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Abstract

This research focuses on the existing international regulation on STEs as provided for in the GATT/WTO disciplines, all the RTAs notified to the WTO, and the official proposals of other relevant RTAs. The main purpose is to evaluate how and whether these disciplines adequately address the STE-related concerns. The GATT/WTO disciplines on STEs suffer from severe difficulties. The text of Article XVII of the GATT is very vague, and it fails to define STEs. While these concerns are not novel, the WTO has not yet adjusted its framework by reinforcing the text of Article XVII. This occurs notwithstanding the incidence of STEs in today's world. Despite a trend towards a decrease of state trading (without China, the number of WTO notified STEs has decreased by 59 percent), the dealings with STEs are becoming more complex and relevant with former centrally-planned economies entering international scenarios. At the regional level, the developments on state trading sharply contrast with the WTO flaws. Recent and earlier RTAs clearly define their covered entities (including SOEs) and explicitly entail for a strict MFN and national treatment application (which also extends to services STEs). Some RTAs go further by regulating the anticompetitive practices of STEs. The TPP also includes specific rules on SOE subsidies (which also apply to services). Some RTAs depart from the GATT/WTO established practice of using the nondiscrimination treatment as the benchmark for judging STEs. For these RTAs, the benchmark by which SOEs operations are judged is commercial considerations (even if discriminatory behavior takes place). In this way, they also ensure that STEs act as private actors (i.e. make decisions on a commercial basis) and not only behave on a non-discriminatory manner. As a result, the exoneration from STE disciplines of non-discriminatory measures that are nevertheless inconsistent with commercial considerations is precluded. On the other hand, some RTAs provide for enhanced and enforceable transparency rules, which compliance cannot be weakened by confidentiality concerns. Thus, while in some instances the RTAs rules converge with (or expand and fill some gaps in) the existing WTO disciplines on STEs, they also deviate from some of the GATT/WTO established practice. The fact that WTO major players (e.g. the EU and the United States), as well as countries with significant state involvement (e.g. Vietnam, Malaysia, and Singapore) have already adopted similar disciplines on state trading may encourage future multilateral (or plurilateral) negotiations on STEs.

Tesi di dottorato "The Regulation of State Trading Enterprises in International Economic Law: A WTO and RTAs Analysis"
di CASTANEDA DORA

discussa presso Università Commerciale Luigi Bocconi-Milano nell'anno 2018

La tesi è tutelata dalla normativa sul diritto d'autore(Legge 22 aprile 1941, n.633 e successive integrazioni e modifiche).

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Chapter 1

Introduction

The issue of state trading has reemerged, moving to the forefront of the trade agenda of many governments as an issue that needs to be addressed. State trading enterprises (STEs) are one of many different means by which governments are involved in or otherwise influence the market. They have represented a key element of many economies and have been used widely by nations, irrespective of their level of development. The interests in STEs has recently intensified, in part because the presence and trade effects of STEs in international markets have expanded considerably in recent years, and in part because former centrally-planned economies have entered the international scenario.

Traditionally, state intervention was primarily oriented towards domestic markets and sectors. In recent years, however, STEs are becoming increasingly internationally oriented. They have evolved from state enterprises operating in domestic markets to state enterprises operating internationally and increasingly competing with private firms (domestically and internationally). Moreover, the increasing international economic interdependence has amplified the incidence of state trading in international trade. Today, the effects of state intervention (even those oriented towards specific domestic firms and sectors) spread more easily across economies and national borders. On the other hand, the international trade expansion of former centrally-planned economies (and other large emerging market economies with significant state sectors) has been on the rise. There is a concern that STEs in these nations still benefiting from favorable business environments and undue protectionism limiting therefore market access or distorting competition on world markets.

These concerns have urged governments to ensure there is a level playing for trade between private enterprises and STEs. Disciplines on state enterprises already exist in some

international frameworks, most notably in the GATT/WTO as well as in some Regional Trade Agreements (RTAs). More recently, the official proposals of some RTAs, such as the Trans-Pacific Partnership (TTP), include comprehensive disciplines on state-owned enterprises (SOEs).

Given this context, this research focuses on some key aspects of state trading and the international contexts in which it is regulated. The regulatory frameworks under examination are the GATT/WTO multilateral disciplines and the regional disciplines contained in the RTAs notified to the WTO that are in force, as well as in the official proposals of other relevant RTAs. The key question of this research is how the WTO and RTAs regulate STEs? Do these regulations ensure a level playing field for trade between STEs and private enterprises? How the rules in RTAs relate to the WTO multilateral disciplines? That is, do they converge with these disciplines (or expand and fill any gaps left at the multilateral level) or do they deviate from the existing WTO disciplines? The main purpose is to evaluate how and whether the existing rules on state trading adequately address the STE-related concerns.

Answering these questions exhaustively requires a comprehensive cross-cutting analysis of the STEs provisions contained in these regulatory contexts. Existing studies in this regard are often limited to the STE provisions contained in the WTO framework and in individual or few RTAs. A compilation of comprehensive data would require further detailed research. As an initial attempt, *Chapter 2* of this study first presents a brief overview of the nature of state trading, including its development in international trade. Then, reviewing all the STEs notifications made by Members to the WTO (from 1995 to 2016), along with some relevant studies on SOEs, *Chapter 3* provides an assessment regarding the incidence of state trading intervention in global markets. Given the prevalence of state trading in the agricultural sector, the status of STEs in the global trade of key agricultural products is further surveyed. Subsequently, *Chapter 4* analyzes the relevant GATT/WTO rules on state trading (including the Agreement of Agriculture and the GATS), with emphasis on the deficiencies of this regulatory framework and the problems regarding its interpretation. It also reviews the multilateral and plurilateral negotiations on state trading, as well as the relevant STEs provisions contained in the Accession Protocols of key WTO Members.

The survey on the state trading landscape at the regional level is next provided in *Chapter 5*. The STE-related provisions of 279 RTAs included in the WTO Regional Trade Agreement database, as well as the state trading provisions contained in the official proposals of other relevant RTAs (i.e. the TTP, CETA, *EU-Singapore* and *EU-Vietnam RTAs*), are examined. This represents by far the largest sample of RTAs analyzed to date with respect to state trading. It first establishes the typology of state trading provisions included in these RTAs, providing the basis to devise a thorough database summarizing these provisions. Moreover, with a view to identifying both common grounds and significant discrepancies between different RTAs and between RTAs and the GATT/WTO, attention is paid to areas of convergence and divergence and of potential gaps where they exist. *Chapter 6* summarizes and concludes, emphasizing on the present and future challenges of state trading concerns.

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Chapter 2

The Nature of State Trading

2.1 Emergence And Development Of State Trading

State trading is not a new phenomenon. Its existence goes back to the ancient Rome period (A.D. 189) and the Middle Ages when state trading is argued to have been born.¹ Still, the modern form of state trading mainly emerged after First World War. Emergency and bad time periods have always characterized the rise of STEs. Thus, governmental and governmental-backed marketing boards were established during this period, particularly in some developed countries and the former British Dominions.

Due to the depressed conditions in the agricultural sector during the 1930s, state trading agencies became even more widespread in developed economies which required a new form of protectionism.² The degree of government involvement varied considerably (from producer self-help organizations to fully or semi-public agencies). In countries such as Denmark, Sweden, and Ireland, cooperative movements and commodity cartels were successful in protecting farmers from the 1930s depression.³ In present and former British Dominions (i.e. Australia, Canada, New Zealand, Rhodesia, South Africa, and Great Britain) many statutory marketing boards were necessary instead.⁴ Other European countries, such as Germany and Italy, also introduced state trading practices to conduct their foreign-trade operations in agriculture. Russia did not limit state trading as a necessary wartime tool but

¹ The existence of a state monopoly of corn in ancient Rome has been traced by Kostescky. M. M. Kostecki, "State Trading in Agricultural Products by the Advanced Countries," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 26-27. According to Hazard, state trading was born in the Middle Ages. John N. Hazard, "State Trading in History and Theory," *24 Law and Contemporary Problems* (1959), p. 243.

² Kostecki, "State Trading in Agricultural Products by the Advanced Countries," p. 26-27.

³ This explains today's absence of agricultural STEs in these countries. *Ibid.*, p. 27.

⁴ For the great part, these boards were producer-controlled monopolies with exclusive power to control production and foreign trade. The creation of these public or semi-public entities was necessary due to the lack of loyalty among widely dispersed farmers and due to the potential of having divergent demands from these farmers on the operations of a central marketing arrangement. *Ibid.*, p. 28.

conceive it as a necessary companion of state production for the creation of a socialist (and ultimately a communist) society.⁵ Accordingly, state trading became a large-scale phenomenon with the Russian Revolution of 1917.⁶ The United States, in contrast, refused the use of state trading practices.

After the Second World War, state trading in agriculture was partly abolished in the United Kingdom and some European countries. Still, state trading remained as a permanent feature of commercial policies.⁷ The United States, while still promoting free trade principles, became the world largest state trader (outside the Sino-Soviet bloc).⁸ State trading was also introduced in the developing world, often with the assistance of the World Bank.⁹ Specially, during the 1950-1960s, STEs were widespread among developing countries as they were perceived as an appropriate government device to boost the industrial sector.¹⁰ Moreover, an important share of their trade with the Socialist bloc and developed economies was conducted under aid programs and by state-trading units.¹¹ State trading also gained importance because of nationalizations, especially for extraction industries. Later, in the 1980s, the free-market

⁵ Hazard, "State Trading in History and Theory," p. 244-247.

⁶ Martin Domke and John H. Hazard, "State Trading and the Most-Favored-Nation Clause," 52 *American Journal of International Law* (1958), p. 55.

⁷ Kostecki, "State Trading in Agricultural Products by the Advanced Countries," p. 26-28.

⁸ The United States approached free trade values with tariffs being its only important government intervention. During the twentieth century, however, it started to intervene in the market (largely due to the two World Wars). Thus, to foster its industry and agriculture, as well as to find outlets for its expanding economy, it created STEs such the Commodity Credit Corporation (CCC) which was the largest and most active STE of the United States. As a result, the United States became the largest world state trader (even more important than the Soviet bloc in Western markets). See, Bernard Fensterwald Jr., "United States Policies Toward State Trading," 24 *Law and Contemporary Problems* (1959), p. 370-373; and M. M. Kostecki, "State Trading in Industrialized and Developing Countries," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 192. Currently, the CCC no longer maintains exclusive rights to export/import or otherwise market any product. See, Annex A.

⁹ J. N. Behrman, "State Trading by Undeveloped Countries," 24 *Law and Contemporary Problems* (1959), p. 454.

454-481; and Paul Barbour, "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries," Paper Presented for Institute for Agriculture & Trade Policy (March 1999), p. 6.

⁹ During this period, agriculture was important to boost the industrial sector and STEs were part of this process. Barbour, "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries," p. 6.

¹⁰ During this period, agriculture was important to boost the industrial sector and STEs were part of this process. Barbour, "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries," p. 6.

¹¹ Kostecki, "State Trading in Industrialized and Developing Countries," p. 192.

doctrines of privatization and liberalization transformed STEs as a target for reform (ironically, in many cases, with the assistance of the World Bank/IMF who helped set them up).¹²

Today, notwithstanding the global trend towards market economies, deregulation, and privatization; the dealings with STEs are becoming more complex. On the one hand, the increasing international economic interdependence has amplified the incidence of state trading in international trade. Indeed, the effects of state intervention (even those oriented towards specific domestic firms and sectors) spread more easily across economies and national borders. State trading itself, moreover, is changing in form. STEs have become increasingly internationally oriented (in some cases, they have become among the world's largest and most influential enterprises). On the other hand, there is the growth and internationalization of former centrally-planned economies (China, Russia and Vietnam) which still relying on state trading to conduct most of their trade.¹³ These considerations have important impacts on the legal, political and economic contexts of state trading.¹⁴

2.2 What Is An State Trading Enterprise?

State trading has been considered undefinable in nature.¹⁵ STEs can vary in terms of structure, operation, power, and function. Moreover, the values and beliefs of societies

¹² Barbour, "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries," p. 6-7.

¹³ China and Vietnam use (fully or partly) STEs in conducting their agricultural trade. Russia (which in principle has eliminated its STEs) still using the central and regional governments to procure commodities from producers and restrict trade between regions. Karen Z. Ackerman and Praveen M. Dixit, "An Introduction to State Trading in Agriculture," Market and Trade Economics Division, Economic Research Service, U.S. Department of Agriculture, Agricultural Economic Report No. 783, p. 9; and Michael T. Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", 6 *Drake Journal of Agricultural Law* (2001), p. 293. See, generally, Chapter 3 on The Incidence Of State Trading In The World.

¹⁴ See, generally, Edmond M. Ianni, "State Trading: Its Nature and International Treatment," 5 *Northwestern Journal of International Law and Business* (1983), p. 46-47; OECD, "Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?," Meeting of the OECD Council at the Ministerial Level, Paris (2014), p. 2-3; and David Robinett, "Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets," Washington, DC: World Bank (2006), p. 2-4.

¹⁵ See, for instance, Kosteci, "State Trading in Industrialized and Developing Countries," p. 188; and Ianni, "State Trading: Its Nature and International Treatment," p. 48-49.

regarding state involvement in trade-related matters differ across nations.¹⁶ As a result, no single agreed definition of state trading enterprises exists.¹⁷

Economic and legal concepts have been developed about STEs. Both concepts acknowledge government control (through a government agency or an enterprise that receives an exclusive trade authority from the government) and recognize the potential of STEs to affect international trade. Economic definitions, however, are broader in scope. They focus on the trade and price behavior associated with state trading rather than the institutions that conduct such trade and their relations with the government.¹⁸

Institutional and functionalist approaches have also been used to define STEs. While the institutional approach focuses on the nature of the state involvement in international trade, the functionalist approach centers on the nature of the activity of the state in this trade.¹⁹ Early references to state trading relied on the institutional approach,²⁰ and defined STEs based on the conduct of the state in foreign trade;²¹ government monopolization of foreign trade;²² or government ownership over an enterprise.²³ In contrast, more recent definitions have employed functional considerations, focusing on the control that the government effectively exercises over foreign trade. According to these definitions, state trading occurs when the

¹⁶ For instance, the various forms of public policy and public intervention found in different countries reflect the history of this culture. In some countries, STE are long-established means of public policy for agriculture and food. Michael Veeman; Murray Fulton; and Bruno Larue, "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," *Agriculture and Agri-Food Canada* (1999), p. 2.

¹⁷ See, for example, Roy Baban, "State Trading and the GATT," 11 *Journal of World Trade* (1977), p. 334; and P. J. Lloyd, "State Trading and the Theory of International Trade," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 118.

¹⁸ Ackerman and Dixit, "An Introduction to State Trading in Agriculture," p. 3.

¹⁹ Veeman, Fulton, and Larue, "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 6.

²⁰ See, for example, Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", p. 290; and Veeman, Fulton, and Larue, "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 2.

²¹ Hazard, "State Trading in History and Theory," p. 243-255.

²² R. E. Baldwin, "Non-Tariff Distortions of International Trade," (Washington: Brookings Institution, 1970), p. 11.

²³ Dharam P. Ghai, "State Trading and Regional Economic Integration: The East African Experience," Discussion Paper No. 145, Institute for Development Studies, University of Nairobi (1972), p. 5.

government or government-backed agencies determine the essential terms (such as price and quantities) on which exports and imports must take place.^{24 25}

At the multilateral level, Article XVII of the General Agreement on Tariffs and Trade (GATT)—the key GATT provision regulating state trading practices—does not define STEs. It only refers to state enterprises (established or maintained by a Member and wherever located), or any enterprise that benefits (whether formally or in effect) from exclusive or special privileges from the state, or any enterprise (whether or not it falls within the descriptions above). However, no definition of these terms is provided. For notification purposes, the Understanding on the Interpretation of Article XVII of the GATT (The Understanding on Article XVII) provides a working definition by which STEs are defined as “governmental or non-governmental entities (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 purchases or sales the level or direction of imports or exports”.²⁶ This definition, however, still lacks precision, and as a result, the GATT/WTO definition on STEs has been considered far from clear.²⁷

²⁴ M. M. Kostecki, “State Trading by the Advanced and Developing Countries: the Background,” in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 6. See, also, Lloyd, “State Trading and the Theory of International Trade,” p. 119-120; and Klaus Stegemann, “State Trading and Domestic Distortions in a Mixed World Economy,” in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 161.

²⁵ Other definitions have also considered the impact that governments exercise over individual transactions. Thus, state trading has been deemed to exist when the state (directly or indirectly) controls trade *or* materially affects the conditions of trade on a transaction-by-transaction basis. Various EU and US programs (i.e. the EC Export Tender System as well as the US Export Enhancement Program (EEP), food aid, and export guarantee programs) have been found to fall within this definition, as the government decisions on whether to export, influence prices, or affect the terms of sale, were made on case-by-case basis by the government. Vernon L. Sorenson, “The Economic and Institutional Dimensions of State Trading,” in *State Trading in International Dimensions and Select Cases*, (Washington: International Policy Council on Agriculture and Trade, 1991) as cited in Ackerman and Dixit, “An Introduction to State Trading in Agriculture,” p. 2.

²⁶ In this sense, it has been argued that the WTO has adopted a functional definition of STEs, focusing on the exercise of exclusive or special rights or privileges that have an influence on the import or export trade. James Rude and Mel Annand, “European Union Grain Export Practices: Do They Constitute a State Trading Enterprise?,” 3 *The Estey Centre Journal of International Law and Trade Policy* (2002), p. 180.

²⁷ For instance, the working definition does not define the term “special privileges”. It has also been argued that the lack of preciseness of this working definition has left to the self-interpretation of WTO Members the determination of when an enterprise is deemed to be STEs. *Ibid.*, p. 177. A detailed discussion about the GATT/WTO definition on STEs is provided in Chapter 4.

Outside the multilateral level, only a few number of regional trade agreements define STEs.²⁸ Yet, the standards to define state trading vary across RTAs, and in some cases, these standards diverge even among RTAs parties. For instance, in the *US–Singapore RTA*, the term “government enterprises” is defined for the United States as “an enterprise owned, or controlled through ownership interest, by the government”, while for Singapore “as an enterprise in which the government has effective influence”.²⁹

The above illustrates the lack of consensus that exists as to the definition of STEs. As will be discussed below, the diversity of state trading practices, as well as the wide variety in powers and functions of STEs, preclude a uniform definition.

2.3 STEs Related Concepts

The absence of a generally accepted STEs definition is one of the major problems contributing to confusion regarding state trading enterprises. STEs and state trading activities are commonly linked to state-owned enterprises and practices.³⁰ They may also be confused with other institutions such as public bodies. However, while the GATT/WTO does not provide with a clear definition of STEs, these enterprises have some distinct features that distinguish them from other related concepts.

With respect to state-owned enterprises, there is no universal definition of this term. For purposes of this research, the definition provided by the Organization for Economic Co-operation and Development (OECD) is followed.³¹ According to the OECD, SOEs are enterprises where the state has significant control through full, majority, or significant minority ownership. Here, state ownership (at different levels) is understood to imply control

²⁸ A full examination of STEs provisions in RTAs is provided in Chapter 5. In particular, see, Section 5.1.2 on Scope and Definition of State Enterprises, SOEs, and Monopolies.

²⁹ *US-Singapore RTA* (art 12.8.6).

³⁰ For example, the WTO Working Party Report of Vietnam refers to SOEs when regulating STEs as provided for in Article XVII of the GATT. Vietnam, Working Party Report, para. 79.

³¹ Other SOEs definitions exist as they vary across countries. For purposes of this research, however, an international and widely used definition is followed.

and is the key element to determine the SOEs status.³² Within the WTO framework, however, state ownership (even full ownership) is not conclusive for a determination of whether Article XVII applies to state trading activities. For instance, the WTO scope is broad enough to include any enterprise (regardless of the state ownership element) to which exclusive or special privileges have been granted.³³ Accordingly, while SOEs could be considered STEs, they certainly do not have an automatic STEs status within the meaning of Article XVII.

As for the relationship with the term public body, the Subsidies and Countervailing Measures Agreement (SCM Agreement) disciplines subsidies which are provided either by the government or a public body.³⁴ The term public body is not defined in the SCM Agreement. Yet, the Appellate Body has interpreted this term as an entity which possesses, exercises, and is vested with government authority.³⁵ The interpretation of the Appellate Body still is not clear and has been widely criticized.³⁶ Still, some considerations can be drawn. First, the scope of public bodies is narrowed than the scope of STEs. The term public body, by its very nature, is concerned with the public and not the private realm. In contrast, the term STEs includes the activities of private enterprises.³⁷ As *per* their context, moreover, public bodies are concerned exclusively with subsidization whilst STEs with other trade-related

³² Organization for Economic Co-Operation and Development (OECD), *Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 edition, p. 14-15 (Hereinafter, OECD 2015 Guidelines). This SOEs definitional approach is applied by some RTAs, such as the TPP. See, Section 5.1.2 on the Scope and Definition of State Enterprises, SOEs, and Monopolies.

³³ The GATT/WTO disciplines are not based on ownership *per se* since STE disciplines based on ownership alone could easily be circumvented. Thus, under WTO rules, an enterprise that is not majority-state owned can nonetheless be considered an STE if it receives any rights or privileges that gives it power in the market. Przemyslaw Kowalski, Max Büge, Monika Sztajerowska and Matias Egeland, "State-Owned Enterprises: Trade Effects And Policy Implications," OECD Trade Policy Papers No. 147, OECD Publishing, Paris (2013), p. 81.

³⁴ Article 1 of the SCM Agreement.

³⁵ According to the Appellate Body, this determination must be made on case-by-case basis. Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, 11 March 2011, para. 317. (Hereinafter, US – Anti-Dumping and Countervailing Duties (China)). See also, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, 8 December 2014, paras. 4.8-4.10. (Hereinafter, US – Carbon Steel (India)).

³⁶ See, for instance, Petros C. Mavroidis, *The Regulations of International Trade* (Cambridge, MA: The MIT Press, 2016), p. 205-207; and Gregory Messenger, "The Public-Private Distinction at the World Trade Organization: Fundamental Challenges to Determining the Meaning of 'Public Body'," 15 *International Journal of Constitutional Law* (2017) p. 63-68.

³⁷ As noted by a panel report on Notification On State Trading Enterprises, Article XVII covers not only an instrumentality of government but also non-governmental agencies to which exclusive or special rights or privileges have been granted. Panel Report on The Notification Of State Trading Enterprises, adopted 24 May 1960, BISD, 9S/179, paras. 21-23.

matters. As such, the term public body (to which subsidizing activities are attached) is a separate and distinct concept from the STEs notion. It does not mean, however, that state trading activities or enterprises cannot fall within the WTO subsidies disciplines. STEs may engage in subsidization and be found to be a public body for purposes of the SCM Agreement. WTO case-law has verified that this is the case.³⁸

2.4 The Rationale Behind The Use of State Trading

STEs have been viewed as a traditionally means by which governments can achieve their trade policy goals. Thus, some countries such as Canada and Singapore, have been able to successfully use STEs to develop their traditional agricultural and service sectors, respectively. Many other countries, however, have not been able to benefit from state trading and have drained the public purse as a result.³⁹ While state considerations motivating the use of state trading diverge across countries, the relevant literature shows that governments establish STEs for a wide variety of economic and political ends,⁴⁰ including:

- To correct certain market failures associated with imperfect competition, information asymmetries, and the lack of complete markets to handle risk;⁴¹

³⁸ In *Canada-Dairy*, both the Panel and the Appellate Body concluded that the provincial marketing boards in Canada were “public bodies” since they acted under the expressed legation of the government. *Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products* (WTO Panel Report, WT/DS103/R WT/DS113/R; and Appellate Body Report, WT/DS103/AB/R WT/DS113/AB/R, adopted 27 October 1999).

³⁹ Kirk Haywood, “The Treatment of State Enterprises in the WTO & Plurilateral Trade Agreements”, The Commonwealth Secretariat, Emerging Issues Briefing Note 3 (2016), p. 1. For instance, during the 2007-08 food crisis, STEs in the Southeast Asian countries (i.e. Indonesia, Malaysia, Philippines, Thailand, and Vietnam) proved to be an inefficient vehicle for ensuring food security, especially in the rice sector. Hamid R. Alavi; Aira Htenas; Ron, Kopicki; Andrew W., Shepherd; Ramon, Clarete, “Trusting Trade and the Private Sector for Food Security in Southeast Asia,” Direction in Development Trade, Washington DC, World Bank (2012), p. 13-15. Similarly, in South Asia and Sub-Saharan Africa, the lack of investment capital by STEs has implied poor delivery of services, having wide economic impact. Sunita Kikeri and Aishetu Kolo, “State Enterprises: What Remains?,” Note No. 304, Washington DC, World Bank (2006), p. 1.

⁴⁰ See, generally, Ianni, “State Trading: Its Nature and International Treatment,” p. 50-51; Ackerman et al., “An Introduction to State Trading in Agriculture,” p. 11-12; Baban, “State Trading and the GATT,” p. 336-337; Veeman et al., “International Trade in Agricultural and Food Products: The Role of State Trading Enterprises,” p. 4-6; Kostecki, “State Trading in Industrialized and Developing Countries,” p. 188-191; and OECD 2015 Guidelines, p. 52-53. See, also, Annex A.

⁴¹ Veeman et al., “International Trade in Agricultural and Food Products: The Role of State Trading Enterprises,” p. 10.

- To fulfill international trade commitments that are concerned with quantity, price, and credit requirements;
- To improve the balance of payments of a country by directly determining the components of the trade account;⁴²
- To increase the international bargaining power of a country by using a variety of state-trading techniques (such as the creation of a state monopoly or the determination by the state of the terms of foreign trade transactions when trade is conducted by private firms);⁴³
- To promote and expand exports;⁴⁴
- To achieve economies of scale in trading operations;⁴⁵
- To protect the domestic industry from imports, to stabilize domestic prices or incomes, to discriminate in favor of certain trading partners (by either determining domestic or external prices of traded goods and the quantities to be imported or exported), to manage the distribution and marketing of essential goods (including food products) and important domestic resources (raw materials);⁴⁶

⁴² Ackerman et al., "An Introduction to State Trading in Agriculture," p. 11; Baban, "State Trading and the GATT," p. 336-337; Ianni, "State Trading: Its Nature and International Treatment," p. 50; and Kostecki, "State Trading in Industrialized and Developing Countries," p. 196-197.

⁴³ In this case, the disadvantage arising from the competition of several producers on international markets is avoided by centralizing the purchases for exports, or when the trading is conducted by private traders, the government can negotiate important contracts to ensure favorable prices and other terms of purchase or sale. See, Kostecki, "State Trading in Industrialized and Developing Countries," p. 193-194; and Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 10.

⁴⁴ For instance, where there is the need of exploring new markets for traditional commodities or countries need to diversify both the geographical and commodity structure of exports, governments have relied on state trading intervention. This has been frequently the case of developing countries. Kostecki, "State Trading in Industrialized and Developing Countries," p. 194-196; and Kostecki, "State Trading by the Advanced and Developing Countries: The Background," p. 18.

⁴⁵ Economies of scale in trading operations (e.g. transportation, insurance, and quality controls) reduce costs to producers in exporting countries and to consumers in importing countries. Baban, "State Trading and the GATT," p. 336-337; Ackerman et al., "An Introduction to State Trading in Agriculture," p. 11; and Ianni, "State Trading: Its Nature and International Treatment," p. 50. For example, the early developments of marketing boards in Australia and New Zealand gave farmers an opportunity to negotiate (as a group) freight rates with groupings of international shippers, offsetting the market power exerted by such groupings within an imperfectly competitive international shipping industry. Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 4.

⁴⁶ State trading usually accomplishes these goals through price support schemes, guaranteed state purchases, income or input support arrangements, determination of quantities to be imported or exported, or by handling the importation and distribution of first necessity or essential products. Ibid. See, also, Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 10-11; and Kostecki, "State Trading in Industrialized and Developing Countries," p. 198-203. Domestic support to producers is a frequently

- To pursue goals of public interest, including national security and revenue concerns;⁴⁷
- To achieve industrial policy objectives by, for instance, supporting national champions in strategic sectors (e.g. French EDF in the power sector or Norwegian Statoil in the extractive industry), controlling the decline of failing industries (e.g. heavy industry in former transition economies) or preventing the collapse of certain services that are important for the economy (e.g. large financial institutions during the recent crisis).⁴⁸

These various objectives verify the multidimensional nature of state trading, serving a wide variety of policies ranging from economic goals to military concerns.⁴⁹ Still, state trading is not the only means by which governments can meet their trade policy objectives.⁵⁰ Governments may nevertheless prefer STEs because they allow to carry out political mandates expeditiously⁵¹ and because their nontransparent nature makes their operations less likely of political complaints.⁵² Moreover, some STEs goals (such as price risk management,

objective of developed countries, while the assurance of reasonably priced food supplies for consumers is a frequently objective of developing countries. Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 11. The Food Corporation of India (FCI), which function includes the maintenance of steady domestic supply of grains, is one example of STEs pursuing macroeconomic policies of food security. See, Annex A.

⁴⁷ This is done by retaining state control over military trade or by shifting trade profits to the government. The best examples of state trading to raise revenue to the government include state monopolies in tobacco, liquors, and matches. Concerns with public health issues may also motivate state trading control over the consumption of pharmaceuticals, narcotics, tobacco, and alcoholic beverages. Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", p. 297; Baban, "State Trading and the GATT," p. 336-337; Ianni, "State Trading: Its Nature and International Treatment," p. 51.

⁴⁸ Ibid.

⁴⁹ Ianni, "State Trading: Its Nature and International Treatment," p. 51.

⁵⁰ Indeed, state trading is one of the very many forms of state intervention that might be used to attain domestic and trade policy goals. Baban, "State Trading and the GATT," p. 338; and Lloyd, "State Trading and the Theory of International Trade," p. 117. Thus, for instance, it has been argued that instead of income support for producers, governments could implement less trade-distorting schemes such as decoupled payments. Ackerman et al., "An Introduction to State Trading in Agriculture," p. 11.

⁵¹ Indeed, it is easier to instruct a STE to increase (for example) the import restrictiveness already implicit in the operations of a STE, than to debate and legislate a tariff change. Lloyd, "State Trading and the Theory of International Trade," p. 136. In addition, STEs instructions are more adaptable to new external conditions or government objectives. Kostecki, "State Trading in Agricultural Products by the Advanced Countries," p. 23.

⁵² Ackerman et al., "An Introduction to State Trading in Agriculture," p. 11. See, also, Kostecki, "State Trading in Agricultural Products by the Advanced Countries," p. 23 and Kostecki, "State Trading by the Advanced and Developing Countries: The Background," p. 15-16. Similarly, in deciding their economic policies, governments are not always guided by economic rationality but by their desire to preserve a favorable balance of political forces. Thus, in choosing between state trading and taxes-subsidies, they will normally prefer state trading. Ibid.

economies of scale, and development of niche markets and customers) might be attained just as efficiently or even more efficiently than by the private sector.⁵³

2.5 Types Of STEs

Since STEs can be involved in different operations and take different forms, there is a great variety of STEs. Some STEs undertake regulatory functions, such as ensuring quality control and providing market information. Others take commercial operations, including importing, exporting, purchasing, selling, or a combination of two or more of these activities. In some cases, STEs may use private firms as agents to carry out specific tasks. Others, while not directly engaged in trade, regulate the conduct of private traders by using different means such as import or export licensing. On the other hand, STEs may be fully integrated into the government administration (acting as a branch of the government) or be separate and distinct from the state (like producer-controlled bodies which operate independently from the state) or fall somewhere in between.⁵⁴

The different types and functions of STEs have impelled the use of different criteria for classifying these enterprises. Some authors have ranked STEs according to their foreign-trade function,⁵⁵ while others according to their potential to distort trade.⁵⁶ The most common types of state trading found in the relevant literature include (i) export or import state monopolies; (ii) private trade monopolies that are conferred and regulated by the state; (iii)

⁵³ Ackerman et al., "An Introduction to State Trading in Agriculture," p. 12.

⁵⁴ Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 11; and Lloyd, "State Trading and the Theory of International Trade," p. 118-119.

⁵⁵ According to this criterion, STEs have been classified in three large categories: trading agencies, regulatory agencies, and mixed agencies. Kostecki, "State Trading in Agricultural Products by the Advanced Countries," p. 9.

⁵⁶ In this case, authors have relied on factors such as market control, trade balance, policy regime, product range, ownership/management structure (Praveen M. Dixit and Tim Josling, "State Trading in Agriculture: An Analytical Framework," *97 Working Paper Series* (1997), p. 19-24), or the degree of contestability of STEs. (Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 87-99).

state determination of prices or quantities or both; and (iv) a combination of two or more of the above.⁵⁷

Based on WTO Members notifications on STEs, the WTO Secretariat has developed a non-exhaustive list of various types of STEs, as follows:

- *Statutory Marketing Boards:*⁵⁸ These boards combine a monopoly of foreign trade with domestic management of production, price, and distribution. They are common in agricultural trade and are mainly producer-controlled or government-sanctioned monopolies which principal objectives include domestic price stabilization, market regulation, and control and promotion of exports. Their typical functions involve price, quality, movement, and marketing control (although they may not engage in them all). Since one of their major focus is the export side, they achieve important economies of scale.
- *Export Marketing Boards:* These boards deal only with exports and do not perform any domestic function. They generally are producer-controlled bodies which main objectives are the promotion of exports and the achievement of advantageous terms of sale on foreign markets.
- *Regulatory Marketing Boards:* These boards operate like statutory marketing boards, except that they do not themselves engage in foreign trade operations, but rather contract out the trading operations to private enterprises. By having monopoly rights on exports and/or imports, they normally determine the terms-related to the purchase or sale (such as the timing of shipments and the exporting and/or importing prices and/or quantities) and then contract out the trading operations to private firms.
- *Fiscal Monopolies:* These monopolies cover trade in goods for which domestic demand is relatively inelastic and foreign demand is relatively elastic, and with respect to goods for which the government has an active public health policy in place such as

⁵⁷ Baban, "State Trading and the GATT," p. 337; and Ianni, "State Trading: Its Nature and International Treatment," p. 50.

⁵⁸ Also called Statutory marketing authorities or Control boards.

- alcoholic beverages and tobacco. They typically enjoy a monopoly on the production, processing, import, and export of the traded products.
- *Canalizing Agencies*: These bodies are normally used by developing countries and serve to channel imports or exports through a designated product-specific enterprise to obtain better terms of trade for large volume of sales or purchases and to realize economies of scale in trade operations.
 - *Foreign Trade Enterprises*: These enterprises are common in non-market economies (NMEs) and are typically owned and controlled by the state while engaging in international trade.
 - *Boards of Nationalized Industries*: While these industries are not necessarily STEs, they may come to the purview of Article XVII of the GATT if they get involve in the production and/or trade of goods.⁵⁹

2.6 STEs Criticism And Defense

State trading is a contentious issue, and reflecting this situation are the mixed perceptions regarding the advantages and disadvantages of this form of state intervention in the market.

A. Criticism

The main concerns about STEs are associated with the way in which these enterprises may affect competition on world markets, by controlling the quantities of traded goods or influencing domestic and international prices. An enterprise with an export or import monopoly position may raise export prices or lower import prices and consequently improve the terms of trade of a country at the cost of restricting world trade.⁶⁰ The trade effects of

⁵⁹ World Trade Organization (WTO), Operations of State Trading Enterprises as They Relate to International Trade, Background Paper by the Secretariat, WTO Document G/STR/2, 26 October 1995.

⁶⁰ Generally, it has been noted that state interventions in trade, production, consumption, and marketing when directed towards commercial objectives not compatible with free trade or applied in the absence of distortions or not directly applied to the source of distortions, or when correctly directed but at the wrong rate, would cause deviation from the free trade equilibrium and reduce international welfare. Baban, "State Trading and the GATT," p. 337-338.

STEs have been equated to those of an import tariff or an export subsidy.⁶¹ This is the case, for instance, where an importing STE controls domestic procurement and sales and determines the level of imports: the consequence is the same as a high (prohibited) tariff level. Similarly, an exporting STE which commercial behavior (or its ties with the government) can influence its performance in world export markets has effects equivalent to those of export subsidization.⁶²

These objections, however, are not unique to state trading. Neither a country need to establish a STE to apply protectionist measures nor private firms are unable to affect competition on world markets. As has been noted, the ability of an enterprise to affect export market prices depends on the nature of competition in the export market in question and not on whether that entity has monopoly powers in selling a traded product.⁶³ Empirical evidence has further shown that there is no reason to believe that state trading countries have higher levels of protection than those characterized by private traders.⁶⁴ Indeed, not only STEs but also multinational enterprises can block otherwise fully functioning international markets.⁶⁵

⁶¹ For example, in the case of rice in Korea, it has been estimated that STEs intervention implied an *ad valorem* tariff equivalent of 178 percent and a production subsidy of 25 percent. Steve McCorrison and Donald MacLaren, "The Economic Effects of State Trading Enterprises: Market Access and Market Failure," Twenty-Sixth Conference of the International Association of Agricultural Economists, Australia (2006), p. 13.

⁶² Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 13-14; Ackerman et al., "An Introduction to State Trading in Agriculture," p. 38-39; and Steve McCorrison and Donald MacLaren, "State Trading, the WTO and GATT Article XVII," 25 *The World Economy* (2002), p. 122-124. For instance, exporting STEs could provide an implicit export subsidy by using a price pooling scheme. Here the STE collects production and pays to producers a blended price based on the total domestic and export sales. By being able to sell at different prices in markets with different elasticities and redistribute the revenues to producers through a higher pooled price, an STE effectively provides an implicit export subsidy to producers. Jana Hranaiova; Harry De Gorter; and Merlinda Ingco; "Perspectives on agricultural export state trading enterprises in the WTO trade negotiations," Washington, D.C., World Bank (2002), p. 4.

⁶³ Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 12. Others argue that mere state ownership or management over STEs do not alter the level of trade achieved under private ownership or management, since for imports or exports to be affected, the state is required to intervene with tariffs, subsidies, quotas, or other trade policy instrument. Thus, state trading does not need to be an obstacle to trade, although it is supposed and normally provided for. Harried Matejka, "Trade-Policy Instruments, State Trading and First-Best Trade Intervention," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 144.

⁶⁴ McCorrison et al., "State Trading, the WTO and GATT Article XVII," p. 122.

⁶⁵ Sophia Murphy, "Market Power in Agricultural Markets: Some Issues for Developing Countries," South Centre (1999), p. 8.

Still, critics maintain that there are other fundamental advantages specific to STEs that are not available to private traders. First, related to price discrimination, there is the potential for price pooling. This arrangement, which involves paying producers an average price based on all sales in foreign and domestic markets, is basically designed to stabilize price and income risks to producers, giving STEs certain pricing advantages not available to private exporters.⁶⁶ Second, the economic rent stemming advantage that STEs have is typically not available to private traders that compete against STEs in international markets. STEs retaining monopoly or monopsony powers can offer producers prices lower than world market prices and charge consumers prices higher than world levels.⁶⁷ Third, the control that STEs have over domestic supplies or exports, provides STEs greater certainty in sourcing supplies, giving them a competitive edge over private traders.⁶⁸ Moreover, this control, together with the lack of transparency, also gives STEs more pricing flexibility relative to private firms.⁶⁹ Four, costs underwriting by the state gives STEs a resource advantage over private traders since STEs may benefit from state financial support, either through direct subsidies or

⁶⁶ McCorrison et al., "State Trading, the WTO and GATT Article XVII," p. 124; and Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 8. For example, in the case of the Canadian Wheat Board, producers receive an advanced payment (80 percent) of the projected final price and then further payments if the projected price is realized. The initial pool payments are guaranteed by the government, so that if this price is below the initial price paid to producers, the government will underwrite the Wheat Board's losses. This gives an advantage to exporters not available if the exports were undertaken by private firms. Moreover, because the government underwrites the activities of the board, the loans to producers are less costly as the loans are perceived as lower risk loans. McCorrison et al., "State Trading, the WTO and GATT Article XVII," p. 124. It should be noted that as from 2015, the Canadian Wheat Board was commercialized, thereby removing its STE designation within the WTO. See, Annex B.

⁶⁷ Moreover, it is argued, the resulting added revenues and profits from these transactions could be used by STEs to subsidize their exports. Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 7-8; and Hranaiova et al., "Perspectives on agricultural export state trading enterprises in the WTO trade negotiations," p. 11-12.

⁶⁸ The fact that STEs know that they will have all the domestic production at their disposal for resale, allows them greater freedom than private firms in concluding export sales commitments and securing long-term contracts with importing buyers. Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 8-9; Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", p. 299-300; and Murphy, "Market Power in Agricultural Markets: Some Issues for Developing Countries," p. 8.

⁶⁹ STEs can charge different prices in different markets. One extreme example of price discrimination is predatory pricing in which an STE, protected by government underwriting of losses, drives commercial competitors out from the market. While private traders may also use discriminatory pricing, it is argued that STEs do not face the same risks as private companies in procuring commodities for export. This lack of competition for obtaining the commodities impedes the possibility of price discovery through an open bidding process. *Ibid.*

government guarantees.⁷⁰ State underwriting may also include other important benefits (such as tax benefits, transport and storage aids, preferential foreign exchange rates, public utility rates, and capital expansion funds) which provide STEs with a competitive advantage over commercial exporters.⁷¹ Fifth, because of its sheer size in the market (e.g. as a monopoly or monopsony), STEs not only enjoy greater economic bargaining power over private traders but also have the capacity to shift this power in favor of the different goals of a state. Collectively, these advantages enhance the STE position *vis-à-vis* the private trader in international trade.⁷²

Finally, critics have noted that one potential problem of STEs is their capacity to effectively circumvent GATT/WTO provisions through their purchasing and pricing policies. For instance, STEs could undermine the GATT non-discrimination rules (i.e. Most-favoured-nation (MFN) and National Treatment clauses) by choosing to buy a product from only one WTO Member or by choosing a domestic supplier rather than WTO Member suppliers. On the other hand, they could also undercut WTO market access commitments by simply refusing to purchase products, or purchase only limited quantities (thereby imposing an implicit quota), or price imported products at such levels as to discourage their resale on the domestic market.⁷³ Another suspicion relates to the management of tariff-rate quotas, which in some countries are managed by a STE.⁷⁴ The concern arises that the rate of quota utilization is

⁷⁰ This support provides two indirect benefits that are not available to private firms. First, it allows STEs to undertake pricing risks beyond what a commercial firm would undertake, and second, preferential interest rates may accrue to STEs because of their connection with the state. *Ibid.*

⁷¹ Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 9; Hranaiova et al., "Perspectives on agricultural export state trading enterprises in the WTO trade negotiations," p. 5 and 8; and Kosteci, "State Trading in Agricultural Products by the Advanced Countries," p. 25.

⁷² Ianni, "State Trading: Its Nature and International Treatment," p. 52.

⁷³ While Articles III and XI of the GATT provide a means to address part of these problems (Article XVII:1(a) deals directly with the MFN issue), it is noted that these provisions apply only when STEs actions are viewed as governmental actions. Thus, in cases where a governmental measure is not involved (for instance, in terms of Article III), there is a *lacuna* in the GATT rules on state trading. William J. David, "Article XVII GATT: An Overview," in *State Trading in the Twenty-First Century*, ed. Thomas Cottier and Petros C. Mavroidis (Ann Arbor: The University of Michigan Press, 1998), p. 31. See, also, Hranaiova et al., "Perspectives on agricultural export state trading enterprises in the WTO trade negotiations," p. 5.

⁷⁴ For instance, the Korean Agro-Fisheries & Food Trade Corporation (aT) is responsible for administering the tariff quotas to stabilize the domestic market and to ensure the smooth implementation of the Uruguay Round commitments. Other example includes the Bank of Taiwan (BOT) that is responsible for administering the allocation of TRQs for 16 agricultural products. See, Annex A.

influenced by the STE and hence the market access is limited and the WTO market access commitments are not fulfilled.⁷⁵

B. Defense

Despite the varied objections on STEs, it has been argued that the legitimate concerns that state trading helps to address offset any of its trade-distorting effects. Particularly, STEs occupy an important role in many developing countries, and absent the use of state trading, these countries would be vulnerable in world markets (especially in the agriculture sector).⁷⁶ It has also been observed that the trade distortionary effects of STEs are trivial, either because the trade disruption of STEs in small countries is minimal,⁷⁷ or because assertions of trade distortion are merely speculative⁷⁸ or state trading does not necessarily distort trade.⁷⁹

Even more, defenders of state trading argued that the criticisms attached to STEs are equally applicable to private firms (especially to multinational enterprises). Specifically, the lack of pricing and operational transparency, access to secure financing and protected prices, guarantees supplies, and benefits from public infrastructure investments, are also common to some multinational companies.⁸⁰ The grain sector in agriculture illustrates this situation. Multinational grain companies do not publish their selling price and many agribusiness firms are not compelled to provide information of their operations. These companies also have

⁷⁵ McCorrison et al., "State Trading, the WTO and GATT Article XVII," p. 121; and Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 10.

⁷⁶ Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", p. 301; Murphy, "Market Power in Agricultural Markets: Some Issues for Developing Countries," p. 5; and Barbour, "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries," p. 1 and 13.

⁷⁷ Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 24-25.

⁷⁸ According to some authors, insufficient evidence has been established regarding the distortionary effects of STEs. Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", p. 300 and 302; FAO, "Export Competition: Appropriate Disciplines for Eliminating Subsidies," FAO Trade Policy Briefs, Paper No. 4, p. 3.

⁷⁹ In many cases, it has been observed that STEs have been used solely to check monopolistic trends in a market, while in others, traders have effectively prevented STEs from taking the lead in influencing price formation. Kostecki, "State Trading by the Advanced and Developing Countries: The Background," p. 17. See, also, Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 12.

⁸⁰ Murphy, "Market Power in Agricultural Markets: Some Issues for Developing Countries," p. 9-15.

access to significant financial security and protected prices.⁸¹ More significantly, since the same multinational grain companies are the major exporters from many countries, they might be eligible for government support from many countries.⁸² Long-term contracts and guaranteed supplies are also available to large grain traders,⁸³ and grain multinationals also profit from public infrastructure investments, such as grain terminals, dams, and lock systems that make rivers navigable for commercial barges.⁸⁴

The above suggests that the existence of STEs becomes easier to justify in markets where the actions of large private traders can also influence market outcomes. Thus, it has been argued that while the removal of an STE could potentially result in a competitive market, in many instances the more likely impact is the replacement of one oligopolistic structure with another. That is, multinational giants absorbing the market thus created instead of several emerging private firms taking the market.⁸⁵ As such, STEs have been considered as one of the few market instruments capable of countervailing the pressure and dominance of multinational firms in the market.⁸⁶

2.7 Conclusions

The basic objective of this section was to provide an overall understating of the nature and development of state trading. State trading enterprises are not a new phenomenon.

⁸¹ The use of export credits in the United States shows how exporting companies receive preferential treatment in their international operations. Murphy, "Market Power in Agricultural Markets: Some Issues for Developing Countries," p. 10.

⁸² For example, multinationals are largely responsible for exporting EU and US grains and hence they may benefit from governmental support on both sides of the Atlantic (from the EU and the US). *Ibid.*

⁸³ For instance, the multinational enterprise "Cargill" controls around 40 percent of US corn exports, suggesting its enormous access to huge amounts of production. *Ibid.*

⁸⁴ The Mississippi river is an example of such investment in the United States. *Ibid.*, p. 12.

⁸⁵ Veeman et al., "International Trade in Agricultural and Food Products: The Role of State Trading Enterprises," p. 15; and Murphy, "Market Power in Agricultural Markets: Some Issues for Developing Countries," p. 8-9.

⁸⁶ In many African countries, for instance, the global grain trade is dominated by few large multinational companies, and it has been claimed that the abolishment of STEs in these countries would pass STEs control to the global elite of multinational firms. Accordingly, for these countries (which heavily rely on imports for food supply) exactly who controls global grain trade and national grain distribution has been of paramount importance for food security purposes. Barbour, "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries," p. 1 and 13.

They are one of the many different means by which governments are involved in or otherwise influence the market. They have widespread among developing and developed countries and have been established for a wide variety of economic, political, and public reasons—addressing market failures, improving the bargaining power of a country, promoting and expanding exports, controlling the distribution and marketing of essential goods, generating revenue for the state, pursuing industrial policy objectives, etc. Depending on the objectives and functions, as well as the traditions and economic and social systems of nations, STEs have also assumed a great variety of forms. These variations clearly evidence the multifaceted nature of state trading.

Still, state trading is a contentious issue and a number of concerns have been expressed over its impact in international trade. Overall, these concerns relate to the STEs potential to upset competition on world markets and circumvent GATT/WTO disciplines. On the other hand, however, there are legitimate economic and non-economic motivations making a case for the use of state trading. Particularly, it may improve the economic and political position of a country, represent a countervailing force to multinationals, and assists developing countries in food security concerns. Today, the dealings with STEs are becoming more complex. The global economic interdependence has intensified the effects of state trading in international markets. Moreover, centrally-planned economies (China, Russia, and Vietnam), which still relying on state trading to conduct most of their trade, are entering to the international scenario.

These considerations have important impacts on the legal, political and economic contexts of state trading. For instance, the multidimensional nature of STEs, as well as the degree to which state trading is considered restrictive and discriminatory, prevents the formulation of a universal definition of STEs. In what follows, it will be demonstrated that the absence of a generally accepted STE definition (and more importantly of a clear STE definition) is one of the major problems contributing to confusion, controversy, and lack of information regarding STEs.

