degree of productivity of labour together with the means available to the organization.

The balance, after deduction of the various contributions, constitutes the net profit of the organization, which is distributed by the management, after paying the minimum amount required by law into the reserve fund, and allocated between workers' and employees' income on the one hand and miscellaneous funds, such as the basic assets fund, the working fund, or the common consumption goods fund (a form of social security fund) on the other.

Finally, enterprises contribute to the budget from the individual incomes of salary-and-wage-earners - which constitute a form of tax on salaries and wages.

Economic organizations also pay a tax on turnover in respect of certain articles. The amount of the tax is determined by the Executive Federal Council of the Federal Government, and the profits of the organizations are calculated after it has been deducted.

It thus follows that economic organizations meet all tax liabilities as determined by Federal legislation, and State control of economic organizations is thus limited to their conforming to the provisions of the law under penalty of sanctions that are, in fact, limited to fines.

The economic organizations thus derive their income from the sale, on the market, of the articles or commodities they produce, and their success depends mainly upon the results of their activity.

The new system thus clearly tends to increase both the interest and the initiative of the aggregate body of the workers in achieving increased efficiency and productivity, to allow the economic organizations the widest possible degree of independence in the constitution of their assets and to lay as solid a foundation as possible for the promotion of the independent management of patrimonial assets.

11. As regards the autonomy of the organs that direct the activity of the organizations, the first point to stress is that the participation of the aggregate body of the workers in the management of the enterprise is one of the basic rights guaranteed by the constitution.

Under the previous system the Director General managed the enterprise as a Government official or as an administrative or operational director, that is, as the representative of a higher official organ, and the part played by the aggregate body of the workers in the management of the enterprise was relatively small.

Today this administrative and operational control no longer exists, and the enterprises have received their autonomy.

Under the new system, the Director of the enterprise as one of its constituent elements, must carry out the decisions of the organ representing the aggregate body of the workers, that is, of the Management Committee and the Workers' Council. The basic principle resides in the fact that the Director acts as the independent executive organ of the enterprise which he represents and on behalf of which he contracts agreements towards third parties. Should he commit the enterprise to any form of engagement without prior authorization by the organ representing the aggregate body of the workers, any such engagement would remain valid towards third parties, though the Director would be held responsible for any damage ensuing to the enterprise.

12. The extent to which economic organizations are subject to State control remains to be examined.

The basic principle is that the State authorities verify the legality of operations of the enterprises. This check is carried out by means of appropriate inspections (financial, market, labour, health inspections, etc.).

In addition, measures are provided to protect the property of the enterprise, but they are rarely applied. If the People's Committee of a commune finds grave irregularities which cause or threaten to cause serious damage, or if it is convinced that they cannot be overcome by any other measures provided under the law of the land, it is entitled, pursuant to Article 113 of the Law on the resources of economic organizations, to take one of the following decisions: (a) to order compulsory administration of the economic organization for a maximum of one year; (b) to relieve the

director of his office or dissolve the workers' council and the management committee, and if need be impose compulsory administration at the same time.

In deciding to dissolve the workers' council and the management committee, a date must also be fixed for new elections which must take place within a period of two months. This control over the utilization of the resources of economic organizations should not be considered as restricting their independence or substituting State administration for independent management. Compulsory administration and the dissolution of the managing body can only be ordered once it has been established that grave irregularities exist which have had harmful effects. Furthermore, these measures are of a temporary nature and must quickly be replaced by normal independent management by the community of workers in the enterprise.

In other words, this control is applied only in exceptional circumstances and to the extent that the workers' self-administration body has failed to operate the enterprise in a proper manner; it is an essential measure for complementing and correcting self-administration by the workers at the present juncture.

The law also makes provision for fines in respect of economic offences committed by the economic organizations. This system of sanctions does not, however, differ greatly from that applied in other countries to joint-stock and other commercial companies.

