
AN ANALYTICAL STUDY ON ROLE OF STATE TRADING ENTERPRISES IN INTERNATIONAL TRADE AND ITS FUTURE

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ABSTRACT

In international trade law, State trading enterprises are businesses that are owned, approved, or otherwise guaranteed by the government and that are allowed to do trade (exporting and/or importing). These are state-owned businesses with the mandate to import and export a variety of products and services essential to the growth of the nation's economy. STEs are in charge of keeping the domestic market stable by bringing in products at fair prices without destroying the delicate balance of the market. STEs are one of the main substantial source of market that determine the fundamental trade goals like fairness and transparency.

Hence, this study seeks to analyses the critical role that STEs play in the global trade of specific items, particularly agricultural products, wherein they enable governments to control prices and ensure producers' access to markets and also its duties which includes implementing trade agreements, settling trade disputes, encouraging industry innovation, and stimulating economic growth through investments. Further this paper explores the arise of STEs concept (Historical development) in International trade law and examine the legal framework such as WTO agreement and General Agreement on trade in services (GATTs). This paper also answers “need of establishing STEs and what are their policy objectives behind this in different sectors”.

In regard to the future, STEs playing an increasingly significant role in trade discussions, leading to a rise in requests for a revision of the international trade regulations controlling their operations. Further efforts to strike a balance between the economic benefits of STEs and the requirements for fair competition and transparency may determine the future of STEs in international trade.

Keywords: State trading enterprise, international trade law, WTO, GATT

INTRODUCTION:

Laws pertaining to international trade are those aspects of the law that deal with specific regulations and practices for regulating trade between nations. Laws pertaining to international trade are those aspects of the law that deal with specific regulations and practices for regulating trade between nations. The General Assembly has often maintained its opinion that decreasing or eliminating legal barriers to the movement of global commerce, and gradually reforming and consolidating international trade law somewhere it is essential¹. This significantly contributes to the reduction of prejudice in international trade as well as global economic relations among all States founded on fairness, transparency, mutual purpose, and upholding the rule of law. Since its founding in 1966, (UNCITRAL) has served as the primary UN organization for addressing issues relating to international trade law.

International trade law and state trading enterprise are mutually dependent on each other as there is certain obligation that is put by international trade law on STEs such as example is , STEs are expected by the GATT to carry out their trade activities without discrimination and to make sure that its pricing are determined by business factors instead of governmental regulations.

Now the introductory question is what is STEs and what kind of rules and regulations are regulated by WTO?

Governmental and non-governmental businesses that deal with items for import and/or export are referred to as **state trading enterprises**. State Trading Enterprises (STEs) having long played a significant role in international trade especially in underdeveloped nations where these organizations might assist in securing better conditions for their imports and exports. International trade laws acknowledge the significance of STEs while simultaneously ITL attempt to prevent unfair trade practices, market distortions, or any infringement in International trade rules. State-run businesses are used to carry out various government objectives and programs. It helps the government in attaining a number of distribution, employment, and output goals.²

¹ Mc Corrison, Mac Laren “The Trade Distorting effect of state trading enterprises in importing countries” in European Economic Review VOL.49 Issue 7 (Oct. 2005)

² R. SRINIVASAN “The Idea of State Trading Enterprise” in Business Line (July 2014)

State trade can take many different shapes:

The most prevalent types include

- (1) nationalized industries over imports or exports or both,
- (2) strictly controlled private exchange monopolies that the government grants, and
- (3) centralized pricing or quantity determination.

There are at least three main types of state trade that can be classified according to the level of interference from the government:

- (1) in which the government owns the trading enterprise;
- (2) in which the state directly controls a private enterprise, but does not own it, to the extent that the enterprise's trading operations or management, or both, are primarily controlled by the state
- (3) in which the state grants the trading enterprise exclusive or special privileges.

The **WTO statute** as well as various **preferential trade agreements (PTAs)** and **bilateral investment treaties (BITs)**, contain some of the necessary binding international standards that penalize discriminatory government behavior connected to state trading firms also The General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) agreements, among others, contain the regulations governing the actions for State trading enterprise. State commerce does not include classic trade mechanisms like tariffs, quotas, and monopolies government-run marketing boards.³

These state trading nations are frequently referred to as "non - market economies" which denotes that domestic prices, production levels, and the sale of products and services are controlled by the government as opposed to the "invisible hand" of the free market. In the lack of other risk-reduction tools like futures markets, STE may also function as a price stabilization mechanism⁴. An STE is a way to lessen the oligopoly power held by businesses downstream

³ Mc Corrison, Mac Laren "The Trade Distorting effect of state trading enterprises in importing countries" in European Economic Review VOL.49 Issue 7 (Oct. 2005)

⁴ Mohamed Arshad, Arifin "Effectiveness of state trading Enterprises in Achieving food Security" Centre for Indonesian policy and studies repository" (2019)

from manufacturers and the power held by these businesses against ultimate consumers in the lack of competition policy.