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Chapter 3

The Incidence Of State Trading In The World

3.1 State Trading In The World

Measuring the quantitative importance of state trading has been a difficult task, partly because of the lack of a clear-cut STE definition and partly because of the absence of relevant statistics in this regard.⁸⁷ Still, although dated, past studies have emphasized the pervasiveness of state trading in international trade.⁸⁸ In 1950s, state trading was estimated to embraced at least one quarter of world trade.⁸⁹ Later, in the 1970s, state trading in developing countries and developed market economies accounted for not less of 10-15 percent of their foreign trade.⁹⁰ State trading from Western economies was estimated to be even greater (four to six times) than the exports and imports from centrally-planned economies.⁹¹ The United States counted among the most important world state traders, while Australia, Canada, New Zealand, and South Africa conducted a big share of their exports through food marketing boards.⁹² For its part, some developing countries maintained an almost complete state-trading system (e.g. Algeria, Burma, Egypt, and Syria), while others integrated their state trading activities into their development plans or domestic distribution schemes (e.g. India, Indonesia,

⁸⁷ Kostecki, "State Trading in Industrialized and Developing Countries," p. 191; and Kostecki, "State Trading by the Advanced and Developing Countries: The Background," p. 11-12.

⁸⁸ See, for example, David, "Article XVII GATT: An Overview," p. 20.

⁸⁹ See Robert Allen, "State Trading and Economic Warfare," Law and Contemporary Problems (1959), p. 257.

⁹⁰ Kostecki, "State Trading in Industrialized and Developing Countries," p. 192-193.

⁹¹ Kostecki, "State Trading by the Advanced and Developing Countries: The Background," p. 11-13.

⁹² In the 70s, Australia maintained seven marketing boards (for wheat, dairy produce, eggs, honey, meat, sugar, apples, and pears). Canada operated marketing boards for grain and fish. New Zealand followed very closely the Australian example, while South Africa operated 22 marketing boards for a wide range of agricultural exports. Kostecki, "State Trading in Industrialized and Developing Countries," p. 199.

Iraq, Pakistan, and Tunisia).⁹³ A relatively more recent study, revealed the existence of 546 STEs across 90 developing countries.⁹⁴

State trading was particularly important in the trade of agricultural products. Thus, more than 95 percent of wheat world trade was made by countries using STEs during the period 1973-77 and similar orders of magnitude were generally referred to for rice.⁹⁵ Moreover, in the mid-seventies, at least 27-8 percent of OECD agricultural exports and imports were made through state trading arrangements.⁹⁶ State trading was also common in the international trade of other industries such as the minerals and oil sectors. In minerals sector, state trading was practically the exclusive form of trade in the Soviet bloc. It also gained prominence in developing countries (following an increase in the nationalization of mineral firms) and developed economies (assuring control and bargaining power in the procurement of mineral raw materials).⁹⁷ About the oil sector, there was a considerable expansion of state trading operations due to the wake of the OPEC (Organization of the Petroleum Exporting Countries) policies of the early seventies and the assurance of developed countries to have adequate access to oil supplies.⁹⁸

Today, a review of the STEs notifications made by Members to the WTO reveal that use of state trading in various sectors is still significant. Relevant studies on SOEs also verify the continuing importance of state intervention in global markets and its likely expansion in the future.

⁹³ State trading also played an important role in the trading of many goods in some South American economies and other African countries. Kostecki, "State Trading in Industrialized and Developing Countries," p. 191-193.

⁹⁴ UNCTAD (1990), *Handbook of State Trading Organisations* (UNCTAD, Geneva) in McCorrison et al., "State Trading, the WTO and GATT Article XVII," p. 113.

⁹⁵ Alex F. McCalla and Andrew Schmitz, "State Trading in Grain," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 55.

⁹⁶ Kostecki, "State Trading in Agricultural Products by the Advanced Countries," p. 26.

⁹⁷ Walter C. Labys, "The Role Of State Trading In Mineral Commodity Markets," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kostecki (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 78-79.

⁹⁸ Kostecki, "State Trading by the Advanced and Developing Countries: The Background," p. 12.

3.1.1 The Case of SOEs As An Illustration ⁹⁹

Notwithstanding the privatization push of the last decades, various reports on SOEs show that state intervention in the market continues to be important, and in some cases, it has been even expanded.¹⁰⁰ In 2006, SOEs accounted for 20 percent of world investment, 5 percent of employment, and up to 40 percent of output in some countries.¹⁰¹ Moreover, a report based on the Fortune Global 500 list for the years 2005-2014 shows the increase of SOEs in the world economy, noting that the number of SOEs during this period grew from 9 to 23 percent.¹⁰²

State intervention prevails in emerging economies but continues to be important in developed countries.¹⁰³ Thus, the world's largest 25 SOEs include SOEs from France, Germany, Italy, Norway, and Japan.¹⁰⁴ In Norway, SOEs account for almost 10 percent of national employment, followed by France and Slovenia (about 6 percent), then by Portugal and Estonia (5 percent).¹⁰⁵ A 2014 OECD report further indicates that SOEs in OECD

⁹⁹ Due to the lack of recent available data on STEs, existing information on SOEs is revised.

¹⁰⁰ See, for instance, Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 17-18. The privatization and liberalization of state-controlled sectors have slowed down. In the case of BRIICS, these reforms have been even halted and, in some instances, reversed over the last decade. Thus, the 1999 devaluation crisis and the 2001 electricity shortage stopped in the early 2000s the Brazilian privatization efforts. China's privatization, which started in the 1990s, ceased in the mid-2000s due to the growing political emphasis on state intervention in key economic sectors. Similarly, the Russian privatization was halted (if not reversed) between 2004 and 2008 due to new regulation favoring strategic sectors and government take-overs. *Ibid.*, p. 53-56.

¹⁰¹ Robinett, "Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets," p. 1.

¹⁰² PWC, "State-Owned Enterprises: Catalysts For Public Value Creation?," (2015), p. 6. <https://www.pwc.com/gx/en/psrc/publications/assets/pwc-state-owned-enterprise-psrc.pdf> (accessed 17 September 2016).

¹⁰³ OECD, "Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?," p. 4; Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 18; World Bank, "Corporate Governance of State-Owned Enterprises: A Toolkit," Washington DC: World Bank (2014), p. 3-4; and Grzegorz Kwiatkowski, "Is the State Ownership of Enterprises Gaining in Importance in a Modern Economy?," in *Crisis Management and the Changing Role of the State*, ed. Éva Voszka and Gábor Dávid Kiss (University of Szeged, 2014), p. 150.

¹⁰⁴ In particular, Volkswagen Group in Germany, ENI in Italy, Statoil in Norway, The Nippon Telegraph and Telephone Corporation (NTT) in Japan, and BNP Paribas, Électricité de France (EDF), and GDF Suez in France. Other SOEs (that are not among the world's largest 25 SOEs) include France Telecom, Japan Tobacco, the Nordea Bank in Sweden, and ENEL in Italy. OECD, "Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?," p. 4.

¹⁰⁵ OECD, "The Size and Sectoral Distribution of SOEs in OECD and Partner Countries," OECD Publishing, Paris (2014), p. 11 and 17.

countries account for 2,111 enterprises, valued at over 2 trillion dollars and employing about 6 million people.¹⁰⁶ In major emerging economies, on the other hand, state involvement continues to be pervasive. For instance, of the top-10 world largest SOEs, six are Chinese, one is Brazilian, and one is Russian.¹⁰⁷

A key feature of present SOEs is that they play a significant role not only in domestic markets but also in global markets. Most large SOEs are active internationally and engaged in trade, being among the world's largest companies,¹⁰⁸ investors,¹⁰⁹ and capital market players.¹¹⁰ A recent OECD report based on an analysis of the world's largest 2000 public companies—the so-called Forbes Global 2000—reveals that more than 10% of the world's largest firms are SOEs and their value of sales (USD 327 billion) represents almost 6% of world GDP.

¹⁰⁶ OECD, "Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?," footnote 7.

¹⁰⁷ *Ibid.*, p. 4. Overall, in developing countries SOEs intervention is significant. In **China**, the central government is responsible for 17,000 SOEs while the 1,200 listed SOEs produce 18 percent of GDP. In **India**, there are 240 Public Sector Enterprises (outside the financial sector), producing (*inter alia*) 95 percent of India's coal, 66 percent of its refined oil, and 83 percent of its natural gas. Indian Railways alone employs 1.6 million people, making it the world's largest commercial employer. In the financial sector, SOEs account for 75 percent of India's banking assets. In **Singapore**, Temasek—the national holding company—has a \$90 billion portfolio with shares in over 20 major SOEs. In **Vietnam**, 5,000 SOEs produce 38 percent of GDP, contributing 22 percent of total government revenue. In **Central Asia**, SOEs accounts for more than 50 percent of GDP in Tajikistan, Turkmenistan, and Uzbekistan (and for 20-40 percent in other countries). State enterprises further dominate many economies in the **Middle East** and **North Africa**, accounting for more of 50 percent of GDP on average. In most **Sub-Saharan African** countries state intervention still operate in essentially all sectors. In **South Africa**, there are 270 SOEs. Moreover, in **Poland**, about 1,800 SOEs account for about 28 percent of GDP and 30 percent of employment; while in **Russia**, companies controlled by the federal government produce 20 percent of the country's industrial output while the regional governments another 5 percent. See, generally, Robinett, "Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets," p. 2; Kikeri et al., "State Enterprises: What Remains?," p. 4; and Kwiatkowski, "Is the State Ownership of Enterprises Gaining in Importance in a Modern Economy?," p. 6.

¹⁰⁸ Around 25 percent of the top multinational corporations from emerging economies (China, Russia, India) were SOE in 2006. UNCTAD (United Nations Conference on Trade and Development), "World Investment Report 2007: Transnational Corporations, Extractive Industries and Development," UNCTAD, Geneva (2007), p. 1-30.

¹⁰⁹ Large SOEs from Brazil, China, Russia, and India actively invest abroad in green-field ventures and cross-border merges and acquisitions. World Bank, "Corporate Governance of State-Owned Enterprises: A Toolkit," p. 6.

¹¹⁰ Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 64. In 2005-2007, initial public offerings of SOEs in China and Russia were among the largest in history. Sunita Kikeri and Verena Phipps, "Privatization Trends: A Record Year in 2006," Note No. 317, Washington DC: World Bank (2008), p. 1; and Sunita Kikeri and Amit Burman, "Privatization Trends: Near-Record Levels in 2005," Note No. 314, Washington DC: World Bank (2007), p. 1.

Moreover, their ownership comes from 37 different countries,¹¹¹ and many of the countries with the highest SOE shares are also important traders. These countries comprise China, the United Arab Emirates, Russia, Indonesia, Malaysia, Saudi Arabia, India and Brazil, which collectively account for more than 20% of world trade (with China alone accounting for more than 10% of the world's exports in 2010). Moreover, the sectors with the strongest SOE involvement (i.e. manufacturing, raw materials, and services) are heavily traded.¹¹²

Sector-wise, state intervention continues to be important in the banking, financial, infrastructure, manufacturing, natural resources, and energy sectors.¹¹³ For instance, the 13 largest oil companies (which control 75 percent of global oil reserves and production) are state-owned, and infrastructure (power, rail, water services, as well as telecommunication services in some cases) are still provided in most countries by SOEs. In 2010, moreover, at least 10 of the 18 largest banks in emerging countries were state controlled.¹¹⁴

It has been estimated that the expansion of SOEs is likely to continue in the short and medium-term future. According to the OECD, the emerging and post-transition economies having large SOEs sectors are projected to grow more briskly than other countries.¹¹⁵ The factors nurturing the expansion of state intervention include the global financial crisis;¹¹⁶

¹¹¹ With China leading the list (70 SOEs), followed by India (30), Russia (9), the United Arab Emirates (9), and Malaysia (8). Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 6.

¹¹² Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 5-7.

¹¹³ Ibid., p. 27-29; World Bank, "Corporate Governance of State-Owned Enterprises: A Toolkit," p. 3-6; and Kikeri et al., "State Enterprises: What Remains?," p. 2-3.

¹¹⁴ World Bank, "Corporate Governance of State-Owned Enterprises: A Toolkit," p. 6. Other studies show that state intervention in developing countries remains significant; thus, power utilities are still state operated in well over 80 developing countries; telecommunications in 60 percent of all developing countries; while transport and water are fully state controlled in more than 70 percent of these countries. Regarding the energy sector, it remains fully, or majority state owned. Kikeri et al., "State Enterprises: What Remains?," p. 3.

¹¹⁵ OECD, "Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?," p. 5.

¹¹⁶ In response to the financial crisis, many governments have taken active measures by increasing state equity holdings, mainly in the banking and the manufacture sector (e.g. the United States in General Motors; the United Kingdom in the Royal Bank of Scotland; the Netherlands in the SNS Bank; Ireland in the Anglo-Irish Bank; and Portugal in BNP). See, for instance, Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 28; Kwiatkowski, "Is the State Ownership of Enterprises Gaining in Importance in a Modern Economy?," p. 153-154; OECD, "Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?," p. 3; and World Bank, "Corporate Governance of State-Owned Enterprises: A Toolkit," p. 7.

natural resources control-related issues;¹¹⁷ growth and internationalization of emerging economies which maintain state ownership in broad segments of their economies; the development of strategic industries to compete in the globalized economy;¹¹⁸ the nationalization or acquisition of key economic sectors;¹¹⁹ and the re-nationalization of public services.¹²⁰

3.1.2 State Trading Enterprises In The WTO

Notwithstanding the GATT/WTO efforts to regulate STEs activities, the current information provided by WTO Members through their STE notifications does not allow for an effective assessment on their STE impact on the global economy. For instance, while some of the reported exporting STEs to the WTO appear to have export monopoly powers and/or other special privileges, having therefore important impacts on global markets, the extent of such impacts is impossible to assess based on the current information provided by Members. Moreover, since WTO Members notify their STEs based on their self-interpretation of the GATT/WTO working definition, many state trading enterprises may escape the notification requirement.¹²¹

¹¹⁷ The nationalization of natural resources started in Mexico in the 1930s, continuing in the Middle East in the 1970s, and lately in countries such as Venezuela and Russia. Kwiatkowski, "Is the State Ownership of Enterprises Gaining in Importance in a Modern Economy?," p. 151 and 154.

¹¹⁸ Russia, for instance, has created the United Shipbuilding Corporation and the Joint Stock United Aircraft Corporation. Carsten Sprenger, "The Role of State-Owned Enterprises in the Russian Economy," OECD Roundtable on Corporate Governance of SOEs, Moscow (2008). In 2009, Vietnam created 175 new SOEs to develop strategic industries. World Bank, "Vietnam Development Report 2012: Market Economy For A Middle-Income Vietnam," Washington DC: World Bank (2011), p. 26.

¹¹⁹ In 2006, Argentina, Bolivia, and Venezuela nationalized companies to increase their presence in strategic sectors of the economy. In 2007, Russian government-related enterprises acquired private company assets (e.g. Gazprom's purchase of Sibneft). World Bank, "Corporate Governance of State-Owned Enterprises: A Toolkit," p. 7.

¹²⁰ This is for instance the case of water in countries such as France, Germany, and the United States. Massimo Florio, "Public Enterprises in a Global Perspective," CIRIEC International Conference, Paris (2015), p. 3.

¹²¹ Rude et al., "European Union Grain Export Practices: Do They Constitute a State Trading Enterprise?," p. 177. For instance, many countries such as Mexico, Egypt, and Pakistan had notified that they do not have agricultural STEs, although these countries did use STEs to import agricultural products during the 1992-95 period. Ackerman et al., "An Introduction to State Trading in Agriculture," p. 9. Illustrating further this situation is the Singaporean STE "Temasek" which is subject to the SOE regulation under the TPP. Within the WTO, however, Singapore has notified that it currently does not maintain any STE (see, Annex C). Vietnam's lack of notifications regarding some STEs also illustrates this point. See *infra* note 183.

Despite these deficiencies, a review of the WTO notifications still providing valuable information about the importance of state trading among WTO Members. WTO Members are required to report their STEs to the WTO Council for Trade and Goods under Article XVII of the GATT once every two years based on a questionnaire adopted in 1960 and revised in 1998 and 2003. A WTO inventory tracing all the STEs notified by Members is presented in Annexes A-D.¹²² The data covers WTO Members notifications from 1995 until March 2017.¹²³ This survey represents by far the most updated and elaborated sample of STEs notified to the WTO to date analyzed.¹²⁴

According to the WTO notifications, well over 474 STEs have been notified since the inception of the WTO. They have been common in all regions and in both developing and developed countries. Asia has notified the existence of 276 STEs,¹²⁵ while Latin America 56 STEs,¹²⁶ Europe 32 STEs,¹²⁷ Oceania 26 STEs,¹²⁸ Africa 21 STEs,¹²⁹ North America 18 STEs,¹³⁰ and the Middle East 16 STEs.¹³¹ Among the countries that have notified more STEs, there is China leading the list with 198 STEs,¹³² followed by India (35 STEs), Colombia (17

¹²² **Annex A** on “Active STEs Notified By WTO Members”; **Annex B** on “STEs Eliminated From Notifications By WTO Members”; **Annex C** on “WTO Members That Does Not Currently Maintain Any STE”; and **Annex D** on “WTO Members That Have Not Made Any STE Notification”.

¹²³ It should be noted that very few STEs have been notified for transparency reasons only and without prejudice to Article XVII of the GATT. In addition, not all the STEs notified by China were possible to examine. With respect to some products (i.e. fuel oil, antimony and antimony products, and silver), China’s latest notifications remit to domestic regulations that were not possible to verify due to language constraints (i.e. they are available only in Chinese). However, the data presented in this section (and contained in Annexes A-D) reflects all the STEs that have been notified (and were verified) during the period under review.

¹²⁴ To best of my knowledge, the largest sample analyzed in previous mapping exercises was undertaken by the WTO Secretariat which covered the STEs notified until 1995. Other samples have covered notifications provided to the WTO from 1980 to 1994. United States General Accounting Office (GAO), “State Trading Enterprises: Compliance with The General Agreement on Tariffs and Trade,” Report to Congressional Requesters, Washington DC: 1995.

¹²⁵ Afghanistan, China, India, Indonesia, Japan, Korea, Malaysia, Philippines, Taiwan, Thailand, and Vietnam.

¹²⁶ Barbados, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Grenada, Jamaica, Mexico, Paraguay, Peru, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay, and Venezuela.

¹²⁷ The European Union, Iceland, Kazakhstan, Latvia, Lithuania, Malta, Norway, Poland, Slovak, Slovenia, Switzerland, Turkey, and Ukraine. (Here, the single notifications made by the EU Members are being considered separately from the notifications made by the EU).

¹²⁸ Australia, Fiji, and New Zealand.

¹²⁹ Cape Verde, Cote d’Ivoire, Mauritius, Mali, Morocco, and Tunisia.

¹³⁰ Canada and the United States.

¹³¹ Israel, Jordan, and Oman.

¹³² The number of China’s STEs is estimated to be greater. See, *supra* note 123.

STEs), Australia (16 STEs), the United States (14 STEs), Korea (12 STEs), Taiwan (11 STEs), Japan (10 STEs), Tunisia and New Zealand (9 STEs each).

In the last decades, however, there has been a trend towards a decrease of state trading. Without considering China,¹³³ the number of notified STEs has decreased by an estimated 59 percent when compared with the STEs notified in the 1995-99 period.¹³⁴ Developed countries have been responsible for the major reduction of STEs, eliminating 86 STEs while developing countries 73 STEs.¹³⁵ The major sector where STEs have been abolished is agriculture, followed by energy and mining.

Explaining this decrease is the fact that some STEs have been abolished or no longer operate as STEs. Thus, countries, which had previously notified the maintenance of STEs, have in their last notifications informed that they do not longer maintain any STE. For instance, South Africa that had notified the existence of 16 STEs and Brazil 10 STEs have reported in their last notification that they do not currently maintain any STE.¹³⁶ Furthermore, while still maintaining STEs, other countries have reduced their number of STEs, and in some cases, in a considerable amount. This is particularly the case of Australia (from 16 to 1 STE), Korea (from 12 to 2), New Zealand (from 9 to 1), Taiwan (from 11 to 3), the European Union and Jamaica (from 7 to 1 each).¹³⁷

¹³³ In some cases, China's pervasive use of STEs obscures WTO Members trends with respect to state trading. Since it joined the WTO, China alone has notified the establishment of 198 STEs. Today, China's notifications show that it maintains 87 STEs. Yet, this number is estimated to be greater since not all China's STEs were possible to verify. See, *supra* note 123.

¹³⁴ In the 1995-99 period, 199 STEs were notified. Today, the notifications show the existence of 117 STEs (this is without considering China, which alone has notified the current existence of 87 STEs).

¹³⁵ This is without considering China. China alone has eliminated 111 STEs.

¹³⁶ Other countries, which currently do not maintain *any* STE, but had notified the establishment of STEs in the past include Bahrain (1 STE), Czech Republic (1 STE), Cyprus (6 STEs), Iceland (1 STE), Latvia (1 STE), Lithuania (6 STEs), Malta (2 STEs), Namibia (4 STEs), Norway (3 STEs), Paraguay (2 STEs), Peru (1 STE), Poland (3 STEs), Slovakia (1 STE), and Slovenia (1 STE).

¹³⁷ Other countries that have reduced their number of STEs include Canada (from 5 to 2), Colombia (from 17 to 13), India (from 35 to 28), Japan (from 10 to 4), Mauritius (from 5 to 2), Morocco (from 4 to 1), Oman (from 4 to 1), Switzerland (from 3 to 1), Trinidad and Tobago (from 5 to 1), Turkey (from 3 to 1), and the United States (from 13 to 7).

Today, active STEs amount to 204 enterprises.¹³⁸ Only less than half of the WTO Membership maintains STEs (26 percent). The rest of Members have notified that they do not currently maintain any STE¹³⁹ or have not made any notification in this regard.¹⁴⁰ The notifications indicate that state trading continues to be widespread among all regions, prevailing in Asia where they account for 65 percent of the total number notified by all Members. This is true notwithstanding China's accession to the WTO and its pervasive number of STEs.¹⁴¹ In other regions, state trading remains also important. Latin America maintains 28 STEs, Africa 15 STEs, North America 10 STEs, the Middle East 10 STEs, Europe 5 STEs, and Oceania 3 STEs.¹⁴²

STEs are more prevalent in developing countries, which have reported the current existence of 180 STEs (88 percent of the total STEs notified by all Members).¹⁴³ China tops the list with 87 STEs,¹⁴⁴ followed by India (28 STEs), Colombia (13 STEs), and Tunisia (9 STEs). China and India have reported by far most of the existing STEs, accounting for 56 percent of the total number reported by all WTO Members. For its part, developed countries with an important number of STEs, include the United States (7 STEs) and Israel (6 STEs).¹⁴⁵

As for the covered sectors, the notifications indicate that state trading is common in both the agricultural and the industrial sectors. Still, STEs are by far more prevalent in the agricultural and related industries. It is estimated that 60 percent of the notified STEs concern agriculture. Some agricultural STEs, moreover, are often concerned with more than one

¹³⁸ While 474 STEs have been notified since the inception of the WTO, today Members notifications indicate that only 204 STEs are still active.

¹³⁹ See, Annex C.

¹⁴⁰ See, Annex D.

¹⁴¹ Overall, Asia has notified the current existence of 133 STEs. Without China, Asia continues to be the leading continent in maintaining STEs (i.e. 46 STEs).

¹⁴² See, Annex A.

¹⁴³ WTO developing countries and LDCs have notified the establishment of STEs as follows: Afghanistan 1, Barbados 1, Cape Verde 1, Chile 1, China 87, Colombia 13, Costa Rica 2, Cote D'Ivoire 1, Dominica 2, Ecuador 1, Fiji 1, Grenada 1, India 28, Indonesia 1, Jamaica 7, Jordan 3, Kazakhstan 1, Korea 2, Mali 1, Malaysia 1, Mauritius 2, Mexico 2, Morocco 1, Oman 1, Philippines 1, St. Vincent and Grenadines 1, Taiwan 3, Thailand 3, Trinidad y Tobago 1, Tunisia 9, Turkey 1, Ukraine 1, Uruguay 1, Venezuela 1, and Vietnam 2.

¹⁴⁴ The number of China's STEs is estimated to be greater. See *supra* note 123.

¹⁴⁵ Overall, WTO developed Members have notified the existence of 24 STEs as follows: Australia 1 STE, Canada 3 STEs, the European Union 1 STE (including the notifications made by its Member States), Israel 6 STEs, Japan 4 STEs, New Zealand 1 STE, Switzerland 1 STE, and the United States 7 STEs.

agricultural product.¹⁴⁶ The range of products traded in agriculture is wide. It includes cereals, grains, seeds, cane sugar, fruits and nuts, vegetables, edible oils, dairy products, tea, coffee, cocoa, livestock and meat, birds' eggs, natural honey, spirits, tobacco, raw silk and cotton. Yet, among these products, the more traded by STEs are cereals (especially rice and wheat), then tobacco, dairy products, vegetables, spirits, sugar, cotton, and vegetable oil.¹⁴⁷

As for the industrial sector, state trading intervention is important in textiles and energy, accounting for 17 percent and 16 percent (respectively) of the total number of STEs reported by all Members. With respect to other sectors, 5 percent of the notified STEs correspond to the chemical or allied industry, 3 percent to the mining sector, and 1 percent (each) to the fisheries and printing sectors. In textiles, STEs mainly deal with cotton yarn and woven fabrics of cotton, while in the energy sector STEs are primarily involved with coal, crude oil and processed and refined oil (including, petroleum naphtha, asphalt base, gasoline, diesel fuel, jet fuel, kerosene, liquefied petroleum gas, aviation gasoline, fuel oil, propane, natural gas, and heating oil). Products of the chemical or allied industries include medicine and pharmaceutical products, isotopes, serums, vaccines, chemical fertilizers, and urea. In the mining sector, the products traded are ore, tungsten, antimony, and silver.¹⁴⁸

With respect to the trading orientation, about 28 percent of the existing STEs are both import and export-oriented enterprises, while an estimated of 46 percent of STEs engage only with imports and about 19 percent only with exports.¹⁴⁹ Sector-wise, the STEs related to agriculture, energy, textiles, and chemical products are mainly associated with imports, whereas the STEs related to mining with exports.¹⁵⁰ China, India, and Colombia have reported by far most of the export-oriented STEs (about 27 percent of the total number notified by all

¹⁴⁶ For instance, Taiwan maintains an STE (The Bank of Taiwan – BOT) that is responsible for 16 agricultural commodities. See, Annex A.

¹⁴⁷ See, Annex A.

¹⁴⁸ See, Annex A.

¹⁴⁹ The remaining 7 percent concerns STEs that neither export nor import.

¹⁵⁰ In the agricultural sector, there are 35 STEs that are import and export-oriented, 49 STEs that only import, and 33 STEs that only export. In the energy sector, there are 17 STEs that are import and export-oriented, 11 STEs that only import, and 1 STE that only export. In the textiles sector, there is 1 STE that is import and export-oriented and 34 STEs that only import. In the chemical and allied industries, there are 2 STEs that are import and export-oriented and 4 STEs that only import. In the mining sector, there are 2 STEs that are import and export-oriented and 3 STEs that only export.

WTO Members).¹⁵¹ In the import side, China alone houses most of the import-oriented STEs (36 percent of the total number notified by all WTO Members).¹⁵²

The notifications further reveal that WTO Members establish STEs to achieve a wide variety of domestic policy goals. The main objectives that Members cite include: (i) development of the agricultural sector; (ii) consolidation and/or expansion of domestic output; (iii) control of marketing and/or production of specific commodities; (iv) income or input support for domestic producers; (v) price stabilization; (vi) assurance of steady supply; (vii) rationalization, control, and/or promotion of foreign trade operations, including achievement of economies of scale in trading operations, development of a competitive market, and improvement of terms of trade; (viii) strategic control and protection of health and public morals; (ix) protection and management of important domestic resources; (x) intervention on market and/or health crisis events; (xi) research and development support; (xii) implementation of international commitments concerned with quantity and/or price; and (xiii) maximizing government revenue.¹⁵³

The types of STEs reported by WTO Members also vary considerably. While the available information does not (in most cases) allow for an accurate assessment on the types of notified STEs, the notifications show that they include statutory marketing boards, export marketing boards, regulatory marketing boards, and fiscal monopolies.¹⁵⁴ Illustrations of statutory marketing boards include the Australian Rice Marketing Board for the State of New South Wales; the Barbados Agricultural Development Corporation (BADMC); the Chilean Comercializadora de Trigo S.A.; the Fiji Sugar Corporation (FSC); the National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED); the Indonesian STE Perum BULOG; the Fruit Board of Israel; and the Moroccan Phosphates Board (OCP).¹⁵⁵

For its part, examples of export marketing boards include the Indian West Bengal Essential Commodities Supply Corporation Ltd. (WBECSC), which is engaged with the

¹⁵¹ India has reported 24 export-oriented STEs, China 19, and Colombia 13.

¹⁵² China has notified 73 import-oriented STEs.

¹⁵³ See, Annex A.

¹⁵⁴ This classification follows the one used by the WTO Secretariat. See, Section 2.5 on Types of STEs above.

¹⁵⁵ See, Annex A.

export of all varieties of onions, and the Minerals and Metals Trading Corporation Ltd. (MMTC), which oversees exporting specific raw materials. Examples of Regulatory marketing boards include the Korean Agro-Fisheries & Food Trade Corporation (aT), which is concerned with the administration of tariff quotas for certain agricultural products, and the Bank of Taiwan (BOT), which administers the allocation of tariff-rate quotas (TRQs) for 16 agricultural commodities. A large group of STEs are also established as fiscal monopolies, including the Cape Verde Sociedade Caboverdiana de Tabacos, S.A.; the Canadian Provincial and Territorial Liquor Control Authorities; thirteen Colombian distilleries; the Japan Tobacco Inc. (JT); and the Tunisian National Tobacco and Matches Agency (RNTA).¹⁵⁶

3.1.3 The Special Case of Agriculture

State trading has been an important tool of agricultural trade. Since the beginning of the WTO, well over 200 STEs on agriculture have been notified.¹⁵⁷ Today, they represent more than 60 percent of the existing STEs, which means that the trend on agriculture has not changed over the years.¹⁵⁸ This is true notwithstanding the decrease of STEs in the agricultural sector (in 1995, STEs on agriculture represented 79 percent of the total STEs reported).¹⁵⁹ China and India are the countries which maintain most of the existing STEs on agriculture, accounting for 48 percent of the total number reported to the WTO.¹⁶⁰ Moreover, most of the WTO Membership maintains only STEs that are related to agriculture. This is particularly the case of Australia, Israel, Japan, Korea, New Zealand, Switzerland, and the European Union.¹⁶¹

The inclination of WTO Members to state trading activities in agriculture obeys to the belief that state trading is an appropriate governmental means to meet agricultural-related

¹⁵⁶ See, Annex A.

¹⁵⁷ Since 1995, 243 agricultural STEs have been notified to the WTO.

¹⁵⁸ As noted earlier, state trading has always been prevalent in agriculture. See, Section 3.1 on State Trading In The World.

¹⁵⁹ Moreover, as noted elsewhere, the major reduction of STEs according to the WTO notifications concern agricultural STEs.

¹⁶⁰ China has notified the existence of 39 STEs on agriculture and India 20 STEs. According to China's notifications, it has eliminated only 3 agricultural STEs since it joined the WTO.

¹⁶¹ Also, Barbados, Cape Verde, Chile, Colombia, Dominica, Ecuador, Fiji, Grenada, Indonesia, Malaysia, Oman, Philippines, Saint Vincent and Grenadines, Thailand, Trinidad and Tobago, and Vietnam. See, Annex A.

policy objectives.¹⁶² STEs normally control the marketing and pricing of agricultural products by purchasing or selling domestic production, exporting, or importing. STEs can also influence agricultural trade when they are designated to administer certain agricultural policies like import restrictions (quotas and tariff-rate quotas (TRQs)). For instance, when a STE is designated as the sole importer under a TRQ, it has full discretion over imports within the quota.¹⁶³

As noted earlier, several agricultural commodities are heavily regulated. The more traded agricultural goods by STEs are cereals (mainly rice and wheat), followed by tobacco, dairy products, vegetables, spirits, sugar, cotton, and vegetable oil. What follows is an overview of the STE importance in the world trade of some of these commodities. Special emphasis is placed on the role that WTO notified STEs play in this trade.

A. State Trading In Wheat

For a long time, the use of STEs in the wheat market was pervasive. During the period 1973-77, more than 95 percent of world wheat trade was made by countries using STEs.¹⁶⁴ From 1993 to 1998, the Canadian and Australian Wheat Boards, which have been historically considered among the largest export-oriented wheat STEs, accounted for a third of world wheat exports.¹⁶⁵ The state trading export privileges or rights afforded to the Canadian and Australian Wheat Boards have been revoked.¹⁶⁶ Moreover, according to the WTO notifications, at least ten wheat-related STEs have been abolished or no longer operate as STEs.¹⁶⁷ Still, despite this overall decline, the global trade of wheat continues to be highly

¹⁶² WTO, Operations of State Trading Enterprises as They Relate to International Trade, Background Paper by the Secretariat, WTO Document G/STR/2, 26 October 1995, p. 2.

¹⁶³ Dixit et al., "State Trading in Agriculture: An Analytical Framework," p. 9-10; and Ackerman et al., "An Introduction to State Trading in Agriculture," p. 4.

¹⁶⁴ McCalla et al., "State Trading in Grain," p. 55.

¹⁶⁵ Ackerman et al., "An Introduction to State Trading in Agriculture," p. 4.

¹⁶⁶ See, Annex B.

¹⁶⁷ That is, the Food Agency of The Government of Japan; the Namibian Agronomic Board; Statkorn Ltd. in Norway; the Wheat Board in South Africa; the National Flour Mill Ltd. (NFM) in Trinidad and Tobago; the Turkish Soil Product Office (Turkish Grain Board); the Cyprus Grain Commission; the Medigrain Company Ltd. in Malta; the Agricultural Market Agency (AMA) in Poland; and the Agency of the Republic of Slovenia for Commodity Reserves. See, Annex B.

intervened by state trading operations. New partakers (such as Russia) are becoming key players in the global trade of wheat.¹⁶⁸

In the period 2015/16, state trading intervention accounted for an estimated 41 percent of world wheat exports. Russia, the second largest wheat exporter handling 15 percent of the global exports, uses an STE (The United Grain Company—UCG) for increasing grain exports.¹⁶⁹ The other two larger exporters are Canada and the United States, accounting for 13 percent each of world exports. The United States maintains export credit guarantees that operate for wheat. They are administered by the Foreign Agricultural Service (FAS) of the USDA on behalf of an STE (The Commodity Credit Corporation—CCC).¹⁷⁰ For its part, Canada uses the Canadian Wheat Board as its sole export agency.¹⁷¹ Several minor exporters also use state trading for administering their wheat export policies, including Chile, China, and Ecuador.¹⁷² Other important exporters, that heavily regulate the wheat market but do not use STEs, are the European Union and Ukraine. The European Union, the largest wheat exporter handling 20 percent-share of global exports, implements various internal market

¹⁶⁸ As has been noted, significant changes have taken place on the world wheat market over the last decade. Russia, which was a formerly net wheat importer, has become a leading exporter. Its share in the world wheat market has grown from 0.5 percent to 13.8 percent since 2000. It is expected that Russia will be the first wheat exporter of the world by 2019. Zsombor Pall; Oleksandr Perekhozhuk; Ramona Teuber; and Thomas Glauben; "Wheat trade: Does Russia price discriminate across export destinations?," IAMO Forum (2011), p. 17.

¹⁶⁹ The UGC (created in 2009 to increase grain purchases and sales on the domestic market and to modernize the storage and shipment of wheat and increase exports) was included in the list of SOEs that had to be privatized in 2012. Today, however, the government owns still 50 percent (plus one share) of the company. *Ibid.*, p. 2; and Global Agricultural Information Network (GAIN), "Privatization of the United Grain Company," USDA Foreign Agricultural Service, GAIN Report No. RS1240 (2012), p. 1. Russia has not notified to the WTO the UGC as an STE (nonetheless it has been formally required by other WTO Members to do so). WTO Document, State Trading: Replies to Questions Posed by the European Union Regarding the Russian United Grain Company, G/STR/Q1/RUS/2 (2016), p. 1.

¹⁷⁰ United States, Trade Policy Review, WTO Document WT/TPR/S/350/Rev.1 (2017), p. 117-119.

¹⁷¹ This board was commercialized in 2015. However, it is considered in this survey as The Marketing Freedom for Grain Farmers Act (which came into force on 1 August 2012 and signaled the dismantling of this monopoly) provided with a five-year transition period. In the meantime, moreover, the CWB retained federal government guarantees. Canada, Trade Policy Review, WTO Document WT/TPR/S/314 (2015), p. 86 and 118-119.

¹⁷² See, Annex A.

support measures that are available for wheat.¹⁷³ Ukraine, for its part, controls 10 percent of the world exports and maintains price regulation on wheat products.¹⁷⁴

Imports of wheat are very fragmented and less concentrated than exports. Fifteen countries account for just over the half of global wheat imports.¹⁷⁵ Some of them use (in some cases exclusively) state trading administration to carry out its imports. Egypt, the larger wheat importer, maintains the General Authority of Supply Commodities (GASC) as a major importer of wheat.¹⁷⁶ Japan uses an STE (The Ministry of Agriculture, Forestry and Fisheries—MAFF) to carry out almost all wheat imports.¹⁷⁷ In China, imports subject to state trading administration also comprise wheat.¹⁷⁸ Other small importers using STEs for managing the importation of wheat include Mauritius (using the State Trading Corporation (STC)) and Oman (using the Public Authority for Stores and Food Reserves (PASFR)). In Jordan, moreover, the Ministry of Industry and Trade is the major importer of wheat bran for animal feed, while in Tunisia the Grain Board (OC) has the monopoly on the importation of durum wheat, common wheat, and barley.¹⁷⁹

¹⁷³ European Union, Trade Policy Review, WTO Document WT/TPR/317/Rev. 1 (2015), p. 122-129; European Union, Trade Policy Review, WTO Document WT/TPR/S/357 (2017), p. 154.

¹⁷⁴ Pursuant to the Law No. 1877-IV of 24 June 2004 on "State Support of Ukraine's Agricultural Sector", wheat and soft wheat were subject to state price regulation. Ukraine, Trade Policy Review, WTO Document WT/TPR/S/334 (2016), p. 87.

¹⁷⁵ Algeria, Bangladesh, Brazil, China, Egypt, the European Union, India, Indonesia, Japan, Korea, Mexico, Morocco, Nigeria, Philippines, Syria, Thailand, Vietnam, and Yemen.

¹⁷⁶ Egypt, Trade Policy Review, WTO Document WT/TPR/S/150/Rev.1 (2005), p. 47.

¹⁷⁷ Japan, Trade Policy Review, WTO Document WT/TPR/S/351 (2017), p. 57.

¹⁷⁸ China, Trade Policy Review, WTO Document WT/TPR/S/342/Rev.1 (2016), p. 94.

¹⁷⁹ See, Annex A.

World Wheat, Flour, and Products Trade			
<i>July/June Year Thousand Metric Tons</i>			
<i>2015/16</i>			
Country	Exports	Country	Imports
Canada	22.136	Algeria	8.153
European Union	34.686	Bangladesh	4.693
Russia	25.543	Brazil	5.922
Ukraine	17.431	China	3.476
United States	21.856	Egypt	11.925
		European Union	6.917
		Indonesia	10.116
		Japan	5.715
		Korea, South	4.420
		Mexico	4.805
		Morocco	4.503
		Nigeria	4.410
		Philippines	4.850
		Syria	4.872
		Vietnam	3.069
		Yemen	3.323
Total World	172.199	Total World	172.199

Source: United States Department of Agriculture – Foreign Agriculture Service (2016)

B. State Trading In Rice

Global exports of rice are highly concentrated (dominated only by four countries) and the sector remains highly influenced by state intervention. According to the STEs notifications to the WTO, only few rice-oriented STEs have been eliminated or no longer operate as STEs.¹⁸⁰ Currently, state trading controls well over 50 percent of world rice exports.

¹⁸⁰ That is, the Companhia Nacional de Abastecimento (CONAB) in Brazil; the Food Agency of the Government of Japan; the Korean Ministry For Food, Agriculture, Forestry & Fisheries (MIFAFF) and the Ministry Of Agriculture & Forestry (MAF); and the Swiss Conseil de l'agriculture (COA). See, Annex B.

In 2015-16, India and Thailand (the two largest exporters of rice in the world) held 25 and 24 percent-share respectively of the global exports. India provides subsidies and price support schemes through state trading (e.g. the Food Corporation of India (FCI)).¹⁸¹ Thailand maintains various measures assisting rice farmers, including financial aid, preferential loans, and input support. It maintains an STE (The Public Warehouse Organization) that oversees the exportation and importation of rice.¹⁸² Vietnam, which holds 12.5 percent of the global exports, conducts about half of its rice exports through its SOEs Vietnam Northern Food Corporation (Vinafood1) and Vietnam Southern Food Corporation (Vinafood2).¹⁸³ Pakistan, controlling 11 percent of the world exports, does not use STEs, but provides numerous domestic support measures to its agriculture sector (including financing to facilitate export growth) and subjects rice exports to minimum export prices.¹⁸⁴

Other exporters using state trading include Chile (with Comercializadora de Trigo S.A.), Ecuador (with the National Warehousing Unit), and China (with COFCO Corporation and Jilin Grain Group Import and Export Co.). Moreover, in Australia, the Rice Marketing Board for the State of New South Wales has appointed Ricegrowers Limited (SunRice) as the sole exporter for the State of New South Wales. In Japan, the Ministry of Agriculture, Forestry and Fisheries (MAFF) can export rice when it is needed.¹⁸⁵

Rice imports are much less concentrated than exports. Around 33 percent of imports are held by eight countries,¹⁸⁶ and in some cases, these imports are controlled by state trading operations. China is the largest rice importer, holding 11 percent-share of world imports. It subjects rice imports to state trading administration (e.g. with the STE COFCO Corporation) and uses TRQs for the importation of rice.¹⁸⁷ Japan carries out almost all imports of rice by its

¹⁸¹ India, Trade Policy Review, WTO Document WT/TPR/S/313/Rev.1 (2015), p. 73, 77 and 101-104.

¹⁸² Thailand, Trade Policy Review, WTO Document WT/TPR/S/326/Rev.1 (2015), p. 18, 77, 81, 97, 104-106. See, also, Annex A.

¹⁸³ Vietnam has not included these state trading enterprises in its STE notification. Vietnam, Trade Policy Review, WTO Document WT/TPR/S/287/Rev.1 (2013), p. 100-103.

¹⁸⁴ Pakistan, Trade Policy Review, WTO Document WT/TPR/S/311/Rev.1 (2015), p. 48 and 67.

¹⁸⁵ See, Annex A.

¹⁸⁶ China, Cote d'Ivoire, the European Union, Indonesia, Iran, Nigeria, and Saudi Arabia.

¹⁸⁷ China, Trade Policy Review, WTO Document WT/TPR/S/342/Rev.1 (2016), p. 94, 117.

STE the Ministry of Agriculture, Forestry and Fisheries (MAFF).¹⁸⁸ In Indonesia, the Government is involved in stabilizing the price of rice through its STE Perum BULOG and by implementing import measures. In this connection, quantitative import restrictions and import licensing requirements have been maintained to protect domestic production.¹⁸⁹

Other minor importers also use state trading for conducting their imports of rice. In Malaysia, Padiberas National Berhad acts as a STE for rice importation. In the Philippines, the National Food Authority (NFA) has the exclusive authority to import rice and to issue import quotas and permits. Similarly, in Saint Vincent and Grenadines, the St. Vincent Marketing Corporation has the monopoly for rice importation. In Taiwan, the Agriculture and Food Agency, Council of Agriculture (AFA) is responsible for conducting rice importation, while the Bank of Taiwan (BOT) undertakes the administration of allocating TRQs on rice. Other countries using import-oriented rice STEs include Dominica, Ecuador, India, and Oman.¹⁹⁰

World Rice Trade			
<i>January/December Year, Thousand Metric Tons</i>			
<i>2015/16</i>			
<i>Country</i>	<i>Exports</i>	<i>Country</i>	<i>Imports</i>
India	10.040	China	4.600
Pakistan	4.300	Cote d'Ivoire	1.300
Thailand	9.867	European Union	1.814
Vietnam	5.088	Indonesia	1.000
		Iran	1.100
		Nigeria	2.000
		Saudi Arabia	1.300
Total World	40.402	Total World	40.402

Source: United States Department of Agriculture – Foreign Agriculture Service (2016)

C. State Trading In Sugar

¹⁸⁸ Japan, Trade Policy Review, WTO Document WT/TPR/S/351 (2017), p. 57.

¹⁸⁹ Indonesia, Trade Policy Review, WTO Document WT/TPR/S/278/Rev.1 (2013), p. 8, 43, 73.

¹⁹⁰ See, Annex A.

Today, state trading intervention in sugar appears to be primarily an issue of imports rather than exports. Australia (one of the largest sugar exporters and an historical state trading operator) has eliminated the special export rights for marketing sugar to the larger exporting STE (Queensland Sugar Limited (QSL)). According to the notifications made to WTO, other minor export-oriented sugar STEs have also been eliminated.¹⁹¹ Still, notwithstanding the participation of exporting STEs has decreased, sugar continues to be a highly-regulated commodity with few players controlling its global trade.

In 2015/16, over the 70 percent of world sugar exports were dominated by four countries. Brazil (the largest sugar exporter) held 45 percent-share of global sugar exports, followed by Thailand (14 percent), Australia (7 percent), and India (5 percent). Brazil, Thailand, and Australia do not use state trading activities to control its sugar exports. However, Brazil and Thailand heavily regulate and influence their sugar markets. Brazil operates credit programs and provides subsidies to the sugar sector.¹⁹² In Thailand, sugar is a commodity subject to price control. Thailand also maintains various measures assisting sugar production, including preferential loans.¹⁹³ India, on the other hand, uses state trading for conducting its sugar exports. It has notified to the WTO the Indian Sugar Exim Corporation Limited as an STE concerned with the promotion of sugar exports. Moreover, exports of sugar (under preferential regimes with the United States and the European Union) are made by state-trading enterprises to which export privileges have been granted. India also maintains various price support schemes and export subsidies for sugar producers.¹⁹⁴ Minor exporters which use state trading for administrating their policies of sugar exports include Costa Rica and Fiji.¹⁹⁵

¹⁹¹ That is, the Sugar Industry Authority of Jamaica, the Taiwan Sugar Company (TSC), the Caroni (1975) Ltd. in Trinidad and Tobago, the Polish Agricultural Market Agency (AMA), the Slovak State Fund for Market Regulation (SFMR), and the Czech State Fund For Market Regulation (SFMR). See, Annex B.

¹⁹² Brazil, Trade Policy Review, WTO Document WT/TPR/S/283/Rev.1 (2013), p. 118, 127, 142. See, also, American Sugar Alliance, "Brazil's \$2.5 Billion a Year Sugar Subsidies Exposed," <https://sugaralliance.org/brazils-2-5-billion-a-year-sugar-subsidies-exposed> (accessed 8 November 2017).

¹⁹³ Thailand, Trade Policy Review, WTO Document WT/TPR/S/326/Rev.1 (2015), p. 84 and 105-106.

¹⁹⁴ India, Trade Policy Review, WTO Document WT/TPR/S/313/Rev.1 (2015), p. 25, 66, 77, 99, and 101. See, also, Annex A.

¹⁹⁵ For the marketing of sugar, including exports, Costa Rica maintains the Liga Agrícola Industrial de Canna de Azucar (LAICA) and Fiji maintains the Fiji Sugar Corporation (FSC). See, Annex A.

Unlike exports, sugar imports continue to be a commodity highly intervened by state trading operations. Only few import-oriented sugar STEs have been eliminated.¹⁹⁶ About 20 percent of sugar imports are conducted through STEs. China, which is the largest world importer of sugar (11-percent share of global imports), subjects this commodity to TRQs and to state trading administration.¹⁹⁷ It has notified to the WTO the establishment of three STEs which are sugar-related: COFCO Corporation, China Commercial Foreign Trade Corporation, and China National Sugar and Alcohol Group Corporation.¹⁹⁸ Indonesia (the second world sugar importer holding 7 percent of the world imports) also maintains quantitative import restrictions for sugar. The government is also considering expanding the mandate of its STE (Perum BULOG) for stabilizing sugar prices.¹⁹⁹ India and Egypt (together accounting for over 4 percent of global imports) also use state trading practices for handling their sugar imports. India maintains state trading requirements on imports of sugar and has notified to the WTO the Indian Sugar Exim Corporation Limited which oversees the importation of sugar.²⁰⁰ In Egypt, the General Authority of Supply Commodities (GASC) is a major importer of sugar.²⁰¹

Other important sugar importers are the European Union and the United States. While they do not rely on state trading for managing their imports of sugar, they continue to be key importers that heavily regulate sugar prices and imports through tariff-rate quotas.²⁰² Other smaller sugar importers using STEs are Dominica, Saint Vincent and Grenadines, and Tunisia.²⁰³

¹⁹⁶ That is, the Moroccan National Tea and Sugar (ONTS), the Taiwan Sugar Company (TSC), the Caroni (1975) Ltd. in Trinidad and Tobago, the Polish Agricultural Market Agency (AMA), the Agency of the Republic of Slovenia for Commodity Reserves, the Slovak State Fund for Market Regulation (SFMR), and the Czech State Fund For Market Regulation (SFMR). See Annex B.

