

## Appendix A: STEs in the GATT

In 1947, GATT negotiators recognized that STEs could distort trade flows the same way that government policies regulating commercial trade affect trade. GATT Article XVII acknowledges STEs as legitimate participants in international trade, but requires that STEs not discriminate among importers or exporters and that they adhere to commercial considerations when they make purchases or sales.

GATT rules on import and export restrictions also regulate trade by STEs. An interpretative note to GATT Article XI, which prohibits countries from restricting exports or imports, applies the rule to restrictions made effective through state trading operations. GATT Article II:4 explicitly provides that an import monopoly not operate in such a way that it affords protection on the average in excess of the country's bound tariff rate (Davey, 1998, pp. 27-28). Article II:4 is strengthened by a reference to the Havana Charter, which requires that an import monopoly import and offer for sale "such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product..." (Havana Charter for an International Trade Organization, September 1948).

The Uruguay Round Agreement on Agriculture (URAA) eliminated many of agriculture's exemptions from GATT rules. Prior to the URAA, countries could impose restrictions on imports and exports of agricultural products to support domestic policy objectives. Agriculture was exempt from GATT rules

that made export subsidies illegal. The URAA applied prohibitions on nontariff import restrictions to agricultural state traders. Countries also agreed to consider the effect of export restrictions on importing countries' food security and to notify the WTO of potential export restrictions for agricultural products.

The nature of STEs creates the possibility for the provision of an export subsidy (Horlick and Mowry, 1998, p. 101). If the government or an agency of the government operates or controls the procurement and the sale of the product, it would be ideally placed to support producers by subsidizing exports over domestic sales. The URAA substantively restricted countries' use of export subsidies in agricultural trade, but did not link the export-marketing practices of STEs to those disciplines. Countries notified the GATT of their agricultural subsidies contingent on export performance, including direct cash or in-kind export subsidies, sales or disposal of noncommercial stocks at a price lower than the domestic market price, and subsidies financed by producer levies. Subsidized sales by agricultural STEs were included in some countries' export subsidy notifications.

However, some of the export marketing practices of agricultural STEs are not defined as export subsidies in the Uruguay Round Agricultural Agreement, but could allow countries to circumvent their export subsidy commitments. Without more substantive GATT rules on the marketing practices of STEs, the complainant country currently has little recourse in countering their adverse trade effects.