13. In accordance with the Decree governing the establishment of enterprises and shops, the right to establish an enterprise is granted to State agencies and to economic, co-operative and social organizations, as well as to groups of citizens, subject to certain conditions specified in that Decree. The relationship between the founder organization and the enterprise which it establishes is determined by contract. During the first stage of establishment, the competent authorities appoint a director of the enterprise. He is responsible for taking all necessary action to bring the enterprise into operation. The next stage is the actual establishment, comprising the election of the workers' management body, adoption of regulations and the tariff scale, and the handing over of the enterprise for management by the workers' community. The establishment of the enterprise must be formally recorded in the register of economic organizations, and the workers' community becomes responsible for its management as from that date.

The enterprise may cease to exist in three cases, as follows:

- (a) if proceedings for compulsory liquidation are instituted; this is similar from the legal and technical point of view to the system existing under the legislation of capitalist countries;
- (b) if the People's Committee decides to suspend the enterprise's activities because the necessary economic conditions are no longer fulfilled. These conditions are considered to be fulfilled if the enterprise pays the

standing contributions to the social community and earns enough to pay the guaranteed basic wages of its workers and employees. In this case, the People's Committee could not decide to suspend the activities of the enterprise;

- (c) the enterprise's activities may also be suspended, in certain cases specifically provided under the law, by decision of the People's Committee or another State agency.

14. As already mentioned, Yugoslavia has no foreign trade monopolies, either legally or in practice. In this connexion, reference may be made to the provisions of the Decree concerning foreign trade transactions.

In accordance with that Decree, all the organizations listed in the register of economic organizations concerned with foreign trade may engage in transactions connected with such trade.

The transactions considered to be connected with foreign trade are those relating to the import and export of goods, the representation of foreign firms, international consignment, and forwarding international transport of goods (whether by road, inland waterways, sea or air), commission business of an international character, verification of quality and quantity of goods, the execution of construction work abroad, tourist arrangements with other countries, and the execution of other services relating to trade with other countries.

The Decree prescribes the following general conditions to be fulfilled by an enterprise in order to be included in the foreign trade register:

- (a) the activities connected with foreign trade in which the economic organization intends to engage must correspond to its economic activity;
- (b) its organization, technical equipment, installations, the nature and quality of production, that is to say, the economic organization's operations, must be such as to ensure that operations connected with foreign trade will be of a continuing nature;
- (c) the responsible employees engaged in foreign trade must possess the experience and professional qualifications which such work demands;
- (d) the enterprise must have loan capacity;
- (e) the reserve fund must at any time have available a certain amount of immediate liquidity;
- (f) it must deposit with the National Bank of Yugoslavia, out of its own resources or those made available to it by the founder organization, a certain sum as security for the carrying out of transactions connected with foreign trade;
- (g) it must fulfil the conditions laid down in the special regulations concerning the various sectors of foreign trade.

The Committee for Foreign Trade may refuse to include in the foreign trade register an organization which fulfils the above-mentioned conditions; if the Committee establishes that, from the economic point of view, there is no reason why that organization should deal with matters of foreign trade. At the time of registration of production organizations with a view to export transactions concerning goods produced by them, the Committee does not make an assessment of economic factors, but is required to register any economic organization which fulfils all the other conditions. The economic organization is entitled to appeal to the Federal Executive Council against the decision rejecting its request for inclusion in the foreign trade register.

15. An economic organization may be struck off the foreign trade register in accordance with a judgment given by the tribunal (disciplinary council) of the Chamber of Foreign Trade, or in accordance with a judgment given by the competent economic tribunal, in the following cases:

- (a) if it ceases to fulfil any one of the conditions for inclusion in the foreign trade register;
- (b) if it engages in foreign trade transactions for which it is not registered;
- (c) if it engages in unfair transactions (unfair competition);
- (d) if by its actions it causes prejudice to the social community or to the national prestige abroad;
- (e) if it does not respect the compulsory conclusions arrived at in the course of consultations in the Federal Chamber of Foreign Trade.

The economic organization may enter an appeal before the Supreme Economic Tribunal within fifteen days after receiving the judgment striking it off the foreign trade register.