¹⁹⁷ China, Trade Policy Review, WTO Document WT/TPR/S/342/Rev.1 (2016), p. 94 and 117. Non-state trading enterprises that have obtained trading rights through registration may engage in the importation of part of the quota of sugar.

¹⁹⁸ See, Annex A.

¹⁹⁹ Indonesia, Trade Policy Review, WTO Document WT/TPR/S/278/Rev.1 (2013), p. 8, 10, 61 and 65.

²⁰⁰ India, Trade Policy Review, WTO Document WT/TPR/S/313/Rev.1 (2015), p. 25, 99. See, also, Annex A.

²⁰¹ Egypt, Trade Policy Review, WTO Document WT/TPR/S/150/Rev.1 (2005), p. 47.

²⁰² United States, Trade Policy Review, WT/TPR/S/350/Rev.1 (2017), p. 46, 116. European Union, Trade Policy Review, WTO Document WT/TPR/S/357 (2017), p. 151.

²⁰³ See, Annex A.

World Centrifugal Sugar			
<i>1.000 Metric Tons, Raw Value</i>			
<i>2015/16</i>			
Country	Exports	Country	Imports
Australia	3.700	China	6.000
Brazil	24.350	European Union	3.000
India	3.000	India	1.352
Thailand	7.800	Indonesia	3.605
		United States	3.031
Total World	53.672	Total World	53.371

Source: United States Department of Agriculture – Foreign Agriculture Service (2016)

D. State Trading In Dairy Produce

The export side of dairy world trade still highly concentrated. In 2012/14, the two major exporters, the European Union and New Zealand, together accounted for over 50 percent of world exports, followed by the United States and Australia. Yet, state trading intervention in this sector has significantly decreased. The New Zealand Dairy and the Australian Dairy Boards do not longer operate as STEs.²⁰⁴ The former handled about 30 percent of world dairy product exports.²⁰⁵ Other small exporters have also eliminated dairy-related STEs.²⁰⁶ Moreover, the European Union (the largest dairy exporter holding 24-percent share) does not use state trading to conduct its exports (although it maintains a series of policy instruments in support of its domestic market).²⁰⁷ The only big exporter that appears to implement state trading activities for conducting dairy exports is the United States. It provides

²⁰⁴ See, Annex B.

²⁰⁵ Ackerman et al., “An Introduction to State Trading in Agriculture,” p. 6.

²⁰⁶ That is, the Barbados Dairy Industries Ltd., the Milk Board of South Africa, the Swiss Butter Supply Board (UTYRA), the Czech State Fund For Market Regulation, the Polish Agricultural Market Agency (AMA), and the Slovak State Fund For Market Regulation (SFMR). See, Annex B.

²⁰⁷ European Union, Trade Policy Review, WTO Document WT/TPR/S/357 (2017), p. 145.

support programs that authorizes its STE (The Commodity Credit Corporation (CCC)) to purchase dairy products at prevailing market prices when milk margins are depressed.²⁰⁸

State trading in the import side of dairy produce is more apparent.²⁰⁹ Japan maintains a complex combination of high tariffs, quotas and government-administered import licensing arrangements that limit dairy imports. ALIC is the STE entitled to import designated dairy products.²¹⁰ Canada maintains an STE (The Canadian Dairy Commission) which controls the imports of butter and has exclusive or special privileges for butter imports.²¹¹ Algeria, an acceding WTO country, imports dairy products through state trading agencies.²¹² Other importing countries maintaining dairy-related STEs include India (which has notified 6 dairy-related STEs), Oman, and Taiwan.²¹³ Russia, Indonesia, and Mexico are large importers of dairy products, and while not using STEs to administer their imports, they maintain important import restrictions. Russia maintains a ban on imports that restricts dairy trade,²¹⁴ Indonesia implements import restrictions on milk,²¹⁵ and Mexico maintains tariff-rate quotas (TRQs) on powdered milk and cheese.²¹⁶

²⁰⁸ The 2014 Farm Act introduced a margin protection for milk producers (MPP-Dairy) and a Dairy Product Donation Program, which authorizes the Commodity Credit Corporation (CCC) to purchase dairy products at prevailing market prices when milk margins are depressed. The purchased quantities are subsequently distributed to low income households. United States, Trade Policy Review, WTO Document WT/TPR/S/350/Rev.1 (2017), p. 114.

²⁰⁹ This is true notwithstanding the elimination of several importing STEs dairy produce, including the Barbados Dairy Industries Ltd., the Milk Board of South Africa, the Swiss Butter Supply Board (UTYRA), the Taiwanese Central Trust of China (CTC/TD), the Czech State Fund For Market Regulation, the Polish Agricultural Market Agency (AMA), and the Slovak State Fund For Market Regulation (SFMR). See, Annex B.

²¹⁰ Japan, Trade Policy Review, WTO Document WT/TPR/S/351 (2017), p. 57 and 96-97.

²¹¹ Canada, Trade Policy Review, WTO Document WT/TPR/S/314/Rev.1 (2015), p. 84, 115-188.

²¹² GAIN, "Algeria: Dairy and Products Annual," USDA Foreign Agricultural Service, GAIN Report No. AG1409 (2014).

²¹³ See, Annex A.

²¹⁴ OECD-FAO, "OECD-FAO Agricultural Outlook 2016-2025," OECD Publishing, Paris (2016), p. 6 and 110.

²¹⁵ Indonesia, Trade Policy Review, WTO Document WT/TPR/S/278/Rev.1 (2013), p. 114.

²¹⁶ Mexico, Trade Policy Review, WTO Document WT/TPR/S/352 (2017), p. 50.

Milk and Milk Products			
<i>Thousand tonnes, milk equivalent</i>			
<i>2012/14</i>			
Country	Exports	Country	Imports
Australia	3.620	Algeria	2.621
European Union	16.314	Canada	607
New Zealand	18.187	Japan	1.758
United States	9.825	Indonesia	2.550
		Mexico	2.964
		Russia	4.359
Total World	68.476	Total World	65.315

Source: United States Department of Agriculture – Foreign Agriculture Service (2016)

E. State Trading Evolution In Other Sectors

While state trading is more prevalent in agriculture, it is also important in other sectors. Thus, as noted earlier, 17 percent of the total number of STEs notified to the WTO is related to textiles, 16 percent to energy, and 3 percent to mining.

In the energy sector, well over 100 STEs have been notified since the inception of the WTO. Currently, only 33 STEs are active.²¹⁷ Still, state trading appears to have gained importance in this sector (even if in marginal terms). The number of STEs has increased by an estimated 10 percent compared to the number notified during the 1995-2000 period.²¹⁸ Developing countries host most of the energy-related STEs (i.e. 28 STEs). Among developed countries, only the United States has reported the existence of STEs associated to energy (i.e. 5 STEs).²¹⁹ This kind of STEs are widespread in nearly all regions but are mainly concentrated

²¹⁷ The WTO Members that currently maintain energy STEs include Afghanistan, Costa Rica, Cote d'Ivoire, China, Jordan, India, Mauritius, Mexico, Tunisia, United States, Uruguay, and Venezuela. Other WTO Members that in the past had notified STEs on energy include Brazil, Jamaica, Morocco, Oman, Trinidad and Tobago, and the European Union. See, Annex A.

²¹⁸ This increase is estimated to be higher since China's STEs with respect to fuel oil products were not possible to verify. See *supra* note 123.

²¹⁹ Other developed countries that in the past had energy STEs, include the European Union (including its Member States) which had notified the existence of 5 energy STEs. See, Annex B.

in Asia (17 STEs), then in Latin America (5 STEs), North America (5 STEs), Africa (4 STEs), and the Middle East (2 STEs).²²⁰ Even if a clear distinction between goods and services in the energy sector is not always an easy task within the WTO framework, it is further noted that several of the notified STEs concern electrical energy (including its supply, and/or transmission and/or distribution). This is particularly the case of 4 STEs from the United States, 1 STE from Mexico, and 1 STE from Afghanistan.²²¹

Regarding textiles, the incidence of STEs was virtually null at the beginning of the WTO. In the last decades, however, the number of textiles-related STEs has significantly increased. This trend is due to China's accession to the WTO. In 1995, only 1 STE on textiles was reported.²²² Currently, there are 35 STEs relating to the textiles industry being China the only hosting Member of these enterprises.²²³

In the mining sector, the number of WTO Members using state trading to handle their mining operations has decreased. In the past, seven WTO Members had reported the existence of mining-related STEs (Brazil, China, India, Japan, Jordan, Taiwan, and the United States). Today, only 4 Members appear to maintain mining STEs (India, Jordan, Morocco, and China).²²⁴ Still, the situation of the mining sector is rather uncertain. The exact number of mining STEs has not been possible to verify due to China's imprecise notifications.²²⁵ Without considering China, it appears that 9 STEs have been reported since the establishment of the WTO, of which only 5 STEs are active. While this trend indicates that the number of STEs in the mining sector has decreased, the number of China's mining-related STEs is estimated to be significant. For instance, early notifications from China show that it maintained well over 50 STEs concerned with mining.²²⁶

²²⁰ According to its notifications, the European Union does not currently maintain STEs on energy.

²²¹ See, Annex A.

²²² This was the case of the Australian STE "Wool International", which oversaw the purchasing of fresh wool when disposals exceeded the maximum allowed. See, Annex B.

²²³ See, Annex A.

²²⁴ See, Annexes A-B.

²²⁵ As noted elsewhere, China's notifications do not specify the STEs involved in this sector but refers to public documents that (due to language constraints) were not possible to be verified.

²²⁶ See, Annex B.

3.2 Conclusions

The empirical part of this research assessed the importance of state trading in WTO Members according to their STE notifications to the WTO. While these notifications provide an incomplete picture of the prevalence of state trading in world trade—WTO Members report their enterprises based on their individual interpretations of the GATT/WTO working definition—the review of these notifications provides still valuable information about the status of state trading among WTO Members and its effects in world markets.

Without considering China, this survey shows that there has been a trend towards a decrease of state trading (about 59 percent). This decrease—partly due to the reduction or elimination of STEs maintained by historically state trading users—has clearly replicated in the world trade of various agricultural commodities. Thus, state trading intervention in the dairy sector has significantly decreased since the New Zealand Dairy Board (handling about 30 percent of world dairy product exports), and the Australian Dairy Board, do not longer operate as STEs. Moreover, following Australia's elimination of the special export rights to the larger sugar exporter Queensland Sugar Limited (QSL), the incidence of state trading in sugar is currently an issue of imports rather than exports. In the same way, the use of STEs in the wheat market (which for long time was pervasive) decreased since the export privileges/rights to the Canadian and Australian Wheat Boards were revoked (these boards accounted for a third of global wheat exports).

Yet, notwithstanding this overall decline—and the fact that less Members are relying on state trading operations (less than half of the WTO Membership maintains STEs)—the raw numbers demonstrate that the influence of STEs both in world trade and in several important countries and sectors is still significant. Today, the STEs notified to the WTO amount to 204 enterprises and they exist in all regions and in many countries irrespective of the degree of economic development. Big users of STEs include China and India (topping the list), Colombia, Israel, Tunisia, and the United States. Some of these countries are also important traders—most notably China, the world's second-largest importer and largest exporter accounting for more than 10 percent of the global exports in 2010.

The results of the analysis also show that most of the notified STEs are import-oriented enterprises. This raises the question of whether the international existing rules adequately address the distortionary effects of importing STEs. In the next section, some loopholes with respect to the GATT/WTO regulation of import monopolies will be discussed. About the covered sectors, the incidence of state trading continues to be pervasive in agriculture (60 percent of STEs and most of the WTO Membership maintains only agricultural STEs), meaning that the trend on agriculture has not changed over the years. This is true notwithstanding agriculture is the sector with more STEs decrease. This result is not surprising, however. China is one of the world's largest importer of agricultural products, and in fact, it is the Member housing most of the import-oriented STEs (36 percent of the total number notified by all WTO Members).

Illustrating the prevalence of STEs in agriculture, well over 50 percent of world rice exports, and about 41 percent of world wheat exports, are controlled by state trading operations. State trading is also relevant in the import-side of agriculture trade, accounting for about 20 percent of sugar world imports; 12 percent of wheat world imports; and 15 percent of global rice imports. Currently, a great part of this trade is held by former centrally-planned economies, showing that these economies are becoming key partakers in international trade and that there is a potential for economic distortions in world markets if the STEs operating in these countries benefit from unfair state advantages.

More importantly, in some cases, former centrally-planned economies are offsetting the overall decline of state trading intervention made by historical STEs users. For instance, the incidence of state trading in the global exports of wheat—which had declined due to the revocation of state trading export rights to the two largest export-oriented STEs (the Canadian and Australian Wheat Boards)—continues to be significant due to Russia's involvement in the market. Russia (which was a formerly net wheat importer) is now the second larger exporter of wheat, and by 2019, it is expected to become the first wheat exporter of the world.

Finally, this survey shows that state trading is also important in the industrial sector, markedly in textiles and energy. In contrast to agriculture, state trading in these sectors is

gaining importance in quantitative terms. Energy STEs increased by an estimated 10 percent. In the case of textiles, the tremendous increase of STEs is due to China's accession to the WTO (notified STE on textiles increased from 1 to 35 STEs). With respect to services, the SOEs reports show that state intervention in the services sector (mainly in banking and financial services) is very high. Yet, the GATS lacks a transparency requirement by which Members are compelled to notify their services STEs. This is a significant omission considering the important presence of state enterprises in the services sector. Outside the multilateral level, however, some RTAs regulate services STEs and include transparency requirements with respect to these enterprises.

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Sono comunque fatti salvi i diritti dell'università Commerciale Luigi Bocconi di riproduzione per scopi di ricerca e didattici, con citazione della fonte.

Chapter 4

The Regulation Of State Trading In The WTO Law

4.1 Article XVII Of The GATT And Related Provisions

4.1.1 Negotiating History Of Article XVII Of The GATT

The issue of state trading has long been recognized since the inception of the GATT.²²⁷ Draftsmen were concerned that, unless disciplined, STEs could act as a concession erosion tool by circumventing GATT concessions.²²⁸ Thus, in its 1945 Proposals on World Trade and Employment, the United States delegation advanced an initial three-element approach to discipline state trading.²²⁹ First, it was proposed that Members operating state trading in any form should accord “equality of treatment” to all other Members. To this end, STEs sales and purchases shall be governed only by commercial considerations (such as price, quality, and marketability). Second, the assurance of minimum levels of market access from countries that had state monopolies of individual products was required. Third, to allow the participation of states that conducted foreign trade only through state monopolies, minimum levels of market access from such countries were also sought.²³⁰

²²⁷ For more on the negotiating history of STEs, see, John H. Jackson, *World Trade and the Law of the GATT*, (The (Bobbs-Merrill Company, 1969), p. 329-361; Mavroidis, *The Regulation of International Trade*, p. 400-402; and Andreas Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, EUI Working Papers RSCAS 2017/18 (2017), p. 1-3.

²²⁸ The fear was that being STEs state entities, they were willing to advance national industrial policy goals and have little (or any) incentive to act in accordance with commercial considerations. Mavroidis, *The Regulation of International Trade*, p. 399-400.

²²⁹ Although previous bilateral trade agreements contained STEs provisions, the United States was the first to propose a multilateral STEs approach. Jackson, *World Trade and the Law of the GATT*, p. 333. See, also, J. E. S. Fawcett, “State Trading and International Organization,” 24 *Law and Contemporary Problems* (1959), p. 341-342.

²³⁰ Proposals for Expansion of World Trade and Employment, Developed by a Technical Staff within the Government of the United States in Preparation for an International Conference on Trade and Employment and Presented for the Peoples of the World, U.S. Department of State (1945), p. 17. (Hereinafter United States 1945 Proposals). See, also, Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 1-2.

Later, as a part of the proposals for an International Trade Organization (ITO), the United States presented a more elaborated proposal to regulate state trading. This proposal did not deviate substantially from its previous one. Article 26 of this proposal provided that covering trading enterprises should operate on “nondiscriminatory basis”, allowing their sales and purchases to be influenced solely by “commercial considerations”. According to the United States, this nondiscriminatory provision was the counterpart of the most favored treatment (MFN) clause as applied to customs duties. Then, Article 27, relating to state monopolies for individual products (e.g. tobacco monopolies), stipulated that states having import monopolies had to negotiate the level of protection in the form of a price markup which had to be applied to domestic sales of the imported product. This provision represented the counterpart of duty reductions in cases where state trading was not involved and called to negotiate these markups in the same way as tariffs. Finally, Article 28 referred to the case of countries having a complete state monopoly of all import trade and required such countries to undertake purchase agreements (subject to periodic adjustments) on a nondiscriminatory basis. The effect of this provision was to allow imports to supply a large portion of the home market.²³¹

As can be inferred, the attempts of the drafters to integrate state trading into international trade were based on the belief that STEs should behave (insofar as possible) like private enterprises.²³² However, a comprehensive multilateral commitment on state trading was finally impracticable. It was recognized that state trading was a relatively new issue that was not sufficiently understood to be subject to specific disciplines.²³³ On the other hand, some states with high state trading intervention desired more flexible STEs rules.²³⁴ As a

²³¹ Suggested Charter for an International Trade Organization of the United Nations, US Department of State (1946), p. 20-22; United Nations, “Preparatory Committee of the International Conference on Trade and Employment, Verbatim Report of the Fifth Meeting of Committee II”, (1946), UN Document E/PC/T/C.II/PV/5, p. 35-37.

²³² Stegemann, “State Trading and Domestic Distortions in a Mixed World Economy,” p. 163; and Jackson, *World Trade and the Law of the GATT*, p. 334.

²³³ See, for instance, United Nations, “Preparatory Committee of the International Conference on Trade and Employment, Verbatim Report of the Fourteen Meeting of Commission A,” (1947), UN Document E/PC/T/A/PV/14, p. 17; and Uruguay Round, Multilateral Trade Negotiations, Article XVII (State Trading Enterprises): Note by the Secretariat, MTN.GNG/NG7/W/15/add.1, 2 December 1988, para. 10. (“Uruguay Round, State Trading Enterprises: Note by the Secretariat”).

²³⁴ Czechoslovakia, for instance, was seeking safe-harbor rules for STEs within GATT. United Nations, “Preparatory Committee of the International Conference on Trade and Employment, Annotated Agenda,”

result, Article XVII of the GATT (and related provisions) reflect only the first two of the three initial objectives proposed by the United States. That is, the provisions related to the nondiscrimination treatment and to state monopolies for individual products. The provision requiring countries operating complete state monopolies for import trade to negotiate global purchase agreements was not retained.²³⁵

4.1.2 Definition Of State Trading Enterprises

Article XVII of the GATT is the central GATT/WTO provision dealing with state trading practices. It provides as follows:

1.* (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,* such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

(b) The provisions of subparagraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations,* including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) No contracting party shall prevent any enterprise (whether or not an enterprise described in subparagraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

(1947), UN Document, E/PC/T/W/198. New Zealand, for its part, complained that the proposed rules would discriminate against nations with greater state trading intervention. United Nations, "Preparatory Committee of the International Conference on Trade and Employment, Summary Record of the Seventeenth Meeting of Commission A," (1947), UN Document, E/PC/T/A/SR/17, p. 9-10.

²³⁵ It was considered impracticable to deal with Article 28 in the absence of the Soviet Union, which was the state for which this provision was intended. Uruguay Round, State Trading Enterprises: Note by the Secretariat, para. 3.

3. The contracting parties recognize that enterprises of the kind described in paragraph 1 (a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.*

4. (a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1 (a) of this Article.

(b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the CONTRACTING PARTIES of the import mark-up* on the product during a recent representative period, or, when it is not possible to do so, of the price charged on the resale of the product.

(c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1 (a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Thus, nothing in Article XVII restricts on the rights of Members to establish and maintain STEs or to grant any enterprise special rights or privileges.²³⁶ It requires, however, that such enterprises comply with certain requirements. As noted earlier, Article XVII was introduced as an anti-circumvention device. In the Appellate Body words, Article XVII:1(a) “seeks to ensure that a Member cannot, through the creation or maintenance of a State enterprise or the grant of exclusive or special privileges to any enterprise, engage in or

²³⁶ The drafting history of Article XVII reveals that the draftsmen “recognized that there was nothing in Article XVII which prevents a contracting party from establishing or maintaining State-trading enterprises, nor does the General Agreement sanction discrimination against State-trading enterprises which are, in this regard, placed on the same basis as any other enterprise.” GATT, “Committee on The Legal And Institutional Framework Of The GATT In Relation To Less-Developed Countries,” GATT Document L/2281, 26 October 1964, para. 10. WTO panels have also confirmed that the mere existence of STEs (or the mere fact that imports are affected through STEs) would not in itself be inconsistent with the WTO Agreement. See, Panel Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R, adopted 22 September 1999, (“*India – Quantitative Restrictions*”), para. 5.134; and Panel Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/R, WT/DS169/R, adopted 10 January 2001, (“*Korea – Various Measures on Beef*”), para. 568.

facilitate conduct that would be condemned as discriminatory under the GATT 1994 if such conduct were undertaken directly by the Member itself. In other words, subparagraph (a) is an "anti-circumvention" provision."²³⁷

Still, the regulation of state trading has been a complex subject within the GATT/WTO multilateral system. Reflecting this situation is its failure to define STEs. The scope of Article XVII broadly refers to (i) state enterprises (established or maintained by a Member and wherever located); (ii) any enterprise that benefits (whether formally or in effect) from "exclusive or special privileges" from the state; and (iii) any enterprise (whether or not it falls with the descriptions above). However, no definition of these terms is provided. For instance, no clarification exists as to meaning of the expression "exclusive or special privileges".²³⁸ On the other hand, while the Interpretative Note to Article XVII (paragraphs 1 and 4) explicitly states that "marketing boards" and "import monopolies" are one form of STE, it does not provide other examples.²³⁹

During the Uruguay Round, an attempt was made to clarify the definition and scope of trading activities. Thus, while Article XVII was maintained, the Understanding on Article XVII was adopted to provide a working definition on STEs for notification purposes. According to this definition, STEs are "governmental or non-governmental entities (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

²³⁷ Appellate Body Report, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/AB/R, adopted 27 September 2004, ("Canada – Wheat Exports and Grain Imports"), para. 85.

²³⁸ Some light is found in the Interpretative Note to paragraph 1 (a) of Article XVII, which clarifies that governmental measures to ensure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of natural resources (which do not empower the government to exercise control over the trading activities of the enterprise in question), do not constitute "exclusive or special privileges". Still, the vagueness of the expression "exclusive or special privileges" has left to the self-interpretation of Members to determine when an enterprise (state controlled or not) is possessed of exclusive or special privileges. Ivan Bernier, "State Trading and the GATT," in *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, ed. M. M. Kosteci (London and Basingstoke: The Macmillan Press Ltd, 1982), p. 247.

²³⁹ The Interpretative Note to paragraph 1 of Article XVII states that "Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of paragraphs (a) and (b)" of Article XVII. Still, as *per* this provision, only marketing boards engaged in purchasing or selling activities (and not regulatory marketing boards) are covered by Article XVII.

purchases or sales the level or direction of imports or exports”.²⁴⁰ This working definition still lacks precision²⁴¹ and functions only as a guidance for notification purposes.²⁴² Its content, however, provides some useful insights for understanding the WTO regulation on STEs.

It confirms that the key element for subjecting state trading activities to the GATT/WTO disciplines is not state ownership *per se* (or monopoly status).²⁴³ According to this definition, what matters is the behavior of state trading enterprises.²⁴⁴ However, its scope is narrower than the scope of Article XVII. As commentators have observed, while Article XVII includes any state enterprise and does not require any trade influence demonstration, STEs in the working definition are excluded unless (1) they have been granted special rights or privileges and (2) they influence the level or direction of trade through sales or purchases.²⁴⁵ With respect to the phrase “exclusive or special rights or privileges”, the working definition reveals that the scope of this expression includes statutory or constitutional powers. In fact, it confirms that STEs may include enterprises afforded the authority to make sales or purchases by operation of national legislation or constitutional prerogatives.²⁴⁶ The working definition also shows that it suffices that STEs through their purchases or sales “influence” (as opposed to regulate) the level or direction of import or export trade.²⁴⁷ Still, it says nothing about whether any specific degree of influence is needed to satisfy this condition.²⁴⁸ Finally, the working definition does not explicitly tie the “purchases or sales”

²⁴⁰ Para. 1 of the Understanding on Article XVII.

²⁴¹ Here again, no clarification is given as to meaning of “exclusive or special privileges”.

²⁴² This definition was adopted without prejudice to the substantive obligations of Article XVII. Understanding on Article XVII.

²⁴³ As noted by John H. Jackson, an example of the fact that state ownership is not the relevant criteria to determine whether Article XVII applies to a trading enterprise is found in the Interpretative Note to paragraph 1 of Article XVII, which indicates that even complete state control of an enterprise is not conclusive on the matter (this provision states that marketing boards which simply set regulations for private traders, but do not themselves engage in trade, are precluded from the provisions of Article XVII). Jackson, *World Trade and the Law of the GATT*, p. 341. See, also, Roberts, “The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric”, 304-305.

²⁴⁴ That is, whether these enterprises influence import or export trade with their purchases or sales.

²⁴⁵ See, for example, Ernst-Ulrich Petersmann, “GATT Law on State Trading Enterprises: Critical Evaluation on Article XVII and Proposals for Reform,” in *State Trading in the Twenty-First Century*, ed. Thomas Cottier and Petros C. Mavroidis (Ann Arbor: The University of Michigan Press, 1998), p. 86-88.

²⁴⁶ Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 4.

²⁴⁷ Mavroidis, *The Regulation of International Trade*, p. 404.

²⁴⁸ Nevertheless, it has been argued that by requiring that such influence result from “purchases or sales” activities, the “nature” of the operations of an enterprise will be an important factor in determining the STE

activities to imports or exports, which means therefore that an enterprise does not actually need to import or export itself to be considered a STE.²⁴⁹

Another attempt to clarify the scope of trading activities within the WTO is found in the Illustrative List developed by the Working Party on State Trading Enterprises.²⁵⁰ This Illustrative List, which is based on the Article XVII notifications made since 1980, aims to provide useful guidance for notification purposes and does not represent an agreed STE definition nor a STE interpretation. Still, it shows the kinds of relationships between governments and STEs and the kinds of activities engaged in by these enterprises as possible indications of the existence of a STE. Thus, as *per* their relationship with the government, the Illustrative List shows that STEs may be (fully or partly) state-owned or be entirely separate from the state (such as entities established and maintained under legislation and financed and controlled by producers). As *per* their activities, STEs can engage on activities which are (directly or indirectly) related to exportation, importation, or the trade regime of a country, including the control or conduct of import or exports, quotas administration, establishment of domestic sales prices of imports, and enforcement of statutory requirements of agricultural marketing schemes or stabilization arrangements.²⁵¹

It should be noted in conclusion that the GATT/WTO definition on STEs is far from clear.²⁵² Most of the work on defining STEs has been aimed at establishing clearer rules for notification purposes.²⁵³ To date, while Members still hanging off from developing a

status of the enterprise. Mastromatteo, "WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994", p. 5.

²⁴⁹ *Ibid.*, p. 4-5.

²⁵⁰ Pursuant to para. 5 of the Understanding on Article XVII, the Working Party On State Trading Enterprises was established in 1995 under the Council for Trade in Goods. It was charged with (*inter alia*) developing an illustrative list showing "the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises." The illustrative list was elaborated in 1999 and it is contained in the WTO Document, G/STR/4 (1999) ("The Illustrative List").

²⁵¹ *Ibid.*, p. 1-4.

²⁵² This situation has been widely recognized. See, for example, Mavroidis, *The Regulation of International Trade*, p. 405; Roberts, "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric", p. 308-311; Baban, "State Trading and the GATT," p. 339; and Ianni, "State Trading: Its Nature and International Treatment," p. 54-55.

²⁵³ David, "Article XVII GATT: An Overview," p. 26.

comprehensive definition of STEs, no WTO panel or the Appellate Body has specifically ruled on this definitional issue.²⁵⁴

Finally, there are some exceptions that apply to state trading activities or enterprises. First, enterprises that buy goods for immediate or ultimate consumption in governmental use are exempted from the disciplines of Article XVII. This government procurement exception recognizes a distinction between governmental *versus* commercial use, where only goods for commercial use are within the reach of Article XVII.²⁵⁵ Second, “exclusive or special privileges” do not involve governmental measures to ensure standards of quality and efficiency in the operation of external trade, as well as the privileges granted for the exploitation of national natural resources but that do not empower the government to exercise control over the activities of an STE.²⁵⁶ Finally, the substantive obligations of Article XVII are subject to the general exceptions of the GATT. Specially, Article XX (on General Exceptions) and Article XXI (on Security Exceptions).²⁵⁷

4.1.3 Substantive Obligations

Article XVII:3 of the GATT explicitly recognizes that STEs “might be operated so as to create serious obstacles to trade”, and to deal with this problem, Article XVII imposes various substantive obligations on the operation of state trading enterprises. These obligations

²⁵⁴ According to Mastromatteo, it is clear from the broad, non-exhaustive, and non-binding nature of the guidance provided in the Illustrative List, that Members continue to shy away from developing a comprehensive STEs definition, preferring the flexibility provided for by Article XVII and the working definition. This, is an argument arguably endorsed by the fact that the STE definitional issue has never been raised in any GATT/WTO dispute. Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 5. See, also, Bernier, “State Trading and the GATT,” p. 247.

²⁵⁵ Para 1 of the Understanding on Article XVII. As noted by Mavroidis, GATT drafters wanted to have an exception for government procurement because of the nature of this activity. Mavroidis, *The Regulation of International Trade*, p. 403.

²⁵⁶ Paragraph 1(a) of the Ad Note to Article XVII.

²⁵⁷ Article XX(d) of the GATT states that nothing in GATT shall prevent the adoption or enforcement of measures necessary to secure compliance with laws or regulations, including those relating to the enforcement of monopolies operated under Article XVII of the GATT. Article XXI on Security Exceptions generally states that nothing in the WTO Agreement shall be construed “to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests ...; or to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security”.

mainly relate to nondiscrimination treatment, commercial considerations, and transparency requirements. Yet, as the Appellate Body has observed, Article XVII does not constitute a comprehensive code of conduct for STEs. Indeed, several other GATT Articles further constrain either directly or indirectly the operation of STEs.²⁵⁸ These provisions include Article II (on Schedule of Concessions), Article III (on National Treatment), Article XVI (on Subsidies), Article XX (on General Exceptions), and Article XXXVII (on Commitments).

Moreover, an Interpretative Note to Article XI (on the elimination of quantitative restrictions), Article XII (on restrictions to safeguards the balance of payments), Article XIII (on the non-discriminatory administration of quantitative restrictions), Article XIV (on exception to the rules on non-discrimination), and Article XVIII (on government assistance for economic development) indicates that under these provisions, the terms “import restrictions” or “export restrictions” include restrictions made effective through state-trading operations. As GATT panels have recognized, the whole purpose of these provisions is to prevent WTO Members “to frustrate the principles of the General Agreement governing measures affecting private trade by regulating trade through [state trading operations].”²⁵⁹

A. MFN And National Treatment

Article XVII:1(a) of the GATT contains the nondiscriminatory treatment obligation. It requires that in their purchases or sales involving either imports or exports, STEs “act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the [GATT]”. Much have been debated about the relationship of this obligation with the

²⁵⁸ According to the Appellate Body, the existence of other GATT provisions supports the view that “Article XVII was never intended to be the sole source of the disciplines imposed on STEs under that Agreement. This is also consistent with the view that Article XVII:1 was intended to impose disciplines on one particular type of STE behaviour, namely discriminatory behaviour, rather than to constitute a comprehensive code of conduct for STEs. Moreover, as the Panel observed, since the conclusion of the Uruguay Round, a number of additional obligations, under different covered agreements, operate to further constrain the behaviour of STEs.” Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 98.

²⁵⁹ GATT Panel Report, *Japan – Restrictions On Imports Of Certain Agricultural Products*, adopted on 2 February 1988, L/6253 - 35S/163, para. 5.2.2.2; and GATT Panel Report, *Canada – Import, Distribution And Sale Of Certain Alcoholic Drinks By Provincial Marketing Agencies*, adopted on 18 February 1992, DS17/R - 39S/27, para. 5.15.

principles of most favored treatment (Article I of the GATT) and national treatment (Article III of the GATT).

While there is agreement that the nondiscrimination obligation contained Article XVII:1(a) entails MFN treatment, it is disputed whether it involves a “relaxed” (as opposed to strict) form of MFN. The language of Article XVII is not self-evident on the matter and the issue has not been subject to the scrutiny of the Appellate Body.²⁶⁰ Some scholars support that compliance with Article I of the GATT is strictly required, arguing that STEs must observe the same general principles of nondiscriminatory treatment applicable to private traders.²⁶¹ Others, however, observe that the drafting history supports a rather “modified or relaxed form of most-favoured-nation treatment”.²⁶² The latter understanding seems to be the official view of the WTO Secretariat, which relies in the derogations from the nondiscriminatory principle of Article XVII (i.e. “tied loan” and “different price charging” exceptions) to sustain that a strict application of the MFN principle was not intended.²⁶³

More significantly, however, is whether the nondiscriminatory treatment under Article XVII:1(a) refers only to MFN or also includes a national-treatment type obligation.²⁶⁴ That is, whether a STE in its purchases or sales is precluded from discriminating against

²⁶⁰ In *Canada – Wheat Exports and Grain Imports*, the Panel had no difficulty in accepting the parties’ view that Article XVII:1(a) “includes the general principles of most-favoured-nation treatment as enshrined in Article I:1 of the GATT 1994.” Panel Report, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/R, adopted 27 September 2004, (“*Canada – Wheat Exports and Grain Imports*”), para. 6.48. This interpretation was not appealed.

²⁶¹ Matsushita (et al.) argue that no derogation exists from the MFN obligation contained in Article I of the GATT. STEs must observe the same “general principles” of non-discriminatory treatment applicable to private traders. This appears to be the purpose of the broad requirement in Article XVII to adhere strictly to “commercial considerations”. Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, *The World Trade Organization* (Oxford, University Press, 2006), p. 277. See, also, Bernier, “State Trading and the GATT,” p. 246 and 250.

²⁶² Jackson argues that the GATT drafting history of Article XVII favors a “modified or relaxed form of most-favoured-nation treatment” by noting that the phrase “general principles of nondiscriminatory treatment” was inserted to allay the doubt that “commercial principles” (in subparagraph b) meant that “exactly the same price would have to exist in different markets”. As a result, it appears that what was meant by nondiscriminatory treatment was a MFN principle tempered by commercial considerations. Jackson, *World Trade and the Law of the GATT*, p. 345-346.

²⁶³ See WTO Technical Information on State Trading Enterprises, available at https://www.wto.org/english/tratop_e/statra_e/statra_info_e.htm (accessed 28 June 2016).

²⁶⁴ This issue must be distinguished from that regarding the specific application of Article III of the GATT to STEs. As noted elsewhere, the WTO Agreement is ownership neutral and its application does not depend on whether the subject at issue is private or state-controlled.

foreign goods in favor of domestic goods. GATT/WTO practice has not been clear on this issue.²⁶⁵ The drafting history indicates that only a MFN treatment was required²⁶⁶ and early GATT panels supported this view.²⁶⁷ Following GATT/WTO panels have taken a more cautious approach. They have avoided to make any specific findings on the merits (i.e. whether the nondiscriminatory treatment referred to in Article XVII:1 also comprises the national treatment principle) once they have found that the challenged measures were inconsistent with Article III which implements the national treatment specifically.²⁶⁸

As has been noted, this definitional uncertainty is of great importance. Article III applies only to internal governmental measures (taxation and regulation). Thus, in cases where a governmental measure is not involved, a *lacuna* seems to exist in the GATT rules on state trading.²⁶⁹ Yet, in practice, this situation has not adversely affected the interests of Members. As of today, the challenged measures under Article XVII in all the relevant disputes have always been found to be inconsistent with other GATT provisions.²⁷⁰

²⁶⁵ Some GATT Panels considered that the general nondiscrimination principles of Article XVII do not include an Article III National Treatment obligation (see, for example, the *Belgian Family Allowances* case, *infra* note 267). In contrast, WTO panels have considered that the principles of non-discrimination in Article XVII include at least the provisions of Articles I and III of the GATT. Panel Report, *Korea – Various Measures on Beef*, para 7.53; and Panel Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* (“*Canada – Renewable Energy*”) and *Canada – Measures Relating to the Feed-in Tariff Program* (“*Canada – Feed-in Tariff Program*”), adopted 24 May 2013, WT/DS412/R, WT/DS426/R, para. 7.143. Some scholars also advocate that the terms of Article XVII require “unqualified adherence to non-discrimination norms” including national treatment. Matsushita et al., *The World Trade Organization*, p. 278.

²⁶⁶ For example, the original United States proposal on STEs included only equality of treatment among the enterprises of all other Members. See, United States 1945 Proposals, *supra* note 230. Moreover, a later proposal of the United States included a specific national treatment obligation. This proposal, however, was not accepted. For more on this point, see, Jackson, *World Trade and the Law of the GATT*, p. 346-347; and Davey, “Article XVII GATT: An Overview”, p. 26.

²⁶⁷ For example, according to the *Belgian Family Allowances* case, Article XVII:2 “referred only to the principle set forth in paragraph 1 of that Article, i.e. the obligation to make purchases in accordance with commercial considerations and did not extend to matters dealt with in Article III.” GATT Panel Report, *Belgian Family Allowances*, adopted 7 November 1952, BISD 1S/59, (“*Belgium – Family Allowances (allocations familiales)*”), para. 4.

²⁶⁸ See, for instance, GATT Panel Report, *Canada – Administration of the Foreign Investment Review Act*, L/5504, adopted 7 February 1984, BISD 30S/140, (“*Canada – FIRA*”), para. 5.16; GATT Panel Report, *Canada – Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies*, L/6304, adopted 22 March 1988, BISD 35S/37, (“*Canada – Provincial Liquor Boards (EEC)*”), para. 4.27; and Panel Report, *Korea – Various Measures on Beef*, para. 780.

²⁶⁹ See Davey, “Article XVII GATT: An Overview”, p. 26 and 31; and Jackson, *World Trade and the Law of the GATT*, p. 338-339.

²⁷⁰ Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 7.

B. Commercial Considerations

Subparagraph (b) of Article XVII:1 requires STEs to make their purchases and sales “solely in accordance with commercial considerations” and to afford other enterprises “adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales”. According to the Appellate Body, subparagraph (b) “operates to clarify the scope of the requirement not to discriminate in subparagraph (a)”.²⁷¹ Hence, the non-discriminatory standard proscribed in subparagraph (a) is understood to require STEs to act “in accordance with commercial considerations” and to afford “adequate opportunity to compete”. The Appellate Body has added that by defining and clarifying the requirement in subparagraph (a), subparagraph (b) “is dependent upon, rather than separate and independent from, subparagraph (a).”²⁷² The interpretation of the Appellate Body has been largely questioned. As many commentators have observed, the interpretation of the Appellate Body means that the compatibility of STEs activities with commercial considerations is to be challenged only when discriminatory conduct has taken place.²⁷³ This understanding, however, reduces the potential of Article XVII to prevent STEs from limiting market access commitments.²⁷⁴ For instance, STEs activities that are not in accordance with commercial considerations might be nevertheless exempted from GATT/WTO liability if they have been adopted in a nondiscriminatory manner.²⁷⁵

²⁷¹ Appellate Body Report, *Canada – Wheat Exports and Grain*, para. 89.

²⁷² Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 91. Similar conclusions are found in the GATT Panel Report, *Canada – FIRA*, para 5.16.

²⁷³ For example, Mastromatteo has noted, the Appellate Body ruling has excluded “the possibility that a violation of Article XVII:1 could be established *solely* on the basis of a failure to satisfy one of the two requirements set out in Article XVII:1(b)”, and as such, Article XVII:1(b) becomes relevant “only when the governmental action at issue is of a kind that should be governed by the principles on non-discrimination prescribed in sub-paragraph (a).” Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 7-8. See, also, Mavroidis, *The Regulation of International Trade*, p. 409.

²⁷⁴ See, for example, Davey, referring to GATT Panel Report, *Canada – FIRA*, which noted that the commercial considerations requirement is an interpretation of the nondiscriminatory provisions of subparagraph (a), and as a result, it is applicable only if the measure at issue falls within the scope of the general principles on nondiscriminatory treatment. Davey, “Article XVII GATT: An Overview”, p. 37.

²⁷⁵ Mavroidis, *The Regulation of International Trade*, p. 409. This approach greatly contrasts with the approach followed by several RTAs, which treat the commercial considerations and the nondiscrimination treatment as two different obligations and for which the key benchmark for judging STEs is commercial considerations, even if discriminatory behavior takes place. See, Section 5.1.3A below.

As to the meaning of the phrase “commercial considerations”, Article XVII:1(b) states that these considerations include price, quality, availability, marketability, transportation, and other conditions of purchase and sale. The Interpretative Notes to Article XVII further clarify the scope of this requirement, by stating that STEs are not prevented to charge different prices in different export markets (provided that this is done for commercial reasons, to meet conditions of supply and demand in export markets)²⁷⁶ nor to receive “tied loans”.²⁷⁷ The Appellate Body has also indicated that the requirement to act “in accordance with commercial considerations” does not mean that STEs must refrain from using their privileges and advantages only because such use might disadvantage private enterprises. According to the Appellate Body, Article XVII:1(b) merely prohibits STEs from making purchases or sales on the basis of non-commercial considerations, and STEs (like private traders) are therefore entitled to exploit their advantages to their economic benefit.²⁷⁸

With respect to the requirement that STEs afford an adequate opportunity to other Members enterprises to compete (“in accordance with customary business practice”) for participation in their import or export transactions, the Appellate Body has noted that this requirement refers to “the opportunity to become the STE’s counterpart in the transaction, *not* to an opportunity to replace the STE as a participant in the transaction”.²⁷⁹ The drafting history

²⁷⁶ Interpretative Note to Para 1 of Article XVII GATT. It has been argued that this provision asymmetrically allows export price discrimination for meeting market conditions without permitting import price discrimination for similar purposes. Ianni, “State Trading: Its Nature and International Treatment,” p. 57. In contrast, some RTAs equally allow import price discrimination. See, Section 5.1.3A below.

²⁷⁷ A tied loan is where a receipt country receives a loan from a given country to buy goods from the latter. According to the Interpretative Note to paragraph 1(a) of Article XVII GATT, a country receiving such a loan is free to consider it as a “commercial consideration” when purchasing requirements abroad.

²⁷⁸ Appellate Body Report, *Canada – Wheat Exports and Grain*, para. 149. According to the Appellate Body, the determination of whether the conduct of a STE is consistent with the requirement of “commercial considerations” must be undertaken on a case-by-case basis and must involve a careful analysis of the relevant markets, since “only such an analysis will reveal the type and range of considerations properly considered ‘commercial’ as regards purchases and sales made in those markets, as well as how those considerations influence the actions of participants in the market(s).” Moreover, based on the relationship between subparagraphs (a) and (b) (which implies that the inquiry to be undertaken under subparagraph (b) must be governed by the nondiscrimination principles of subparagraph (a)), the relevant market is “the market(s) in which the STE is alleged to be engaging in discriminatory conduct.” *Ibid.*, paras. 144-145.

²⁷⁹ Appellate Body Report, *Canada – Wheat Exports and Grain*, para. 157 (emphasis original).

further shows that the expression “customary business practice” was intended “to cover business practices customary in the respective line of trade.”²⁸⁰

Finally, subparagraph (c) of Article XVII:1 requires Members not to prevent “any enterprise” from acting in accordance with the principles of subparagraphs (a) and (b). A GATT panel referred to the relationship between subparagraphs (a), (b), and (c) of Article XVII:1, and stated that “through its reference to sub-paragraph (a), paragraph (c) of Article XVII of the General Agreement imposes on contracting parties the obligation to act in their relations with state-trading and other enterprises “in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders”. This obligation is defined in subparagraph (b), which declares, *inter alia*, that these principles are understood to require the enterprises to make their purchases and sales solely in accordance with commercial considerations.”²⁸¹ According to subparagraph (c), this obligation applies not only to STEs but also to “any enterprise” under the jurisdiction of the country concerned.²⁸² Thus, unlike Article XVII:1(b), this provision establishes an additional obligation on Members not to prevent any enterprise to act in accordance with the GATT nondiscrimination principles and commercial considerations.²⁸³

²⁸⁰ United Nations, Preparatory Committee of the International Conference on Trade and Employment, Report to Commission A by Sub-Committee on Articles 31 & 32, (1947), UN Document E/PC/T/160, p. 4.

²⁸¹ GATT Panel Report, *Canada – FIRA*, para. 5.16. Under this basis, the Panel rejected the claim of the United States that the Canadian undertakings which oblige investors to export specified quantities or proportions of their production are inconsistent with subparagraph (c) because the companies’ export levels subject to such undertakings cannot be assumed to be the result of a decision-making process based on commercial considerations. According to the Panel, Article XVII:1(b) does not establish a separate obligation but it merely defines the general non-discriminatory principles set out in sub-paragraph (a). Hence, before applying the commercial considerations criterion, it must first be determined whether Canada acted inconsistently with any of the nondiscriminatory principles. The Panel found that there is no provision in the GATT which forbids requirements to sell goods in foreign markets in preference to the domestic market. In particular, the GATT does not impose on contracting parties the obligation to prevent enterprises from dumping. Therefore, the Panel concluded that Canada did not act inconsistently with any of the principles of non-discrimination, and therefore, Article XVII:1(c) was not applicable to the export undertakings at issue. GATT Panel Report, *Canada – FIRA*, para. 5.18.

²⁸² Article XVII:1(c) makes clear that it applies to “any enterprise”, whether or not it is an enterprise to which exclusive or special privileges have been granted.

²⁸³ Petersmann, “GATT Law on State Trading Enterprises: Critical Evaluation on Article XVII and Proposals for Reform,” p. 84. Yet, the obligation contained in subparagraph (c) is narrower than the nondiscriminatory obligation of subparagraph (a). In *Canada – Wheat Exports and Grain Imports*, the Panel stated that while

C. Obligations Related To Market Access Commitments

Besides Article XVII, there are other GATT provisions that prevent STEs from corroding market access commitments. In particular, Article II:4 and the Interpretative Note to Articles XI, XII, XIII, XIV, and XVIII of the GATT.

The specific situation of import monopolies is addressed in Article II:4, which seeks to prevent the impairment or nullification of negotiated tariff concessions by limiting the implicit rates of protection that import monopolies may impose. It states that import monopolies cannot “afford protection on the average in excess of the amount of protection provided for in [the appropriate] Schedule or as otherwise agreed between the parties”. The purpose of this provision is to prevent these monopolies to set domestic resale prices at prohibitive or non-competitive levels, undermining therefore anticipated benefits of market access commitments.²⁸⁴ Thus, according to this provision, absent an agreement between the parties, the degree of protection that a monopoly importing a product for which a concession has been granted is to be defined by the relevant tariff binding contained in the Schedule of concessions of Members. If the products concerned are not subject to tariff concessions under Article II, import monopolies are required to disclose their import markup during a recent representative period, or when this is not possible, they must disclose their prices charged at resale.²⁸⁵

The qualification “on the average” (which is not defined) has raised some concerns about the effective application of this provision.²⁸⁶ It has been argued that this definitional

Article XVII:1(c) requires Members not to prevent any enterprise under its jurisdiction (including its STEs) from acting consistently with the principles of Article XVII:1(a) and (b), “Article XVII:1(a) goes further than Article XVII:1(c), in that, under Article XVII:1(a), non-conforming conduct by a Member’s STE engages that Member’s responsibility under international law, even in the absence of intervention of the Member itself, as would be necessary under Article XVII:1(c)”. Panel Report, *Canada – Wheat Exports and Grain Imports*, para. 6.43.

²⁸⁴ As Mastromatteo notes, import monopolies could potentially circumvent negotiated concessions by applying mark-ups on imported products at levels that would price them above domestically produced competing products. Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 9. See, also, Ianni, “State Trading: Its Nature and International Treatment,” p. 59; and Baban, “State Trading and the GATT,” p. 342-343.

²⁸⁵ Article XVII:4(b) of the GATT.