HISTORICAL DEVELOPMENT:

State trading enterprises (STEs), which extend back to the earliest era of international trade, have a lengthy history in international law. In the interest of advancing their state economic interests overseas and oversee and manage foreign commerce and trade, governments first came up with the idea of STEs. In the early years of global trade, traders and sellers from many nations conducted direct negotiations with one another to trade goods and services. Governments started to create state-owned trading enterprises to handle international trade, though, as it became increasingly complex and they aimed to safeguard their own national interests. The home governments of these trading firms, sometimes known as chartered businesses, granted them monopolies to regulate trade in particular areas or industries.

All developmental decisions were made during British control by the British government, which did not specifically priorities industrial or economic expansion. A few consumer products companies were established in some countries during World War II as a result of Britain's involvement in the conflict and its dominance over the countries⁵. The business significantly contributed to the growth of British business and trade in Africa and Asian nations and to the creation of the British Empire.

Many countries started creating their own state-run trading companies in the 19th and 20th centuries to handle their international trade. This pattern was particularly common among newly independent governments looking to advance industrialization and safeguard their national economic interests. These countries gave these state-owned companies monopolies so they could regulate the trade in and out of particular goods like oil, gas, and resources. The primacy of state trading businesses was challenged by the growth of free trade and globalization in the late 20th century⁶. The International Trade Organization (WTO) updated its STE regulations in the 1990s as portion of the Uruguay Round for the trade negotiations. These regulations attempted to prevent trade distortion and the unfair benefiting of domestic manufacturers by ensuring that STEs operated in a fair and non-discriminatory manner. A

⁵ Abbott, Young "Wheat- Importing State Trading Enterprises: Impact on the world Wheat market" VOL. 42 Issue 2 (July 1999)

⁶ Mohamed Arshad, Arifin "Effectiveness of state trading Enterprises in Achieving food Security" Centre for Indonesian policy and studies repository" (2019).

special committee on STEs was also created by the WTO to oversee the application of these regulations.

Governments' ability to establish monopolies and stifle competition was restricted by the General Trade and Tariff Agreement (GATT), which was established in 1947 to enhance international trade and lower tariffs and other barriers. A much more competitive and open global business system was promoted by the world's trade organization (WTO), which was founded in 1995.⁷

Even though they are now subject to more inspection and regulation, state trading firms nonetheless contribute to global trade. Many nations continue to operate state-owned businesses in vital industries including energy, transportation. These businesses must adhere to international trade laws and commitments and operate in a manner that is more open, accountable, and competitive. Enhancing agricultural exports with added value and expanding the range of exports and export destinations.

LEGAL FRAMEWORK:

International trade agreements establish the norms and regulations that govern the legal structure of STE (Subsidies and Trading Enforcement) and these agreements are **world trade organization (WTO), General Agreement on Tariffs and Trade (GATT) and some of the bilateral and multilateral treaty** on trade that has been signed among the countries.

State trading regulations of GATT 1994 were applicable to all forms of commerce in both unprocessed and processed goods. The majority of international trade undertaken by State trading enterprises is in food and agricultural items, but STEs also trade other products as per international rules.

Article XVII of the GATT 1994:

State trading enterprises (STEs), which are defined as organizations with the exclusive or special privileges given by states to conduct trade within a specific product or geographical location, are the subject of this article.

⁷ Schmitz, Gray "State Trading Enterprises and Revenue Gains from Market Power: The case of Barley Marketing and the Canadian Wheat Board" in *Journal of Agricultural And Resource Economy*" VOL 25 NO.2 (Dec. 2005)

1. Each party agrees that if it creates as well as retains a State enterprise, no matter where it is, or grants any enterprise exclusive or special privileges, either formally or informally, that enterprise will act in accordance with the general non-discrimination standards outlined in this Deal for government regulatory actions affecting the import or export of goods by private traders when making purchases or sales involving imports or exports.
2. Imports of items for immediate or final governmental use, rather than for resale or for use in the manufacture of commodities for sale, are exempt from the provisions of this Article. Each party to the contract must treat the commerce among the other parties to the contract fairly and equally with regard to such imports.
3. The contracting parties acknowledge that businesses may be run in a way that poses significant barriers to trade; as a result, talks on a reciprocal and mutually beneficial basis aimed at limiting or reducing such barriers are crucial to the growth of global trade.