As may be seen from the above regulations, there are no State monopolies in the field of foreign trade. Any enterprise which meets certain specified objective conditions is entitled to apply for inclusion in the foreign trade register and, thereafter, to engage in activities connected with foreign trade. Similarly, it can be struck off that register only if it ceases to fulfil those objective conditions or infringes them through its activities.

Furthermore, there should not be any monopolies in practice, since the economic system encourages competition between the foreign trade enterprises. What is forbidden for these enterprises is to engage in unfair competition. The system as a whole tends to ensure the necessary conditions for the existence and unhampered functioning of the mechanism of competition.

16. One question which may be of particular interest to contracting parties to the General Agreement is the position of foreign enterprises and firms in Yugoslavia - in other words the extent to which they can operate directly and permanently in Yugoslav territory and enter into competition on the Yugoslav market.

It must first be emphasized that under our social and juridical system, legal persons who are foreigners can transact business with Yugoslav enterprises and can, if need be, ensure their rights by having recourse to Yugoslav justice.

Secondly, it must be pointed out that in Yugoslavia, the right of private ownership of production and trade resources does not exist. Consequently, a foreign enterprise - in the same way as a Yugoslav enterprise founded with private capital - could not engage in any permanent activity directly connected with industry and commerce on Yugoslav territory. This is clear from the rules governing the representation of foreign firms; the latter may only carry on business permanently and directly through the intermediary of Yugoslav enterprises.

Yugoslav enterprises may represent foreign firms either in their own name and for the account of the latter, or alternatively in their own name and for their own account. Only in exceptional cases are Yugoslav enterprises authorized to sell foreign goods in their own name and for their own account, if express provision to this effect is recorded in the representation contract and in the foreign trade register.

Article 35 of the Decree concerning foreign trade transactions makes provision for the following as representation of foreign firms:

- (a) management in the name and for the account of a foreign firm of matters preliminary to the conclusion of a contract for the sale or purchase of goods or of a contract for services, as well as matters relating to the execution of such contracts (commission);
- (b) management in the name and for the account of a foreign firm of commission matters, with the right to conclude contracts for the sale or purchase of goods or for services (business representation);
- (c) management of matters relating to business representation as regards various technical services (business and technical representation);
- (d) sale of goods consigned by a foreign firm (on consignment).

The representation contract concluded with a foreign firm is submitted for approval to the Committee for Foreign Trade, as also is any contract by which a Yugoslav organization hands over to a foreign firm the management of matters concerned with representation and consignment.

17. In view of the foregoing, a foreign enterprise could not operate in Yugoslav territory through the intermediary of its permanent juridical institutions. It should not be concluded, however, that such an enterprise would be unable to compete, together with the other foreign firms, on the Yugoslav market on the same footing and without any discrimination. The foreign enterprises may at any time enter into a representation contract or establish co-operation with the various Yugoslav economic organizations, which can compete with one another. The foreign firm which is in a position to offer the best conditions on the Yugoslav market can - either directly or in co-operation with a Yugoslav enterprise - be the best competitor, since Yugoslav enterprises engage in competition with a view to taking the fullest advantage of the conditions prevailing on the market.

In conclusion, two remarks should be made:

- (a) the present-day economic system of Yugoslavia constitutes a new and original concept of socialist economy. It goes without saying that this concept will continue to develop and improve.

All the legal provisions hitherto adopted are based on a unique concept of the juridical and economic independence of enterprise, and of free competition within the conditions of the market economy which is at the same time of a planned nature.

- (b) The present statement deals mainly with the status of the Yugoslav economic organizations and the extent to which, within that framework, the basic principles of the General Agreement could effectively be implemented. It should, however, be borne in mind that the status of the enterprise is only one factor among the general problems which are of interest to the contracting parties - in other words, the rights and obligations which a new member of the organization acquires towards the other members, and vice versa.

With this in mind, it must be emphasized that the Yugoslav economic system is based on the principle of duality and of differentiation between the economic institutions (enterprises) and the administrative institutions and political and territorial authorities, from the point of view of our heritage and also from that of organization and administration. This principle of drawing a distinction between the activities of State institutions, on the one hand, and independent economic organizations, on the other, is applied in a rational manner through a series of legal provisions.