²⁸⁶ The drafting record shows that an amendment to limit such protection (by for instance establishing a maximum import duty) was not adopted. See, Baban, “State Trading and the GATT,” p. 342-343.

deficiency grants a degree of flexibility which complicates the application of Article II:4.²⁸⁷ GATT panel reports provide some guidance on the calculation of the level of protection that import monopolies are entitled to charge.²⁸⁸

First, it has been found that the price charged by import monopolies cannot exceed the landed cost of the imported product plus a reasonable margin of profit, customs duties, any internal taxes, as well as the costs related to transportation, distribution and other expenses incident to the purchase, sale or further processing.²⁸⁹ To this effect, “a reasonable margin of profit” means a margin that would be obtained under normal conditions of competition (in the absence of the monopoly) and should (on the average) be the same on both the domestic and the like imported product so as not to undermine the value of tariff concessions under Article II.²⁹⁰ Second, differential markups can be justified only to the extent that they represent “additional costs necessarily associated with marketing of the imported products” and to the extent that these calculations can be made on the basis of average costs over recent periods.²⁹¹ In this connection, the costs can be considered “additional” because they are incurred as a result of activities that are specific to the imported products (e.g. customs clearance or warehouse handling expenses like palletization). If the costs arise both for imported and domestic products, they can be considered “additional” if they are higher for

²⁸⁷ For instance, this flexibility may open the door to disagreement about the relevant period for which this average should be calculated. Ianni, “State Trading: Its Nature and International Treatment,” p. 59. On the hand, Baban argues that the definitional handicap of the qualification “on the average” complicates the application of Article II:4. For example, the phrase “on the average” involves the calculation of two averages: (a) the average of nominal protection rates in a schedule of concessions and (b) the actual average protection rate implicit in the differential between external purchase prices and domestic resale prices. However, without a demonstration of the equality or inequality of these averages, no demonstration can be made regarding the level of protection. Baban, “State Trading and the GATT,” p. 342-343.

²⁸⁸ For a more detailed analysis of these cases see Mastromatteo, “WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994”, p. 10.

²⁸⁹ GATT Panel Report, *Canada – Provincial Liquor Boards (EEC)*, para. 4.10.

²⁹⁰ GATT Panel Report, *Canada – Provincial Liquor Boards (EEC)*, para. 4.16. Thus, a monopoly profit margin on imports resulting from policies of revenue maximization cannot be considered a “reasonable margin of profit” in the sense of Article II:4 (especially if the profit margin is higher on imported products than on domestic products). *Ibid.*, para. 4.15.

²⁹¹ Thus, differential markups can be justified to offset any additional costs of transportation, distribution, and other expenses incident to the purchase, sale, or further processing (such as storage) necessarily associated with importing products. GATT Panel Report, *Canada – Provincial Liquor Boards (EEC)*, paras. 4.13 and 4.19. See, also, GATT Panel Report, *Canada – Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies*, adopted 18 February 1992, BISD 39S/27, (“*Canada – Provincial Liquor Boards (US)*”), para. 5.17.

imported products (e.g. storage costs or where inventory turnover for imported products may be slower than for domestic products).²⁹²

Other obligations preventing circumvention of GATT concessions through STEs operations are found in the Interpretative Note to Articles XI, XII, XIII, XIV, and XVIII (dealing with import and export restrictions). According to the Interpretative Note, these provisions apply equally to state trading operations.²⁹³ Thus, for instance, STEs cannot be used to implement quantitative restrictions (quotas, import or export licenses, or other measures) in trade. In fact, the GATT/WTO practice demonstrates that complaining Members have successfully challenged quota-like restrictions implemented through state trading operations.²⁹⁴

Finally, even if not explicitly connected, several other obligations are relevant to state trading activities. That is, as not existing derogations with respect to STEs, the WTO anti-dumping and subsidies disciplines in the SCM Agreement and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement) apply to state trading activities.

4.1.4 Procedural Obligations

Article XVII also imposes a duty of transparency by requiring Members to notify their STEs. Paragraph (a) of Article XVII:4 mandates WTO Members to notify “the products which are exported or imported ... by [STEs]”. Paragraph (c) also requires Members to supply information about the operations of their STEs if another Member considers that its interests under the GATT/WTO are being adversely affected by the operations of an STE.

²⁹² GATT Panel Report, *Canada – Provincial Liquor Boards (US)*, para. 5.18. In contrast, general or administrative expenses that are not necessarily associated with the marketing of the imported product, but rather with the overall operation of the monopoly in question, or costs that are incurred in respect of services prescribed for imported products but not for domestic products inconsistently with the GATT, cannot be considered “additional costs necessarily associated with marketing of the imported products”. Ibid.

²⁹³ Annex I, *Ad Articles XI, XII, XIII, XIV, and XVIII of the GATT*.

²⁹⁴ See, for instance, GATT Panel Report, *Canada – Provincial Liquor Boards (EEC)*, para. 4.24; GATT Panel Report, *Japan – Agricultural Products I*, paras. 5.2.2.1 and 5.2.2.2; GATT Panel Report, *Republic of Korea – Restrictions on Imports of Beef – Complaint by the United States*, adopted 7 November 1989, L/6503, (“*Korea – Beef (US)*”), para. 113; and Panel Report *Korea – Various Measures on Beef*, para. 767.

Poor compliance with the notification requirement during the GATT era forced WTO Members in the Uruguay Round to provide greater clarity on the meaning and scope of the term STE.²⁹⁵ As a result, the Understanding on Article XVII was adopted and a Working Party on State Trading was also established. According to this Understanding, current notifications must “ensure the maximum transparency possible” to permit a clear appreciation of the operation and effects on international trade of the notified enterprises.²⁹⁶ The notifications must be submitted to the Council for Trade in Goods and be made in the form of a response to a standard questionnaire.²⁹⁷

As noted earlier, in order to assist Members to identify the kinds of enterprises that must be notified, the Understanding on Article XVII provides with a working definition of STE²⁹⁸ as well as an Illustrative List showing the kinds of trading activities and relationships between governments and STEs that may be relevant for the purposes of Article XVII.²⁹⁹ It further reaffirms that each WTO Member must submit a notification whether or not it maintains STEs and requires the notification of all STEs regardless of whether or not imports or exports have in fact taken place during the reporting period. Counter-notifications are also allowed.³⁰⁰ On the other hand, pursuant to paragraph 4(b) of Article XVII, Members are also required (upon request of a Member having a substantial trade in the product concerned) to disclose the “import mark-up” on imported products, or when this is not possible, the reselling

²⁹⁵ For more details on the GATT notification experience, see Baban, “State Trading and the GATT,” p. 334-352; and McCorriston et al., “State Trading, the WTO and GATT Article XVII,” p. 111-113.

²⁹⁶ Para. 2 of the Understanding on Article XVII.

²⁹⁷ The questionnaire was developed originally in 1960 and thereafter revised in 1998 and 2003. Its latest version was adopted on 14 November 2003 as contained in the WTO document G/STR/3/Rev.1. The questionnaire requires information on (i) identification of STEs and description of products affected; (ii) reasons or purposes for establishing/maintaining STEs; (iii) summary of the legal basis for the granting of the exclusive or special rights or privileges to the STE; (iv) description of the functioning of the STE; and (v) statistical data on imports, exports and domestic production.

²⁹⁸ Para 1 of the Understanding on Article XVII. See, Section 4.1.2 on the Definition of State Trading Enterprises.

²⁹⁹ As noted earlier, the Illustrative List is not exhaustive, nor does it represent a definition of what constitutes a STE or attempt to refine or interpret this term as provided in Article XVII. Rather, the Illustrative List is based on the Article XVII notifications made since 1980, and as such, it merely reflects the past practice of individual Members rather than consensus standards. The Illustrative List, para. 2.

³⁰⁰ Paragraphs 3 and 4 of the Understanding on Article XVII.

price.³⁰¹ Notifications and counter-notifications are to be revised by the Working Party on State Trading.³⁰²

Notwithstanding the improvements on the notification procedure, there are several problems that continue to undermine the entire purpose of the transparency requirement. First, the lack of a clear definition on STEs cannot be understated. In fact, as noted in the preceding chapter, WTO Members report their enterprises based on their individual interpretations of the GATT/WTO working definition, and as a result, many STEs escape from notification. This hinders Members possibility to determine whether the state trading activities of WTO Members operate in accordance with GATT/WTO disciplines. Second, the duty to notify is also weakened by the principle of confidentiality.³⁰³ Paragraph 4(d) of Article XVII provides that a contracting party shall not be required “to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises”.³⁰⁴ As has been noted, the duty to notify can be easily evaded by the invocation of the “public interest” exception.³⁰⁵

In practical terms, moreover, while the number and quality of notifications has been improved, there are still many WTO Members that do not fully comply with their notification obligation. New and full notifications must be submitted every two years.³⁰⁶ Yet, 39 WTO

³⁰¹ The import mark-up is defined as the difference between the domestic resale price charged by the importing STE (exclusive of internal taxes, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) and the landed cost of the imported product. Interpretative Note to Paragraph 4(b) of Article XVII GATT.

³⁰² Paragraphs 4 and 5 of the Understanding on Article XVII.

³⁰³ As Jackson has noted, the major weakness of Article XVII of the GATT is that it allows the refusal to supply “confidential information”. Jackson, *World Trade and the Law of the GATT*, p. 354-355. See, also, the communication from Canada to the Working Party on State Trading Enterprises highlighting Members’ limited responses to the questionnaires due to commercial confidentiality considerations. Submission by Canada to the Working Party on State Trading Enterprises, G/STR/W/44, 3 May 2016.

³⁰⁴ The confidentiality principle allows a subjective determination by the reporting country of the applicability of this disclosure requirement. Ianni, “State Trading: Its Nature and International Treatment,” p. 58.

³⁰⁵ Thus, this exception should be tailored more narrowly as for helping to restore the vitality of the duty of notification. *Ibid.*, p. 63-64.

³⁰⁶ New and full notifications were first required in 1995 and, subsequently, every third year thereafter, with updating notifications to be made in the intervening years. As from 2003, updating notifications were eliminated and the frequency of new and full notifications was increased to once every two years. Report (2016) Of The Working Party On State Trading Enterprises, WTO Document G/L1156, G/STR/15, 10 November 2016, p. 1.

Members have never submitted a notification (including major traders such as Russia).³⁰⁷ Moreover, for the 2016 notification period, only 33 new and full notifications were received out of a total of 136 members subject to this obligation.³⁰⁸ China last notification was more than ten years ago and its last new and full notification (submitted in 2015) lacks important information.³⁰⁹ Similarly, Vietnam, which identified several STEs in its WTO accession package and reserved the importation of some goods for state trading, has so far notified the existence of only two STEs.³¹⁰ As the WTO Annual Report has acknowledged, the above demonstrates that the notification compliance within the WTO on state trading remains very poor.³¹¹

4.2 The Regulation Of STEs In The Agreement On Agriculture

STEs that concern the trade of agricultural products are subject to the disciplines of the WTO Agreement on Agriculture (AoA). The AoA contains comprehensive commitments on export subsidies, market access, and domestic support, including several specific references made to STEs operations. With respect to market access restrictions, Article 4.2 of the AoA requires the conversion into ordinary customs duties of certain market access measures affecting imports of agricultural products. Footnote 1 to Article 4.2 provides with a list of border measures that have been required to be converted into ordinary customs duties and includes nontariff measures maintained through STEs.³¹² In fact, various panels have found various measures relating to STEs to be inconsistent with Article 4.2 of the AoA.³¹³

³⁰⁷ See, Annex D. Russia has twice missed the biennial deadline to make the required notification, mostly recently in June 2016. As the United States trade representative has noted, of concern is Russia's failure to notify the STE Gazprom, which owns and controls all the gas pipelines in Russia. In 2013, Russia granted Rosneft and Novatek the right to export liquefied natural gas, but Gazprom retains a monopoly of pipeline gas exports. United States Trade Representative, "2016 Report on the Implementation and Enforcement of Russia's WTO Commitments," (2006), p. 31.

³⁰⁸ WTO, Annual Report 2017, p. 70. (Hereinafter "WTO Annual Report 2017").

³⁰⁹ See, *supra* note 123. China last new and full notifications was made in 2003.

³¹⁰ Vietnam, Working Party Report, WTO Document WT/ACC/VNM/48, 27 October 2006, tables 5 and 8. See, also Annex A.

³¹¹ WTO Annual Report 2017, p. 70

³¹² According to footnote 1 to Article 4.2 of the AoA, these measures include "quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary

Members are also asked (when providing information to the Committee on Agriculture regarding implementation) to explain the administration of market access commitments, including details about STEs and their relevant activities where such commitments are controlled by STEs.³¹⁴ With respect to export subsidies, references to STEs are less specific than those in the market access disciplines. However, the export subsidies commitments on agriculture are equally applicable to governments and their agencies.³¹⁵ Thus, export subsidies subject to reduction that are granted to or by an STE would be subject to reduction. Moreover, export subsidies not subject to reductions cannot be applied in a manner which results in circumvention of export subsidy commitments. This includes export subsidies granted to or by STEs.³¹⁶

4.3 The Regulation Of STEs In The GATS

In contrast to Article XVII of the GATT, the GATS does not contain a comparable provision for services. Article VIII of the GATS, on “Monopolies and Exclusive Services Suppliers”, only requires WTO Members to ensure that monopoly suppliers or exclusive service suppliers operating in their territory do not (in the supply of a monopoly service)³¹⁷ act in a manner inconsistent with Member obligations on MFN treatment and their respective commitments. To this effect, “monopoly supplier of a service” has been defined as any person (public or private) which in the relevant market of the territory of a Member is authorized or established (formally or in effect) by that Member as the sole supplier of the service.³¹⁸

customs duties, whether or not the measures are maintained under country-specific derogations from the provisions of GATT 1947, but not measures maintained under balance-of-payments provisions or under other general, non-agriculture-specific provisions of GATT 1994 or of the other Multilateral Trade Agreements in Annex 1A to the WTO Agreement.” Article 4.2 of the Agreement on Agriculture.

³¹³ See, for example, Panel Reports, *India – Quantitative Restrictions*, para. 5.242; *Korea – Various Measures on Beef*.

³¹⁴ This requirement is provided for in the notification forms adopted by the Committee on Agriculture. See, for instance, Background Document By The Secretariat, Committee on Agriculture, “Export Subsidies, Export Credits, Export Credit Guarantees Or Insurance Programmes, International Food Aid And Agricultural Exporting State Trading Enterprises”, WTO Document G/AG/W/125/Rev.7, 27 September 2017.

³¹⁵ Article 9.1 of the Agreement on Agriculture.

³¹⁶ Article 10.1 of the Agreement on Agriculture.

³¹⁷ According to Article XXVIII (b) of the GATS the “supply of a service” includes the production, distribution, marketing, sale, and delivery of a service.

³¹⁸ Article XXVIII (h) of the GATS. The Panel in *China – Electronic Payment Services* interpreted the concept of “exclusive service supplier” as “one of a small number of supplier in a situation where a Member authorizes

Members must also ensure that these entities do not abuse their monopoly position outside the scope of their exclusive rights. If a Member has reasons to believe that a monopoly supplier of any other Member does not comply with such obligations, it can request to this Member (through the Council of Trade in Services) to provide specific information concerning the relevant operations of the supplier.³¹⁹

When comparing Article VIII of the GATS with Article XVII of the GATT, it appears that the scope of Article VIII is narrower than the reach of Article XVII. First, Article VIII only applies to monopoly suppliers and exclusive service suppliers. Other undertakings (whether publicly or privately-owned) operating in a competitive environment are not covered.³²⁰ Second, since the entities covered (monopoly suppliers and exclusive service suppliers) must be authorized or established by the government as the sole supplier of the service in question, some form of government involvement is required.³²¹ Finally, in terms of market access and national treatment, the scope of Article VIII of the GATS is dependent on the specific commitments that Members have made in this regard.³²² For instance, national

or establishes a small number of service suppliers, either formally or in effect, and that Member substantially prevents competition among those suppliers". Panel Report, *China – Electronic Payment Services*, WT/DS413/R, para. 7.587.

³¹⁹ Articles VIII:2 and VIII:3 of the GATS.

³²⁰ It has been argued that Article VIII cover a small number of exclusive service suppliers, that is, only when competition among them is substantially prevented. For instance, Article VIII excludes duopoly in the domestic market. OECD, "Assessment of WTO and Competition Rules for Enterprises with Exclusive or Special Rights," Joint Group on Trade and Competition, COM/TD/DAFFE/CLP (2000) 45, OECD Publishing, Paris (2000), p. 7. Moreover, it has been noted that the current relevance of Article VIII is very limited. State-mandated pure monopolies or non-competing oligopolies (for which Article VIII is most relevant) are disappearing, while the behavior of dominant suppliers that often remain does not fall within the scope of Article VIII (in this case, other means must be implemented, including the Annex on Telecommunications and the additional commitments undertaken in the telecommunications and the maritime sectors). *Ibid.*, p. 5; and Aaditya Mattoo, "Dealing with Monopolies and State Enterprises WTO Rules for Goods and Services," in *State Trading in the Twenty-First Century*, ed. Thomas Cottier and Petros C. Mavroidis (Ann Arbor: The University of Michigan Press, 1998), p. 44.

³²¹ Mattoo, "Dealing with Monopolies and State Enterprises WTO Rules for Goods and Services," p. 38-39 and 51.

³²² Indeed, since Article VIII of the GATS depends on the other obligations undertaken by Members, a variety of exemptions have weakened the application of Article VIII (e.g. the suspension of the MFN treatment for the maritime sector). *Ibid.*, p. 64-65.

treatment applies to services only to the extent that Members have made specific commitments in this respect.³²³

One interesting feature in both disciplines (GATT and GATS) is the unlike implications of the MFN treatment. Article XVII of the GATT allows export price discrimination for meeting export market conditions (import price discrimination for similar purposes is not specifically allowed).³²⁴ In contrast, the MFN obligation in GATS excludes measures affecting exports since it only concerns foreign services and services suppliers.³²⁵ According to some commentators, this difference obeys to the fact that price discrimination in goods pertains to behavior in export markets, while price discrimination in essential intermediate services would lead to discrimination between imports from different foreign sources.³²⁶

4.4 State Trading Enterprises In Accession Protocols

Another set of GATT/WTO rules governing STEs include the specific commitments contained in the accession protocols of WTO Members. Indeed, while Article XVII:3 of the GATT explicitly provides for “negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce obstacles” to trade resulting from STEs operations, WTO Members have pursued this objective mainly in the context of negotiations on accessions. In the past, for instance, when Poland, Romania, and Hungary acceded to the GATT, their accession protocols implemented different legal techniques and safeguard clauses for dealing with state trading countries.³²⁷ Recently, most notably, state trading was one of the most debated themes in the negotiations on accession of China, Russia, and Vietnam. The

³²³ Ibid., p. 40. Article XVII of the GATT arguably does not include the national treatment principle. Yet, to extent that governmental measures are involved, Article III of the GATT on national treatment applies.

³²⁴ Interpretative Note to Para 1 of Article XVII of the GATT. See, section 4.1.3A above.

³²⁵ Thus, the charging of different prices by a telecom monopoly supplier to foreign telecommunications suppliers, or the charging of different rates by a port monopoly to different foreign ships, would be contrary to the MFN obligation of Article VIII:1 of the GATS. Mattoo, “Dealing with Monopolies and State Enterprises WTO Rules for Goods and Services,” p. 40-41.

³²⁶ See, for instance, Mattoo, “Dealing with Monopolies and State Enterprises WTO Rules for Goods and Services,” p. 41.

³²⁷ Petersmann, “GATT Law on State Trading Enterprises: Critical Evaluation on Article XVII and Proposals for Reform,” p. 76-77.

accession protocols of these countries contain several specific obligations on state trading, which (in some cases) are in addition to the existing requirements under Article XVII of the GATT and Article VIII of the GATS. In particular, China and Vietnam agreed not to “influence” (directly or indirectly) the commercial decisions of state-owned or state-invested enterprises except in accordance with the WTO Agreement.

A. China

Prior to its accession, China greatly restricted the number of companies to trade.³²⁸ According to its Accession Protocol, China committed to progressively liberalize the availability and scope of the right to trade, so that within three years after its accession, all enterprises in China would have the right to import and export all goods, except for those products listed in Annex 2A of its protocol which continue to be subject to state trading.³²⁹ A liberalization schedule covering 245 products was agreed.³³⁰ China committed to complete all necessary legislative procedures to comply with these commitments during the three-year transition period.³³¹

Other commitments of China include (i) the phasing out of import quotas and import licensing requirements with respect to 377 products,³³² (ii) that imports allocated to non-state

³²⁸ The right to import and export goods in China was available only to 35,000 Chinese enterprises. Report Of The Working Party On The Accession Of China, WTO Document WT/MIN(01)/31, 10 November 2001, para. 80. (“China’s Working Party Report”).

³²⁹ Protocol on the Accession of the People’s Republic of China, WTO Document WT/L/432, Section 5. (“China’s Accession Protocol”). See, also, China’s Working Party Report, para 80. Annex 2A contains the list of products that remain subject to state trading. It lists 84 products in seven categories (including grain, vegetable oil, sugar, tobacco, processed oil, chemical fertilizer and cotton) the import of which is subject to state trading. Annex 2A2 lists 134 agricultural products and commodities (including tea, grains, metals, coal, oil, silk and cotton) the export of which is subject to state trading. As noted by the Appellate Body, Section 5.1 of China’s Accession Protocol imposes on China the obligation to ensure that (except for certain goods set out in Annex 2A) “all enterprises in China shall have the right” to import and export all goods “throughout the customs territory of China”. This is confirmed by paragraphs 83(d) and 84(a) of China’s Working Party Report, which establishes China’s obligation to grant the right to trade. In addition, paragraph 84(b) of China’s Working Party Report contains an obligation to grant in a non-discretionary manner the right to trade to foreign enterprises and individuals. Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R, adopted 19 January 2010, para. 167. (“*China – Publications and Audiovisual Products*”).

³³⁰ China’s Accession Protocol, Section 5 and Annex 2B.

³³¹ China’s Accession Protocol, Section 5.

³³² China’s Accession Protocol, Annex 3A.

traders of crude and processed oil would be carried over to the next year if they were not fully utilized;³³³ (iii) the progressive abolishment of state trading in respect of silk by increasing and extending trading rights;³³⁴ and (iv) the assurance that no price increase in respect to imports by STEs would result in protection beyond that allowed in its Schedule of Concessions or that is not otherwise justified under WTO rules.³³⁵

With respect to the products that continue to be subject to state trading, China agreed to ensure that all state-owned and state-invested enterprises would make purchases and sales based “solely on commercial considerations” and that the enterprises of other WTO Members would have “an adequate opportunity to compete” for sales to and purchases from these enterprises on nondiscriminatory basis.³³⁶ In addition, China committed not to influence (directly or indirectly) the commercial decisions of state-owned or state-invested enterprises (including on the quantity, value or country of origin of any goods purchased or sold) except in accordance with the WTO Agreement. Finally, China must ensure that import purchasing procedures are fully transparent and in compliance with the WTO Agreement, and as a part of the Article XVII notification obligation, China agreed to provide “full information on the pricing mechanisms of its state trading enterprises for exported goods”.³³⁷ This information is in addition to the information that Members must provide pursuant to the STE questionnaire.³³⁸

B. Vietnam

STEs in Vietnam not only perform business functions but also fulfill many social and political responsibilities. For instance, they are still required to help ensure social security and contribute to poverty alleviation.³³⁹ In its accession to the WTO, Vietnam made considerable improvements in the areas of trading rights and liberalization of state trading enterprises.

³³³ China’s Working Party Report, para. 212.

³³⁴ China’s Working Party Report, para. 215.

³³⁵ China’s Working Party Report, paras. 217.

³³⁶ China’s Working Party Report, para. 46.

³³⁷ China’s Accession Protocol, Section 6.

³³⁸ See *supra* note 297.

³³⁹ OECD, “Structural Policy Challenges For Southeast Asian Countries,” Southeast Asian Economic Outlook 2013: With Perspectives On China And India, OECD Publishing, Paris (2013), p. 11.

Vietnam agreed to grant all enterprises with foreign direct investment full trading rights no later than 1 January 2007, except for a limited number of products for which full trading rights will be granted in 2009³⁴⁰ and for some specific products which were reserved to state trading.³⁴¹

The latter group of products (i.e. products subject to state trading) were reduced to crude oil, refined petrol and gasoline, aircraft spare parts and aviation equipment, film, newspapers, cigarettes and cigars. With respect to these products, Vietnam agreed that all enterprises that were state-owned or state-controlled (including equitized enterprises in which the State had control) and enterprises with special or exclusive privileges, would make purchases (not for governmental use) and sales in international trade “based solely on commercial considerations” (e.g. price, quality, marketability, and availability) and that the enterprises of other WTO Members would have an “adequate opportunity” in accordance with customary business practice to compete for participation in sales to and purchases from these enterprises on non-discriminatory basis.³⁴² Vietnam also committed not to influence (directly or indirectly) the commercial decisions on these enterprises, including decisions on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement and the rights accorded to non-governmental enterprise owners or shareholders.³⁴³

C. Russia

Russia had many state-owned enterprises and state-controlled enterprises that operate in the commercial sphere as well as enterprises with exclusive or special privileges for

³⁴⁰ These products include pharmaceuticals, cinematographic film, calendars, post cards, industrial printers and print machinery, TV and radio transmission apparatus and video camera recorders. Accession Of Viet Nam, Report of the Working Party on the Accession of Viet Nam, WTO Document WT/ACC/VNM/48, 27 October 2006, Table 8(a), p. 155-159. (“Vietnam Working Party Report”).

³⁴¹ Vietnam Working Party Report, paras. 137-138.

³⁴² Vietnam Working Party Report, para. 78.

³⁴³ Ibid.

conducting commercial activities.³⁴⁴ Prior to becoming a WTO Member, Russia took various steps to eliminate special privileges for most of those companies.³⁴⁵ Moreover, Russia committed that, from the date of its accession to the WTO, such enterprises (when engaged in commercial activity) would make purchases (which were not intended for governmental use) and sales in international trade in a manner consistent with the applicable WTO provisions. In particular, Russia confirmed that such enterprises would make such purchases and sales in accordance with “commercial considerations” (including price, quality, availability, marketability, and transportation) and would afford enterprises of other WTO Members “adequate opportunity in conformity with customary business practice, to compete for participation in such purchases or sales”.³⁴⁶ Within respect to services for which Russia has taken commitments in its services schedule and considering the limitations set out therein, Russia also agreed to ensure that such enterprises would act in accordance with its rights and obligations under the GATS and the WTO Agreement (including pricing regulations). Russia further agreed to notify, upon accession, the enterprises falling within the scope of the Understanding on Article XVII.³⁴⁷

4.5 GATT/WTO Case Law

The GATT/WTO jurisprudence on state trading is very limited.³⁴⁸ Only few GATT/WTO disputes have dealt specifically with state trading related matters under Article XVII. GATT disputes include *Belgian Family Allowances*; *Canada – FIRA*; *Canada – Provincial Liquor Boards (EEC)*; *Korea – Beef (US)*. Within the WTO practice, the relevant disputes dealing with STE-related matters include *Korea – Various Measures on Beef* and *Canada – Wheat Exports and Grain Imports*.

³⁴⁴ Report Of The Working Party On The Accession Of The Russian Federation To The World Trade Organization, WT/ACC/RUS/70 WT/MIN(11)/2, 17 November 2011, para. 99. (“Russia Working Party Report”).

³⁴⁵ In 2005, for instance, Russia abolished the law under which only certain companies in which the government owned more than 51 percent could import or export ethyl spirits (provided that they had the appropriate license). Russia Working Party Report, para. 89.

³⁴⁶ Russia Working Party Report, para. 99.

³⁴⁷ Russia Working Party Report, para. 99. Until now, Russia has not made any notifications. See, Annex D and *supra* note 307.

³⁴⁸ The relevant jurisprudence on STEs is discussed across this chapter.

Generally, the claims of GATT-inconsistent discrimination have been decided in favor of the complainants based on Articles I, III, and XI rather than on Article XVII.³⁴⁹ Some panels, for instance, have explicitly applied judicial economy once a measure had been found to be inconsistent with a specific provision such as Article XI of the GATT.³⁵⁰ Only in one dispute (i.e. *Korea – Various Measures on Beef*) the measure at issue was found to be inconsistent with the nondiscriminatory treatment under Article XVII:1(a). In this dispute, the Panel found that the LPMO (a Korean notified state-trading agency responsible for administering the import and licensing regime for beef) was not acting in a manner consistent with the general principles of non-discriminatory treatment prescribed in Article XVII:1(a) when “it delayed its sales of imported beef into the Korean market while having important stocks”.³⁵¹

4.6 Multilateral Negotiations On State Trading

The eight GATT rounds of multilateral trade negotiations have so far led to relatively few concessions specifically relating to state trading. As noted earlier, the few attempts to strengthen the GATT disciplines on STEs have largely focused on reinforcing the notification requirements of Article XVII:4.³⁵² The specific issue of STEs has neither been addressed within the Doha Round negotiations. Yet, being agriculture one of the most important matters on the WTO negotiating agenda, agricultural exporting state trading enterprises have been included in the negotiations of agricultural trade. At the Tenth Ministerial Conference in Nairobi, WTO members adopted several important decisions on agriculture, including the decision on “Export Competition” where the operations of exporting agricultural state trading enterprises were addressed.³⁵³ The Decision on Export Competition fully eliminates any form

³⁴⁹ See, for instance, Panel Reports, *India – Quantitative Restrictions*, para. 5.136 and *Korea – Various Measures on Beef*, para. 768.

³⁵⁰ GATT Panel Reports, *Canada – FIRA*, para. 6.1; *Canada – Provincial Liquor Boards (US)*, para. 4.27; *Japan – Trade in Semi-Conductors*, L/6309, adopted 4 May 1988, para. 123. (“*Japan – Semi-Conductors*”).

³⁵¹ Panel Report, *Korea – Various Measures on Beef*, para. 769.

³⁵² Petersmann, “GATT Law on State Trading Enterprises: Critical Evaluation on Article XVII and Proposals for Reform,” p. 77-78. Also, see, Section 4.1.4 on Procedural Obligations above.

³⁵³ The issues on elimination of agricultural export subsidies, new rules for export credits, and decisions on international food aid and exporting state trading enterprises, which are part of the “Nairobi Package” adopted at the WTO’s Tenth Ministerial Conference in December 2015, are known as “export competition”.

of agricultural export subsidies,³⁵⁴ and in order to minimize any support on agriculture exports and circumvention of the provisions on export subsidies, the Decision mandates WTO Members to “ensure that agricultural state trading enterprises do not operate in a manner that circumvents any other disciplines contained in this Decision” and to make “their best efforts to ensure that the use of export monopoly powers by agricultural exporting state trading enterprises is exercised in a manner that minimizes trade distorting effects and does not result in displacing or impeding the exports of another Member”.³⁵⁵

4.7 Plurilateral Negotiations On State Trading – (TISA)

At the plurilateral level, it is noteworthy that 23 WTO Members are negotiating the Trade in Services Agreement (TISA).³⁵⁶ This services-trade only agreement builds on the GATS provisions and aims to strengthen rules and improve market access for trade in services.³⁵⁷ The negotiations focus on a core text that includes general provisions and modalities for scheduling commitments as well as on several annexes that represent specific issues for which mutual commitments or disciplines are being negotiated. One of these annexes is specifically dedicated to state-owned enterprises. The SOE Annex is based on a US

³⁵⁴ Under the Ministerial Decision on Export Competition, developed countries will immediately remove export subsidies (except for some agriculture products); while developing countries will do so by 2018 (with a longer time-frame in some limited cases). In addition, developing countries will keep the flexibility of covering marketing and transport costs for agriculture exports until the end of 2023, while the poorest and food-importing developing countries will enjoy additional time to cut export subsidies. WTO, Tenth WTO Ministerial Conference, Briefing Note: Agricultural Issues, Nairobi (2015), available at https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_agriculture_e.htm (accessed 28 September 2016).

³⁵⁵ WTO, Export Competition: Ministerial Decision Of 19 December 2015, WTO Document WT/MIN(15)/45, WT/L/980 (21 December 2015), Ministerial Conference Tenth Session (Nairobi, 2015), p. 5. The decision also addresses other export policies on export finance and international food aid by including maximum repayment terms for export financing programs for agriculture exporters supported by the government and by ensuring that food aid does not displace trade and does not cause adverse effects on domestic production.

³⁵⁶ By the end of 2016, 21 rounds of negotiations have taken place since the launch of the negotiations in 2013. The WTO Members currently negotiating the TISA are Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the European Union, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, and the United States. All these Members account for approximately 70% of world trade in services. European Commission, Trade in Services Agreement (TISA): Factsheet, European Commission (2016), p. 2 and 8; Rachael F. Fefer, “Trade in Services Agreement (TISA) Negotiations: Overview and Issues for Congress,” Congressional Research Service (CRS Reports), 2017, p. 5.

³⁵⁷ Global Affairs Canada, Government of Canada, Trade in Services Agreement (TISA), (2017), available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-acs.aspx?lang=eng> (accessed 17 September 2017).

proposal and replicates the SOE chapter in the Trans-Pacific Partnership Agreement (TPP Agreement). It aims to establish a level-playing field between private enterprises and SOEs that are principally engaged in commercial activities.³⁵⁸

In the TPP text, a SOE is defined as an enterprise that is principally engaged in commercial activities and in which a Party: (i) directly owns more than 50 percent of the share capital; (ii) controls (through ownership interests) the exercise of more than 50 percent of the voting rights; or (iii) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.³⁵⁹ The United States is seeking to expand this definition to also include cooperatives.³⁶⁰ As commentators have observed, while non-profit-making enterprises are not affected, the TISA profit definition is so restrictive that it leaves little room for any enterprises providing basic services to be exempted, even where their sole purpose is to ensure accessible and affordable services.³⁶¹

As for the obligations envisaged by this agreement, SOEs must operate like private enterprises, being obliged to make their purchases and sales based only on commercial considerations. An SOE that operates under a government mandate to provide a public service is exempted from this obligation, but it has still the obligation not to discriminate between local and foreign services and suppliers. This public procurement exemption only applies to the procurement of services purchased for governmental purposes. The provision of basic services are therefore not covered by this exception. On the other hand, when introducing any regulation (including regulations regarding SOEs), states are obliged to comply with the

³⁵⁸ Ibid. In the 14th Round of negotiations (2015), the United States proposed a chapter on SOEs which is based on the TPP SOE chapter. Fefer, "Trade in Services Agreement (TISA) Negotiations: Overview and Issues for Congress," p. 8-9.

³⁵⁹ See Section 5.1.2C on SOEs Or State Enterprises above.

³⁶⁰ Fefer, "Trade in Services Agreement (TISA) Negotiations: Overview and Issues for Congress," p. 9. For its part, the European Union has made publicly clear that it has taken a SOE position in line with its prevailing policy adopted in bilateral trade negotiations. European Commission, Report of the 20th TISA negotiation round 9 – 25 September 2016, European Commission (2016), p. 4.

³⁶¹ Viviana Barreto and Daniel Chavez, "TISA and State-Owned Enterprises: Lessons from Uruguay's Withdrawal for Other Countries in the South," Transnational Institute (TNI) and REDES (2017), p. 4.

requirements of objectivity, reasonableness, impartially, and transparency. Thus, any regulation on SOEs cannot be introduced or applied on discriminatory basis.³⁶²

Provisions regarding “adverse effects” to the interests of another TISA Party are also provided. Thus, if a party believes that 30 of the largest 100 enterprises in another TISA Party are SOEs, or SOEs contribute to 30 percent of this party overall GDP, it can request to the TISA Parties to develop further rules aiming to ensure that this Party does not provide non-commercial assistance (financial or input support) that causes “adverse effects” to another Party’s interests. This obligation to develop further rules also applies to countries with that proportion of SOEs (such as China and India) that want to join the TISA. Finally, in addition to the general transparency provisions in TISA, the SOE Annex specifically requires each party to inform other parties about its SOEs. TISA Parties are also obliged to provide sensitive information requested about their SOEs, including the composition of share capital, annual revenue, and financial and audit reports.³⁶³

4.8 Conclusions

The regulation of state trading has been a complex issue within the GATT/WTO. Illustrating this situation is Article XVII, which was not originally intended to provide comprehensive disciplines over STEs (it was recognized that state trading was not sufficiently understood to be subject to specific regulations). As a result, the obligations imposed by this provision suffer from severe difficulties. The current language of Article XVII is very vague. More importantly, it fails to define STEs. No WTO panel or the Appellate Body has specifically ruled on this definitional concern (indeed, this specific issue has never been brought before the WTO dispute settlement system). The lack of precision in this definition has deprived Article VXII from effectively tackling the state trading concerns. In fact, Article

³⁶² See, for instance, *Ibid.*, p. 4.

³⁶³ Barreto et al., “TISA and State-Owned Enterprises: Lessons from Uruguay’s Withdrawal for Other Countries in the South,” p. 3-4. For a detailed discussion about TISA provisions, see generally, Jane Kelsey, “From GATS to TISA: Pushing the Trade in Services Regime Beyond the Limits,” *7 European Yearbook of International Economic Law* (Springer, Cham, 2016); and Elina Viilup, “The Trade in Services Agreement (TISA): An End to Negotiations In Sight,” Directorate-General For External Policies, Policy Department, European Parliament (2015).

XVII has been rarely invoked. It also has the drawback of tolerating the proliferation of individual interpretations by WTO Members, representing one the main reasons of poor compliance with the WTO notifications obligation.

Yet, the problem with the WTO regulation on state trading goes beyond definitional concerns. Another important example calling for clarification and reinforcement of the WTO STE disciplines is the lack of clarity with respect to the scope of the nondiscriminatory treatment under Article XVII—i.e. whether it involves a strict form of MFN and a national-treatment type obligation. As noted, there is an important *lacuna* in this regard since neither Article XVII nor Article III of the GATT seem to be able to sanction the behavior of STEs that does not involve a governmental measure. This situation harms the level playing field for STEs and private firms, since STEs are not compelled to observe the same general principles of nondiscrimination applicable to private firms. Another important gap in the WTO framework is the absence of general rules on subsidies in services. This is a significant omission considering the significance of state enterprises in the services sector.

The GATT/WTO procedural legal disciplines have also proved to be ineffective. Notwithstanding the improvements on the notification procedure, the entire purpose of the transparency requirement is still undermined by confidential considerations and the lack of a clear definition on STEs. Thus, in practice, compliance with STE notifications continues to be very poor. (For instance, 39 WTO Members have never submitted a notification (including major traders such as Russia) and only 33 new and full notifications were received in 2016 out of a total of 136 members). The lack of notifications (or imprecise notifications) has hindered one of the central objectives of Article XVII, which is the collection of information about the state trading activities of WTO Members and the identification of whether these activities operate in accordance with GATT/WTO disciplines.

In general, the existing WTO rules on STEs have not been very successful in disciplining state trading. While this situation is not novel, the WTO system has not yet adjusted its framework by reinforcing the current text of Article XVII. WTO Members seem reluctant to develop a comprehensive definition of STEs and their efforts have instead focused

on establishing clearer rules for notification purposes and to tackle STE-related issues mainly through accession negotiations. Still, transparency requirements may be useful for developing effective STE disciplines, but transparency by itself does not provide additional guidance to the WTO dispute settlement. On the other hand, some of the most recent Accession Protocols (China and Vietnam's Protocols of Accession) contain state trading obligations that add-on the existing requirements under Article XVII—a situation that questions the very multilateralism nature of the WTO. It is not clear, moreover, whether these rules have been effective in disciplining the trade distorting effects of STEs in those countries.

The multilateral stance is in sharp contrast with the regional and plurilateral developments. There, the regulation on state trading is gaining importance and many countries are taken concrete and significant steps to address STE-related concerns. The TISA at the plurilateral level illustrates this situation. Moreover, as will be discussed in the next chapter, many RTAs clearly define STEs.

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Chapter 5

The Regulation Of State Trading In RTAs

5.1 The Regulation Of STEs In Regional Trade Agreements

Given the lack of comprehensive GATT/WTO disciplines over STEs, the notable rise in the number and reach of bilateral and regional trade agreements (hereinafter RTAs),³⁶⁴ as well as the increase in large plurilateral agreements under negotiation, has become an increasingly popular mechanism for regulating state trading in the international trade arena.³⁶⁵ The TISA at the plurilateral level illustrates this situation. Moreover, of all the RTAs reviewed in this research, a considerably number (43 percent) addresses state trading-related issues in one form or another. This trend extends to RTAs concluded in all regions and includes both developed and developing countries.³⁶⁶

The recent tendency towards mega-regional agreements, such as the Trans-Pacific Partnership (TPP), provide additional opportunities to increase the geographical scope of state trading provisions and perhaps even encourage Members to rethink the issue of STEs at the multilateral (or at least at plurilateral) level.³⁶⁷ Comprehensive SOE disciplines in recent

³⁶⁴ In the WTO, regional trade agreements (RTAs) are defined as reciprocal trade agreements between two or more partners, and they include free trade agreements and customs unions. This definition is implemented throughout this research. Thus, any reference to RTAs will indistinctively refer to bilateral or regional free trade agreements and custom unions.

³⁶⁵ As noted by the WTO Secretariat, following the notification of the RTA between Mongolia and Japan in June 2016, all WTO members now have an RTA in force. WTO website, https://www.wto.org/english/tratop_e/region_e/region_e.htm (accessed 12 September 2017).

³⁶⁶ Except for Afghanistan and Lesotho, least developed countries (as identified by the United Nations) are underrepresented in this trend. (Least developed countries: UN classification, <https://www.un.org/development/desa/dpad/least-developed-country-category/ldcs-at-a-glance.html>) (accessed 15 September 2017).

³⁶⁷ In fact, it is argued that TPP Parties, especially the United States, sought to use TPP negotiations to elaborate an innovative set of rules with the purpose of seeing these norms being widely disseminated. Julien Sylvestre Fleury and Jean-Michel Marcoux, "The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership," *19 Journal of International Economic Law* (2016), p. 445. See, also, Gary Clyde Hufbauer and Cathleen Cimino-Isaacs, "How will TPP and TTIP Change the WTO System?," *18 Journal of International Economic Law* (2015), p. 687.

RTAs where countries with significant state involvement are party (e.g. Vietnam, Malaysia and Singapore) may also fuel this process.³⁶⁸

This section reports the findings of a mapping exercise of the STE-related provisions of 279 RTAs included in the WTO Regional Trade Agreements database.³⁶⁹ Official proposals of other relevant RTAs (which ratifications are pending or have entered into force on provisionally basis) are also analyzed. In particular, the Trans-Pacific Partnership (TPP);³⁷⁰ the Comprehensive and Economic Trade Agreement (CETA or EU-Canada);³⁷¹ the EU-Singapore Free Trade Agreement;³⁷² and the EU-Vietnam Free Trade Agreement.³⁷³ This represents by far the largest sample of RTAs analyzed to date with respect to STEs-related provisions.³⁷⁴

³⁶⁸ In 2012, Vietnam had well over 3,300 SOEs. In 2013, Malaysia was considered among the eight economies with the highest SOE shares. In 2004, Temasek—the national holding company in Singapore—has a \$90 billion portfolio with shares in over 20 major SOEs. The 12 Government Linked Companies listed on the Singapore Stock Exchange produce about 12 percent of GDP. See, generally, Section 3.1.1 on The Case Of SOEs As An Illustration above. Also, see, Robinett, “Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets,” p. 2; and Sean Miner, “Commitments On State-Owned Enterprise,” in *Assessing the Trans-Pacific Partnership, Vol 2: Innovations in Trading Rules*, PIIE Briefing16-4 (2016), p. 91.

³⁶⁹ The WTO Regional Trade Agreements Database lists 299 RTAs in force. The sample in this research includes 279 of these 299 RTAs. The reasons of this discrepancy are as follows: First, this sample excludes 2 RTAs that could not be examined online (i.e. South Asian Free Trade Agreement (SAFTA)-Accession of Afghanistan, and Southern Common Market (MERCOSUR)-Southern African Customs Union (SACU)). Second, the RTAs between the Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) on the one hand and Chile and Panama on the other hand have been counted as two (rather than ten) RTAs. Third, also for avoiding repetition, ten RTAs notified for accession/enlargement reasons were not examined (i.e. Central American Common Market (CACM)-Accession of Panama; EFTA-Accession of Iceland; EU (10,12, 15, 25, 27, 9, 28) Enlargements; EU-Colombia and Peru-Accession of Ecuador)).

³⁷⁰ The TPP is still under negotiation and pending (*inter alia*) of ratification. Its current members are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The United States has formally withdrawn from the agreement *per* guidance from the President of the United States.

³⁷¹ On 21 September 2017, the CETA entered into force provisionally. National parliaments in EU countries—and in some cases regional ones too—still need to approve the CETA before it can take full effect. EU Trade website, <http://ec.europa.eu/trade/policy/in-focus/ceta/> (accessed 12 September 2017).

³⁷² The EU and Singapore completed the negotiations for a comprehensive free trade agreement on 17 October 2014. The agreement needs now to be formally approved by the European Commission and then agreed upon by the Council of Ministers and ratified by the European Parliament. EU Trade website, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore/> (accessed 12 September 2017).

³⁷³ On 1 February 2016, the text of the EU-Vietnam Free Trade Agreement was published. The legal review of the negotiated text is currently ongoing. The Commission will then present a proposal to the Council of Ministers for approval of the agreement and ratification by the European Parliament. EU Trade website, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/> (accessed 12 September 2017).

³⁷⁴ For instance, other mapping exercises have not covered all the RTAs in force notified to the WTO, but only very few of them. See, for example, Innes Willemyns, “Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?,” *19 Journal of International Economic Law* (2016), p.

The survey focuses on STEs that are related to trade of goods.³⁷⁵ It first establishes the typology of state trading provisions included in RTAs, providing the basis to devise a thorough database summarizing these provisions. Then, only with respect to the RTAs found to have comprehensive STE-related provisions, it will evaluate the following key elements: definitional matters, general obligations and rights, specific exceptions, transparency, and enforceability aspects. With a view to identifying both common grounds and significant discrepancies between different approaches to address STE-related matters among RTAs and between RTAs and the GATT/WTO disciplines, attention is paid to differences in language, terminology, and scope.

5.1.1 Typology Of STE-related Provisions In RTAs

A wide range of RTA provisions, including those concerning market access, import/export restrictions, and competition-related matters, may have a direct or indirect impact on STEs. One of the most common STE-related provisions in RTAs is a general obligation upon the parties to progressively adjust their state monopolies and to simply subjecting their public/private undertakings, and/or enterprises entrusted with special or exclusive rights, to competition national laws. These RTAs (which represent the 19 percent) mainly concern the RTAs to which the European countries are party. As a part of their competition chapters, these RTAs (i) recognize the prerogative of the parties to designate or maintain these enterprises;³⁷⁶ (ii) require that state monopolies of a commercial character be (progressively) adjusted so as to ensure that no discrimination takes place;³⁷⁷ and (iii) require

657-680; and Fleury et al., "The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership," p. 445-465.

³⁷⁵ RTAs provisions regarding STE-related matters on services or investment are not examined, although reference (wherever relevant) to this type of provisions is made.

³⁷⁶ EU-Cariforum States EPA (art 129), EU-Chile (art 179), EU-Georgia (art 205), EU-Moldova (art 336), EU-Ukraine (art 257), Korea-Chile (art 14.8), and the Trans-Pacific Strategic Economic Partnership (art 9.6).

³⁷⁷ EFTA-Israel (art 9), EFTA-Jordan (art 11), EFTA-Morocco (art 10), EFTA-Palestinian Authority (art 9), EFTA-The former Yugoslav Republic of Macedonia (art 10), EFTA-Tunisia (art 14), EFTA-Turkey (art 9), EFTA-Lebanon (art 14), Egypt-Turkey (art 25), EC-Treaty (art 37), EU-The former Yugoslav Republic of Macedonia (art 26), EU-Albania (art 40), EU-Algeria (art 43), EU-Bosnia and Herzegovina (art 41), EU-Cariforum States EPA (art 129), EU-Egypt (art 36), EU-Israel (art 38), EU-Jordan (art 54), EU-Lebanon (art 29), EU-Montenegro (art 43), EU-Morocco (art 37), EU-Palestinian Authority (art 31), EU-Serbia (art 43), EU-Turkey (art 42), EU-Ukraine (art 258), European Economic Area (art 16), Faroe Islands-Norway (art 15), Iceland-Faroe Islands (Art 5), Turkey-Albania (art 20), Turkey-Bosnia and Herzegovina (art 15), Turkey-

that public/private undertakings (and/or enterprises entrusted with special or exclusive rights) be subject to national competition laws or neither enact nor maintain measures distorting trade between the parties.³⁷⁸

Other RTAs (15 percent) broadly regulate STEs, by making reference to the existing GATT/WTO disciplines on state trading but without elaborating on those rules. Parties to these RTAs include Canada and a great number of Asian, European, and Latin American countries. The relevant provisions in these RTAs simply (i) confirm, or implicitly follow, the rights and obligations of the parties under Article XVII of the GATT and the Understanding on Article XVII;³⁷⁹ or (ii) require that STEs, as understood in Article XVII of the GATT, accord nondiscriminatory treatment in their imports and exports.³⁸⁰ Some of these agreements

Georgia (art 23), Turkey-Israel (art 13), Turkey-Jordan (art 23), Turkey-Montenegro (art 20), Turkey-Morocco (art 21), Turkey-Palestinian Authority (art 26), Turkey-Serbia (art 21), Turkey-Syria (art 26), Turkey-The former Yugoslav Republic of Macedonia (art 20), Turkey-Tunisia (art 23), and Ukraine-The former Yugoslav Republic of Macedonia (art 21). Regarding nondiscrimination, some EFTA RTAs go further by explicitly requiring that monopoly goods be procured and marketed in accordance with commercial considerations (EFTA-Morocco, EFTA-Palestinian Authority, EFTA-The former Yugoslav Republic of Macedonia, and EFTA-Lebanon).

³⁷⁸ European Free Trade Association (EFTA) (art 17), EFTA-Lebanon (art 14), EC Treaty (art 86 ex article 90), EU-The former Yugoslav Republic of Macedonia (arts 33-34), EU-Albania (arts 71-72), EU-Bosnia and Herzegovina (arts 71-72), EU-CARIFORUM States EPA (Arts 125-130), EU-Central America (art 280), EU-Chile (art 179), EU-Egypt (art 34-36), EU-Faroe Islands (art 25), EU-Georgia (art 205), EU-Iceland (art 25), EU-Israel (art 38), EU-Jordan (art 54), EU-Lebanon (art 29), EU-Moldova (art 336), EU-Montenegro (arts 73-74), EU-Morocco (arts 36-37), EU-Norway (art 23), EU-Palestinian Authority (30-32), EU-Serbia (arts 73-74), EU-Tunisia (arts 36-38), EU-Turkey (art 41), EU-Ukraine (arts 254 and 257), European Economic Area (EEA) (art 53-60), Korea-Chile (art 14.8), Korea-Australia (art 14.3), Trans-Pacific Strategic Economic Partnership (art 9.6), Turkey-Albania (art 24), Turkey-Bosnia and Herzegovina (art 17), Turkey-Georgia (art 20), Turkey-Israel (art 25), Turkey-Jordan (art 25), Turkey-Montenegro (art 24), Turkey-Morocco (art 25), Turkey-Palestinian Authority (art 24), Turkey-Serbia (art 25), Turkey-Syria (art 24), Turkey-The former Yugoslav Republic of Macedonia (art 24), Turkey-Tunisia (art 25), Ukraine-The former Yugoslav Republic of Macedonia (art 26). The *EU-Switzerland-Lichtenstein RTA* does not refer to competition rules but allows parties to take appropriate measures where the measures of undertakings affect trade. EU-Switzerland-Lichtenstein (art 23).

³⁷⁹ Canada-Colombia (art 2.15), Canada-Peru (art 2.16), Canada-Panama (art 2.15), Central European Free Trade Agreement (CEFTA) (art 19), China-Korea (art 2.11), China-Singapore (art 9), EFTA-Albania (art 15), EFTA-Bosnia and Herzegovina (art 17), EFTA-Canada (art 19), EFTA-Central America (art 2.13), EFTA-Colombia (art 2.12), EFTA-Chile (art 77), EFTA-Egypt (art 15), EFTA-Georgia (art 2.12), EFTA-Hong Kong, China (art 2.10), EFTA-Korea (art 2.13), EFTA-Mexico (art 12), EFTA-Montenegro (art 16), EFTA-Peru (2.12), EFTA-SACU (art 12), EFTA-Serbia (art 16), EFTA-Singapore (art 2.12), EFTA-Ukraine (art 2.12), El Salvador-Honduras-Chinese Taipei (art 3.10.6), EU-Colombia Peru and Ecuador (art 27), EU-Korea (2.13), Eurasian Economic Union (EAEU)-Vietnam (art 2.11), Guatemala-Chinese Taipei (art 3.09), India-Singapore (art 2.14), Korea-Colombia (art 2.10), Korea-India (art 2.10), Pakistan-Malaysia (art 7), Peru-China (art 17), Peru-Korea (art 2.12), and Switzerland-China (art 2.6).

³⁸⁰ Central American Common Market (CACM) (art IX:C), Chile-India (art VI), India-Afghanistan (art VI), India-Sri Lanka (art VI), Mauritius-Pakistan (art 16), Mercosur-India (art 10), and Pakistan-Sri Lanka (art VI).

further regulate monopolies and state enterprises by subjecting these entities to national competition laws.³⁸¹

Only a limited number of RTAs (8 percent) discipline state trading activities in a rather comprehensive manner, including recently negotiated RTAs.³⁸² They involve both developed and developing countries, including 11 Latin American countries,³⁸³ 9 Asian countries,³⁸⁴ Australia, Canada, the EU, New Zealand, and the United States. Even countries with a significant state trading intervention (e.g. Vietnam and Singapore) are party to these RTAs. In their competition chapters, they regulate (state or private) monopolies, SOEs, state enterprises, and/or enterprises granted special or exclusive rights or privileges. (Only the TPP, CETA, and *EU-Vietnam RTA* have SOE-specific chapters). According to these RTAs, parties retain their right to designate or maintain these enterprises, or from granting an enterprise special rights or privileges,³⁸⁵ but undertake to ensure that these entities (i) comply with regulatory control provisions; (ii) act in accordance with commercial considerations; (iii) act in a nondiscriminatory manner; and/or (iv) refrain from using their monopoly position to engage in anticompetitive practices.³⁸⁶

³⁸¹ Canada-Colombia, Canada-Peru, Canada-Panama, Central European Free Trade Agreement (CEFTA), EFTA-Chile, EFTA-Peru, EU-Colombia-Peru-Ecuador, Eurasia Economic Union (EAEU)-Vietnam, and Korea-India.

³⁸² Canada-Chile, Canada-Honduras, Canada-Israel, Canada-Jordan, Canada-Korea, North American Free Trade Agreement (hereinafter NAFTA), US-Australia, US-Colombia, US-Chile, US-Korea (KORUS), US-Peru, US-Singapore, Panama-Central America, Colombia-Mexico, Australia-Chile, Chile-Central America, Chile-Mexico, Nicaragua-Chinese Taipei, Israel-Mexico, and Panama-Chinese Taipei. Also, recently negotiated RTAs: the TPP, CETA, EU-Singapore and EU-Vietnam.

³⁸³ Colombia, Costa Rica, Chile, Guatemala, El Salvador, Honduras, Nicaragua, Mexico, Panama and Peru.

³⁸⁴ Brunei Darussalam, Chinese Taipei, Israel, Japan, Jordan, Korea, Malaysia, Singapore and Vietnam.

³⁸⁵ Canada-Chile (arts J-02-J-03), Canada-Honduras (arts 15.3-15.4), Canada-Israel (arts 7.2-7.3), Canada-Jordan (arts 9.1-9.2), Canada-Korea (arts 15.2-15.3), Panama-Central America (art 15.03), Australia-Chile (arts 14.4-14.5), Chile-Central America (art 15.02), Chile-Mexico (arts 14.03-14.04), CETA (art 18.3), EU-Singapore (arts 12.3-12.4), EU-Vietnam (art 3), NAFTA (arts 1502-1503), Nicaragua-Chinese Taipei (arts 16.3-16.4), Israel-Mexico (arts 8.05-8.06), Panama-Chinese Taipei (art 15.03), TTP (art 17.2.9), US-Colombia (arts 13.5.2 and 13.6.2), US-Chile (arts 16.1.1 and 16.4.1), US-Korea (arts 16.3.2), US-Peru (arts 13.5.2-13.6.2), and US-Singapore (arts 12.3.1-12.3.2).

³⁸⁶ Canada-Chile (arts J-02-J-03), Canada-Honduras (arts 15.3-15.4), Canada-Israel (arts 7.2-7.3), Canada-Jordan (arts 9.1-9.2), Canada-Korea (arts 15.2-15.3), Panama-Central America (art 15.03), Colombia-Mexico (art 16.02), Australia-Chile (arts 14.4-14.5), Chile-Central America (art 15.02), Chile-Mexico (arts 14.03-14.04), CETA (art 18.4), EU-Singapore (arts 12.3-12.4), EU-Vietnam (art 4), NAFTA (arts 1502.3-1503.2), Nicaragua-Chinese Taipei (arts 16.3-16.4), Israel-Mexico (arts 8.05-8.06), Panama-Chinese Taipei (art 15.03), TTP (art 17.4.1-2), US-Colombia (arts 13.5 and 13.6), US-Chile (arts 13.1.3 and 16.4.2), US-Korea (arts 16.3.1), US-Peru (arts 13.5.1-13.6.1), and US-Singapore (arts 12.3.1-12.3.2).

The remaining part of RTAs (i.e. 57 percent) does not provide with specific provisions regulating STEs which are trade in goods-related.³⁸⁷ They do not make any reference to STEs, or they simply refer to “state enterprises” without attaching to these enterprises any specific rights or obligations, or they only regulate the activities of state enterprises that are related to trade in services or investment.³⁸⁸

The following sections will evaluate in detail the state trading provisions contained in the group of RTAs identified before which comprehensively discipline state trading activities.³⁸⁹ Additionally, wherever relevant, reference will be made to the STE-related provisions of other concluded RTAs as well as to the negotiations on the Transatlantic Trade and Investment Partnership (TTIP).³⁹⁰

5.1.2 Scope And Definition Of State Enterprises, SOEs, And Monopolies

The scope of application of RTAs is very broad and varied. As Article XVII of the GATT, it covers state enterprises as well as private enterprises. For the most part, the RTAs include specific disciplines with respect to SOEs (or state enterprises) and monopolies (state or private). This is the case of the TPP and most of the RTAs to which the United States, Canada, or the Latin American countries are party.³⁹¹ Other RTAs, mainly the ones to which the EU is party, further include enterprises to which special or exclusive rights or privileges

³⁸⁷ As noted before, this research focuses on the activities of STEs that affect trade in goods. See, *supra* note 375.

³⁸⁸ See, Annex E.

³⁸⁹ See, *supra* note 382.

³⁹⁰ The TTIP is the bilateral trade and investment agreement being negotiated between the EU and the United States. Throughout this research, reference will be made to the EU’s initial textual proposal for legal text on “State- owned Enterprises” in the TTIP, which was tabled for discussion with the United States in the negotiating round of 14-18 July 2014 and made public on 7 January 2015 (hereinafter EU SOEs TTIP Proposal), EU Trade, http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153030.pdf (accessed 27 September 2017). The United States has not made public any proposal in this regard.

³⁹¹ Canada-Chile (Ch. J), Canada-Honduras (Ch. 15), Canada-Israel (Ch. 7), Canada-Jordan (Ch. 9), Canada-Korea (Ch. 15), Panama-Central America (Ch. 15), Colombia-Mexico (Ch. 16), Chile-Central America (Ch. 15), Chile-Mexico (Ch. 14), Nicaragua-Chinese Taipei (Ch. 16), Israel-Mexico (Ch. 8), Panama-Chinese Taipei (Ch. 15), NAFTA (Ch. 15), TPP (Ch. 17), US-Australia (Ch. 14), US-Colombia (Ch. 13), US-Chile (Ch.16), US-Korea (Ch. 16), US-Peru (Ch. 13), US-Singapore (Ch.12).

have been granted.³⁹² Overall, these RTAs go far beyond the GATT/WTO disciplines on state trading by explicitly defining their covered enterprises.

A. Privately-owned And State Monopolies

The definition of monopolies (including government monopolies) is very consistent across RTAs. A “*monopoly*” is defined “as an entity (including a consortium or government agency) that in a relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant.” A “*government monopoly*” is defined as “a monopoly that is owned, or controlled through ownership interests,³⁹³ by the national government of a Party or by another such monopoly.”³⁹⁴ As can be inferred, these definitions clearly cover enterprises that are the sole provider of a good or service, such as national oil and gas enterprises, and electricity monopoly providers.

³⁹² CETA (Ch. 18), EU-Singapore (Ch. 12), and EU-Vietnam (Ch. 10, Section III). See, also, Australia-Chile (Ch. 14). The scope of the *CETA* and *US-Singapore RTAs* also include other enterprises. The *CETA RTA* includes “a supplier of a good or a service authorized or established by a Party, formally or in effect, and the Party substantially prevents competition among those suppliers in its territory.” (CETA, art 18.1). The *US-Singapore RTA* includes “covered entities” which are enterprises whose definition only concerns Singapore. (US-Singapore, art 12.3.2(g)). See, *infra* note 512.

³⁹³ The US-Korea further clarifies that ownership, or control through ownership interests, may be direct or indirect. (US-Korea, art 16.9).

³⁹⁴ Canada-Chile (art J-04), Canada-Honduras (art 15.1), Canada-Israel (art 7.4), Canada-Jordan (art 9.4), Canada-Korea (art 15.5), Colombia-Mexico (art 16.01), Chile-Mexico (art 14.01), NAFTA (art 1505), TPP (art 171), US-Australia (art 14.12), US-Colombia (art 13.11), US-Chile (16.9), US-Korea (art 16.9), US-Peru (art 13.11), and US-Singapore (art 12.8). The EU SOEs TTIP Proposal follows the monopoly definitions provided by these RTAs but adds that the monopoly must be involved in commercial activities. (EU SOEs TTIP Proposal, art 1(b)). The following RTAs do not define, or specifically refer to, *monopolies* or *government monopolies*: Panama-Central America, Panama-Chinese Taipei, CETA, EU-Singapore, Canada-Israel, Australia-Chile, Chile-Central America, Nicaragua-Chinese Taipei, Mexico-Israel, and EU-Vietnam.

B. Enterprises Granted Special Rights Or Privileges

As noted before, only few RTAs regulate “*enterprises granted special rights or privileges*”.³⁹⁵ They define these enterprises as any enterprise to which a Party has granted, in law or in fact, special rights or privileges.³⁹⁶

The *EU-Vietnam RTA* enriches this definition by clarifying that these entities include subsidiaries and public or private enterprises. It also defines the expression “*special rights or privileges*” as those rights/privileges “granted by a Party to a limited number of enterprises (or any subsidiaries thereof) within a given geographical area or a product market the effect of which is to substantially limit the ability of any other enterprise to carry out its activity in the same geographical area or a product market in like circumstances”.³⁹⁷ Similarly, the *CETA*, which also defines the term “*enterprises granted special rights or privileges*”,³⁹⁸ requires that these special rights or privileges have the effect of substantially affect trade and also that they allow enterprises to scape (in whole or in part) competitive pressures or market constraints.³⁹⁹ Under both RTAs, the granting of a license or a permit to a limited number of enterprises in allocating a scarce resource (through objective, proportional and non-discriminatory criteria) is not considered a special right or privilege.⁴⁰⁰

In contrast to the GATT/WTO disciplines, the scope of “special rights and privileges” under these RTAs is narrower than its counterpart in Article XVII of the GATT.

³⁹⁵ That is, the *CETA*, *EU-Singapore*, *EU-Vietnam* and *Australia-Chile*. See, *supra* note 392.

³⁹⁶ *EU-Vietnam* (Section III, art 1) and *CETA* (art 18.1). In the *Australia-Chile RTA*, enterprises with special or exclusive rights are poorly defined as “an enterprise to which a Party has granted special or exclusive rights in its purchases or sales involving either imports or exports.” (*Australia-Chile*, art 14.1).

³⁹⁷ *EU-Vietnam* (Section III, art 1).

³⁹⁸ The *CETA RTA* defines “enterprises granted special rights or privileges” as “any entity to which a Party has granted, formally or in effect, special rights or privileges to supply a good or service, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions, and allowing the entity to escape, in whole or in part, competitive pressures or market constraints.” (*CETA*, art 18.1).

³⁹⁹ In addition, the *CETA* uses the term “substantially equivalent conditions” as opposed to the *EU-Vietnam RTA* that refers to “in like circumstances”. The definitions of “enterprises granted special rights or privileges” and “special rights” contained in the *EU SOEs TTIP Proposal* are in line with the *CETA* equivalent provisions, except that the *EU* proposed definitions require that these enterprises be involved in commercial activities and includes the granting of special rights by the government sub-central level. (*EU SOEs TTIP Proposal*, arts 1(b) and 1(c)).

⁴⁰⁰ *EU-Vietnam* (Section III, art 1) and *CETA* (art 18.1).

According to these RTAs, entities whose rights or privileges do not *substantially* affect trade are not considered “enterprises granted special rights or privileges”. Article XVII, however, does not require any trade influence demonstration to bring an enterprise within its purview. Moreover, under the WTO STE working definition (which is similar to that provided by the CETA and *EU-Vietnam RTA*) the effect on trade of such rights or privileges does not need to be substantial. It suffices that STEs through their purchases or sales *influence* the level or direction of import/export trade. The GATT/WTO disciplines are silent on whether any specific degree of influence (like substantial) is required to meet this condition.⁴⁰¹ The exception on the granting of a license or a permit for allocating scarce resources provided by these RTAs further reduces the scope of “enterprises granted special rights or privileges” *vis-à-vis* the scope of Article XVII, which does not provide for this exception.⁴⁰²

Interestingly, the scope of the SOEs Chapter in the TPP does not cover “enterprises granted special rights or privileges”. It only covers monopolies and state-owned enterprises, following therefore a state-ownership specific approach to define state trading enterprises. This is in contrast with the ownership-neutral approach which advocates disciplining the use of state-granted advantages that are able to influence the competitive position of firms engaged in commercial activities rather than focusing on ownership *per se*.⁴⁰³

C. SOEs Or State Enterprises

The majority of RTAs lack of a clear definition of SOEs or state enterprises. As within the WTO context, this shows the difficulties that governments may find in establishing the criteria to define these enterprises. Most RTAs broadly define a “*state enterprise*” or

⁴⁰¹ See, Section 4.1.2 above on the Definition Of State Trading Enterprises.

⁴⁰² Under Article XVII of the GATT, only privileges granted for the exploitation of national natural resources (but that do not empower the government to exercise control over the activities of the STE in question), or governmental measures to ensure standards of quality and efficiency in the operation of external trade, are excluded from the scope of the expression “exclusive or special privileges”. Interpretative Note to paragraph 1(a) of Article XVII of the GATT.

⁴⁰³ For more details regarding the differences between these approaches, see, OECD, “Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?,” p. 12.

“SOE” as “an enterprise owned, or controlled through ownership interests, by a Party”.⁴⁰⁴ ⁴⁰⁵ Only few RTAs (most notably the TPP, *EU-Vietnam*, and *US-Singapore RTAs*) clearly define these enterprises and provide for specific criteria to determine the state-ownership and control standards.

The SOE definition in the TPP conveys two elements: (i) the enterprise is principally engaged in commercial activities;⁴⁰⁶ and (ii) a Party directly *owns* more than 50 percent of the share capital of the enterprise; or *controls* (through ownership interests) the exercise of more than 50 percent of the voting rights; or *holds the power to appoint* a majority of members of the board of directors or any other equivalent management body.⁴⁰⁷ The term “commercial activities” is defined as those activities that focus on profit-making and involve the production of a good or service for sale to a consumer in the relevant market at prices and quantities determined by the SOE. This definition leaves out government-owned not for profits enterprises or those enterprises operating on a cost recovery basis.⁴⁰⁸ Albeit this exclusion, the

⁴⁰⁴ CETA (art 18.1), Colombia-Mexico (art 16.01), Chile-Mexico (art 14.01), Nicaragua-Chinese Taipei (Art 16.05), Israel-Mexico (art 8.01), Panama-Chinese Taipei (general definitions section), US-Australia (art 14.12), US-Colombia (art 13.11), US-Chile (art 16.9), US-Korea (16.9), and US-Singapore (only with respect to the United States – art 12.8). The NAFTA, and other RTAs to which Canada is party, adopt this “state enterprise” definition but with the following exceptions: “state enterprise” for Canada means a Crown corporation within the meaning of the Canadian relevant law, and a Crown corporation with the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law. For Jordan, “state enterprise” means “any corporation established between the government of Jordan and any other country, or established in accordance with a cabinet decision or by special law”. For Korea, “state enterprise” means “a public corporation and a quasi-governmental entity within the meaning of the Act on the management of Non-Departmental Public Entities). For Mexico, state enterprises do not include the National Company for Basic Commodities and its affiliates, or any successor enterprise and its affiliates, for purposes of sale of maize, beans, and powder milk. (NAFTA, art 1505; Canada-Chile, art J-04; Canada-Honduras, art 15.1; Canada-Israel, art 7.4; Canada-Jordan, art 9.4; and Canada-Korea, art 15.5). The following RTAs do not provide for a definition on “state enterprises” or SOEs: Panama-Central America, EU-Singapore, Australia-Chile, Chile-Central America, and US-Peru.

⁴⁰⁵ The *US-Korea RTA* further clarifies that ownership or control may be direct or indirect. (US-Korea, art 16.9).

⁴⁰⁶ No explanation is provided as for the meaning of the expression “principally engaged”. It is argued that the TPP Annex 17-A (on Threshold Calculations) provides some guidance in this regard. Article 1 of this Annex establishes that “At the time of entry into force of this Agreement, the threshold referenced in Article 17.13(5) (Exceptions) shall be 200 million Special Drawing Rights (SDRs).” Thus, enterprises that are principally engaged in commercial activities would be those with an annual revenue of more than the threshold level of 200 million SDRs. Lee Hyo-young, “Applying Competition Policy to Optimize International Trade Rules,” Korea Institute for International Economic Policy, KIEP Staff Paper 17-01 (2017), p 17.

⁴⁰⁷ TPP (art 17.1).

⁴⁰⁸ In addition, regulatory agencies are not considered enterprises that engage in commercial activities since “measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.” TPP (art 17.1, footnotes 1-2).

TPP definition is still sufficiently broad to cover a vast number of enterprises considered to be SOEs.⁴⁰⁹

The *EU-Vietnam* and *US-Singapore RTAs* also provide for detail SOE definitions which, on their face, seem to be broader than the SOE TPP definition. Thus, while the *EU-Vietnam RTA* resembles the SOE TPP definition, it does not limit state ownership to *direct* ownership but also includes *indirect* ownership. Moreover, the government control criterion *explicitly* extends to strategic decisions of enterprises.⁴¹⁰

For its part, the *US-Singapore RTA* (notwithstanding it does not provide for a single definition applying to all the Parties)⁴¹¹ markedly expands the state ownership and control criteria. It establishes that with respect to Singapore, SOEs means “an enterprise in which it has effective influence”, and this criterion is fulfilled where any of the following conditions are met: (i) the government and its enterprises (alone or in combination) own more than 50 percent of the voting rights of an enterprise; or (ii) the government and its enterprises (alone or in combination) exercise substantial influence over the composition of the board of directors (or any managing body) to determine the outcome of decisions on the strategic, financial, or operating policies or plans of an enterprise, or otherwise to exercise substantial influence over the management or operation of an enterprise. In addition, where the government and its enterprises (alone or in combination) own 50 percent or less but own more

⁴⁰⁹ Indeed, it suffices that the state has majority ownership or voting rights for an enterprise to be considered a SOE. Moreover, even where no state ownership exists, an enterprise is still deemed to be a SOE if the state has the power to appoint the majority of its board of directors or equivalent management body. In the same vein, it is noted that even if the rebuttable presumption found in the *US-Singapore RTA* (see, *infra* note 412) is absent in the TPP, the TPP SOE definition encapsulates the considerations of effective influence provided for in the *US-Singapore RTA*. Fleury et al., “The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership,” p. 453.

⁴¹⁰ The *EU-Vietnam RTA* defines SOEs as “an enterprise, including any subsidiary, in which a Party, directly or indirectly: (a) owns more than 50% of the enterprise’s subscribed capital or the votes attached to the shares issued by the enterprise; or (b) can appoint more than half of the members of the enterprise’s board of directors or an equivalent body; or (c) can exercise control over the strategic decisions of the enterprise.” (EU-Vietnam, art 1). As the TPP, it also limits the SOE scope to enterprises that engage in commercial activities, by providing that the application of the SOEs Chapter (including the nondiscrimination and commercial considerations obligations) apply to covered entities (including SOEs) only when they engage “in commercial activities”. (EU-Vietnam, arts 2.1 and 4.1).

⁴¹¹ For the United States, SOEs means “an enterprise owned, or controlled through ownership interests, by the [government]”. (US-Singapore, art 12.8.6).

than 20 percent of the voting securities and the largest block of voting rights of the enterprise, there is a rebuttable presumption that effective influence exists.⁴¹²

Accordingly, the TPP, *EU-Vietnam* and *US-Singapore RTAs* establish comprehensive standards for the management of SOEs (more than any other regional trade agreement). Their SOE definitions are far-reaching concepts that cover a clear majority of enterprises considered to be SOEs. They are also an expansion of the GATT/WTO rules. They cover services SOEs, which represent an important expansion to the WTO disciplines that poorly regulate the activities of services STEs. For instance, the scope of Article VIII of the GATS only applies to monopoly suppliers and exclusive service suppliers.⁴¹³

Moreover, in contrast with Article XVII of the GATT, these RTAs provide for clear and direct criteria to determine when an enterprise is considered to be a SOE. According to their SOE definitions, majority government ownership *or* control over an enterprise, *or* the government power to appoint the majority of the board of directors, suffices for an entity to be deemed a SOE. Within the GATT/WTO disciplines, however, state ownership (even complete state-ownership) of an enterprise is not conclusive in determining whether Article XVII applies to this enterprise.⁴¹⁴

The SOE definitions also contrast sharply with the Appellate Body interpretation of the term “public bodies” in the SCM Agreement. According to the Appellate Body, “formal *indicia* of control”, such as state ownership and state power to appoint or nominate directors, do not provide a sufficient basis for a determination that an enterprise is a public body within the meaning of the SCM Agreement.⁴¹⁵ This is of relevance since no WTO panel (or the

⁴¹² *US-Singapore* (art 12.8). Interestingly, the SOE definition proposed by the EU within the TTIP negotiations, which is a combination of the TPP and *US-Singapore RTA* SOE definitions, seems to have more relaxing state-ownership and control requirements. The state majority shares or voting rights, or its control to appoint the majority of the administrative/managerial/supervisory body of an enterprise, gives rise to a “presumption” (as opposed to determinative evidence) of state “decisive influence”. (EU SOE TTIP proposal, p 2). To a certain extent, this approach follows the approach taken by the Appellate Body to define the term “public bodies” within the meaning of the SCM Agreement. See *infra* note 415.

⁴¹³ For more details on the regulation of STEs within the GATS see Section 4.3.

⁴¹⁴ See, Section 4.1.2 above.

⁴¹⁵ In *US – Anti-Dumping and Countervailing Duties (China)*, the Appellate Body stated that “evidence of government ownership, in itself, is not evidence of meaningful control of an entity by government and cannot,

Appellate Body) has specifically ruled on the definition of STEs (arguably, the Appellate Body interpretation of “public bodies” elucidates the likely understanding of the Appellate Body with respect to the term STEs. In fact, it is argued that the public body interpretation by Appellate Body influenced the inclusion of a SOEs chapter in the TPP, with clear criteria for defining SOEs.⁴¹⁶

Finally, while generally expanding the GATT/WTO STE disciplines, there are some instances where the scope of these RTAs seems to be narrower than the reach of Article XVII.⁴¹⁷ With respect to SOEs, the condition in the TPP and *EU-Vietnam RTA* regarding enterprises which are “engaged in commercial activities” focuses on profit-oriented enterprises, leaving outside entities such as state-owned not for profits enterprises. Under the WTO disciplines, however, even socially oriented or not for profit STEs fall within the scope of Article XVII, once these enterprises have the power to contravene any of the obligations imposed by this provision.

D. Exclusions From Scope

All the RTAs under consideration hold some kind of exclusions. As within Article XVII of the GATT, most RTAs provide for the government procurement exception.⁴¹⁸ The TPP and *EU-Vietnam RTA* go further. (Indeed, the inclusion of detailed SOE rules headed to

without more, serve as a basis for establishing that the entity is vested with authority to perform a governmental function. Accordingly, such evidence, alone, cannot support a finding that an entity is a public body.” (Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, WT/DS379/AB/R, para. 346). Similarly, in *US – Carbon Steel (India)*, the Appellate Body ruled that “the USDOC examined evidence which, in our view, would be seen more appropriately as evidence of “formal indicia of control” such as the GOI’s ownership interest in the NMDC and the GOI’s power to appoint or nominate directors. These factors are certainly relevant but do not provide a sufficient basis for a determination that an entity is a public body that possesses, exercises, or is vested with governmental authority.” (Appellate Body Report, *US – Carbon Steel (India)*, WT/DS436/AB/R, para. 4.54).

⁴¹⁶ Lee Hyo-young, “Applying Competition Policy to Optimize International Trade Rules,” p. 12.

⁴¹⁷ See, for instance, the previous discussion about “enterprises granted special rights or privileges” in Section 5.1.2B.

⁴¹⁸ Canada-Chile (art J-02.4), Canada-Honduras (art 15.3.4), Canada-Israel (art 7.2.4), Canada-Jordan (art 9.1.4), Canada-Korea (art 15.2.4), Panama-Central America (art 15.3.4), Colombia-Mexico (art 16.2.3), Australia-Chile (14.4.3), Chile-Mexico (art 14.3.5), CETA (art 18.2), EU-Vietnam (art 2.4), NAFTA (art 15.02.4), Israel-Mexico (art 8.5.4), Panama-Chinese Taipei (15.3.4), TPP (art 17.2.7), US-Australia (art 14.3.3), US-Colombia (art 13.5.3), US-Chile (art 16.3.4), US-Korea (art 16.2.3), US-Peru (art 13.5.3), and US-Singapore (art 12.3.4). See, also, EU SOEs TTIP Proposal (art 2.2).

the inclusion of a considerable number of exceptions).⁴¹⁹ They include unusual general exemptions such as: (i) the exclusion of enterprises for which a Party has taken measures on a temporary basis in response to a national or global emergency⁴²⁰ (this exception seems to go beyond the general and security exceptions provided for in Article XX and Article XXI of the GATT);⁴²¹ and (ii) the exclusion of all entities that are below a size threshold—i.e. entities with an annual revenue derived from commercial activities that is below SDR 200 million (about \$280 million) in any of the past three years—as such, only larger SOEs are subject to the disciplines of these agreements.⁴²²

They also incorporate the following exclusions: The *EU-Vietnam RTA* excludes enterprises in charge of national defense, public order or public security,⁴²³ as well as services supplied in the exercise of governmental authority.⁴²⁴ The TPP excludes (i) goods and services supplied in the exercise of governmental functions; (ii) actions for addressing the resolution of failing/failed financial institutions or financial service suppliers; (iii) sovereign wealth funds (including Singapore's Temasek); (iv) independent pension funds or enterprises owned or controlled by these funds;⁴²⁵ (v) regulatory/supervisory actions or monetary/credit/exchange rate policy of a central bank or monetary authority; and (vi) regulatory/supervisory actions over financial services suppliers.⁴²⁶

5.1.3 RTAs Substantive Obligations And Rights

The RTAs under consideration build on the existing STEs rights and obligations provided by WTO disciplines. Thus, just as Article XVII of the GATT, nothing in these RTAs

⁴¹⁹ Fleury et al., "The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership," *19 Journal of International Economic Law* (2016), p. 453-454.

⁴²⁰ TPP (art 17.13.1) and EU-Vietnam (art 2.3).

⁴²¹ For instance, there is no need to comply with an Article XX-Chapeau safeguarding the principle of nondiscrimination.

⁴²² TPP (art 17.13.5) and EU-Vietnam (art 2.3).

⁴²³ Except where these entities are engaged exclusively in commercial activities unrelated to national defense, public order or public security. (EU-Vietnam, art 2.5).

⁴²⁴ EU-Vietnam (arts 2.5 and 2.8).

⁴²⁵ However, the exceptions to sovereign wealth funds and independent pension funds are limited exceptions. Like governments, they are barred from providing non-commercial assistance (subsidies) to SOEs. (TPP, art 17.2.6).

⁴²⁶ TPP (art 17.2).

prevents the parties from establishing or maintaining state enterprises, SOEs, monopolies,⁴²⁷ or granting an enterprise special or exclusive rights.⁴²⁸ In fact, the main goal of these RTAs is not to prohibit STEs, but rather to ensure that their trade and investment activities do not place private firms at an unfair disadvantage. The specific obligations assumed by these entities include the obligations of nondiscrimination treatment and commercial considerations.⁴²⁹ As will be discussed in the following sections, the extent of these obligations vary across RTAs, and in some instances, they differ from the WTO practice.

A. Nondiscrimination Treatment

Most of the RTAs oblige parties to ensure that (i) any state enterprise established or maintained “accords non-discriminatory treatment in the *sale* of its *goods* or *services* to covered investments”; and (ii) any privately or state-owned monopoly “provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party, in its *purchase* or *sale* of the monopoly good or service in the relevant market”.⁴³⁰ In a few number of RTAs, the scope of this obligation is narrower, either because it does not apply to state or private monopolies, or because it only applies to the sale of goods (and not to the sale of services) of state enterprises and/or monopolies.⁴³¹

⁴²⁷ According to the TPP, “designate” means “to establish, designate or authorize a monopoly, or to expand the scope of a monopoly to cover an additional good or service”. (TPP, art 17.1). Nearly identical definitions are found in the US and Canadian RTAs under consideration, as well as in the Colombia-Mexico, Australia-Chile, Chile-Mexico, CETA, EU-Vietnam, and Israel-Mexico RTAs.

⁴²⁸ Canada-Chile (arts J-02-J-03), Canada-Honduras (arts 15.3-15.4), Canada-Israel (arts 7.2-7.3), Canada-Jordan (arts 9.1-9.2), Canada-Korea (arts 15.2-15.3), Panama-Central America (art 15.03), Australia-Chile (arts 14.4-14.5), Chile-Central America (art 15.02), Chile-Mexico (art 14.03-14.04), CETA (art 18.3), EU-Singapore (arts 12.3-12.4), EU-Vietnam (art 3), NAFTA (arts 1502-1503), Nicaragua-Chinese Taipei (art 16.3-16.4), Israel-Mexico (art 8.5-8.6), Panama-Chinese Taipei (art 15.3), TPP (art 17.2), US-Colombia (arts 13.5-13.6), US-Chile (arts 16.1 and 16.4), US-Korea (art 16.2), US-Peru (art 15.3 and 13.6), and US-Singapore (art 12.3). Only the *Colombia-Mexico RTA* does not explicitly provide for the right of establishing STEs.

⁴²⁹ All the RTAs considered under this section contain a nondiscrimination treatment obligation, and all of them (but for the *Panama-Central America*, *Chile-Central America*, and *Panama-Chinese Taipei RTAs*) also contain a commercial consideration obligation.

⁴³⁰ Canada-Korea (arts 15.2-15.3), US-Colombia (arts 13.5-13.6), US-Chile (arts 16.1 and 16.4), US-Korea (art 16.2), and US-Peru (arts 13.5-13.6). A nearly identical provision is contained in: Canada-Chile (arts J-02-J-03), Canada-Honduras (arts 15.3-15.4), Australia-Chile (arts 14.4-14.5), Chile-Mexico (arts 14.3-14.4), NAFTA (arts 1502-1503), and US-Australia (arts 14.3-14.4).

⁴³¹ In the following RTAs, the nondiscrimination treatment obligation does not apply to state or private monopolies but only to state enterprises and only in the sale of their goods. (Canada-Israel, art 7.3; Nicaragua-

Still, several RTAs incorporate a far-reaching nondiscrimination treatment obligation. Thus, the CETA, TPP, and *EU-Vietnam RTA* require nondiscriminatory treatment to (covered) investments, goods, or services in both the *sale* and *purchase* of a *good* or *service*.⁴³² In these RTAs, the nondiscrimination obligation apply to all the entities covered, including state enterprises, SOEs, private or state monopolies, and where provided, to enterprises granted special rights or privileges. Some of the RTAs to which the Latin American countries are party, and the *US-Singapore RTA* (but only with respect to Singapore),⁴³³ also include this extensive nondiscrimination obligation.⁴³⁴ All of these RTAs are in line with the GATT/WTO equivalent nondiscrimination provisions. They indistinctively require that all their covered entities (without exception) afford nondiscrimination treatment and extend this obligation to both the sales and purchases of these entities.

In contrast to Article XVII, however, nearly all the RTAs covered in this sample appear to have a higher nondiscriminatory standard. Within the WTO, is not clear whether the nondiscrimination principle in Article XVII involves a strict (as opposed to relaxed) form of

Chinese Taipei, art 16.4; and Mexico-Israel, art 8.06). The same approach is taken by the *Colombia-Mexico RTA*, except that this agreement extends this obligation to the sale of services of state enterprises. (Colombia-Mexico, art 16.2). For its part, the *Canada-Jordan RTA* applies the nondiscrimination obligation to both state enterprises and monopolies but only with respect to the sale of goods of state enterprises and sales/purchases of goods of monopolies. (Canada-Jordan, arts 9.1-9.2).

⁴³² CETA (art 18.4), EU-Vietnam (art 4), and TPP (art 17.4). See, also, the EU SOEs TTIP Proposal (art 4).

⁴³³ As noted elsewhere, the *US-Singapore RTA* applies a dual approach by which some definitions and obligations apply only to Singapore. Thus, to Singapore, this RTA requires that any state enterprise provides nondiscriminatory treatment to covered investments, to goods and to service suppliers of the United States, including with respect to its purchases or sales. It also requires that Singapore takes no action (directly or indirectly) to influence decisions of its government enterprises (it may however exercise its voting rights in a manner that is not inconsistent with this Agreement) and that continues reducing (with a goal of substantially eliminating) its aggregate ownership/interests that confer effective influence in entities organized under the laws of Singapore. To the United States, instead, this agreement requires that a government enterprise “accords nondiscriminatory treatment in the sale of its goods or services to covered investments”. With respect to designated monopolies, it requires that both (the United States and Singapore) ensure that any (state or private) monopoly accords nondiscriminatory treatment to covered investments, to goods, and to services, including with respect to its purchases or sales. (US-Singapore, arts 12.2-12.3). The *EU-Singapore RTA* follows a similar approach. (EU-Singapore, art 12.4).

⁴³⁴ Panama-Central America (art 15.03) and Panama-Chinese Taipei (art 15.03). A similar provision is also found in the *Chile-Central America RTA* (art 15.02).

MFN and whether it includes a national-treatment type obligation.⁴³⁵ This definitional uncertainty is of great importance, since where an STE acts in violation of the national treatment obligation and this action does not involve a governmental measure, neither Article XVII nor Article III of the GATT seem to be able to sanction this behavior.⁴³⁶ The RTAs override this definitional drawback. They explicitly establish that their nondiscriminatory obligation with respect to state trading means both the better of national treatment and MFN treatment.⁴³⁷ Moreover, some RTAs cover services SOEs,⁴³⁸ and in contrast with the GATS limited approach, they equally apply this higher nondiscriminatory standard to these enterprises.⁴³⁹

Still, there are some important exceptions that RTAs apply to the obligation of nondiscrimination. A great number of RTAs specifies that the charging of different prices in different markets (or within the same market), where such differences are based on normal commercial considerations, is not inconsistent with the substantive obligation of nondiscrimination treatment.⁴⁴⁰ While these RTAs only refer to price differentiation, the TPP and *EU-Vietnam RTA* extend the scope of this exception to the purchase or sale on different terms and conditions (including but not limited to those related to price) and to the refusal to

⁴³⁵ The language of Article XVII of the GATT is not self-evident on the matter and the issue has not been subject to the scrutiny of the Appellate Body. Thus, as long as this issue is not resolved within the WTO, the RTAs appear to have a higher nondiscriminatory standard than the one provided for in Article XVII of the GATT.

⁴³⁶ For a detailed analysis on this point, see, Section 4.1.3A on National Treatment and MFN Treatment obligations.

⁴³⁷ Canada-Chile (art J-04), Canada-Honduras (art 15.1), Canada-Jordan (art 9.4), CETA (art 18.1), Colombia-Mexico (art 16.1), Australia-Chile (14.1), Chile-Central America (art 15.2), Chile-Mexico (art 14.1), NAFTA (art 1505), US-Australia (art 14.12), US-Colombia (art 13.11), US-Chile (art 16.9), US-Korea (art 16.9), US-Peru (art 13.11), and US-Singapore (12.8). While not explicitly stated in the TPP and *EU-Vietnam RTA*, it is clear from the wording of their nondiscriminatory obligations that these obligations cover the national treatment and MFN treatment principles. (TPP, art 17.4; and *EU-Vietnam*, art 4).

⁴³⁸ For instance, the CETA, TPP and *EU-Vietnam RTA*.

⁴³⁹ Article VIII of the GATS, regulating MFN treatment, depends on a variety of exemptions that have weakened its application (e.g. the suspension of the MFN treatment for the maritime sector). Moreover, the obligation of national treatment is dependent upon the obligations undertaken by Members in this regard. For more on the regulation of STEs within the GATS, see, Section 4.3.

⁴⁴⁰ Canada-Chile (footnote 2 to art J-02), Canada-Korea (art 15.4), Chile-Mexico (art 14.3.6), US-Australia (art 14.5), US-Colombia (art 13.7), US-Chile (art 16.5), US-Korea (art 16.4), US-Peru (art 13.7), and US-Singapore (art 12.3.3). See, also, EU SOEs TTIP Proposal (art 6).

purchase or sell goods or services.⁴⁴¹ These derogations deserve careful consideration as they greatly deviate from the GATT/WTO law and practice.

First, Article XVII of the GATT exempts from the nondiscriminatory obligation the charging of different prices in different markets only for meeting conditions of supply and demand in export markets (this exception applies regardless of whether such price differentiation is based on commercial considerations).⁴⁴² In contrast, the RTAs provisions exclude this price differentiation exception, unless this differential treatment is undertaken in accordance with commercial considerations. Only in this very limited situation, it appears that the RTAs price differential exception is narrowed than the export price discrimination exception of Article XVII.

In fact, the RTAs exceptions extend to sales in the domestic market, to purchases, to different terms and conditions of sale and purchase other than price differentiation, and without the sole purpose of meeting demand or supply conditions in export markets. Thus, while Article XVII only allows export price discrimination for meeting export market conditions, these RTAs allow not only export but also import price discrimination regardless of the purpose of such discrimination. What is more, the TPP and *EU-Vietnam RTA* allow for discriminatory treatment including but not limited to price discrimination.

More importantly, the RTAs exceptions—which indicate that discriminatory operations of SOEs might be nevertheless exempted from liability if they are in accordance with the commercial considerations—denote that for these RTAs the important benchmark by which SOEs operations are judged is commercial considerations. This approach, which goes

⁴⁴¹ The TPP and *EU-Vietnam RTA* establish that the nondiscrimination treatment obligation does not preclude their covered entities from purchasing or selling goods or services on different terms or conditions (including those relating to price), or to refuse to purchase or sell goods or services, provided that such differential treatment or refusal is undertaken in accordance with commercial considerations. (TPP, art 17.4.3; and EU-Vietnam, art 4.2). While the CETA does not include a similar provision, it provides that if a covered entity (except monopolies) acts in accordance with commercial considerations, “the Party in whose territory the covered entity is located shall be deemed to be in compliance with the [nondiscriminatory] obligation in respect of that covered entity.” (CETA, art 18.4.2).

⁴⁴² For more on this point, see, Section 4.1.3B on Commercial Considerations.

back to the original US proposal during the negotiations of Article XVII,⁴⁴³ is in sharp contrast with the current GATT/WTO practice. Under this practice, preeminence is given to the obligation of nondiscrimination treatment. The Appellate Body and GATT/WTO panels have treated the obligation to act in accordance with commercial considerations as an illustration of the obligation not to discriminate, and as a result, it has been argued that commercial considerations is applicable only when discriminatory behavior has taken place.⁴⁴⁴ Thus, what matters for the WTO is that STEs do not discriminate, and this is regardless of whether this nondiscriminatory behavior could nevertheless be inconsistent with commercial considerations.

For the RTAs, in contrast, the central point is that STEs behave in accordance with commercial considerations, even if discriminatory behavior takes place. This approach reflects a preference for a framework based on commercial considerations over a framework of uniform treatment whatever the trading rules. As has been observed, the belief behind this approach is that, like private firms, STEs could occasionally price-discriminate, but to the extent that similar behavior is justified by the benchmark established, this price discrimination should be tolerated as well.⁴⁴⁵

Finally, of equal relevance, while the GATT/WTO treats the obligation of commercial considerations as an illustration of the obligation not to discriminate, the RTAs appear to treat these two obligations as two different and independent obligations. That is, on equal basis. This issue is of significant importance. As noted before, the GATT/WTO practice has implied that the conformity of STEs activities with commercial considerations can be

⁴⁴³ During the New York Conference, the US delegation proposal with respect to Article 31 on “Non-discriminatory Administration of State-Trading Enterprises” read: “The charging by a state enterprise of different prices for its sales of a product in different markets, domestic or foreign, is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons.” (Drafting Committee of the Preparatory Committee of the United Nations Conference On Trade And Employment, 30 January 1947, E/PC/T/C.6/27, p. 4-5). As noted by Mavroidis, price differentiation could, in principle, give rise to nondiscriminatory claims. Yet, the United States wanted to avoid this situation by establishing preeminence of “commercial considerations” as the benchmark by which STEs should be judged, even if their behavior could be regarded as discriminatory. Mavroidis, *The Regulation of International Trade*, p 401.

⁴⁴⁴ For a detailed discussion about this issue, see, Section 4.1.3B on Commercial Considerations; specifically, *supra* notes 273 and 274.

⁴⁴⁵ See, Mavroidis, *supra* note 443. Arguably, the permissibility of export or import price discrimination enables a STE to exercise a market power which a private export or import monopoly would normally exploit.

challenged only when discriminatory behavior is involved, allowing therefore that STE nondiscriminatory measures, which are nevertheless inconsistent with the commercial considerations requirement, escape from the STEs GATT/WTO disciplines. Yet, the RTAs under examination contain no wording from which it can be inferred that compliance with commercial considerations presupposes compliance with the nondiscrimination treatment (or *vice-versa*),⁴⁴⁶ or that one of these obligations is dependent upon (rather than separate and independent from) the another.⁴⁴⁷ Hence, it seems that within these RTAs either of these obligations can be challenged on its own.

B. Commercial Considerations

The great majority of RTAs include the obligation of commercial considerations⁴⁴⁸ but only with respect to state or privately-owned monopolies. They require that such monopolies “act (solely) in accordance with commercial considerations in their purchase or sale of a good or service.”⁴⁴⁹ Only few RTAs extend this obligation to all their covered entities

⁴⁴⁶ Only the CETA specifically establishes that that if a covered entity (except monopolies) acts in accordance with commercial considerations and “the Party in whose territory the covered entity is located shall be deemed to be in compliance with the [nondiscriminatory] obligation in respect of that covered entity.” (CETA, art 18.4.2). This (or similar) provision is not found in the other RTAs at issue.

⁴⁴⁷ On the other hand, the exceptions to the nondiscrimination obligation (discussed in this section) are specific derogations from this principle and should not (for that reason alone) be understood as having the effect of creating a relationship of complete dependency between the nondiscrimination obligation and the commercial considerations obligation. Moreover, although broad in scope, these exceptions may not cover all the trade distorting activities of STEs. Indeed, there may other STEs operations that may not fall within the scope of these exceptions and be therefore challenged under discriminatory basis.

⁴⁴⁸ Except for the *Panama-Central America*, *Chile-Central America*, and *Panama-Chinese Taipei RTAs*. The *EU-Singapore RTA* include the obligation of commercial considerations only with respect to Singaporean public undertakings or undertakings granted special or exclusive rights. (EU-Singapore, art 12.3).

⁴⁴⁹ For referencing purposes, see, *infra* notes 451, 453 and 454. Interestingly, the circumscribing term “solely” appears in all the RTAs except in the TPP, CETA, and *EU-Vietnam RTA*. In the TPP, this term is absent despite the desire of some parties to introduce this term to avoid any kind of circumvention (e.g. by arguing that commercial considerations do not need to be solely market driven). Thus, whether the term “commercial considerations” allows for such an interpretation remains uncertain. Fleury et al., “The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership,” p. 456-457. As noted in this section, however, these RTAs clearly define the term “commercial considerations” preventing therefore undesirable misinterpretations.

(i.e. SOEs, state enterprises, state or privately-owned monopolies and, where provided, to enterprises granted special rights and privileges).⁴⁵⁰

Concerning the definition of this obligation, these RTAs establish that commercial considerations include price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale.⁴⁵¹ This is in accordance with Article XVII of the GATT.⁴⁵² Yet, a great number of RTAs go further by providing more developed definitions. In addition to the factors listed above, they specify that the term commercial considerations means “consistent with normal customary business practices of privately-held enterprises in the relevant business or industry.”⁴⁵³ Similarly, the TPP and *EU-Vietnam RTA* establish that commercial considerations also include other factors that would normally be considered “in the commercial decisions of a privately-owned enterprise in the relevant business or industry.”⁴⁵⁴

It is not clear, however, whether the standards provided by these definitions are limited to a business or industry in the SOE (or monopoly) home country, or whether these standards also include reference to the practice in third countries. This is of relevance, as there would be no domestic benchmarks where (for instance) the entity at issue is a monopoly. The *EU-Vietnam RTA* emphasizes that the benchmark enterprise must be an enterprise “operating according to market economy principles” in the relevant business or industry, implying

⁴⁵⁰ CETA (art 18.3), Colombia-Mexico (art 16.2), EU-Vietnam (art 3), and the TPP (art 17.4). This is also the case of the *US-Singapore RTA*, but only with respect to Singaporean monopolies and state enterprises. US-Singapore (art 12.3). For the United States, the obligation on commercial considerations apply only with respect to state or private monopolies.

⁴⁵¹ Canada-Israel (art 7.2), Canada-Korea (15.2), EU-Singapore (art 12.3), Nicaragua-Chinese Taipei (art 16.3), and Israel-Mexico (art 8.05). Also, see, *infra* notes 453 and 454.

⁴⁵² See, Section 4.1.3B on Commercial Considerations.

⁴⁵³ Canada-Chile (arts J-02 and J-04), Canada-Honduras (art 15.1 and 15.3), Canada-Jordan (arts 9.1 and 9.4), CETA (arts 18.1 and 18.5), Colombia-Mexico (arts 16.1-16.2), Australia-Chile (arts 14.1-14.4), Chile-Mexico (art 14.1-14.3), NAFTA (arts 1502 and 1505), US-Australia (art 14.3 and 14.12), US-Colombia (arts 13.5 and 13.11), US-Chile (arts 16.1 and 16.9), US-Korea (arts 16.2 and 16.9), US-Peru (arts 13.5 and 13.11), and US-Singapore (arts 12.3 and 12.8). The EU negotiations on SOEs within the TTIP, follows this commercial consideration definition. (EU SOEs TTIP Proposal, art 5). The *Chile-Mexico and Canada-Chile RTAs* exclude from the scope of commercial considerations pricing differences between classes of customers, between affiliated and non-affiliated firms, and cross-subsidization. According to these agreements, the pricing differences are not in themselves inconsistent with the commercial considerations obligation. Rather, they are subject to this obligation when they are used as instruments of anticompetitive behavior by the monopoly firm. (Chile-Mexico, art 14.3.2(b); and Canada-Chile (footnote 4 to art J-02.3(b)).

⁴⁵⁴ TPP (art 17.1) and EU-Vietnam (art 3).

therefore that the use of third-country benchmarks (potentially for cases where Vietnamese SOEs are involved) may be allowed.⁴⁵⁵

On the other hand, as for greater clarity, most RTAs specify that the charging of different prices in different markets (or within the same market), is not in itself inconsistent with the obligation of commercial considerations, provided that such differential treatment is based on normal commercial considerations (such as supply and demand conditions).⁴⁵⁶ The *EU-Vietnam RTA* corresponding provision is not limited to price differentiation but includes the purchase or supply of goods or services on different terms and conditions (including those related to price) or the refusal to purchase or supply goods or services.⁴⁵⁷

Finally, the commercial considerations obligation is limited by some specific exemptions. According to most RTAs, an enterprise can act on non-commercial considerations to fulfill any of the terms of its public mandate, designation or grant, provided that such terms are consistent with the nondiscrimination treatment and competition-related obligations.⁴⁵⁸ Other RTAs also provide for this exception but require that these terms are consistent only with respect to the nondiscrimination obligation,⁴⁵⁹ or only with respect to the

⁴⁵⁵ The *EU-Vietnam RTA* states that “commercial considerations mean price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale; or other factors that would normally be taken into account in the commercial decisions of an enterprise operating according to market economy principles in the relevant business or industry.” (EU-Vietnam, art 3).

⁴⁵⁶ Canada-Chile (footnote 2 to art J-02), Canada-Korea (art 15.4), Chile-Mexico (art 14.3.6), US-Australia (art 14.5), US-Colombia (art 13.7), US-Chile (art 16.5), US-Korea (art 16.4), US-Peru (art 13.7), and US-Singapore (art 12.3.3). See, also, EU SOEs TTIP Proposal (art 6). As noted before, the same conditions are provided with respect to the nondiscrimination treatment obligation. For a discussion about price differentiation and nondiscrimination treatment, see, Section 5.1.3A above.

⁴⁵⁷ EU-Vietnam (art 4.2). The TPP contains a very similar provision but indicates that this differential treatment or refusal (provided that it is undertaken on commercial considerations basis) is consistent with the nondiscrimination treatment obligation. It says nothing with respect to the commercial considerations obligation. (TPP, art 17.4.3).

⁴⁵⁸ Canada-Chile (art J-02.3), Canada-Honduras (art 15.3.3), Canada-Jordan (art 9.1.3), Canada-Korea (art 15.2.3), CETA (art 18.5.2), Australia-Chile (art 14.4.2), Chile-Mexico (art 14.3.2), NAFTA (art 1502), US-Australia (14.3), US-Colombia (art 13.5), US-Chile (art 16.1), US-Korea (art 16.2), and US-Peru (art 13.5). The competitive-related obligations mainly concern the specific obligation against monopolies not to use their monopoly position to engage in anticompetitive practices. In the case of the CETA, it concerns all the competition matters contained in Chapter 17 on Competition Policy. Following the CETA approach, see, the EU SOEs TTIP Proposal (art 5).

⁴⁵⁹ EU-Vietnam (art 4.1(a)). In fact, within its SOE chapter, this RTA does not contain any provision on anti-competitive practices.

competition-related provisions.⁴⁶⁰ Moreover, according to the *US-Korea* and *Canada-Korea RTAs*, a monopoly can act on non-commercial considerations when supplying goods or services in accordance with specified rates approved (or other terms or conditions established) by a regulatory authority, provided that such rates or terms are not inconsistent with the nondiscrimination treatment and competition-related obligations.⁴⁶¹

5.1.4 Other Specific Obligations And Disciplines

In addition to the substantive obligations of commercial considerations and nondiscrimination treatment, the RTAs under examination contain other specific obligations that further regulate the behavior of SOEs. These obligations include requirements with respect to their regulatory control and anticompetitive practices. The TPP goes further by including specific subsidies rules to SOEs.

A. Regulatory Control

Nearly all the RTAs require that each Party ensures that its state and privately-owned monopolies, state enterprises, SOEs, and/or enterprises granted special or exclusive rights, act in a manner that is not inconsistent with that Party's obligations under the RTA, wherever these entities exercise any regulatory, administrative or other governmental authority that the Party has delegated, designated, or directed to them. Illustrations of this authority includes the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees or other charges.⁴⁶² In a limited number of RTAs, this obligation is provided only with respect

⁴⁶⁰ Canada-Israel (art 7.2.3(b), Nicaragua-Chinese Taipei (art 16.3.3(b), and Israel-Mexico (art 8.5.3(b)). The TPP also adopts a similar approach in this regard. With respect to designated monopolies, the TPP requires that the terms of their designation are no inconsistent with the nondiscrimination and competition-related obligations. However, with respect to SOEs, it only requires that the terms of the SOEs public service mandate are not inconsistent with the nondiscriminatory obligation that is specifically provided for covered investments. (TPP; arts 17.4.1(a) and 17.4.2(a)).

⁴⁶¹ Canada-Korea (footnote 4 to art 15.2.3(b)) and US-Korea (footnote 3 to art 16.2.1(b)).

⁴⁶² Canada-Israel (arts 7.2.3(a) and 7.3.2), Canada-Jordan (arts 9.1.3(a)), Canada-Korea (arts 15.2.3(a) and 15.3.2), Panama-Central America (art 15.3.3(a)), Australia-Chile (arts 14.4.2(a) and 14.5.2), Nicaragua-Chinese Taipei (arts 16.3.3(a) and 16.4.2), Israel-Mexico (arts 8.5.3(a) and 8.6.2), Panama-Chinese Taipei (art 15.3.3(a)), TTP (art 17.3), US-Australia (arts 14.3.1(a) and 14.4.1(a)), US-Colombia (arts 13.5.1(a) and 13.6.1(a)), US-Chile (arts 16.1.3(a) and 16.4.2), US-Korea (arts 16.2.1(a) and 16.2.1(a)), US-Peru (art 13.5.1(a) and 13.6.1(a)), and US-Singapore (arts 12.3.1(c)). Although poorly defined, a similar obligation is contained in Chile-Central

to monopolies (state and privately-owned), while for state enterprises it is only required that these enterprises act in a manner that is not inconsistent with the Party's obligations under the specific investment and/or financial services chapters of the agreement.⁴⁶³

The whole purpose of these provisions is to prevent RTAs parties from circumventing through state trading operations the principles and obligations contained in the RTAs. This is in line with the GATT/WTO approach, where in addition to Article XVII of the GATT, several other obligations under different covered agreements operate to further constrain the behavior of STEs, including Article II (on Schedule of Concessions), Article III (on National Treatment), Article XVI (on Subsidies), Article XX (on General Exceptions), Article XXXVII (on Commitments), Article XI (on the elimination of quantitative restrictions), Article XII (on restrictions to safeguards the balance of payments), Article XIII (on the non-discriminatory administration of quantitative restrictions), Article XIV (on exception to the rules on non-discrimination), and Article XVIII (on government assistance for economic development).⁴⁶⁴

B. Anticompetitive Practices

Unlike the WTO disciplines,⁴⁶⁵ a major part of RTAs contains specific obligations on “anticompetitive practices”. They require that a monopoly (state or privately-owned) do not use its monopoly position to engage (directly or indirectly) in anticompetitive practices in a

America (art 15.2.3). The CETA, *Colombia-Mexico*, *EU-Vietnam*, and *EU-Singapore RTAs* do not provide for this regulatory-related obligation.

⁴⁶³ For instance, the *Canada-Chile RTA* provides that “each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapter G (Investment) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licences, approve commercial transactions or impose quotas, fees or other charges.” (Canada-Chile, art J-03.2). Similar provisions are found in: Canada-Honduras (art 15.4.2), Chile-Mexico (art 14.4.2), and NAFTA (art 1503.2).

⁴⁶⁴ See, Section 4.1.3 on Substantive Obligations.

⁴⁶⁵ Today, the WTO disciplines do not specifically include competition policy rules. The preamble to the Safeguards Agreement only states that Members recognize “...the importance of structural adjustment and the need to enhance rather than limit competition in international markets”. Also, some provisions in several agreements (Articles VIII and IX of the GATS, Article 9 of the TRIMS Agreement, and Section 8 of the TRIPS Agreement) refer to anticompetitive practices but their impact is limited (i.e. they do not specifically address competitive issues and they are subject to many exceptions).

non-monopolized market in its territory that adversely affect other parties,⁴⁶⁶ or that adversely affect an investment (or covered investment).⁴⁶⁷ The reach of this obligation is enhanced by the TPP, which establishes that the negative effects can be on both the trade or investment between the parties. However, the TPP gives the parties a great deal of leeway for determining how to comply with this obligation, questioning therefore the effectiveness of this provision.⁴⁶⁸ Illustrations of specific anticompetitive practices are included in most RTAs, including the discriminatory provision of monopoly goods or services, cross-subsidization, or predatory conduct.⁴⁶⁹

Only in a limited number of cases, the RTAs provide for a similar anticompetitive obligation with respect to state enterprises or SOEs.⁴⁷⁰ The *US-Singapore RTA* is the agreement which contains more detailed anticompetitive practices provisions (although they are country-specific). Pursuant to this RTA, Singapore has engaged itself to ensure that its state enterprises do not (either directly or indirectly) (i) enter into agreements among competitors that restrain competition on price or output or allocate customers for which there

⁴⁶⁶ Canada-Israel (art 7.2.3(c)), Canada-Jordan (art 9.1.3(d)), Colombia-Mexico (art 16.2(b)), US-Australia (art 14.1(d)), Nicaragua-Chinese Taipei (art 16.3.3(c)), and Israel-Mexico (art 8.5.3(c)).

⁴⁶⁷ Canada-Chile (art J-02.3(d)), Canada-Honduras (art 15.3.3(d)), Canada-Korea (arts 15.2.3(d)), Panama-Central America (art 15.3.3(c)), Chile-Mexico (art 14.3.3(d)), NAFTA (art 1502.3(d)), Panama-Chinese Taipei (art 15.3.3(c)), US-Australia (arts 14.3.1(d)), US-Colombia (art 13.5.1(d)), US-Chile (art 16.1.3(d)), US-Korea (art 16.2.1(d)), US-Peru (art 13.5.1(d)), and US-Singapore (arts 12.3.1(c)). This obligation is not provided by the CETA, *Chile-Central America* and *EU-Vietnam RTAs*, and the EU SOEs TTIP Proposal.

⁴⁶⁸ TPP (art 17.4.2(d)). The TPP provides that a Party can comply with this obligation through either (i) its national competition laws and regulations, (ii) its economic regulatory laws and regulations, or (iii) other appropriate measures. This, in practice, provides considerable domestic policy scope as it relies on domestic measures. Haywood, "The Treatment of State Enterprises in the WTO & Plurilateral Trade Agreements", p 8.

⁴⁶⁹ For referencing purposes, see *supra* notes 466-467 and 470.

⁴⁷⁰ The EU-Singapore, Australia-Chile, and US-Australia. For instance, the *US-Australia RTA* requires that (i) the United States ensures that anticompetitive activities by its sub-federal state enterprises are not excluded from its national antitrust laws solely because of their status as sub-federal state enterprises, to the extent that their activities are not protected by the State Action Doctrine; (ii) Australia takes reasonable measures (e.g. through its policy of competitive neutrality) to ensure that its governments at all levels do not provide any competitive advantage to any government businesses simply because they are government-owned. This provision does not apply to the government noncommercial activities. Australia must also ensure that its competitive neutrality complaints offices treat complaints lodged by persons or government of the United States no less favourably than complaints lodged by persons or the government of Australia. (US-Australia, art 14.4.2-3). A similar provision is included in the *Australia-Chile RTA* (art 14.5.4).

is no plausible efficiency justification; or (ii) engage in exclusionary practices that substantially lessen competition to the detriment of consumers.⁴⁷¹

It has been argued that applying competition law to SOEs has significant drawbacks and therefore it is not the appropriate method of dealing with the trade distortive effects of SOEs.⁴⁷² Still, a great number of RTAs (namely old RTAs) refer to national competition law to deal with the distorting behavior of STE-related enterprises.⁴⁷³ The RTAs examined under this section (which include recent RTAs), however, show a new strategy to discipline state trading. That is, an application of trade law principles complemented with specific competition law commitments, as distinct from an application of purely competition law or trade law disciplines.

C. Non-commercial Assistance

Only the TPP includes specific provisions on non-commercial assistance (NCA), namely subsidies, regarding SOEs.⁴⁷⁴ The aim of these rules is to prevent adverse effects or injury to the interests of TPP parties.⁴⁷⁵ These rules largely follow the subsidies disciplines

⁴⁷¹ US-Singapore (art 12.3.2(d)(ii)).

⁴⁷² First, the main anticompetitive conduct of SOEs (i.e. non-recoupment predation) is often not captured by competition law. Second, competition law follows an *ex post* remedy approach (i.e. it will deal with anticompetitive practices only after they have taken place) and would only apply to big SOEs, which have sufficient market power, and that would not fall within any exclusion. And Third, SOEs activities, which normally have their basis in law or public policies, would be exempted by the state defense doctrine that allows for the exclusion of liability where the conduct of an enterprise is dictated by law or regulation. Willemyns, "Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?," p 670.

⁴⁷³ See *supra* note 378.

⁴⁷⁴ Only a few number of RTAs have attempted to regulate STEs agriculture export subsidies but by adopting a rather soft-law approach. The *US-Colombia and US-Peru RTAs* compels the Parties "to work together toward an agreement on export state trading enterprises in the WTO that: (a) eliminates restrictions on the right to export; (b) eliminates any special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of their country's total exports of an agricultural good; and (c) ensures greater transparency regarding the operation and maintenance of export state trading enterprises." (US-Colombia, art 2.17; and US-Peru, art 2.17). See also EU-Central America (art 892.). The EU SOEs TTIP Proposal does not include SOE subsidies provisions.

⁴⁷⁵ According to some TPP parties, the mere regulation of nondiscrimination treatment would not suffice to resolve all the issues incurred by the preferential treatment of SOEs by governments. Fleury et al., "The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership," p. 459.

provided by the SCM Agreement but they go well beyond these disciplines by applying not only to subsidization of trade in goods but also to subsidization of trade in services.⁴⁷⁶

“*Non-commercial assistance*” is defined as an “assistance to a state-owned enterprise by virtue of that state-owned enterprise’s government ownership or control”;⁴⁷⁷ where “*assistance*” means (i) direct transfers of funds or potential direct transfers of funds or liabilities (including, grants or debt forgiveness; (ii) loans, loan guarantees or other types of financing on terms more favorable than those commercially available; (iii) equity capital inconsistent with the usual investment practice of private investors); or (iv) goods or services other than general infrastructure on terms more favorable than those commercially available.⁴⁷⁸ “*By virtue of that state-owned enterprise’s government ownership or control*” occurs where a party (or any of its state enterprises or SOEs) (a) explicitly limits access to the assistance to the SOEs; (b) provides assistance which is predominately used by the SOEs; (c) provides a disproportionately large amount of the assistance to the SOEs; or (d) otherwise favors the SOEs through the use of its discretion in the provision of assistance.⁴⁷⁹

Accordingly, the NCA definition incorporates (although with some omissions) the key elements of the WTO subsidy definition and specificity requirement. The forms of assistance include the financial contributions contemplated in the SCM Agreement (except for the financial contribution on “government revenue that is otherwise due”).^{480 481} Also, with

⁴⁷⁶ For a detailed comparative analysis of the TPP NCA rules and the SCM Agreement, see, Yoshinori Abe and Takemasa Sekine, “Non-Commercial Assistance Rules in the TPP: A Comparative Analysis with the SCM Agreement,” in *The Trans Pacific Partnership Agreement: Its Substance and Impact on International Trade, NAFTA, and Other FTAs*, (2016), (Forthcoming).

⁴⁷⁷ TPP (art 17.1). The NCA definition excludes (a) intra-group transactions within a corporate group including SOEs (e.g. between the parent and subsidiaries); (b) other transactions between SOEs that are consistent with the usual practices of privately owned enterprises in arm’s length transactions; and (c) a party’s transfer of funds (collected from contributors to a plan for, *inter alia*, pension, retirement, and social security) to an independent pension fund for investment on behalf of the contributors and their beneficiaries. (TPP, footnote 4 to article 17.1).

⁴⁷⁸ TPP (art 17.1)

⁴⁷⁹ TPP (art 17.1) The determination of whether the assistance is provided “by virtue of that state-owned enterprise’s government ownership or control” must take into account “the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.” (footnote 5 to art 17.1). These factors are also provided by the SCM Agreement for determining specificity. (Article 2.1(c) of the SCM Agreement).

⁴⁸⁰ However, since the forms of assistance indicated with respect to “direct transfers of funds or potential direct transfers of funds or liabilities” are illustrative, some argue that government revenue foregone (including the

respect to “specificity”, the NCA definition largely conveys the conditions specified under Article 2 of the SCM Agreement.⁴⁸² The NCA definition, however, does not explicitly incorporate the “benefit” element.⁴⁸³

Like the WTO, the TPP does not prohibit subsidies as such. The TPP only bans the NCA provided by the government to SOEs (directly or indirectly)⁴⁸⁴ that cause adverse effects to the interests of other TPP parties. This includes the commitment no to cause injury to the domestic industry of another party.⁴⁸⁵ Importantly, moreover, the TPP prohibits the NCA provided by SOEs (directly or indirectly) to any of their own SOEs that causes adverse effects to the interests of another party.⁴⁸⁶

The definition of injury, as well as the conditions for determining material injury, closely resemble the SCM Agreement equivalent provisions.⁴⁸⁷ Thus, the TPP defines “*injury*” as material injury, threat of material injury, or material retardation of the establishment of a domestic industry. It also requires that a determination of material injury be based on positive

granting of tax credits) may be possibly included within the NCA definition. Abe et al., “Non-Commercial Assistance Rules in the TPP: A Comparative Analysis with the SCM Agreement,” p. 3-4.

⁴⁸¹ In addition, it is not clear whether the assistance on “goods or services” refers only to the provision of goods and services other than general infrastructure or it also includes the “purchase of goods” as established by Article 1 of the SCM Agreement.

⁴⁸² There are some omissions, however. For instance, the NCA definition does not explicitly contemplates the regional specificity provided for in Article 2.2.2 of the SCM Agreement.

⁴⁸³ However, some of the wording of the “assistance” definition in the TPP seem to implicitly require a comparison analysis as the one undertaken to determine the existence of a benefit within the meaning of the SCM Agreement. Abe et al., “Non-Commercial Assistance Rules in the TPP: A Comparative Analysis with the SCM Agreement,” p. 4-5.

⁴⁸⁴ “*Indirect provision*” includes the situation in which a Party entrusts or directs an enterprise that is not a SOE to provide non-commercial assistance. (TPP; footnote 18 to article 17.6.1). This provision reflects Article 1.1.1(iv) of the SCM Agreement on the government entrustment or direction to a private body to carry out a financial contribution.

⁴⁸⁵ TPP (arts 17.6.1-17.6.3). The TPP definition of term “*domestic industry*” is the same as the definition of domestic industry in the SCM Agreement, except that it does not contemplate the exclusion of “related producers”. (TPP, footnote 20 to article 17.6.3(b); and Article 16 of the SCM Agreement).

⁴⁸⁶ Interestingly, a similar provision is not provided with respect to “injury”.

⁴⁸⁷ With some notable exceptions, including: unlike the SCM Agreement, the TPP does not define the term “*like products*” for purposes of the injury determination. Moreover, the TPP elaborates on the definition of “*material retardation of the establishment of a domestic industry*” by providing that in relation to this definition it is understood “that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good”. (TPP, footnote 20 to article 17.6.3(b)).

evidence, involve an objective examination of all the relevant factors,⁴⁸⁸ and comply with the causality and non-attribution requirements.⁴⁸⁹

The TPP indicates the specific cases where a NCA are deemed to cause adverse effects.⁴⁹⁰ According to the TPP, adverse effects arise where the effect of the NCA is (i) to displace or impede in the territory of the SOE, or from the market of another party, sales of a like good produced by a covered investment enterprise, or imports of a like good of another party; (ii) to displace or impede from the market of a non-party imports of a like good of another party; (iii) a significant price undercutting by the SOEs goods in the market of a party as compared with the price in the same market of imports of a like good of another party, or a like good produced by a covered investment enterprise in the same market; or significant price suppression, price depression or lost sales in the same market; or (iv) a significant price undercutting by the SOEs goods in the market of a non-party as compared with the price in the same market of imports of a like good of another party in the same market, or significant price suppression, price depression or lost sales in the same market.⁴⁹¹ The criteria for determining displacement, impediment and price undercutting largely mirror the corresponding criteria in the SCM Agreement with respect to “serious prejudice”.⁴⁹²

With respect of trade in services, the TPP similarly establishes that adverse effects arise where the effect of the NCA is (i) to displace or impede from the market of another party the supply of a like service supplied by a service supplier of that another party or any other party; or (ii) a significant price undercutting by the SOEs services in the market of another party as compared with the price in the same market of a like service supplied by a service

⁴⁸⁸ Including, the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the domestic industry producing like goods. (TPP, art 17.8).

⁴⁸⁹ The TPP requires a demonstration that the adverse effects claimed have been caused by the NCA and requires an examination of other possible causal factors to ensure an appropriate attribution of causality. TPP (art 17.8.1 and footnote 17 to article 17.6.1).

⁴⁹⁰ The TPP scope of adverse effects, however, is narrower than the scope provided by the SCM Agreement. For instance, in contrast to the SCM Agreement, the displacement or impediment of like goods produced by another party’s domestic industry in the same party’s market do not fall within the TPP scope of adverse effects.

⁴⁹¹ TPP (art 17.7.1).

⁴⁹² One important difference between the TTP and the SCM Agreement is that in the TPP the degree of change in relative shares of the market must be “significant” while the SCM Agreement is silent on this matter. (TPP, art 17.7.2).

supplier of that another party or any other party, or significant price suppression, price depression or lost sales in the same market.⁴⁹³ However, a service supplied by an SOE in its home territory is not deemed to cause adverse effects. Moreover, adverse effects caused in third country markets by services supplied by an SOE are not currently covered by the TPP. Further negotiations are scheduled to address this concern.⁴⁹⁴

While the scope of the TPP disciplines on NCA may be narrowed by several exceptions,⁴⁹⁵ the reach of these disciplines is still significantly wider than the scope of the SCM Agreement. As noted before, it provides for explicit rules on subsidies in services.⁴⁹⁶ Also important, it explicitly regulates the NCA provided by SOEs and defines SOEs on the basis of majority state ownership or control (or state power to appoint the majority of the board of directors). By way of comparison, the SCM Agreement does not explicitly regulate SOEs subsidies (although they may be covered the SCM Agreement), nor majority state ownership or control alone suffice for an enterprise to be deemed a public body within the meaning of the SCM Agreement. The TPP thus codifies innovative and concrete rules regarding subsidies for services and subsidies granted by SOEs.

⁴⁹³ TPP (art 17.7.1).

⁴⁹⁴ TPP (art 17.6.4 and Annex 17-C).

⁴⁹⁵ Most notably: (i) the NCA given before signing the TPP, or within 3 years after the signing pursuant to law enacted or obligation undertaken prior the signing of the TPP; (ii) the initial capitalization of an SOE; (iii) sovereign wealth funds provided that they do not provide or are used to provide certain NCA; and (iv) enterprises owned or controlled by an independent fund except the NCA directly or indirectly provided by a party to these enterprises or the NCA indirectly provided by a party through these enterprises. (TPP, arts 17.7.5-17.7.6 and 17.2.5-17.2.6).

⁴⁹⁶ As has been noted, the WTO lack of subsidy disciplines in the services sector is of significant importance. First, many internationally active SOEs operate in services sectors. Second, goods and services are tightly linked (many enterprises engage in production of both goods and services; services are often embodied in traded goods (and *vice versa*); and there are strong vertical links between goods and services sectors). Third, the expansion of state intervention in the context of the financial crisis was strongly concentrated in services sectors (e.g. financial services and real estate), meaning that services (a sector with significant SOE presence) is not efficiently disciplined by existing WTO subsidy rules. Kowalski et al., "State-Owned Enterprises: Trade Effects And Policy Implications," p. 78-79.

5.1.5 RTAs Exceptions

The obligations provided by the RTAs are subject to a wide range of exceptions.⁴⁹⁷ This is particularly the case of the TPP, CETA, and *EU-Vietnam RTA*. Thus, their obligations on noncommercial considerations and nondiscrimination treatment are not unconditional, as these obligations are hampered by several country-specific and narrowly-tailored exemptions.

The CETA specifies that the nondiscrimination treatment and commercial considerations obligations do not apply to investment and cross-border trade in services. Specific reservations to these obligations are also contained in each party's schedule.⁴⁹⁸ Similarly, the *EU-Vietnam RTA* indicates that these obligations do not apply (i) to the services and investment sectors;⁴⁹⁹ (ii) to the purchase of goods or services of SOEs or designated monopolies from Vietnamese small and medium enterprises; and (iii) to some activities of the enterprises that Vietnam has listed in its SOE Annex.⁵⁰⁰

The TPP contains a great number and broad range of exemptions,⁵⁰¹ including: (i) subject to certain conditions, it excludes from the obligations of nondiscrimination treatment and commercial considerations the SOEs supply of financial services pursuant to a government mandate;⁵⁰² (ii) as specified in Annex 17-D, most of the TPP parties have exempted their sub-central level of government from the nondiscriminatory treatment,

⁴⁹⁷ The exceptions described in this section are in addition to the exceptions indicated in the previous sections.

⁴⁹⁸ CETA (arts 18.2.3-18.2.4). In contrast, the EU SOEs TTIP Proposal proposes that the SOE chapter apply "to enterprises operating in sectors in which the Parties have undertaken specific commitments under the Chapter on Cross-border Supply of Services or the Chapter on Investment of this Agreement and only to the extent that these specific commitments apply." (EU SOEs TTIP Proposal, art 1).

⁴⁹⁹ EU-Vietnam (arts 2.6-2.7).

⁵⁰⁰ These enterprises concern: VietnamOil and Gas Group (PETROVIETNAM), VietnamElectricity (EVN), VietnamNational Coal – Minerals Holding Corporation Limited (Vinacomin), Debt and Asset Trading Corporation (DATC), State Capital Investment Corporation (SCIC), Airport Corporation of Vietnam, and SOEs in the printing, publishing, mass communication, and audio-visual services sectors. (EU-Vietnam, Annex 10-a). The activities of these enterprises are also exempted from the transparency requirement.

⁵⁰¹ This has questioned the TPP reaching overall objective of its SOE substantial provisions. See, for instance, Willemyns, "Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?," p 675.

⁵⁰² Provided that the supply of such services supports exports or imports or private investments overseas and are not intended to displace commercial financing or are supplied on comparable terms to those obtainable in the commercial market. SOEs supply of financial services are also exempted where they are offered on terms consistent with the agreement and provided that it falls within the scope of the agreement. (TPP, art 17.13.2).

commercial considerations, and/or non-commercial assistance obligations;⁵⁰³ (iii) as specified in Annex IV, the party's reservations (non-conforming measures) to the obligations above;⁵⁰⁴ and (iv) country-specific exceptions (i.e. with respect to Malaysia and Singapore).⁵⁰⁵

5.1.6 RTAs Procedural Obligations – Transparency Requirements

Most RTAs contain transparency provisions by which RTA parties are required to provide information about the trading activities of their covered entities. Moreover, a great number of RTAs further provide for consultations to foster understanding between the parties or to address specific matters regarding STEs.⁵⁰⁶ The *EU-Vietnam RTA* not only requires parties to comply with standards of transparency but also with corporate governance principles in accordance with the OECD Guidelines on corporate governance of state-owned enterprises.⁵⁰⁷

⁵⁰³ Annex 17-D specifies the obligations that do not apply to each party's sub-central SOEs and designated monopolies. "*Sub-central level of government*" is defined as "the regional level of government and the local level of government of a Party." (TPP, footnote 36 to Annex 17-D). The exclusion of the sub-central level of government from the SOE chapter greatly contrast with the EU proposed approach in TTIP negotiations. In its proposal, the EU specifies that the trading activities of the sub-central level of government must be governed by the SOE chapter. (EU SOEs TTIP Proposal, arts 2, 4, and 5). Some argued that TTP exceptions for sub-central SOEs is not a concern since most TPP members have few sub-central SOEs. Miner, "Commitments On State-Owned Enterprise," p. 99.

⁵⁰⁴ This Annex, which contains each Party's Schedule with their non-conforming activities, specifies (i) the obligations concerned; (ii) the SOEs (or designated monopolies) for which the obligations do not apply; (iii) the scope of the non-conforming activities; and (iv) the measures by which these entities engage in the non-conformity activity. Except for Singapore and Japan, all TPP parties have included in their Schedules non-conforming activities. Vietnam is the country listing more of these activities (14), followed by Mexico (10), Chile (7), Canada and Malaysia (6 each), New Zealand and the United States (3 each), Brunei Darussalam and Peru (2 each), and Australia (1). The non-conforming activities cover a wide array of sectors, including cultural industries, indigenous people or ethnic groups, electricity, minerals, natural gas, petroleum, financial services (including the development of financial institutions), financial housing-related services, infrastructure and transport services. (TPP, Annex IV).

⁵⁰⁵ For instance, the SOEs owned or controlled by a sovereign wealth fund of Singapore are exempted from the obligations of nondiscrimination treatment and commercial considerations (TTP, Annex 17-E). With respect to Malaysia, Annex 17-F specifies that, subject to certain conditions, Permodalan Nasional Berhad is exempted from the nondiscrimination and commercial considerations obligations. (TTP, Annex 17-F).

⁵⁰⁶ See, for instance, US-Australia (art 14.10), US-Colombia (art 13.9), US-Singapore (art 12.6), US-Korea (16.7), US-Peru (art 13.9), and US-Chile (art 16.7)). In contrast, the following RTAs do not contain any transparency requirement with respect to state enterprises or monopolies: the CETA, EU-Singapore, Panama-Central America, Chile-Central America, Nicaragua-Chinese Taipei, Mexico-Israel, and Panama-Chinese Taipei.

⁵⁰⁷ The same approach is followed by the EU SOEs TTIP. (EU-Vietnam, art 5; and EU SOEs TTIP Proposal, art 7.1).

The rigorousness of the transparency provisions varies across RTAs. Thus, several RTAs contain flexible transparency provisions by requiring parties to (i) provide, *wherever possible*, written notification of the designation of a monopoly when such designation may affect the interests of other RTA parties; and (ii) *endeavor* to introduce at the time of the designation the conditions on the operation of the monopoly.⁵⁰⁸

Other RTAs, while providing for stricter transparency rules, subject compliance with those rules to demanding written requests for information. Moreover, they do not specify in detail the information to be supplied. These RTAs require that parties make available (upon request) public information on their state enterprises, government business, and public or private designated monopolies, provided that the requests for such information indicate the entities involved, specify the products/services and markets concerned, and include *indicia* that these enterprises may be engaging in practices that may hinder trade or investment between the parties.⁵⁰⁹

The *EU-Vietnam* and *US-Singapore RTAs* include the provision above, but further require the supply of very detailed information about the enterprise for which information is sought.⁵¹⁰ Under the *EU-Vietnam RTA*, a party is required to supply (upon request) detailed information about its SOEs, enterprises granted special rights or privileges, and designated monopolies, including information on (i) government ownership and control; (ii) organizational structure; (iii) state regulation and/or monitoring; (iv) state rights and practices in the appointment/dismissal/remuneration of managers; (v) annual revenue and total assets; and (vi) exemptions or immunities and any other measures applicable to the enterprise.⁵¹¹ For

⁵⁰⁸ Canada-Jordan (art 9.1.2), Canada-Israel (art 7.2.2), Canada-Chile (art J-02.2), Chile-Mexico (art 14.3.3), and NAFTA (art 1502.2). Similar provisions are provided in Canada-Honduras (art 15.3.2) and Canada-Korea (art 15.2.2).

⁵⁰⁹ US-Australia (art 14.8.2), and US-Korea (art 16.5.2b)). A similar provision is found in: US-Colombia (art 13.8.2(b)), US-Chile (art 16.6.2(b)), US-Peru (art 13.8.2(b)), and Australia-Chile (art 14.8.3(b)). In the latter RTA, parties are not even compelled to make available public information, but parties must “endeavor” to do so. Some of these RTAs, also require parties to make available (upon request) information concerning exemptions provided under the parties’ competition laws. See, for instance, all the US RTAs mentioned above.

⁵¹⁰ Except that the *EU-Vietnam RTA* does not require “indicia” but “indications” that the enterprise is engaging in practices that hinder trade or investment between the parties. (*EU-Vietnam*, art 6.1). (*US-Singapore*, art 12.5.3).

⁵¹¹ *EU-Vietnam* (art 6.1). With respect to EU small or medium-sized enterprises, only the last requirement on exemptions, immunities and other measures apply.

its part, the *US-Singapore RTA* requires (yet only with respect to Singapore) an annual publication of a consolidated report regarding Singaporean covered entities.⁵¹² This report must include very detailed information similar to that required under the *EU-Vietnam RTA*.⁵¹³

The TPP is the RTA that greatly enhances the transparency concerns with respect to SOEs. For instance, it requires *ex ante* information on SOEs.⁵¹⁴ Under this RTA, parties are required (i) to provide to other parties (or otherwise make publicly available) a list of their SOEs within six months of entry into force of the TPP, and update this list annually;⁵¹⁵ (ii) to promptly notify the other parties (or otherwise make publicly available) the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation; and (iii) to promptly provide (upon a written request) detailed information on their SOEs or government monopolies, provided that the information request explains how the activities of these enterprises may be affecting trade or investment between the parties.⁵¹⁶ Also significant,

⁵¹² “Covered entities” are defined as any entity organized under the laws of Singapore in which (a) effective influence exists, or is rebuttable presumed to exist, whose annual revenue or total assets are greater than SGD 50 million; or (b) the Government of Singapore owns a special voting share with veto rights relating to such matters as the disposal of the undertaking, the acquisition by any person of a specified percentage of the enterprise’s share capital, appointments to the board of directors or of management, winding up or dissolution of the enterprise, or any change to the constituent documents concerning the aforementioned matters. This definition does not apply to state enterprises organized and operating solely for investing the reserves of the Government of Singapore in foreign markets, or holding investments in this regard, and to Temasek Holdings (Pte) Ltd. (US-Singapore, art 12.8.1).

⁵¹³ That is, (i) the percentage of shares and the percentage of voting rights that the government and its enterprises cumulatively own; (ii) a description of any special shares, voting, or other rights that Singapore or its state enterprises hold; (iii) identification of any government official serving as an officer or member of the board of directors; and (iv) the annual revenue or total assets. Upon request, Singapore must also provide this information with respect to not covered entities provided that the information may be made public. (US-Singapore, art 12.3.2(g)).

⁵¹⁴ Under all the RTAs cited earlier, parties are required to provide information only upon request. (The *US-Singapore RTA* does not include this requirement, but its enhanced transparency provisions do not apply to all the RTA parties but only to Singapore). For its part, WTO Members are only compelled to notify their STEs once every two years and to supply general information (upon request) about the operations of STEs. For more on GATT/WTO transparency requirements, see, Section 4.1.4.

⁵¹⁵ TPP (art 7.10.1). Brunei Darussalam, Malaysia and Vietnam are given longer phase-in periods to comply with this obligation. They are exempted from this obligation for the first five years from the entry into force of the TPP. However, during these first years (within the first three years for Brunei and 6 months to Vietnam and Malaysia), these countries must provide (or otherwise make publicly available on an official website) a list of their SOEs with a specified minimum capital (i.e. SOEs with an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years), and must update this list annually, until the phasing-in periods expire. (TPP, footnotes 28-29 to Article 7.10.1).

⁵¹⁶ In contrast with other RTAs, the TPP does not require that an information request include “indicia” that the enterprises may be engaging in practices that may hinder trade or investment between the parties. The TPP only requires an “explanation” of these possible effects.

these obligations are subject to the TPP dispute settlement procedures, discouraging therefore nonconformity with these obligations.⁵¹⁷

With respect to the information required,⁵¹⁸ TTP Parties must detail: (i) the percentage of shares and the percentage of votes that the party, its SOEs or designated monopolies cumulatively own; (ii) a description of any special shares, special voting, or other rights that the party, its SOEs or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity; (iii) the government titles of any government official serving as an officer or member of the entity's board of directors; (iv) the entity's annual revenue and total assets over the most recent 3-year period for which information is available; (v) any exemptions and immunities from which the entity benefits under the party's law; and (vi) any additional information regarding the entity that is publicly available (including annual financial reports and third-party audits) and that is required in the written request.⁵¹⁹ The TPP also requires the provision of information on any policy or program, adopted or maintained by TPP parties, that provides for non-commercial assistance.⁵²⁰

Interestingly, the information required by the TPP (and *EU-Vietnam* and *US-Singapore RTAs*) contrasts sharply with the degree of detail and kind of information required under the WTO disciplines. The WTO STE questionnaire requires information which is mainly concerned with the functioning of STEs and with the reasons for establishing or maintaining these enterprises, and the degree of detail that this information must meet is very broad.⁵²¹ In contrast, the information required by these RTAs focuses on the extent of government ownership or control over SOEs and very detailed information in this regard must

⁵¹⁷ TPP (art 28.3). The *US-Singapore RTA* also subjects its transparency obligations to its dispute settlement procedure. (US-Singapore, art 12.7).

⁵¹⁸ This set of information is similar to the information required by the *EU-Vietnam RTA* and the EU SOEs TTIP Proposal.

⁵¹⁹ TPP (art 17.10.1-3). Some exceptions to the TPP transparency obligations are included for Brunei Darussalam, Vietnam, and Malaysia. (TPP, footnotes 26, 27, and 30 to article 17.10).

⁵²⁰ (TPP, art 17.10.4).

⁵²¹ The WTO STE questionnaire requires information on (i) identification of STEs and description of products affected; (ii) reasons or purposes for establishing or maintaining STEs; (iii) summary of the legal basis for the granting of the exclusive or special rights or privileges; (iv) description of the functioning of the STE; and (v) statistical data on imports, exports and domestic production. See, *supra* note 297.

be provided. The difference in these approaches is explained by the fact that these RTAs have clear SOEs definitions. Thus, in contrast to the lack of a clear STE definition within the WTO, they are able to require detailed information.

With respect to the treatment of confidential information, only few RTAs contain provisions regulating the supply of such information. Like the GATT/WTO corresponding provision, the *EU-Vietnam RTA* provides for the non-disclosure of confidential information “which would be inconsistent with [the party’s] laws and regulations, impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.”⁵²² The TPP, however, does not halt the supply of confidential information. Rather, it regulates the treatment of such information by ensuring that any information provided on a confidential basis must be kept confidential and cannot be disclosed without the prior consent of the party concerned.⁵²³ This approach further enhances the TPP transparency obligations *vis-à-vis* the duty to notify under Article XVII, which is significantly weakened by confidentiality concerns.⁵²⁴

5.1.7 RTAs Enforcement Provisions

As is well-known, dispute settlement mechanisms (DSM) are a means to enforce the commitments undertaken in international trade agreements. If commitments are not enforceable, they may become ineffective.⁵²⁵ Still, not all the RTAs under this sample subject their state trading provisions to enforcement mechanisms. A great number of RTAs explicitly excludes state trading matters from any form of dispute settlement provided for in the

⁵²² EU-Vietnam (art 6.3) and Article XVII:4(d) of the GATT. This approach is also followed by the EU SOEs TTIP Proposal. (EU SOEs TTIP Proposal, art 7.4).

⁵²³ TPP (art 17.10.9). The *Australia-Chile RTA* also provides for the supply of confidential information and requires the provision (upon request) of non-confidential summaries which must be “in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.” (Australia-Chile, arts 14.8.4-14.8.5).

⁵²⁴ For more details on this point, see, Section 4.1.4 on procedural Obligations.

⁵²⁵ See, for instance, WTO, “World Trade Report 2007: Six Decades of Multilateral Co-operation – What Have We Learned?,” WTO Secretariat (2007), p. 155-162.

agreements,⁵²⁶ while others do not make any explicit reference to the dispute settlement procedures with respect to state trading.⁵²⁷ Only a few number of RTAs (mainly the TPP and the RTAs where the United States or Canada are party) explicitly allow parties to have recourse to the RTA dispute settlement chapter for any matter arising under their state trading regulations.⁵²⁸

Generally, the dispute settlement provisions of these RTAs encourage resolution of complaints through cooperation and consultation mechanisms; provide for expeditious resolution of disputes; and allow for the use of trade retaliation (suspension of benefits and/or payment of a monetary assessment). They also encourage the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes.⁵²⁹ The TPP further establishes that local courts have jurisdiction over commercial activities of foreign SOEs.⁵³⁰ This ensures that foreign SOEs operating in a TPP country could not evade legal action regarding its commercial activities simply by claiming sovereign immunity.⁵³¹

The enforcement of state trading commitments is of vital importance. Indeed, if RTAs (specifically the TPP) want to be an alternative to the ill-drafted state trading WTO disciplines, they certainly need to make their SOEs provisions enforceable.

⁵²⁶ CETA (art 17.4), EU-Singapore (art 12.14), US-Australia (art 14.11), Australia-Chile (art 14.9), Canada-Israel (art 7.1.3), Canada-Chile (art J-01.3), Israel-Mexico (art 8.1.3), Chile-Mexico (art 14.2.3), Canada-Korea (art 15.1.4), and NAFTA (art 1501-3).

⁵²⁷ EU-Vietnam, Panama-Chinese Taipei, Canada-Jordan, Panama-Central America, and Colombia-Mexico RTAs.

⁵²⁸ US-Singapore (art 12.7), US-Colombia (art 13.10), US-Chile (art 16.7), US-Korea (art 16.8), US-Peru (13.10), Canada-Honduras (art 15.6), and the TPP (art 28.3). With respect to the TPP, nothing in its dispute settlement chapter, or in the RTA as whole, precludes the application of the dispute settlement provisions to state trading matters.

⁵²⁹ See, for instance, TPP Chapter 28 on Dispute Settlement; US-Colombia Chapter 21 on Dispute Settlement; Canada-Honduras Chapter 21 on Institutional Arrangements and Dispute Settlement Procedures.

⁵³⁰ However, a TPP party is not obliged to provide jurisdiction over such claims if it does not provide jurisdiction over similar claims against enterprises that are no state-owned or controlled. (TPP, art 17.5).

⁵³¹ Office of the United States Trade Representative (USTR), "State-Owned Enterprises (SOEs)," p. 2. <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-State-Owned-Enterprises.pdf> (accessed 27 September 2017).

5.2 Conclusions

The preceding review of state trading provisions in the RTAs notified to the WTO, and official proposals of other relevant RTAs, reveals that regional trade agreements have become an increasingly popular mechanism for negotiating and regulating state trading in the international trade arena. A considerably number (43 percent) of RTAs addresses state trading-related issues in one form or another. This trend extends to RTAs concluded in all regions and includes both developed and developing countries. Still, only a few number of RTAs (8 percent), including recently negotiated RTAs, discipline state trading in a rather comprehensive manner. While it is difficult to say in general whether the STE-related provisions in these RTAs improve upon the existing GATT/WTO provisions—in terms of effectively preventing unwanted effects of state trading enterprises—the developments on state trading of some of these agreements sharply contrast with the WTO regulatory flaws.

These RTAs build on existing GATT/WTO obligations but go far beyond them in very important ways. The most prominent advance is found in the TPP, *EU-Vietnam*, and *US-Singapore RTAs*, which provide clear and explicit definitions of their covered entities (*viz.* SOEs, monopolies, and enterprises granted special rights or privileges). More importantly, they establish clear and concrete standards to determine state-ownership and control for the management of SOEs, and their SOEs definitions are far-reaching concepts that cover a clear majority of enterprises considered to be SOEs. This not only reinforces their transparency requirements but also makes effective the anti-circumvention nature of their state trading disciplines. Importantly, these RTAs also cover services SOEs, representing an important expansion to the WTO disciplines that poorly regulate the activities of these enterprises. For instance, the scope of Article VIII of the GATS only applies to monopoly suppliers and exclusive service suppliers.

Moreover, in contrast to Article XVII, most RTAs apply a higher nondiscriminatory standard. They make clear that their nondiscrimination treatment obligations entail for both a strict MFN and national treatment application. Neither the text of Article XVII nor the GATT/WTO practice are self-evident on this matter. Hence, the unqualified

nondiscrimination treatment provided by these RTAs clearly overrides the GATT/WTO nondiscrimination definitional drawback of Article XVII and the *lacuna* of Article III of the GATT. In the same way, some of these RTAs (most notably the CETA, TPP and *EU-Vietnam RTA*) cover services SOEs. Thus, in contrast with the GATS limited nondiscrimination approach, they equally apply this higher nondiscriminatory standard to services-related enterprises.

On the other hand, most RTAs ensure that STEs act as private actors (i.e. make decisions on a commercial basis) and not only behave on a nondiscriminatory manner. Thus, as opposed to the WTO practice—where the obligation to act in accordance with commercial considerations is treated as an illustration of the nondiscriminatory principle and what matters therefore is that STEs do not discriminate—these agreements treat the obligations of commercial considerations and nondiscriminatory treatment as two different and independent obligations. As a result, the potential exoneration from STE disciplines of nondiscriminatory measures that are nevertheless inconsistent with commercial considerations is precluded under these RTAs.

A great number of RTAs also depart from the GATT/WTO practice of using as benchmark the nondiscrimination treatment obligation for judging state trading operations. For these RTAs, the relevant benchmark by which SOEs operations are judged is the commercial considerations obligation, even if discriminatory behavior takes place. This approach recognizes that STEs could discriminate (just as private firms) and tolerates this discrimination provided that similar behavior is justified by the benchmark established. While judgment on the appositeness of this approach is beyond the purpose of this research, it is noted (for instance) that export or import price discrimination enables STEs to exercise a market power which a private export or import monopoly would normally exploit. As such, the level playing field between SOEs and private firms does not seem to be hindered by the RTAs approach.

In addition to the substantive obligations of commercial considerations and nondiscrimination treatment, some RTAs go further by disciplining the anticompetitive

practices of STEs, showing a new strategy for disciplining state trading operations. That is, an inclusive approach which applies trade law disciplines complemented with specific competition law commitments, as distinct from a regulation based solely on competition law or trade law disciplines. The TPP goes further by including specific subsidies rules to SOEs and goes well beyond the WTO subsidy disciplines by regulating subsidization of trade in services and explicitly regulating the subsidies provided by SOEs.

With respect to transparency requirements, only a few number of RTAs provide for extensive transparency provisions by requiring the supply of detailed information about the trading activities of their covered entities (most notably the TPP, *EU-Vietnam RTA* and partially the *US-Singapore RTA*). As in the multilateral level, this shows the resistance of nations regarding transparency requirements on state trading related matters. The TPP is the RTA that greatly enhances the SOEs transparency concerns, by requiring the supply of very detailed and *ex ante* information on SOEs and monopolies. More importantly, it ensures that its transparency obligations are not weakened by confidentiality concerns and subjects these obligations to dispute settlement procedures, discouraging therefore nonconformity with these obligations.

The foregoing suggests that while in some instances the RTAs disciplines on state trading converge with (or expand and fill some gaps in) the existing WTO disciplines on STEs, they also deviate from some of the GATT/WTO established practice. This is true not only with respect to recent RTAs (as it is mainly claimed) but also with respect to earlier RTAs. (For instance, the *Canada-Chile*, *Canada-Korea*, *Chile-Mexico*, *US-Singapore*, *US-Australia*, *US-Colombia*, *US-Chile* and *US-Korea RTAs*).

Only in few instances, the scope of the RTAs seems to be narrower than the reach of Article XVII. While the enterprises “granted special rights or privileges” under the CETA and *EU-Vietnam RTA* are required to demonstrate that these rights or privileges have the effect of substantially affect trade, such *substantial* trade influence demonstration is not required under Article XVII. More importantly, the obligations contained in some RTAs (e.g. the TPP and *EU-Vietnam RTA*) are subject to a great number and wide range of exceptions, including

country-specific and narrowly-tailored exceptions. Yet, even if the innovations of these RTAs are tempered by a great number of exceptions, the fact remains that they provide a substantial set of rules that in many ways excel the multilateral regulations on STEs. Most notably, they offer a clear definition of SOEs.

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Sono comunque fatti salvi i diritti dell'università Commerciale Luigi Bocconi di riproduzione per scopi di ricerca e didattici, con citazione della fonte.

Chapter 6

Conclusions

The aim of this research was to survey the international contexts on which state trading is regulated (most notably the GATT/WTO and RTAs) and to see how and whether these regulatory frameworks adequately address the STE-related concerns. Accordingly, the regulation of state trading enterprises in the GATT/WTO was reviewed along with the state trading provisions enclosed in 279 RTAs notified to WTO as well as in the official proposals of other relevant RTAs (including the TTP, CETA, *EU-Singapore* and *EU-Vietnam RTAs*). Several conclusions arise from the analysis of this research.

The GATT/WTO disciplines on STEs suffer from severe difficulties. The text of Article XVII of the GATT is very vague. More importantly, it fails to define STEs. (In fact, Article XVII has been rarely invoked.) Moreover, it is not clear whether the scope of the nondiscriminatory treatment obligation under this provision involves a strict form of MFN and a national-treatment type obligation. As a result, there is an important *lacuna* in this regard (neither Article XVII nor Article III of the GATT seem able to sanction the conduct of STEs that does not involve governmental measures). Another important gap in the WTO framework is its limited approach in regulating services STEs (including the absence of general rules on subsidies in services), representing an important omission considering the significant state trading involvement in the services sector.

On the other hand, notwithstanding the improvements on the notification procedure, the entire purpose of the notification requirement continues to be undermined by confidential considerations and the lack of a clear definition of STEs, making compliance with the transparency obligations very poor. For instance, 39 WTO Members have never submitted a notification (including major traders such as Russia); Vietnam has so far notified the existence of only two STEs; and only 33 new and full notifications were received in 2016 out of a total of 136 Members.

While these concerns are not novel, the WTO system has not yet adjusted its framework by reinforcing the current text of Article XVII or by adopting enhanced rules on services. The negotiations in this regard are stalled. This occurs notwithstanding the incidence of STEs in today's world. Evidence points to the continued influence of STEs both in world trade and in several important countries and sectors. More importantly, big users of STEs include countries which are also important traders (most notably China) and former centrally-planned economies are offsetting the overall decline of state trading intervention made by historical STEs users. (Russia's involvement in the global export trade of wheat illustrates this situation).

It is against this background that regional trade agreements (as well as plurilateral agreements) have emerged as an increasingly popular mechanism for negotiating and regulating state trading matters in the international arena. (The TISA at the plurilateral level is recalled in this regard). Indeed, state trading has become a major irritation among mixed economies, urging adequate and significant steps to address the cross-border effects of STEs. The specificity and directness of many RTAs contrast sharply with the GATT/WTO shortcomings.

These RTAs (including recent and earlier RTAs) clearly define their covered entities (including SOEs), entail for a strict MFN and national treatment application (which also extends to services STEs), and clarify the nondiscrimination treatment *lacuna* in the WTO context. Some RTAs go further by adopting an inclusive STE-regulatory approach (not limited to trade disciplines but also regulating the anticompetitive practices of STEs). The TPP also includes specific subsidies rules to SOEs, which apply to subsidization of trade in services and explicitly regulate the subsidies provided by SOEs. Some RTAs, on the other hand, diverge from the GATT/WTO established practice of using the nondiscrimination treatment as a benchmark for judging state trading operations. For these RTAs, the benchmark by which SOEs operations are judged is the commercial considerations obligation (even if discriminatory behavior takes place) and not the nondiscrimination treatment obligation. In this connection, they also ensure that STEs act as private actors (i.e. make decisions on a commercial basis) and not only behave on a non-discriminatory manner. As a result, the

exoneration from STE disciplines of non-discriminatory measures that are nevertheless inconsistent with commercial considerations is precluded. Finally, some RTAs (most notably the TPP) provide for enhanced transparency rules (requiring the supply of very detailed and *ex ante* information on SOEs and monopolies), which compliance cannot be weakened by confidentiality concerns and are enforceable through the RTA dispute settlement mechanism.

In light of these developments, it seems that the time has come to undertake a review of the GATT/WTO disciplines on state trading. The scope of Article XVII is already broad, including state enterprises and enterprises that benefit from “exclusive or special privileges”. However, no definition of these terms is afforded. The effectiveness of Article XVII greatly depends on a clear understanding of the entities to be considered STEs. Thus, a definition of STEs should be provided (or at least a set of standards sufficiently explicit to provide clearer criteria of what constitutes a STE). The various SOE definitions in (and approaches followed by) the RTAs should aid this process. Accordingly, if an inclusive and concrete definition is pursued, state-ownership *or* control should suffice for an enterprise to be considered a STE and specific criteria to determine these conditions should be provided. A more relaxing approach could be also followed by adopting specific state-ownership and control requirements which give rise to a presumption (as opposed to determinative evidence) of state control or influence. Similarly, in line with a relaxed approach, a strict STE definition along with country-specific and narrowly-tailored exclusions could be also developed. This approach may be easier to manage, and even if not absolute, it is certainly better than relying on amorphous definitions that fail to establish clear STEs disciplines.

On the other hand, in order to ensure a level playing field in trade between STEs and private enterprises, an unqualified nondiscrimination treatment approach should be undertaken. Indeed, one of the major problems with Article XVII is that it does not reflect a clear position on the treatment for STEs nor on the kind of state trading behavior that it wants to regulate. Thus, the benchmark by which STEs operations are going to be judged (i.e. the commercial considerations obligation or the nondiscrimination treatment obligation) should be clearly established.

Another potential area calling for improvement is the notification requirement. While a clear STE definition would automatically improve (qualitatively and quantitatively) compliance with the duty to notify, the confidential information exceptions provided for in Article XVII (most notably the public interest exception) should be narrowed or at least the treatment of confidential information should be regulated. Moreover, the transparency obligations should be enforceable through dispute settlement mechanisms.

Indeed, while levelling the playing field is more challenging in an international context—state trading is multidimensional in nature and views on the role of STEs in the economy vary across countries—the evolvement of state trading regulation in some RTAs demonstrates that comprehensive disciplines on state trading can be achieved at the international level and that this can be done regardless of the degree (even a high degree) of state intervention maintained by countries. Of course, this situation raises the question of the current effectiveness of the WTO as the central forum for international trade negotiations, and in particular, of its ability to coping with a regulatory (as opposed to a tariffication) trade policy agenda.

It is in this context, therefore, that the real challenge is to see whether and how the innovative RTAs disciplines on state trading will impact the WTO framework negotiations. That is, whether these RTAs will act as building blocks for future WTO negotiations by (for instance) using their SOE definition as a benchmark. The fact that WTO major players (e.g. the EU and the United States), as well as countries with significant state involvement (e.g. Vietnam, Malaysia and Singapore) have already adopted similar disciplines on STEs at the regional level may encourage future multilateral (or plurilateral) negotiations in this regard. This, however, remains an open question.

Chapter 7 Bibliography

- Abe, Yoshinori, and Takemasa Sekine. 2016. "Non-Commercial Assistance Rules in the TPP: A Comparative Analysis with the SCM Agreement ." In *The Trans Pacific Partnership Agreement: Its Substance and Impact on International Trade, NAFTA, and Other FTAs*, by David A. Gantz and Jorge Huerta Goldman. (Forthcoming).
- Ackerman, Karen Z., and Praveen M. Dixit. 1999. *An Introduction to State Trading in Agriculture*. Agricultural Economic Report No. 783, Market and Trade Economics Division, Economic Research Service, Washington DC: U.S. Department of Agriculture, 1-38.
- Alavi, Hamid R., Aira Htenas, Ron Kopicki, Andrew W. Shepherd, and Ramon Clarete. 2012. *Trusting Trade and the Private Sector for Food Security in Southeast Asia*. Direction in Development Trade, Washington DC: World Bank.
- Allen, Robert Loring. 1959. "State Trading And Economic Warfare." *Law and Contemporary Problems* 256-275.
- American Sugar Alliance. "Brazil's \$2.5 Billion a Year Sugar Subsidies Exposed." Accessed November 8, 2017. <https://sugaralliance.org/brazils-2-5-billion-a-year-sugar-subsidies-exposed>.
- Baban, Roy. 1977. "State Trading and the GATT." *Journal of World Trade* 11 (4): 334-353.
- Baldwin, R. E. 1970. *Non-tariff Distortions of International Trade*. Washington DC: Brookings Institution.
- Barbour, Paul. 1999. "WTO Reform to State Trading Enterprises and the Implications for National Food Security of Developing Countries." *Paper Presented for Institute for Agriculture & Trade Policy*. 1-15.
- Barreto, Viviana, and Daniel Chavez. 2017. "TISA And State-Owned Enterprises: Lessons from Uruguay's Withdrawal for Other Countries in the South." *Transnational Institute (TNI) and REDES*, 1-8.
- Behrman, J. N. 1959. "State Trading by Undeveloped Countries." *Law and Contemporary Problems* 24: 454-481.
- Bernier, Ivan. 1982. "State Trading and the GATT." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, edited by M. M. Kosteci, 245-260. London: The Macmillan Press.
- David, William J. 1998. "Article XVII GATT: An Overview." In *State Trading in the Twenty-First Century*, edited by Thomas Cottier and Petros C. Mavroidis, 17-36. Ann Arbor: The University of Michigan Press.

- Dixit, Praveen M., and Tim Josling. 1997. "State Trading in Agriculture: An Analytical Framework." *Working Paper Series* 1-29.
- Domke, Martin and Hazard, John H. 1958. "State Trading and the Most-Favored-Nation Clause." *American Journal Of International Law* 55-68.
- European Commission. 2016. *Report of the 20th TISA negotiation round 9 – 25 September 2016*.
- European Commission. 2016. *Trade In Services Agreement (TISA): Factsheet*.
- FAO. *Export Competition: Appropriate Disciplines for Eliminating Subsidies*. FAO Trade Policy Briefs, Italy.
- Fawcett, J. E. S. 1959. "State Trading and International Organization." *Law and Contemporary Problems* 341-349.
- Fefer, Rachel F. 2017. *Trade In Services Agreement (TISA) Negotiations: Overview and Issues for Congress*. Washington DC: Congressional Research Services (CRS), 1-17.
- Fleury, Julien Sylvestre, and Jean-Michel Marcoux. 2016. "The US Shaping of State-Owned Enterprise Disciplines in the Trans-Pacific Partnership." *Journal of International Economic Law* (Oxford University Press) 445-465.
- Florio, Massimo. 2015. "Public Enterprises in a Global Perspective." *CIRIEC International Conference: The Future of Public Enterprise*. Paris. 1-5.
- GAIN. 2012. *Privatization of the United Grain Company*. Washington DC: USDA Foreign Agricultural Service, 1-4.
- GAIN. 2014. *Algeria: Dairy and Products Annual*. Washington DC: USDA Foreign Agricultural Service.
- GAO. 1995. *State Trading Enterprises: Compliance with the General Agreement on Tariffs and Trade*. Report to Congressional Requesters, United States General Accounting Office, Washington DC: General Accounting Office (GAO), 1-32.
- Ghai, Dharam P. 1972. "State Trading and Regional Economic Integration: The East African Experience." *Integration and Regional Plan Co-ordination*. Kampala: Institute For Development Studies University Of Nairobi. 1-25.
- Global Affairs Canada. 2017. "Trade In Services Agreement (TISA)." Accessed September 17, 2017. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-ac.aspx?lang=eng>.
- Haywood, Kirk. 2016. "The Treatment of State Enterprises in the WTO & Plurilateral Trade Agreements." *Emerging Issues Briefing Note 3*. The Commonwealth Secretariat .

- Hazard, John N. 1959. "State Trading in History and Theory." *Law and Contemporary Problems* 24: 243-255 .
- Hranaiova, Jana, Harry De Gorter, and Merlinda Ingco. 2002. *Perspectives on agricultural export state trading enterprises in the WTO trade negotiations*. Washington DC: World Bank.
- Hufbauer, Gary Clyde, and Cathleen Cimino-Isaacs. 2015. "How will TPP and TTIP Change the WTO System?" *Journal of International Economic Law* 18: 679-696.
- Hyo-young, Lee. 2017. "Applying Competition Policy to Optimize International Trade Rules." *KIEP Staff Paper*, 1-31.
- Ianni, Edmond M. 1983. "State Trading; Its Nature and International Treatment." *Northwestern Journal of International Law and Business* 5 (1): 45-64.
- Jackson, John H. 1969. *World Trade and the Law of the GATT*. The Bobbs-Merrill Company.
- Jr., Bernard Fensterwald. 1959. "United States Policies Toward State Trading." *Law And Contemporary Problems* 369-397.
- Kelsey, Jane. 2016. "From GATS to TISA: Pushing the Trade in Services Regime Beyond the Limits." *European Yearbook of International Economic Law* (Springer, Cham) 7: 119-151.
- Kikeri, Sunita, and Aishetu Kolo. n.d. *State Enterprises: What Remains?* Note No. 304, Washington DC: World Bank.
- Kikeri, Sunita, and Amit Burman. 2007. *Privatization Trends: Near-Record Levels in 2005*. Note No. 314, Washington DC: World Bank.
- Kikeri, Sunita, and Verena Phipps. 2008. *Privatization Trends: A Record Year in 2006*. Note No. 317, Washington DC: World Bank.
- Kostecki, M. M. 1982. "State Trading by the Advanced and Developing Countries: the Background." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, by M. M. Kostecki, edited by M. M. Kostecki, 6-21. London: The Macmillan Press Ltd.
- Kostecki, M. M. 1982. "State Trading in Agricultural Products by the Advanced Countries." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, by M. M. Kostecki, edited by M. M. Kostecki, 1-301. London: The Macmillan Press Ltd.
- Kostecki, M. M. 1982. "State Trading in Industrialized and Developing Countries." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, by M. M. Kostecki, edited by M.M. Kostecki, 187-207. London: The Macmillan Press Ltd.

- Kowalski, Przemyslaw, Max Büge, Monika Sztajerowska, and Matias Egeland. n.d. *State-Owned Enterprises: trade Effects and Policy Implications*. OECD Trade Policy Papers No. 147, Paris: OECD Publishing , 1-74.
- Kwiatkowski, Grzegorz. 2014. "Is the State Ownership of Enterprises Gaining in Importance in a Modern Economy?" In *Crisis Management and Changing Role of the State*, edited by Eva Voszka and Gabor David Kiss, 145-155. University of Szeged.
- Labys, Walter C. 1982. "The Role Of State Trading In Mineral Commodity Markets." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, edited by M. M. Kostecki, 78-102. London: The Macmillan Press Ltd.
- Lloyd, P. J. 1982. "State Trading and the Theory of International Trade." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, by M. M. Kostecki, edited by M. M. Kostecki, 117-141. London: The Macmillan Press Ltd.
- Mastromatteo, Andrea. 2017. "WTO and SOEs: Overview of Article XVII and Related Provisions of the GATT 1994." *EUI Working Papers* 1-14.
- Matejka, Harried. 1982. "Trade-Policy Instruments, State Trading and First-Best Trade Intervention." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, by M. M. Kostecki, edited by M. M. Kostecki, 142-160. London: The Macmillan Press Ltd.
- Matsushita, Mitsuo, Thomas J. Schoenbaum, and Petros C. Mavroidis. 2006. *The World Trade Organization*. New York: Oxford University Press.
- Mattoo, Aaditya. 1998. "Dealing with Monopolies and State Enterprises WTO Rules for Goods and Services." In *State Trading in the Twenty-First Century*, edited by Thomas Cottier and Petros C. Mavroidis, 37-70. Ann Arbor : The Univeristy of Michigan Press.
- Mavroidis, Petros C. 2016. *The Regulation of International Trade*. Cambridge, MA: The MIT Press.
- McCalla, Alex F., and Andrew Schmitz. 1982. "State Trading In Grain." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, edited by M. M. Kostecki, 55-77. London: The Macmillan Press Ltd.
- McCorrison, Steve, and Donald MacLaren. 2002. "State Trading, the WTO and GATT Article XVII." *The World Economy* 25: 107–135.
- McCorrison, Steve, and Donald MacLaren. 2006. "The Economic Effects of State Trading Enterprises: Market Access and Market Failure." *Twenty-Sixth Conference of the International Association of Agricultural Economists*. Queensland, Australia. 1-16.

- Messenger, Gregory. 2017. "The Public-Private Distinction at the World Trade Organization: Fundamental Challenges to Determining the Meaning of "Public Body"." *International Journal of Constitutional Law* 15: 60-83.
- Miner, Sean. 2016. "Commitments On State-Owned Enterprises." In *Assessing the Trans-Pacific Partnership, Vol 2: Innovations in Trading Rules*, by PIIE Briefing 16-4. The Peterson Institute for International Economics (PIIE).
- Murphy, Sophia. 1999. *Market Power in Agricultural Markets: Some Issues for Developing Countries*. South Centre, 1-28.
- OECD. 2000. *Assessment of WTO and Competition Rules for Enterprises with Exclusive or Special Rights*. Joint Group on Trade and Competition , Paris: OECD Publishing, 1-31.
- OECD. 2014. *Levelling the International Playing Field Between Public and Private Business: What Have We Learnt So Far?*. Meeting of the OECD Council at the Ministerial Level. Paris. 1-16.
- OECD. 2013. *Structural Policy Challenges For Southeast Asian Countries*, Southeast Asian Economic Outlook 2013: With Perspectives On China And India, Paris: OECD Publishing, Paris, 1-18.
- OECD. 2015. *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. Paris: OECD Publishing, 1-69.
- OECD. 2014. *The Size and Sectoral Distribution of SOEs in OECD and Partner Countries*. Paris: OECD Publishing , 1-57.
- OECD/FAO. 2016. *OECD-FAO Agricultural Outlook 2016-2025*. Paris: OECD Publishing .
- Pall, Zsombor, Oleksandr Perekhozhuk, Ramona Teuber, and Thomas Glauben. 2011. "Wheat trade - does Russia price discriminate across export destinations?" *IAMO Forum* . 1-19.
- Petersmann, Ernst-Ulrich. 1998. "GATT Law on State Trading Enterprises: Critical Evaluation on Article XVII and Proposals for Reform." In *State Trading in the Twenty-First Century*, edited by Thomas Cottier and Petros C. Mavroidis, 71-96. Ann Arbor: The University of Michigan Press.
- PWC. 2015. Accessed September 17, 2016. <https://www.pwc.com/gx/en/psrc/publications/assets/pwc-state-owned-enterprise-psrc.pdf>.
- Roberts, Michael T. 2001. "The Unique Role of State Trading Enterprises in World Agricultural Trade: Sifting Through the Rhetoric." *Drake Journal of Agricultural Law* 6: 288-314.

- Robinet, David. 2006. *Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets*. Washington DC: World Bank.
- Rude, James, and Mel Annand. 2002. "European Union Grain Export Practices: Do They Constitute a State Trading Enterprise?" *The Estey Centre Journal of International Law and Trade Policy* 3: 176-189.
- Sorenson, Vernon L. 1991. "The Economic and Institutional Dimensions of State Trading." In *State Trading in International Dimensions and Selected Cases*. Washington DC: International Policy Council on Agriculture and Trade.
- Sprenger, Carsten. 2008. "The Role of State-Owned Enterprises in the Russian Economy." *OECD Roundtable on Corporate Governance of SOEs*. Moscow: OECD.
- Stegemann, Klaus. 1982. "State Trading and Domestic Distortions in a Mixed World Economy." In *State Trading in International Markets: Theory and Practice of Industrialized and Developing Countries*, by M. M. Kostecki, edited by M. M. Kostecki, 161-188. London: The Macmillan Press Ltd.
- United Nations. "Least Developed Countries: UN Classification." Accessed September 15, 2015. <https://www.un.org/development/desa/dpad/least-developed-country-category/ldcs-at-a-glance.html>.
- UNCTAD. 2007. *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development*. Geneva: UNCTAD, 1-181.
- USTR. "TPP: State-Owned Enterprises (SOEs)." Office of the United States Trade Representative. Accessed September 16, 2017. <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-State-Owned-Enterprises.pdf>.
- USTR. 2016. "2016 Report on the Implementation and Enforcement of Russia's WTO Commitments." Executive Office of the President of the United States, Washington DC.
- Veeman, Michelle, Murray Fulton, and Bruno Larue. 1999. *International Trade in Agricultural and Food Products: The Role of State Trading Enterprises*. Report, Ottawa, Ontario: Agriculture and Agri-Food Canada.
- Viilup, Elina. 2015. *The Trade in Services Agreement (TISA): An End to Negotiations In Sight*. European Parliament, European Union.
- Willemys, Ines. 2016. "Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?" *Journal Of International Economic Law* (19): 657-680.

-
- World Bank. 2014. *Corporate Governance of State-Owned Enterprises: A Toolkit*. Washington DC: World Bank, 1-260.
- World Bank. 2011. *Vietnam Development Report 2012: Market Economy For a Middle-Income Vietnam*. Washington DC: World Bank, 1-88.
- WTO. 2007. *World Trade Report 2007: Six Decades of Multilateral Co-operation – What Have We Learned?* Geneva: WTO.
- WTO. 2017. *Annual Report 2017*. Geneva: WTO.
- WTO. 2015. "Tenth WTO Ministerial Conference: Briefing Note, Agricultural Issues." Accessed September 28, 2016. https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_agriculture_e.htm.

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Annex A

Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Afghanistan					
Da Afghanistan Brishna Shirkat (DABS)	2016	Energy	Electricity	Import	To provide stable and secure supply of electricity. It is a government owned corporation dealing with electricity generation, imports, transmission and distribution
Australia					
The Rice Marketing Board for the State of New South Wales	2016, 2014, 2013, 2012, 2010, 2008, 2007, 2006, 2004, 2000, 1998, 1996	Agriculture	Rice	Export	Develop competitive market for rice; for the State of New South Wales it has appointed Ricegrowers Limited (SunRice) as its sole exporter; it does not have special or exclusive privileges to import
Barbados					
Barbados Agricultural Development Corporation (BADMC)	2016, 2013, 1996	Agriculture	Meats of Poultry, Onions, sugar raw/refined	Import	To ensure the development of the local agricultural sector. It is the sole importer of poultry parts and all chicken products, as well as onions free of duty
Cape Verde					

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Sociedade Caboverdiana de Tabacos, S.A.	2014	Agriculture	Tobacco, Cigarettes containing tobacco, Smoking tobacco	Import	It holds exclusive import and wholesale marketing rights for tobacco and tobacco derivatives. To regulate the tobacco industry to consolidate existing investments and make new investments
Canada					
Canadian Dairy Commission (CDC)	2016, 2014, 2012, 2010, 2007, 2002, 1997, 1996, 1995	Agriculture	Butter and other fats and oils derived from milk, dairy spreads.	Import Export	To provide producers of milk and cream with the opportunity of obtaining a fair return for their labor and investment, and to provide consumers with a continuous and adequate supply of dairy products of high quality
Freshwater Fish Marketing Corporation	2016, 2014, 2012, 2010, 2007, 2002, 1995	Fisheries	Freshwater fish and fish products and by-products	Export	To market freshwater fish and fish products sourced in agreement areas; to increase returns to fishermen; and to promote international markets for, and increase inter-provincial and export trade in, freshwater fish and fish products
Provincial and Territorial Liquor Control Authorities	2016, 2014, 2012, 2010, 2007, 2002, 1995	Agriculture	Beer from malt, Wine, Vermouth, Other fermented beverages, mixtures of fermented beverages, etc.	Import	The control of the consumption of alcoholic beverages in Canada for protecting public health and morals
Chile					
Comercializadora de Trigo S.A. (COTRISA)	2016, 2014, 2012, 2010, 2008, 2006, 2001, 2000, 1999, 1997, 1996, 1995	Agriculture	Wheat, Maize, Rice, Other cereals	Export	To buy, sell, package, store, transport, distribute, deliver and trade, all types of wheat and other cereals

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
China					
Note: In addition to the STEs listed below, China maintains other STEs as noted in China's 2015 notification with respect to Fuel Oil (refer to Ministry of Foreign Trade and Economic Cooperation Announcement No. 28/2001) and with respect to Antimony and antimony products and Silver (refer to MOFCOM Announcements 78/2003, 93/2004, 107/2005, 107/2006, 106/2007, 106/2008, 127/2009, MOFTEC Announcements 29/2001, 52/2002, MOFCOM Circular 1071/2011, 1135/2012, 1012/2013). With respect to STEs concerned with tobacco, the data was obtained from the WTO Document G/STR/Q1/CHN/8 (2017).					
China National Cereals, Oil and Foodstuff Import and Export Co. (renamed COFCO Corporation in 2007)	2015, 2003, 2002	Agriculture	Wheat, Maize, Rice, Crude soybean oil, Soybean Oil, Crude palm oil, Palm oil, Crude rape, colza oil, Crude mustard oil, Rape, Sugar, etc.	Import Export	To ensure stable supply of state trading products, prevent consumers' from being affected by drastic price fluctuations, safeguard food security, protect exhaustible and non-recyclable natural resources and the environment, and realize the goal of sustainable development. (Note: State trading on the import of vegetable oil was suspended since 2006)
China National Native Products and Animal By-products Import & Export Co.	2015, 2003, 2002	Agriculture	Crude soybean oil, Soybean Oil, Crude palm oil, Palm oil, Crude rape, colza oil, Crude mustard oil, Rape, colza or mustard oil, refined, but not chemically modified	Export	Idem.
China Resources Co.	2015	Agriculture	Idem.	Import	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
China Nam Kwong National Import & Export Co.	2015, 2003, 2002	Agriculture	Idem.	Export	Idem.
China Liangfeng Cereals Import & Export Co.	2015	Agriculture	Idem.	Export	Idem.
China Cereals, Oil & Foodstuff Co.	2015, 2003, 2002	Agriculture	Idem.		Idem.
China Sugar and Wine Co.(Group) (renamed China National Sugar and Alcohol Group Corporation)	2015, 2003, 2002	Agriculture	Sugar	Import	Idem.
China Commercial Foreign Trade Corporation	2015, 2003, 2002	Agriculture	Sugar	Import	Idem.
China National Native Products and Animal By-Products Import & Export Co.	2015	Agriculture	Tea	Export	Idem. (Note: State trading on the export of tea was suspended since 2004)

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
China National Cereals, Oil and Foodstuff Import and Export Co. (renamed COFCO Corporation in April 2007)	2015	Agriculture	Rice, Corn, Soybean	Export	Idem. (Note: State trading on the export of soybean has not taken place since China's accession to the WTO)
Jilin Grain Group Import and Export Co.	2015, 2003, 2002	Agriculture	Rice, Corn, Soybean	Export	Idem.
China National Tobacco Import & Export Co. (Group) (renamed China Tobacco International Inc.)	2015, 2003, 2002	Agriculture	Tobacco	Import	Idem.
China Tobacco Liaoning Imp.&Emp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Heilongjiang Imp.&Emp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Shanghai Imp&Emp Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Fujian Imp&Emp	2015	Agriculture	Tobacco	Import	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Co. Ltd.					
China Tobacco Shandong Imp&Emp Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Henan Imp&Emp Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Hubei Imp&Emp Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Hunan Imp&Emp Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Guangdong Imp&Emp Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Sichuan Imp.& Emp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Guizhou Imp.& Emp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
China Tobacco Yunnan Imp.& Emp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Jilin Tobacco Imp. & Exp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
Zhejiang Tobacco Imp. & Exp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
Shenzhen Tobacco Imp. & Exp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
Shaanxi Tobacco Imp. & Exp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
Xinjiang Tobacco Imp. & Exp. Co. Ltd.	2015	Agriculture	Tobacco	Import	Idem.
Yunnan Hongta Imp. & Exp. Co. Ltd. (later renamed Yunnan Tobacco International Co. Ltd.)	2015	Agriculture	Tobacco	Import	Idem.
China National Chemicals Import and Export Co. (renamed SINOCHEM Group in January 2003)	2015, 2003, 2002	Energy Mining Products of the Chemical or Allied Industries	Crude oil, Processed oil- Gasoline, diesel oil, kerosene, naphtha, aviation kerosene, Fuel oil, Chemical fertilizer, Tungsten, etc.	Import Export	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
China International United Petroleum and Chemicals Co., Ltd.	2015, 2003, 2002	Energy	Crude Oil, Processed oil- Gasoline, diesel oil, kerosene, naphtha, aviation kerosene, Fuel oil	Import Export	Idem.
China National United Oil Corporation	2015, 2003, 2002	Energy	Crude Oil, Processed oil- Gasoline, diesel oil, kerosene, naphtha, aviation kerosene, Fuel oil	Import Export	Idem.
Zhu Hai Zhen Rong Company	2015, 2003, 2002	Energy	Crude Oil, Processed oil- Gasoline, diesel oil, kerosene, naphtha, aviation kerosene, Fuel oil	Import	Idem.
China National Offshore Oil Corporation	2015	Energy	Crude Oil	Import	Idem.
China Aviation Oil Import and Export Co. Ltd.	2015	Energy	aviation kerosene	Import	Idem.
China National Offshore Oil Corporation	2015	Energy	Crude oil, processed oil	Import Export	Idem.
China National Aviation Fuel Group Corporation	2015	Energy	Crude oil, processed oil (aviation fuel only)	Import	Idem.

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Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
China National Agriculture Means of Production Group Co.	2015, 2002	Products of the Chemical or Allied Industries	Chemical fertilizer	Import	Idem.
China National Textiles Import and Export Co. (renamed Chinatex Corporation in May 2005)	2015, 2003, 2002	Agriculture Textiles	Cotton, Cotton yarn, Woven fabrics of cotton	Import Export	Idem. (Note: No STE exports on cotton yarn and woven fabrics of cotton since China's accession to the WTO)
Beijing Jiu Da Textiles Group Co.	2015, 2003, 2002	Agriculture	Cotton	Import	Idem.
Tianjin Textiles Industry Supply and Marketing Co.	2015	Agriculture	Cotton	Import	Idem.
Shanghai Textiles Raw Materials Co.	2015, 2003, 2002	Agriculture	Cotton	Import	Idem.
China National Cotton Reserve Corporation	2015, 2003	Agriculture	Cotton	Import Export	Idem.
Xinjiang Uygur Autonomous Region Cotton and Jute Import and Export Co.	2015, 2003, 2002	Agriculture	Cotton	Export	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Xinjiang Nong Ken Import and Export Co., Ltd (renamed Xinjiang Yin Long International Agriculture Cooperation Co., Ltd in 2012)	2015, 2003, 2002	Agriculture	Cotton	Import Export	Idem.
China National Cotton Group Corporation	2015	Agriculture	Cotton	Import	Idem.
China National Silk Import & Export Co.	2015	Agriculture	Silk, Unbleached silk	Import Export	Idem.
Qingdao Textiles United Import & Export Co.	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem. (Note: No STE exports since China's accession to the WTO)
Beijing No.2 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Beijing No.3 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Tianjin No.1 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Shanghai Shenda Co. Ltd	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Shanghai Huashen Textiles and Dying Co. (Group)	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Dalian Huanqiu Textiles Group Co.	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Shijiazhuang Changshan Textiles Group	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Luoyang Cotton Mill, Henan Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Songyue Textiles Industry Group, Henan Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Dezhou Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Wuxi No.1 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Puxin Textiles Mill, Hubei Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Northwest No.1 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Chengdu Jiuxing Textiles Group Co.	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Suzhou Sulun Textiles Joint Company (Group)	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Northwest No.7 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Xiangmian Group Co., Hubei Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Handan Lihua Textiles Group Co.	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Xinjiang Textiles Industry Co. (Group)	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Anqing Textiles Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Jinan No.2 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Tianjin No.2 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Jinhua Textiles Mill, Shanxi Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Jinwei Group Co., Zhejiang Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Northwest No.5 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Baoding No.1 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Liaoyang Textiles Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Changchun Textiles Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Huaxin Cotton Mill, Henan Province	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Baotou Textiles Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Ninbo Hefeng Textiles Group Co.	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Northwest No.4 Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.
Xinjiang Shihezi Bayi Cotton Mill	2015	Textiles	Cotton yarn, Woven fabrics of cotton	Import	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
China National Coal Industry Import and Export Corporation (renamed China National Coal Group Corporation in 2009)	2015, 2003, 2002	Energy	Coal	Import Export	Idem.
China National Metals and Minerals Import and Export Co. (renamed China Minmetals Corporation in 2004)	2015, 2003, 2002	Energy	Coal	Import Export	Idem.
Shanxi Coal Import and Export Group Corporation	2015, 2003, 2002	Energy	Coal	Import Export	Idem.
Shenhua Group Corporation Ltd.	2015, 2003, 2002	Energy	Coal	Import Export	Idem.
Aluminum Corporation of China Limited	2015	Energy	Coal	Import	Idem.
Colombia					

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Fábrica de Licores y Alcoholes de Antioquia	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum, Vodka, Mint liqueur, Coffee liqueur, Rum cream liqueur, Gin	Import Export	Colombian distilleries are held to produce, export and import alcoholic beverages and raw materials
Industria Licorera De Bolívar (in liquidation)	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Rum	Import Export	Idem.
Industria Licorera de Boyacá	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum, Brandy, Chocolate liqueur, Coffee liqueur, Triple sec liqueur, Aguardiente aperitif, Aged rum aperitif	Import Export	Idem.
Industria Licorera de Caldas	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum, Vodka, Rum cream liqueur, Coffee liqueur	Import Export	Idem.
Industria Licorera del Cauca	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum	Import Export	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Empresas de Licores de Cundinamarca	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum, Anise-flavoured liqueur	Import Export	Idem.
Empresa de Licores del Huila	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum	Import Export	Idem.
Empresa Licorera del Magdalena	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Rum	Import Export	Idem.
Fábrica de Licores del Tolima	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum	Import Export	Idem.
Industria de Licores del Valle del Cauca	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum	Import Export	Idem.
Unidad de Licores del Meta	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Aguardiente, Rum	Import Export	Idem.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Empresa De Licores Del Caquetá (in liquidation)	2014, 2012, 2010, 2009, 2007, 2004, 1996	Agriculture	(Spirits) Aguardiente	Import Export	Idem.
Aguardiente Nariño	2014, 2012, 2010, 2009, 1996	Agriculture	Aguardiente, Rum	Import Export	Idem.
Costa Rica					
Refinadora Costarricense de Petróleo S.A. (RECOPE)	2016, 2014, 2003, 2002, 1999, 1998, 1995	Energy	crude oil, fuels derived from oil, asphalt, naphtha, gasoline, Diesel fuel, Jet fuel, Liquefied petroleum gas (LPG), Aviation gasoline (AvGas), Fuel oil, Methyl tertiary-butyl ether (MTBE)	Import	RECOPE has a monopoly on the importation, refining and wholesale distribution of crude oil, fuels derived from oil, asphalt and naphtha
Liga Agrícola Industrial de la Caña de Azúcar (LAICA)	2016	Agriculture	Sugar	Export	To market sugar; to establish and allocate the national sugar production quota. The individual quotas include the amount and type of sugar to be produced for domestic consumption, export or stockpiling. Written contracts registered with LAICA are indispensable for sugar exports.
Cote D'Ivoire					
Societe Ivoirienne di Refinagge	1996	Energy	Crude and refined petroleum	Import	

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Dominica					
Dominica Import Export Agency (DEXIA)	2001	Agriculture	Raw cane sugar, bulk parboiled rice, white rice	Import	To prevent prices from exceeding certain maximum limits and to ensure regular supplies of essential commodities. To promote the export of agricultural produce and to undertake the import of essential commodities.
Dominica Banana and Marketing Corporation (DBMC)	2001	Agriculture	Bananas	Export	To promote the well-being of the banana grower and to ensure the financial viability of the banana industry. DBMC is the sole purchaser of bananas for export to countries outside of the Caribbean area
Ecuador					
National Warehousing Unit (UNA EP)	2014	Agriculture	Yellow flint maize, rice and cereals	Import Export	To manage the temporary warehousing and domestic marketing of agricultural surpluses (mainly, yellow flint maize, rice and cereals), the management of strategic food reserves, and support for the marketing and distribution of inputs.
Fiji					
Fiji Sugar Corporation (FSC)	1999	Agriculture	Raw Sugar and Molasses	Export	To develop and manage Fiji's sugar industry including all aspects of production and marketing
Grenada					
Grenada Cocoa Association (GCA)	2010	Agriculture	Cocoa, Beans	Export	To provide for the future regulation and control of the production, processing and marketing of cocoa in Grenada.
India					

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED)	2012, 2010, 2008, 2001, 1996	Agriculture	Onions, Milk or cream, Maize, Crude sunflower seed or safflower oil, Refined rape, colza, canola or mustard oil	Import Export	To organize, promote and develop marketing, processing and storage of agricultural, horticultural and forest produce. It undertakes inter-state, intra-state and export/ import trade to help farmers get remunerative prices for their produce, stabilize prices, shield farmers against distress sales and maximize both producers and consumers value.
Karnataka State Agricultural Produce Processing and Export Corporation (KAPPEC)	2012, 2010, 2008, 2001	Agriculture	Onions, Milk or cream, Maize, Crude sunflower seed or safflower oil, Refined rape, colza, canola or mustard oil	Export	To develop, and promote the production, processing, procurement and export of agriculture, horticulture and floriculture products from the State of Karnataka.
AP MARKFED (Andhra Pradesh State Co-operative Marketing Federation Ltd.)	2012, 2010, 2008, 2001	Agriculture	Idem.	Export	To help farmers to secure better price for their produce by taking care of their marketing needs and providing agricultural inputs.
Gujarat Agro Industries Corporation Ltd.(GAIC) Ahmedabad	2012, 2010, 2008, 2001	Agriculture	Idem.	Export	To finance and promote industries based on agriculture, to manufacture and or market export quality agricultural inputs and effect market interventions on behalf of the state government in cases of crisis to protect small and marginal farmers.
Andhra Pradesh State Trading Corporation (APSTC)	2012, 2010, 2008, 2001	Agriculture	Idem.	Import Export	To market selective goods and commodities. It is engaged in the import of goods and commodities for government departments and undertakings, and in promoting exports from the state of Andhra Pradesh.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Spices Trading Corporation Ltd. (STCL)	2012, 2010, 2008, 2001	Agriculture	Idem.	Export	To carry domestic and international trade in spices and their products.
The Karnataka State Cooperative Marketing Federation Limited (KSCMFL)	2012, 2010	Agriculture	Idem.	Export	The procurement and marketing of Agricultural commodities. The Federation has been granted the rights of an STE for exports of all varieties of onions.
West Bengal Essential Commodities Supply Corporation (WBECS) Ltd	2012, 2010	Agriculture	Idem.	Export	The export of all varieties of onions.
Madhya Pradesh State Co-operative Oil Seeds Growers Federation Limited (MPSCOGFL)	2012, 2010	Agriculture	Idem.	Export	To usher in integrated cooperative effort in cultivation, processing and marketing of oilseeds.
National Cooperative Consumers' federation of India Ltd.(NCCF)	2012, 2010, 2008, 2001	Agriculture	Idem.	Export	To provide managerial assistance to improve the functioning of consumer cooperatives in India. It also helps distribute general use consumer goods at competitive prices.
Maharashtra State Agricultural Marketing Board (MSAMB)	2012, 2010, 2001	Agriculture	Idem.	Export	To develop agricultural marketing in the State of Maharashtra. It has the right to export Onions as and when there is an adequate surplus domestic production of Onions.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Madhya Pradesh State Agro Industries Development Corporation Ltd. (MPSAIDC)	2012, 2010	Agriculture	Idem.	Export	The marketing of agricultural inputs, manufacture of high quality Bio-Fertilizers, production of Hybrid vegetable seeds, promotion of agro processing industries in the state of Madhya Pradesh and procurement and marketing of vegetables and fruits in raw and processed form.
Tribal Cooperative Marketing Development Federation of India Limited (TRIFED)	2012, 2010, 2001, 1996	Agriculture	Gum Karaya	Export	To provide fair economic returns to tribals for their agricultural and forest produce. It takes up activities like training of tribal growers for scientific cultivation and collection methods to add value to their produce. It has been granted the right to export Gum Karaya.
Indian Sugar Exim Corporation Limited (ISEC)	2012, 2010	Agriculture	Sugar	Import Export	To promote exports and imports of sugar and sugar products and by-products
Kudremukh Iron Ore Company Limited (KIOCL)	2012, 2010, 2001	Mining	Iron Ores, Iron Ore pellets	Export	To export Iron ore concentrate, produced by itself, prepared by beneficiation and/or concentration of low grade iron ore containing 40% or less of iron and to export Iron Ore pellets manufactured by the company out of concentrates produced by itself.
Minerals and Metals Trading Corporation Limited (MMTC Ltd.)	2012, 2010, 2001	Mining	Iron ore, Manganese ores, Beneficiated Chrome Ore fines/concentrates, Low silica	Import Export	To export only specified varieties of iron ore; manganese ore, chrome ore lumps and mica scrap as and when there is a surplus of these raw materials.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Manganese Ore India Limited (MOIL)	2012, 2010, 2001, 1996	Mining	Manganese ores other than lumpy/blended manganese ore above 46% Mn. for Mn Ores produced in MOIL mines	Export	To export manganese ores other than lumpy/ blended manganese ore above 46% manganese.
Indian Oil Corporation Limited (IOCL)	2012, 2010, 2001	Energy	Crude Oil	Export	To ensure a reliable supply of kerosene and Liquified Petroleum Gas (LPG), which are used as household fuels, trough exports.
Food Corporation of India (FCI)	2012, 2010, 2001, 1996	Agriculture	Wheat, Rye, Oats, Rice, Grain Sorghum, Buckwheat, other cereals	Import	To enable better marketing, realization of better prices, ensuring a steady domestic supply and preventing wide domestic price fluctuations. To import cereals like wheat, rye, oats, rice, grain sorghum, buckwheat, millet, canary seed, jawar, bajra, ragi and other cereals.
National Dairy Development Board (NDDB)	2012, 2008, 2001, 1996	Agriculture	Milk or cream in powder, granules or other solid forms, Crude sunflower seed or safflower oil or fractions thereof; Refined rape, colza, canola or mustard oil	Import Export	To promote, finance and support producer-owned and controlled organizations. To strengthen farmer cooperatives, and to import certain agri products

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
State Trading Corporation (STC)	2012, 2010, 2001	Agriculture Products of the Chemical or Allied Industries	Milk or cream, Copra Crude sunflower seed or safflower oil, Refined rape, colza, canola or mustard oil; Crude Coconut oil, Maize, Urea	Import Export	To import copra, crude edible oil (Coconut oil and its fractions) and Urea. STC could import Maize in 2009-10.
Projects and Equipment Corporation of India Limited (PEC)	2012	Agriculture	Milk or cream, Maize	Import	To import agro commodities.
Indian Oil Corporation Limited (IOCL)	2012, 2010, 2001, 1996	Energy	Special boiling point spirits, Natural gasoline Liquid (NGL), Superior Kerosene Oil (SKO), Aviation Turbine Fuel (ATF), High Speed diesel (HSD), Light diesel oil (LDO)	Import Export	To import all types of Motor spirit (Gasoline), all types of aviation spirit, all types of spirit type (gasoline type) jet fuel, Kerosene type jet fuels (Aviation turbine fuel), Diesel gas oil, Other gas oil, Kerosene, Crude Oil and Liquefied Petroleum Gas. It has also been granted the right to export Crude Oil.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Bharat Petroleum Corporation Limited (BPCL)	2012, 2010	Energy	Special boiling point spirits, Superior Kerosene Oil (SKO), Aviation Turbine Fuel (ATF), High Speed diesel (HSD)	Import Export	To produce petrochemicals and solvents to aircraft fuel and specialty lubricants, to market them.
Hindustan Petroleum Corporation Limited (HPCL)	2012, 2010	Energy	Special boiling point spirits, Superior Kerosene Oil (SKO), Aviation Turbine Fuel (ATF), High Speed diesel (HSD)	Import Export	India's second largest refining and marketing company.
Minerals and Metals Trading Corporation Ltd. (MMTC Ltd.)	2012, 2001, 1996	Agriculture Products of the Chemical or Allied Industries	Milk or cream, Maize, Urea	Import	To import Ammonium Sulpho Nitrate and Urea.
Indian Potash Limited (IPL)	2012, 2010, 2001	Products of the Chemical or Allied Industries	Urea	Import	The marketing and sales promotion of potash. It is the STE for import of urea.
The North Karnataka Onion Growers Co-operative Society	2012, 2010	Agriculture	Onions	Export	The promotion of exports of onions grown in North Karnataka to generate better income for the farmers as also to protect their interests.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
(NKOCS)					
Indonesia					
Perum BULOG	2016, 2014, 2009, 2004, 2002, 1996, 1995	Agriculture	Rice	Import	To conduct good quality and sufficient staple food logistics businesses. It engages in domestic procurement, sales/distribution, import/export and public stockholding.
Israel					
Israel Groundnuts Production and Marketing Board	1996	Agriculture	Groundnuts	Export	To facilitate the development, planning and production of groundnuts and to coordinate marketing activities. It is the sole exporter of groundnuts; it does not act in import.
Production and Marketing Board of Ornamental Plants	1996	Agriculture	Ornamental Plants	Export	Supporting research and development; reduce production and marketing costs; coordination of export activities. It is the exclusive exporter of ornamental plants (it does not import). Since 1992, private companies can export where the Board does not operate.
Fruit Board of Israel	1996	Agriculture	Fruits	Export	Supporting research and development; reduce production and marketing costs; ensure regular supplies of fruit at stable prices. It is the exclusive exporter of non-citrus fruits (does not import).
The Vegetable Production and Marketing Board	1996	Agriculture	Vegetables	Export	Support research and development; establish storage and packing centers; plan vegetable production; coordinate exports (does not import).

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Citrus Marketing Board of Israel (CMBI)	1996	Agriculture	Citrus Fruit	Export	Responsible for the "Jaffa" trademark, carrying out agro-technical activities in the citrus field, and supporting research and development in the field.
Egg and Poultry Board	1996	Agriculture	Eggs Poultry	Export	Encourage quality poultry breeding; organize veterinary control; encourage consumption of poultry meat. It has exclusive right to export egg and poultry products (does not import).
Jamaica					
Jamaica Commodity Trading Company Ltd. (JCTC) (not currently engaged in trading activities)	2016, 2010, 1996	Products of the Chemical or Allied Industries	Fertilizers	Import Export	To act on behalf of the Government as a commercial importer/exporter of sensitive commodities where there are exceptional circumstances.
Japan					
Japan Tobacco Inc. (JT)	2016, 2014, 2012, 2010, 2009, 2006, 2004, 2001, 1999, 1995	Agriculture	Tobacco	Import Export	The tobacco production is monopolized by JT for promoting sound development of the tobacco industry.
The Government of Japan (Ministry of Health, Labour and Welfare)	2016, 2014, 2012, 2010, 2009, 2006, 2004, 2001, 1999, 1995	Agriculture	Opium	Import Export	To achieve the rational supply of opium for medical and scientific purposes; control the cultivation, transfer, receipt and possession. It has the monopoly of import and export opium

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
The Ministry of Agriculture, Forestry & Fisheries (hereinafter referred to as "MAFF")	2016, 2014, 2012, 2010, 2009, 2006, 2004	Agriculture	Rice, Wheat, Barley	Import Export	To stabilize supply and demand situations as well as prices. MAFF can import rice, wheat and barley, and can export rice when necessity exists.
Agriculture and Livestock Industries Corporation (hereinafter referred to as "ALIC")	2016, 2014, 2012, 2010, 2009, 2006, 2004, 2001, 1999	Agriculture	Dairy products and Raw Silk	Import Export	To stabilize supply and demand and prices; promote development of dairy and improve national diet; import designated dairy products; import raw silk
Jordan					
Jordan Petroleum Refinery Co. Ltd. (JPRCL)	2003, 2002, 2001	Energy	Crude oil, Processed oil (LPG), Gasoline, Avtur, Kerosene, Light Gas Oil, Fuel Oil, and Asphalt), Lubricating oil	Import	Exclusive rights to establish and invest in facilities for refining and processing petroleum and hydrocarbon products and derivatives; store and distribute these products; exclusive rights to import oil and hydrocarbon products; etc. Concession agreement valid through 2008

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Jordan Phosphate Mines Co. Ltd. (JPMC)	2003, 2002, 2001	Mining	Phosphate, ammonium nitrate (for explosive purposes), detonating fuses, safety fuses, ordinary aluminum detonators, electrical detonators, igniters, and sodium nitrate.	Import Export	Extract phosphate from four different mines in Jordan; export directly or sell through intermediaries; sole importer of explosive materials used for mining and quarrying purposes
Ministry Of Industry And Trade	2003, 2002, 2001	Agriculture	Wheat	Import	It is the major importer of wheat bran for animal feed, only importing in times of drought. It does export.
Kazakhstan					
Ural-Atyrau Sturgeon Fishing Plant (UASFP)	2016	Fisheries	Smoked fish, Fish frozen, Sturgeon caviar	Export	Preservation of sturgeon species; only company able to export sturgeon species, harvested from natural habitat, their caviar and other types of their products. The export right is currently restricted.
Korea					
Ministry of Agriculture, Food and Rural Affairs, MAFRA	2016, 2014, 2012	Agriculture	Rice	Import	Exclusive rights to the importation of rice to avoid disturbances caused by a sudden influx of imported rice and to ensure smooth implementation of UR commitments.
The Korea Agro-Fisheries & Food Trade Corporation (aT)	2016, 2014, 2012	Agriculture	Genus Capsicum, onions, garlic, Sesame seeds, ground nuts	Import	Administer tariff quotas to stabilize the domestic market and to ensure the smooth implementation of the UR commitments.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Malaysia					
Padiberas National Berhad (BERNAS)	2016, 2014, 2013, 2010, 1995	Agriculture	Rice	Import	Act as a State Trading Enterprise for rice importation.
Mali					
Société nationale des tabacs et allumettes du Mali (SONATAM)	2016	Agriculture	Tobacco	Import	
Mauritius					
Agricultural Marketing Board (AMB)	2016, 2014, 1997, 1995	Agriculture Fisheries	Dry whole onions, Fresh whole garlic, Fresh whole potatoes, Garlic seeds, Onion seeds, Potato seeds, By catch fish (frozen fish)	Import	Ensure efficient marketing facilities; buy, sell, import, export; etc. AMB controls the import of these products.
State Trading Corporation (STC)	2016, 2014, 1997, 1995	Agriculture Energy	Rice, Wheat flour, Petroleum products (gasoline, gasoil, kerosene, etc)	Import	To regulate and rationalize trade, particularly in relation to essential commodities
Mexico					

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Petróleos Mexicanos (PEMEX)	2016	Energy	Crude petroleum oils, Aviation fuel, other gasoline, fuel oil, jet fuel, propane, etc. Natural gas, Other products	Import Export	Generate economic value and profits to maximizing the State's oil revenues; engage in exploration for and extraction of petroleum and solid, liquid or gaseous hydrocarbons, and to retrieve, sell and market them.
Federal Electricity Commission (CFE)	2016	Energy	Electrical energy	Import Export	To provide the public service of electricity transmission and distribution, and to carry out activities relating to the generation, transmission, distribution and marketing of electricity
Morocco					
Moroccan Phosphates Board (OCP)	2016, 1996	Mining	phosphate ore	Export	Export phosphates; monopoly in the mining of phosphate ore
New Zealand					
Zespri Group Limited (before 2000, it was the New Zealand Kiwifruit Marketing Board)	2016, 2014, 2012, 2011, 2009, 2004, 2000, it was the 2001, 2000, 1999, 1995	Agriculture	Kiwifruit	Export	Kiwifruit exports to obtain the best commercial return from world markets for producers in New Zealand
Oman					

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
The Public Authority for stores and Food Reserves (PASFR)	2014, 2004, 2001	Agriculture	Rice, sugar, milk powder, tea, wheat, lentil and edible oil	Import	To maintain strategic food reserves to meet the essential requirements of population in an emergency. (Note: notified for transparency reasons only without prejudice of Art. XVII)
Philippines					
National Food Authority (NFA)	2002, 1997, 1995	Agriculture	Rice, Corn, Other commodities	Import	Ensure food security and price stabilization; exclusive authority to import rice and to issue import quotas and permits for rice, corn and other cereals.
St. Vincent and Grenadines					
St. Vincent Marketing Corporation	2000	Agriculture	Sugar, Rice	Import	Monopoly for the importation of sugar and rice
Switzerland					
Swiss Alcohol Board	2016, 2014, 2012, 2010, 2008, 2007, 2004, 2003, 2002, 2001, 2000, 1997, 1996, 1995	Agriculture	Alcohol	Import	Furtherance of the general objectives of Swiss policy with respect to public health, agriculture and supplies. It engages in import, marketing and (if necessary) production
Taiwan					
Agriculture and Food Agency, Council of Agriculture (AFA)	2016, 2014, 2012, 2010, 2008, 2007, 2004	Agriculture	Rice in the husk, Husked (brown) rice, Glutinous rice, Broken rice, etc	Import Export	Production, purchasing, warehousing, export and import of rice to ensure food security, market stability and income security.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Central Engraving and Printing Plant (CEPP)	2016, 2014, 2012, 2010, 2008, 2007, 2004	Prodcuts of the printing indutsry	Banknote paper	Import	Stabilize financial markets and prevent counterfeiting using banknote paper; it has exclusive rights to print currency and to import banknote paper.
Bank of Taiwan (BOT)	2016, 2014, 2012, 2010, 2008, 2007	Agriculture	Deer velvet, fresh pears (excluding European pears), bananas, red beans, liquid milk, peanuts, garlic bulbs, dried shiitake, dried day lilies, young coconuts, betel nuts, pineapples, mangoes, pomelos, dried longans and longan pulp, and rice (including rice products)	Import Export	Administer the allocation of tariff rate quotas (TRQs) for 16 items of agricultural products
Thailand					
Public Warehouse Organization (PWO)	2013, 2008, 2006, 2004, 2001, 1997, 1996, 1995	Agriculture	Rice	Import Export	Responsible for agricultural goods and consumer products in response to the government policies, including importation and exportation

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Thailand Tobacco Monopoly (TTM)	2013, 2008, 2006, 2004, 2001, 1997, 1996, 1995	Agriculture	Tobacco	Import Export	TTM is the leader of the domestic cigarette market.
Liquor Distillery Organization Excise Department (LDO)	2013, 2008, 2006, 2004, 2001, 1997, 1996, 1995	Agriculture	Alcohol		LDO only deals with the production of ethyl alcohol 95% to be distributed within the country. It does not import or export
Trinidad and Tobago					
Cocoa and Coffee Industry Board of Trinidad and Tobago (CCIB)	2010, 2008, 1998	Agriculture	Coffee, Cocoa	Export	Secure purchase, sale, handling, grading, exportation and marketing of cocoa and coffee for the benefits of the industry.
Tunisia					
Tunisian Trade Board (OCT)	2016, 2003, 2002, 1996	Agriculture	Sugar, tea, coffee	Import	Responsible for importing basic food products and occasionally other products in the case of production shortages.
Tunisian Petroleum Enterprise (ETAP)	2016, 2003, 2002, 1996	Energy	Crude oil, Natural Gas, Propane	Import Export	Responsible for supplying petroleum products; imports of crude oil and natural gas and exports of other related products
Tunisian Refining Industries Corporation (STIR)	2016, 2003, 2002, 1996	Energy	Heating oil, Petrol, Virgin naphtha, Heavy heating oil, Diesel fuel	Import Export	Protect consumers from fluctuations in the prices of petroleum products on the international market; sole supplier of petroleum products on the domestic market.

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
National Edible Oils Board (ONH)	2017, 2016, 2003, 2002, 1996	Agriculture	Soybean, Palm oil, Olive oil	Import Export	Protect production, promotion and export of olive oil; ensure supply of refined seed oil for consumption
National Alcohol Agency (RNA)	2016, 2003, 2002, 1996	Agriculture	Extra-fine rectified alcohol, absolute alcohol, non-rectified alcohol, phlegma	Import	Import, purchase of local production and sale of alcohol. Created to exploit a strategic monopoly that have an impact on public health, security, taxation, etc
Pasteur Institute of Tunis (IPT)	2016, 2003, 2002, 1996	Products of the Chemical or Allied Industries	Serums, vaccines		Production of serums and vaccines. Activities of importing and marketing serums and vaccines were transferred to PCT
Grain Board (OC)	2016, 2003, 2002, 1996	Agriculture	Wheat, Barley	Import	Monopoly on the importation of durum wheat, common wheat and barley; executes State policy for the development of cereal production
National Tobacco and Matches Agency (RNTA)	2016, 2003, 2002, 1996	Agriculture	Cigarettes, Cigars, Pipe tobacco and tumbak, Gunpowder, playing cards, Matches, Snuff (Neffa), Leaf tobacco	Import Export	Fiscal monopoly over tobacco, matches, playing cards and any other product assigned by the State
Tunisian Central Pharmacy (PCT)	2016, 2003, 2002, 1996	Products of the Chemical or Allied Industries	Medicine and Pharmaceutical products	Import	Supply of medicines, vaccines and pharmaceutical products; cover domestic consumption and control price stability
Turkey					

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Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Turkish Red Crescent (TRCS)	2016, 2012, 2010, 2008, 2006, 2003, 2000, 1998, 1995	Products of the Chemical or Allied Industries	Cinchona bark, potassium iodide, alkaloids of cinchona and their derivations, quinidine, klorikin, and primakin	Import	Enable the institution to fight against Malaria and Syphilis
Ukraine					
Liqueur And Alcoholic Beverage Industry (Ukrspyr)	2016, 2014, 2012, 2010, 2008	Agriculture	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	Export	Increase the efficiency of state enterprises of liqueur and alcoholic beverage industry; responsible for exporting ethyl alcohol and wholesale trade in ethyl alcohol and fruit alcohol, etc.
United States					

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
The U.S. Department of Agriculture's Commodity Credit Corporation (CCC)	2016, 2014, 2012, 2010, 2008, 2006, 2005, 2003, 1997, 1996, 1995	Agriculture	Non-fat dry milk, Butter, Cheese, Honey, Dry beans, Wheat, Rye, Barley, Oats, Corn, Rice, Sorghum, Soybeans, Peanuts, Flaxseed, Sunflower seeds, Sugar, Cotton, Mohair, Wool, and Pulses		Stabilize, support, and protect farm income and prices; maintain balanced and adequate supplies of agricultural commodities and aids. CCC does not have the exclusive right to export or import, or otherwise market, any product
Isotope Production and Distribution Program Fund (IP&D) within the Department of Energy (DOE)	2016, 2014, 2012, 2010, 2008, 2006, 2005, 2003, 1995	Products of the Chemical or Allied Industries	isotopes		Produce and distribute isotopes for research and development, medical diagnostics and therapy, and other applications of national interest.
The Bonneville Power Administration (Bonneville)	2016, 2014, 2012, 2010, 2008, 2006, 2005, 2003, 1995	Energy	Electrical energy	Import Export	The Power Marketing Administrations (PMAs) market wholesale electricity generated at hydroelectric dams owned/managed by the US Army Corps of Engineers and the US Bureau of Reclamation. These agencies also generate electricity at hydropower plants located at federal water projects. The PMAs sell the power that is not used to cooperatives and public bodies, and any power surplus to other power purchasing entities.
Southeastern Power Administration (Southeastern)	2016, 2014, 2012, 2010, 2008, 2005, 2003, 1995	Energy	Electrical energy		Idem. (Note: notified for transparency reasons only as currently it does not engage in foreign transactions)

Annex A - Active STEs Notified By WTO Members

STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Southwestern Power Administration (Southwestern)	2016, 2014, 2012, 2010, 2008, 2005, 2003, 1995	Energy	Electrical energy		Idem. (Note: notified for transparency reasons only as currently it does not engage in foreign transactions)
Western Area Power Administration (Western)	2016, 2014, 2012, 2010, 2008, 2006, 2005, 2003, 1995	Energy	Electrical energy	Import Export	
The Strategic Petroleum Reserve (SPR)	2016, 2014, 2012, 2010, 2008, 2006, 2005, 2003, 1995	Energy	Crude petroleum	Import	The SPR is a crude oil stockpile, managed by the Department of Energy. Its mission is to reduce vulnerability to economic, national security, and foreign policy consequences of supply interruptions
Uruguay					
Administración Nacional de Combustibles, Alcohol y Portland (ANCAP)	2013, 2012, 1998, 1995	Energy	Refining of crude petroleum and byproducts alcohol	Import	ANCAP was created because petroleum and fuels derived from petroleum are deemed to be strategic products. (Previously it had the monopoly on alcohol and alcoholic products).
Venezuela					
Petróleos de Venezuela S.A. (PDVSA) and its subsidiaries	2001, 2000, 1999, 1998, 1996	Energy	Hydrocarbons	Import Export	The oil industry is reserved for the Venezuelan State for reasons of national interest
Viet Nam					

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STEs	Years of Notification	Sector	Commodities	Trade Orientation	Purpose (Observations)
Tobacco Corporation Of Vietnam (VINATABA)	2016	Agriculture	Cigarettes, Cigars	Import	Under WTO commitments, Vietnam opened its market and appointed VINATABA as state trading enterprise to import cigarettes and cigars. It is the only company having the right to import cigarettes and cigars
XUNHASABA	2016	Prodcuts of the printing indutsry	Newspapers, journals and periodicals.	Import Export	It is 100% SOE authorized to import and export international newspapers, journals and periodicals. These products are cultural products affecting to society morals
European Union					
Systembolaget AB	2016, 2014, 2012	Agriculture	Spirituuous drinks, wines and strong beer	Import	Conduct retail sales of alcoholic beverages to the public in Sweden; a retail monopoly. Systembolaget aims to reduce the total alcohol consumption by limiting availability.

Annex B

STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Australia			
AWB (International) Limited (Before it was part of the Australian Wheat Board)	2010, 2008, 2007, 2006, 2004, 2000, 1998, 1996, 1995	Agriculture	Wheat
Grain Pool Pty Ltd.	2010, 2008, 2007, 2006, 2004	Agriculture	Barley, lupins, canola
Queensland Sugar Limited (QSL)	2010, 2008, 2007, 2006, 2004, 2000, 1998, 1996, 1995	Agriculture	Raw cane sugar
ABB Grain Export Limited	2008, 2007, 2006, 2004	Agriculture	Barley
New South Wales Grains Board (NSW)	2007, 2006, 2004, 2000, 1998, 1996	Agriculture	Malting and feed barley, canola, sorghum

Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Australian Dairy Corporation (ADC)	2004, 2000, 1998, 1996, 1995	Agriculture	Cheese, butter, skim milk powder, whole milk powder
Wool International (It replaced the Australian Wool Realization Commission)	2000, 1998, 1996, 1995	Agriculture Textiles	Wool in greasy and semi processed form
Grainco	2000, 1998, 1996	Agriculture	Barley
Australian Barley Board (ABB)	2000, 1998, 1996	Agriculture	Barley, Oats
Grain Pool Of Western Australia	2000, 1998, 1996	Agriculture	Barley, lupins, rapeseed
Australian Dried Fruits Board (ADFB)	1998, 1996, 1995	Agriculture	Sultanas, raisins, currants
Australian Honey Bureau	1998, 1996, 1995	Agriculture	Honey
Australian Horticultural Corporation (AHC)	1998, 1996, 1995	Agriculture	Fruits, nuts, natural honey
Australian Meat and Live-stock Corporation (AMLC)	1998, 1996, 1995	Agriculture	Meat and livestock
Australian Wine and Brandy Corporation (AWBC)	1998, 1996, 1995	Agriculture	Wine, brandy, grape spirit
Bahrain			

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
The Ministry of Commerce of the State of Bahrain	2001, 2000	Agriculture	Live sheep
Barbados			
Barbados Dairy Industries Limited (BDIL)	1996	Agriculture	Dairy produce
Brazil			
COBRA - Computadores e Sistemas Brasileiros S.A.	1997, 1996	Electrical machinery equipment parts thereof	Informatics components and equipment
Petrobrás Química S.A. (PETROQUISA)	1997, 1996	Products of the Chemical or Allied Industries	Petrochemicals
ITAIPU Binacional	1997, 1996	Energy	Electricity
Industrias Nucleares do Brasil S.A. (INB)	1997, 1996	Energy	Electricity
Florestas Rio Doce S.A.	1997, 1996	Forestry	Wood, boards, eucalyptus
Companhia Vale do Rio Doce (CVRD)	1997, 1996	Mining	Iron-ore
Companhia Nacional de Abastecimento (CONAB)	1997, 1996	Agriculture	Cereals, Grains, Seeds, Vegetables, Cotton

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Casa da Moeda do Brasil (CMB)	1996		Money, coins, passports, postal stamps, bonuses, etc.
Petroleo Brasileiro S.A. (PETROBAS)	1996	Energy	Oil
BR - Petrobrás Distribuidora S.A.	1996	Energy	Lubricants, fuel
Canada			
Canadian Wheat Board (CWB)	2016, 2014, 2012, 2010, 2007, 2002, 1995	Agriculture	Wheat, barley, canola, peas
Ontario Bean Producers' Marketing Board	2007, 2002, 1997, 1996	Agriculture	White pea beans, dried shelled
China			
Hua Ken Materials Co. Ltd.; and Qiao Jian Industry, Trading, Investment and Development Co. Ltd.	2003, 2002	Agriculture	Crude soybean oil, Soybean Oil, Crude palm oil, Palm oil, Crude rape, colza oil, Crude mustard oil, Rape, colza or mustard oil, refined, but not chemically modified
China National Export Bases Development	2003, 2002	Agriculture	Sugar

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
<p>China Petro-chemical International Co. Ltd; China Arts Hua Hai Import and Export Co. Ltd; China Marine Bunker Supply Company; China National Water Resources and Electric Power Material and Equipment Co. Ltd; Everbright Petroleum and Natural Gas Development and Investment Co. Ltd; China Hua Neng International Economic and Trade Co.; China Beijing International Economic Cooperation Co.; Tianjin Elec-Mech International Trade Co.; Hebei Metals and Minerals Import and Export Co.; Shanxi Tian Li Enterprise Co. Ltd; Liaoning Foreign Trade Co.; Dalian Golden Sun Import and Export Co. Ltd; Jinlin Foreign Trade Import and Export Co.; Sinochem Heilongjiang Import and Export Co.; Orient International Holding Shanghai Foreign Trade Co. Ltd; Shanghai Materials Group Import and Export Co. Ltd; Jiangsu Fuel Co.; Suzhou Industrial Park Co. Ltd; Zhejiang Metal Material Co.; Zhejiang Di Da Import and Export Co. Ltd; Ningbo Ning Shing Co. (Group); Anhui Chemicals Import and Export Co. Ltd; Fujian Chemicals Import and Export Co.; China (Fujian) Foreign Trade Centre (Holding); Xiamen Jian Fa Co. Ltd; Xiamen International Trade Group Co. Ltd.; Jiangxi Chemicals Import and Export Co.; Shandong Sheng Li Co. Ltd; Shandong Foreign Trade(Holding) Co. Ltd; Qingdao Hua Qing Industrial Co. Ltd; Qingdao Yi Jia E.T.I. Import and Export Co. Ltd; Henan Cereals, Oil and Foodstuff Import and Export Group Co. Ltd; Hubei Chemicals Import and Export Co.; Hunan Chemicals Import and Export Co.; Guangdong Materials Import and Export Co.; Guangdong Hua Guang Light Industrial Co. Ltd; Zhuhai S.E.Z Goods and Materials Co.; Guangdong Zhong Ren Enterprise (Group) Co. Ltd.; Guangzhou Tminae Petroleum and Chemicals Co. Ltd; Shenzhen Yong Jun Industrial Co. Ltd; Shenzhen Petroleum Company; Shenzhen Zhong You Tong Da Petroleum Co. Ltd; Shenzhen Dong Er Technology Dispatch Co. Ltd; Shenzhen Petrochemical Bonded Oil Trading Co.; Guangxi Chemicals Import and Export Co.; Hainan Zhong Tong Chemicals Import and Export Co.; Chongqing Foreign Trade Import and Export Co.; Guizhou Foreign Trade Import and Export Co.; Yunnan Native Produce Import and Export Co.; Gansu Import and Export Trading Group Co.; Xinjiang International Industry Co. Ltd; Sinochem International Oil Company; Sinochem Guangdong Import and Export Co.; Sinochem Shanghai Import and Export Co.; Sinochem Pudong Trading Co. Ltd; Sinochem Ning Bo Co.; Sinochem (Shenzhen) Industries Co. Ltd; Sinochem Jiangsu Import and Export Co; Sinochem Guangzhou Import and Export Co.; Sinochem Shandong Import and Export Co.; and Sinochem Liaoning Import and Export Co.</p>	2003, 2002	Energy	Fuel oil

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Minmetals Nonferrous Metals Co. Ltd.	2003	Mining	Tungsten and tungstate products, Antimony and antimony products, Silver
Hunan Zhong Nan Metals and Minerals Import and Export Corporation	2003, 2002	Mining	
China National Nonferrous Metals Industry Trading Group Corporation	2002	Mining	
Sichuan Metals and Minerals Import and Export Corporation; Zigong Cemented Carbide Co. Ltd; Zhuzhou Cemented Carbide Import and Export Corporation; Nanchang Cemented Carbide Plant; Jiangxi Rare Metals and Rare Earth Tungsten Group Corporation; Jiangxi Metals and Minerals International Trading Corporation Ltd; Langfang Tungsten and Molybdenum Material Plant; Xiamen Tungsten Corporation Ltd; and Fujian Jin Xin Powder Metallurgy Company Ltd.	2003, 2002	Mining	Tungsten and tungstate products
Chaozhou Xiang Lu Tungsten Co. Ltd.	2003	Mining	
China National Nonferrous Import and Export Guangdong Corporation	2002	Mining	
Hsikwangshan Shan Xing Antimony Corporation Ltd; Guandong Metals and Minerals Import and Export Group Corporation; Yunnan Metals and Minerals Import and Export Group Corporation; Guizhou Metals and Minerals Import and Export Corporation; Haikou Metals Minerals Machinery Chemicals Medicinal Import and Export Corporation; Liuzhou China Tin Group Co. Ltd; Guangxi Metals and Minerals Import and Export (Group) Corporation.	2003, 2002	Mining	Antimony and antimony products

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
China National Arts and Crafts Import and Export Corporation; China National Pearl Diamond Gem and Jewelry Import and Export Corporation; China Banknote Printing and Minting Corporation; China National Jin Yu Gold Materials and Equipment Corporation; Zhuzhou Smelter Corporation; Shenzhen Zhong Jin Ling Nan Nonferrous Corporation Ltd; Henan Yu Guang Gold and Lead Group Corporation; Shuikoushan Mining Bureau Import and Export Corporation; Inner Mongolia Qian Kun Gold and Silver Refinery Share Co. Ltd; Shandong Zhao Jin (Group) Corporation; Zhejiang Taizhou International Trading Corporation; Shanghai Metals and Minerals Import and Export Corporation; Fujian Pearl Diamond Gem and Jewelry Import and Export Corporation; Yunnan Copper Industry (Group) Corporation Ltd; Yunnan Metallurgical Group Import and Export Corporation; Anhui Tong Ling Nonferrous Metals (Group) Corporation; Yantai Nonferrous Metals Co. Ltd	2003, 2002	Mining	Silver
China International Trust and Investment Corporation; Yunnan Tin Co. Ltd.; Baiyin Nonferrous Metals Company; Qinghai Xi Tie Shan Minerals Import and Export Co. Ltd.; Da Ye Nonferrous Metals Company; Anhui Chi Zhou Nonferrous Metals Group Corporation; Ningxia Tian Ma Metallurgical and Chemical Industry Co. Ltd.; Gansu Bai Yin Nonferrous Metals Import and Export Corp.	2003	Mining	
Liaoning Shenyang Xing Ye Industry and Trade Technology Co. Ltd.	2002	Mining	
Colombia			
Empresa Licorera de Santander	2012, 2010, 2009, 2007, 2004, 1996	Agriculture	Alcoholic beverages
Industria de Licores del Atlántico	2012, 2010, 1996	Agriculture	Alcoholic beverages
Empresa Licorera del Chocó	2009, 2007, 2004, 1996	Agriculture	Alcoholic beverages
Putamayo	1996	Agriculture	Alcoholic beverages

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STEs	Years of Notification	Sector	Commodities
India			
Indo-Burma Petroleum Company Limited (IBP)	2010	Energy	Special boiling point spirits (other than Benzene Toulol) with nominal boiling point range 55-1150C
M.P. State Cooperative Oilseed Grower's Federation Ltd. (OILFED)	2001	Agriculture	Niger seeds
Hindustan Vegetable Oil Corporation	2001, 1996	Agriculture	Copra, Crude Oil (Coconut oil and its fractions), other
Indian Rare Earths Ltd.	2001, 1996	Mining	Rare earths, ores, etc
Kerala Minerals Metals Ltd.	2001, 1996	Mining	Minerals containing Samerskite and Uraniferrous allanite Radium ores and concentrates, etc
Mica Trading Corporation	1996	Mining	Mica waste and scrap
Coffee Board	1996	Agriculture	Coffee
Indonesia			
Badan Penyangga dan Pemasaran Cengkeh (BPPC)	1996, 1995	Agriculture	Cloves
Jamaica			

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STEs	Years of Notification	Sector	Commodities
The Sugar Industry Authority	1996	Agriculture	Sugar
The Cocoa Industry Board	1996	Agriculture	Cocoa
The Coconut Industry Board	1996	Agriculture	Coconut
The Coffee Industry Board	1996	Agriculture	Coffee
The Banana Board	1996	Agriculture	Banana
The Petroleum Corporation of Jamaica	1996	Energy	Oil
Japan			
The New Energy and Industrial Technology Development Organization (NEDO)	2006, 2004, 2001	Agriculture	Alcohol of an alcoholic strength by volume of 90 per cent vol. or higher
The Salt Industry Centre of Japan	2001, 1999	Mining	Salt for common use
The Government of Japan (the Food Agency)	2001, 1999, 1995	Agriculture	Rice, wheat, meslin, triticale, Barley
The Government of Japan (Ministry of International Trade and industry (MITI))	1999, 1995	Agriculture	Alcohol of an alcoholic strength by volume of 90 per cent vol or higher
The Livestock Industry Promotion Corporation (LIPC) (In 1996, merged into "Agriculture and Livestock Industries Corporation")	1996, 1995	Agriculture	Dairy products

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
The Japan Raw Silk and Sugar Price Stabilization Agency (the Agency) (In 1996, merged into "Agriculture and Livestock Industries Corporation")	1996, 1995	Agriculture	Raw silk (including doupion silk)
Jordan			
Jordan Cement Factories	2002, 2001	Mining	Cement
Jordan Vegetable Oil Industry Co. Ltd.	2002, 2001	Agriculture	Vegetable Oil and ghee
Jordan Tanning Co. Ltd.	2002, 2001	Agriculture	Rawhides and skins, tanned leather
Korea			
Ministry For Food, Agriculture, Forestry & Fisheries, MIFAFF	2010	Agriculture	Rice
Ministry Of Agriculture & Forestry, MAF	2010, 2009, 1998, 1997, 1995	Agriculture	Rice in the husk, glutinous husked rice, rice flour, pellets of rice, food preparations of rice, Barely
Agricultural And Fishery Marketing Corporation, AFMC	2010, 2009, 1998, 1997, 1995	Agriculture	Genus Capsicum, onions, garlic, Sesame seeds, ground nuts
Livestock Products Marketing Organization, LPMO	2010, 2009, 1998, 1997, 1995	Agriculture	Meat of bovine animals
National Livestock Cooperatives Federation, NLCF	2010, 2009, 1998, 1997, 1995	Agriculture	Natural honey

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Cheju Citrus Grower's Agricultural Cooperative, CCGAC	2010, 2009, 1998, 1997, 1995	Agriculture	Oranges, Mandarins and other tangerines
Korea Ginseng Cooperative Federation, KGCF	2010, 2009, 1998, 1995	Agriculture	Ginseng
National Forestry Cooperatives Federation, NFCF	2010, 2009, 1998, 1997, 1995	Agriculture	Pine nuts
National Ginseng Cooperative Federation (NGCF)	1997, 1995	Agriculture	Ginseng
Korea Raw Silk Exporters Association (KRSEA)	1997, 1995	Agriculture	Silk
Mauritius			
The Meat Authority	1997, 1995	Agriculture	Meat
The Tobacco Board	1997, 1995	Agriculture	Tobacco
The Tea Board	1997, 1995	Agriculture	Tea
Morocco			
The Tobacco Board	1996	Agriculture	Tobacco
The National Tea and Sugar (ONTS)	1996	Agriculture	Tea, Sugar
The National Electricity Board	1996	Energy	Electricity

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STEs	Years of Notification	Sector	Commodities
Namibia			
Namibian Agronomic Board	2000, 1999, 1997	Agriculture	Maize, wheat
The Meat Board of Namibia	2000, 1999, 1997	Agriculture	Livestock and meat
Karakul Board	2000, 1999, 1997	Agriculture	Karakul skins and wool
Meatco	2000, 1999, 1997	Agriculture	Meat
New Zealand			
New Zealand Dairy Board	2001, 1999, 1995	Agriculture	Dairy products
ENZA Limited	2001, 2000, 1999, 1995	Agriculture	Apples and (European) Pears
Hop Marketing Board	2001, 1999, 1995	Agriculture	Hops
New Zealand Horticulture Export Authority	2001, 2000	Agriculture	Apricots Avocados blackcurrants blueberries boysenberries squash chestnuts nashi/Asian pears nectarines peaches persimmons plums sweet cherries table grapes tamarillos
Raspberry Marketing Council	2001, 2000, 1999, 1995	Agriculture	raspberries

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
New Zealand Meat Board	2001, 2000, 1999, 1995	Agriculture	meat from slaughtered cattle, sheep and goats
New Zealand Game Industry Board	2001, 2000, 1999, 1995	Agriculture	deer meat and deer antlers in velvet
New Zealand Wool Board	1999, 1995	Agriculture	Wool
Norway			
Arcus Produkter AS	2001	Agriculture	Spirituous beverages, Spirits for technical/medical use
A/S Vinmonopolet (The State Wine and Spirits Monopoly)	1997	Agriculture	Spirits, liqueurs and other spirituuous beverages Wine and fruitwine Beer containing more than 4.75 per cent alcohol by volume
Statkorn Ltd		Agriculture	wheat, rye, barley and oats, milled products thereof, feeding stuffs as well as oil seeds
Oman			
PDO	2010, 2004, 2001	Energy	Petroleum
Petroleum Industries Company (Orpic)	2010	Energy	Petroleum

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Oman Refinery Company (ORC)	2004, 2001	Energy	Bumper Fuel Oil 180 cst, other refined products
Paraguay			
Tourism Directorate (DITUR)	1998	Tourism	Tourism
Central Bank of Paraguay	1998	banknotes, coins	Banknotes, coins
Peru			
Fertilizantes Sintéticos S.A. (FERTISA S.A.)	1997, 1995	Products of the Chemical or Allied Industries	Ammonium nitrate
South Africa			
Citrus Board	2000, 1997, 1995	Agriculture	Oranges, lemons, Grapefruit
Meat Board	2000, 1997, 1995	Agriculture	livestock and meat
Lucerne Seed Board'	2000, 1997, 1995	Agriculture	Lucerne seeds
Maize Board	2000, 1997, 1995	Agriculture	maize and maize products
Oilseeds Board	2000, 1997, 1995	Agriculture	Groundnuts, soya beans and sunflower seed

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Tobacco Board	2000, 1997, 1995	Agriculture	Leaf Tobacco
Canning Fruit Scheme	2000, 1997, 1995		Canning pears, peaches and apricots
Wheat Board	2000, 1997, 1995	Agriculture	wheat, barley, oats and the main products derived from these cereals
Mohair Board	2000, 1997, 1995	Agriculture	Mohair products
Milk Board	2000, 1997, 1995	Agriculture	Milk fresh
Egg Board	2000, 1997, 1995	Agriculture	Eggs
Dried Fruit Board	2000, 1997, 1995	Agriculture	dried prunes and dried vine fruits
Deciduous Fruit Board	2000, 1997, 1995	Agriculture	fresh apples, apricots, grapes, peaches, nectarines, pears, plums and prunes
South African Wool Board's	2000, 1997, 1995	Agriculture	wool
Cotton Board	2000, 1997, 1995	Agriculture	cotton
Sorghum Board	2000, 1997, 1995	Agriculture	Sorghum and sorghum products
Switzerland			
Federal Office of Agriculture	2002, 2001, 2000, 1997, 1996, 1995	Agriculture	bread flour

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
UTYRA, Swiss Butter Supply Board	2000, 1995	Agriculture	butter
Taiwan			
Taiwan Tobacco and Liquor Corporation (TTL) (Before named the Taiwan Tobacco and Wine Board (TTWB))	2007, 2004, 2002	Agriculture	Alcohol Products, Cooking Wine, Tobacco
Central Trust of China (CTC/TD)	2004, 2002	Agriculture	Vegetables, Dairy produce, fruit and nuts, livestock and meat
Taiwan Sugar Company (TSC)	2004, 2002	Agriculture	sugar
Taiwan Salt Industrial Corporation (TSI)	2004, 2002	Mining	salt
Conseil de l'agriculture (COA)	2004, 2002	Agriculture	rice
China Engraving and Printing Works (CEPW)	2004, 2002	Products of the printing industry	banknote paper
Taiyen Biotech Co., Ltd. (Taiyen)	2004	Mining	salt
Taiwan Provincial Fruit Marketing Cooperative (TPFMC)	2004, 2002	Agriculture	Bananas including plantains, fresh or dried
Trinidad and Tobago			
The National Gas Company of Trinidad and Tobago Limited (NGC)	1998	Energy	Natural gas

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Caroni (1975) Limited	1995	Agriculture	sugar
National Flour Mill Limited (NFM)	1995	Agriculture	Wheat and soya
Trinidad and Tobago National Petroleum Marketing Company Limited (NPMC)	1995	Energy	Gasoline, diesel, liquefied petroleum, gas
Turkey			
Turkish State Monopoly (TEKEL)	2003, 2000, 1998, 1995	Agriculture	Beer, Wine, Other fermented beverages, Undenatured ethyl alcohol
Turkish Soil Product Office (Turkish Grain Board)	1995	Agriculture	Wheat, barely
United States			
Alaska Power Administration	1995	Energy	hydroelectric power
Naval Petroleum And Oil Shale Reserves	2003, 1995	Energy	Crude petroleum, Natural Gas
National Stockpile of Strategic and Critical Materials	1995	Mining	Aluminium oxide, antimony, Asbestos, Bauxite, Bismuth, Cadmium, Chromite, Cobalt, Copper, Diamond, Ferro-chromium, Ferro-manganese, Ferrosilicon manganese, Fluorspar, Germanium, Graphite, Iodine, Manganese, Mercury, Mica, Nickel, Quartz Rubber, etc.

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Tennessee Valley Authority (TVA)	1995	Energy	Hydroelectric power
The Federal Helium Program	1995	Products of the Chemical or Allied Industries	Helium
United States Enrichment Corporation (USEC)	1995	Energy	Uranium
European Union			
Gaz de France (GDF)	2002, 1999, 1996, 1995	Energy	Lighting gas, producer gas, water gas and similar gases
Entreprise Minière et Chimique	2002, 1999, 1996	Products of the Chemical or Allied Industries	Mineral or chemical potassium fertilizers
Electricite De France	1996, 1995	Energy	Electrical energy
Amministrazione Autonoma dei Monopoli di Stato	1995	Agriculture	Tobacco
Austrian Tobacco Monopoly	1995	Agriculture	Tobacco
Austrian Alcohol Monopoly	1995	Agriculture	alcohol
Czech Republic			

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
The State Fund for Market Regulation (SFMR)	1995	Agriculture	grain (cereals), malt, live cattle and beef meat, pork meat, butter, skimmed milk powder, cheeses, sugar, potatoes and potato starch
Cyprus			
Cyprus Grain Commission	1995	Agriculture	Feed barley, Maize, Wheat
Cyprus Milk Industry Organization	1995	Agriculture	Milk
Vine Products Commission	1995	Agriculture	Raw grape alcohol (Zivania), Raisins (dried grapes)
Cyprus Potato Marketing Board	1995	Agriculture	Potatoes
Cyprus Carrot and Beetroot Marketing Board	1995	Agriculture	Carrots, Beetroot
Cyprus Olive Products Marketing Board	1995	Agriculture	Olives, Olive Oil
Iceland			
The State Alcohol and Tobacco Monopoly (ATVR)	1999, 1998, 1997	Agriculture	Alcoholic beverages, Ethyl alcohol, Tobacco and Tobacco products
Latvia			
Cereal Trade Agency	2000, 1999	Agriculture	grains
Lithuania			

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Stumbras	2002	Agriculture	alcohol
Vilniaus Degtine	2002	Agriculture	Idem.
Anyksciu Vynas	2002	Agriculture	Idem.
Alita	2002	Agriculture	Idem.
SEMA	2002	Agriculture	Idem.
Lietuviskas Midus	2002	Agriculture	Idem.
Malta			
Medigrain Company Limited	2001, 1998, 1996	Agriculture	Wheat, Animal feed barley, Animal feed maize
Enemalta Corporation	2001, 1998, 1996	Energy	Unleaded, Premium, AV Gas, JEt AI, Kerosene, Gas Oil, Fuel Oil, LP Gas
Poland			
Agricultural Market Agency (AMA)	1995	Agriculture	Wheat and rye; Pork meat; Butter and skimmed milk powder, Sugar
Polish Oil and Gas Company (POGC)	1995	Energy	Oil, Natural Gas
Polish Power Grid Company (PPGC)	1995	Energy	Electricity

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Annex B - STEs Eliminated From Notifications By WTO Members

STEs	Years of Notification	Sector	Commodities
Slovak			
State Fund for Market Regulation (SFMR)	1999, 1998, 1996, 1995	Agriculture	Cereals, Sugar, Dairy produce, Meat and live animals
Slovenia			
The Agency of the Republic of Slovenia for Commodity Reserves	2000, 1999, 1998, 1996	Agriculture	Wheat, Sugar

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Annex C

WTO Members That Does Not Currently Maintain Any STE

WTO Member	WTO Doc.
Albania	G/STR/N/13/ALB G/STR/N/14/ALB G/STR/N/15/ALB (2014)
Argentina	G/STR/N/15/ARG (2015)
Armenia	G/STR/N/13/ARM, G/STR/N/14/ARM (2013)
Bahrain	G/STR/N/7/BHR G/STR/N/10/BHR G/STR/N/11/BHR G/STR/N/12/BHR G/STR/N/13/BHR G/STR/N/8/BHR G/STR/N/9/BHR (2011)
Bolivia	G/STR/N/7/BOL (2001)
Botswana	G/STR/N/1/BWA (1997)
Brazil	G/STR/N/16/BRA (2016)
Burkina Faso	G/STR/N/1/BFA, G/STR/N/4/BFA G/STR/N/7/BFA, G/STR/N/10/BFA G/STR/N/11/BFA, G/STR/N/12/BFA G/STR/N/2/BFA, G/STR/N/3/BFA G/STR/N/5/BFA, G/STR/N/6/BFA G/STR/N/8/BFA, G/STR/N/9/BFA G/STR/N/13/BFA G/STR/N/14/BFA G/STR/N/15/BFA (2014)
Burundi	G/STR/N/7/BDI (2001)
Chad	G/STR/N/7/TCD (2001)
Egypt	G/STR/N/16/EGY (2016)
El Salvador	G/STR/N/15/SLV (2016)
Gambia	G/STR/N/1/GMB (1997)

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Annex C - WTO Members That Does Not Currently Maintain Any STE

WTO Member	WTO Doc.
Giorgia	G/STR/N/15/GEO (2014)
Ghana	G/STR/N/10/GHA (2004)
Guatemala	G/STR/N/9/GTM (2012)
Guinea	G/STR/N/7/GIN G/STR/N/8/GIN G/STR/N/9/GIN (2003)
Hiati	G/STR/N/15/HTI (2015)
Honduas	G/STR/N/15/HND (2014)
Hong Kong China	G/STR/N/16/HKG (2016)
Kenya	G/STR/N/11/KEN (2006)
Kuwait	G/STR/N/15/KWT (2014)
Kyrgyz Republic	G/STR/N/5/KGZ, G/STR/N/6/KGZ G/STR/N/8/KGZ, G/STR/N/9/KGZ (2015)
Laos	G/STR/N/15/LAO (2014)
Macao China	G/STR/N/16/MAC (2016)
Malawi	G/STR/N/16/MWI (2017)
Moldova	G/STR/N/16/MDA (2017)
Mongolia	G/STR/N/7/MNG (2001)
Montenegro	G/STR/N/16/MNE (2016)
Mozambique	G/STR/N/12/MOZ (2009)
Namibia	G/STR/N/7/NAM G/STR/N/8/NAM G/STR/N/9/NAM (2010)
Nicaragua	G/STR/N/1/NIC, G/STR/N/4/NIC G/STR/N/7/NIC, G/STR/N/10/NIC G/STR/N/11/NIC, G/STR/N/12/NIC (2015)

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Annex C - WTO Members That Does Not Currently Maintain Any STE

WTO Member	WTO Doc.
Nigeria	G/STR/N/9/NGA G/STR/N/10/NGA G/STR/N/11/NGA G/STR/N/14/NGA (2012)
Norway	G/STR/N/16/NOR (2016)
Pakistan	G/STR/N/14/PAK G/STR/N/15/PAK G/STR/N/16/PAK (2017)
Panama	G/STR/N/11/PAN G/STR/N/12/PAN G/STR/N/13/PAN G/STR/N/14/PAN (2012)
Paraguay	G/STR/N/4/PRY/Suppl.2 (1998)
Peru	G/STR/N/15/PER (2014)
Qatar	G/STR/N/16/QAT (2017)
Saudi Arabia	G/STR/N/13/SAU (2011)
Senegal	G/STR/N/1/SEN, G/STR/N/4/SEN G/STR/N/7/SEN, G/STR/N/10/SEN G/STR/N/11/SEN, G/STR/N/12/SEN (2014)
Seychelles	G/STR/N/16/SYC (2016)
Singapore	G/STR/N/16/SGP (2016)
South Africa	G/STR/N/16/ZAF (2016)
Suriname	G/STR/N/11/SUR G/STR/N/12/SUR (2009)
Yugoslavia	G/STR/N/15/MKD G/STR/N/16/MKD (2017)
Togo	G/STR/N/16/TGO (2017)
Uganda	G/STR/N/10/UGA (2005)
United Arab Emirates	G/STR/N/1/ARE (1996)
Zambia	G/STR/N/2/ZMB G/STR/N/3/ZMB G/STR/N/6/ZMB G/STR/N/12/ZMB G/STR/N/13/ZMB G/STR/N/14/ZMB (2012)
Zimbabwe	G/STR/N/12/ZWE (2008)

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Annex D

WTO Members That Have Not Made Any STE Notification

	WTO Member
1	Angola
2	Antigua and Barbuda
3	Bangladesh
4	Belize
5	Benin
6	Brunei
7	Cambodia
8	Cameron
9	Central African Republic
10	Congo
11	Cuba
12	Djibouti
13	Dominican Republic
14	Gabon

	WTO Member
15	Guinea Bissau
16	Guyana
17	Lesotho
18	Liberia
19	Madagascar
20	Maldives
21	Mauritania
22	Myanmar
23	Nepal
24	Niger
25	Papua New Guinea
26	Russia
27	Rwanda
28	Saint Kitts and Nevis
29	Saint Lucia
30	Samoa
31	Sierra Leone
32	Solomon Islands
33	Sri Lanka

Annex D - WTO Members That Have Not Made Any STE Notification

	WTO Member
34	Swaziland
35	Tajikistan
36	Tanzania
37	Tonga
38	Vanuatu
39	Yemen

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Annex E

RTAs Where No Specific STE Regulation Is Provided (*)

Agadir Agreement; Andean Community (CAN); Argentina - Brazil; Armenia - Kazakhstan; Armenia - Moldova, Republic of; Armenia - Turkmenistan; Armenia - Ukraine; ASEAN - Australia - New Zealand; ASEAN - China; ASEAN - India; ASEAN - Japan; ASEAN - Korea, Republic of; ASEAN Free Trade Area (AFTA); Asia Pacific Trade Agreement (APTA); Asia Pacific Trade Agreement (APTA) - Accession of China; Australia - China; Australia - New Zealand Closer Economic Relations Trade Agreement (ANZCERTA); Australia - Papua New Guinea (PATCRA); Brazil - Uruguay; Brunei Darussalam - Japan; Canada - Costa Rica; Caribbean Community and Common Market (CARICOM); Chile - China; Chile - Colombia; Chile - Malaysia; Chile - Viet Nam; Chile - Japan; Chile - Thailand; China - Costa Rica; China - Hong Kong, China; China - Macao, China; China - New Zealand; Colombia - Northern Triangle (El Salvador, Guatemala, Honduras); Common Economic Zone (CEZ); Common Market for Eastern and Southern Africa (COMESA); Common Market for Eastern and Southern Africa (COMESA) - Accession of Egypt; Commonwealth of Independent States (CIS); Costa Rica - Colombia; Costa Rica - Peru; Costa Rica - Singapore; Dominican Republic - Central America; Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR); East African Community (EAC); East African Community (EAC) - Accession of Burundi and Rwanda; Economic and Monetary Community of Central Africa (CEMAC); Economic Community of West African States (ECOWAS); Economic Cooperation Organization (ECO); El Salvador - Cuba; EU - Andorra; EU - Cameroon; EU - Côte d'Ivoire; EU - Eastern and Southern Africa States Interim EPA; EU - Ghana; EU - Mexico; EU Overseas Countries and Territories (OCT); EU - Papua New Guinea / Fiji; EU - SADC; EU - San Marino; EU - South Africa; EU - Syria; Eurasian Economic Union (EAEU); Eurasian Economic Union (EAEU) - Accession of Armenia; Eurasian Economic Union (EAEU) - Accession of the Kyrgyz Republic; Faroe Islands - Switzerland; Georgia - Armenia; Georgia - Azerbaijan; Georgia - Kazakhstan; Georgia - Russian Federation; Georgia - Turkmenistan; Georgia - Ukraine; Global System of Trade Preferences among Developing Countries (GSTP); GUAM; Gulf Cooperation Council (GCC); Gulf Cooperation Council (GCC) - Singapore; Hong Kong, China - Chile; Hong Kong, China - New Zealand; Iceland - China; India - Bhutan; India - Japan; India - Malaysia; India - Nepal; India - Thailand; Japan - Australia (**); Japan - Indonesia; Japan - Malaysia; Japan - Mexico; Japan - Mongolia; Japan - Peru; Japan -

Philippines; Japan - Singapore; Japan - Switzerland; Japan - Thailand; Japan - Viet Nam; Jordan - Singapore; Korea, Republic of - New Zealand; Korea, Republic of - Singapore; Korea, Republic of - Turkey; Korea, Republic of - Viet Nam; Kyrgyz Republic - Armenia; Kyrgyz Republic - Kazakhstan; Kyrgyz Republic - Moldova, Republic of; Kyrgyz Republic - Ukraine; Kyrgyz Republic - Uzbekistan; Lao People's Democratic Republic - Thailand; Latin American Integration Association (LAIA); Malaysia - Australia; Melanesian Spearhead Group (MSG); Mexico - Central America; Mexico - Panama; Mexico - Uruguay; New Zealand - Chinese Taipei; New Zealand - Malaysia; New Zealand - Singapore; Pacific Alliance; Pacific Island Countries Trade Agreement (PICTA); Pakistan - China; Panama - Dominican Republic; Panama - Chile; Panama - Singapore; Panama - Peru; Pan-Arab Free Trade Area (PAFTA); Peru - Chile; Peru - Mexico; Peru - Singapore; Protocol on Trade Negotiations (PTN); Russian Federation - Azerbaijan; Russian Federation - Belarus - Kazakhstan; Russian Federation - Serbia; Russian Federation - Turkmenistan; Russian Federation - Uzbekistan; Singapore - Australia; Singapore - Chinese Taipei; South Asian Free Trade Agreement (SAFTA); South Asian Preferential Trade Arrangement (SAPTA); South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA); Southern African Customs Union (SACU); Southern African Development Community (SADC); Southern African Development Community (SADC) - Accession of Seychelles; Southern Common Market (MERCOSUR); Southern Common Market (MERCOSUR) - Chile; Southern Common Market (MERCOSUR) - Mexico; Thailand - Australia; Thailand - New Zealand; Treaty on a Free Trade Area between members of the Commonwealth of Independent States (CIS); Turkey - Chile; Turkey - Malaysia; Turkey - Mauritius; Turkey - Moldova, Republic of; Ukraine - Azerbaijan; Ukraine - Belarus; Ukraine - Kazakhstan; Ukraine - Moldova, Republic of; Ukraine - Montenegro; Ukraine - Tajikistan; Ukraine - Uzbekistan; Ukraine - Turkmenistan; United States - Bahrain; United States - Israel; United States - Jordan; United States - Morocco; United States - Oman; United States - Panama (***) ; West African Economic and Monetary Union (WAEMU)

(*) Because the RTA does not make any reference to STEs, and/or because it generally refers to "enterprises" or "state enterprises", and/or because it refers to "state enterprises" and/or "Monopolies and Exclusive Service Suppliers" for matters other than trade in goods (such as services and/or investment). According to some RTAs, these entities are subject to competition rules.

(**) Note that Japan - Australia FTA regulates SOEs by providing that " bearing in mind the relationship between the promotion of competition and other policy objectives, the Parties recognize that seeking to ensure that governments do not provide competitive advantages to state-owned enterprises simply because they are state owned can contribute to the promotion of competition." (Art 15.4)

Annex E - RTAs Where No Specific Ste Regulation Is Provided

(***) Note that the United - States Panama FTA encourage the elimination of certain measures related to export STEs as follows: "Article 3.16: Export State Trading Enterprises - The Parties shall work together toward an agreement on export state trading enterprises in the WTO that: (a) eliminates restrictions on the right to export; (b) eliminates any special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of their country's total exports of an agricultural good; and (c) ensures greater transparency regarding the operation and maintenance of export state trading enterprises."