Relationship between Article XVII and other provision of GATT 1994:

Article II and Article XVII

The United States - Limitations on Import of Sugar Panel Report from 1989 details these restrictions.⁸

The Panel considered the matter in light of the General Agreement's provisions pertaining to Article II. It was noticed that Article XVII:3 permits conversations regarding trade barriers caused by the operations of state-owned trading businesses, and a note to that section states that such negotiations may be held.

Article III and Article XVII

The Panel Report from 1988 on "Canada - Import, Distribution, and Sale of Alcoholic Beverages by Canadian Provincial Marketing Agencies"⁹

⁸ Schmitz, Gray "State Trading Enterprises and Revenue Gains from Market Power: The case of Barley Marketing and the Canadian Wheat Board" in *Journal of Agricultural And Resource Economy*" VOL 25 NO.2 (Dec. 2005)

⁹ Hokeman , P. Trachtman " Canada-Wheat: Discrimination Non-considerations and the Right to regulate through State trading Enterprises" in Cambridge University (2008)

Analyzed the European Community's claim that the complained-about activities violated Article III. Since the Interpretative Comment regarding Articles XI, XII, XIII, XIV, and XVIII made clear, clauses else than Article XVII related to state-trading businesses by special reference only, the Committee observed that Canada did not believe Article III to just be relevant to this issue. Where the monopoly of importation and the monopoly of distribution in domestic industries were combined, as they were in the instance of the province boards in Canada, the Panel believed that Article III:4 applied to state-trading companies as well.

Article XII and XVIII

Many instances of the use of State trading to enforce balance-of-payments limits have been observed. For example, have a look at some of the policies covered in the 1962 "Uruguayan Recourse to Article XXIII." State trading, or government monopolistic, used as an assessment to severely restrict for balance-of-payments reasons, is one of the measures to be supposed to cover inside the Basic File for a script is intended to deal under Articles XII:4(b) or XVIII:12(b) under the 1970 "full consultation procedures" for balance-of-payments restrictions.

DIFFERENT SECTOR WHERE STEs PLAY IMPORTANT ROLE:

Agriculture:

Most WTO notified STEs are related to the agricultural industry. Agricultural policy goals are thought to be accomplished through state trading. STEs work with a variety of agricultural goods. Cotton, dairy goods, sugar, opium, potatoes, oilseeds, poultry, egg, soybean, textile materials, sugar, nicotine, tea, and tobacco-related products are a few of them. Wheat, cereals, feed, grain, sugarcane, dairy foods, and other agricultural items are the main products that STEs deal in. Agriculture Specialized Trading Entities (STEs) come in a variety of forms and serve a range of functions, including "agricultural market boards, export marketing panels, regional management boards, fiscal monopolies, canalizing agencies, and multinational businesses."¹⁰

They seem primarily focused on maintaining price stability, assisting producers, and controlling trade. It is frequently believed that export marketing boards are more independently

¹⁰ Hokeman, P. Trachtman "Canada-Wheat: Discrimination Non-considerations and the Right to regulate through State trading Enterprises" in Cambridge University (2008)

than domestic marketing boards and actively pursue profit-maximizing tactics in global marketplaces.

Oil and gas sector:

The much more actively traded commodity globally, crude oil futures provide higher liquidity because of their enormous trading volume. Market regulators rarely engage in direct trading, but they do have an impact on the market by regulating pricing and the volume of traded items. Canalizing agencies exist in emerging nations.

By restricting the channels of importation and/or exporters that are available, these policies seek to increase trade by obtaining economies of scale (significant discount on importation and higher export prices). With a peak of 36.2% of the world's primary energy consumption in 1979, oil has always been the main source of energy. It continues to be the primary energy source today, with a share of 28.9% in the energy basket¹¹.

Minerals and metal sector:

The only examples given were railroads, "Posts and Telegraph lines, Port Corporations, Ordnance and Aircraft industries, as well as Government held salt and quinine factories." After gaining political independence, many countries implemented planning to secure economic self-reliance because it was "firmly convinced that political freedom without economic self-reliance was not beneficial for the people."

The Industrial Strategy Our government's adoption of socialism and resolution prepared the ground for the purposeful growth of the public sector. It was thought that public sector domination would reduce income and wealth disparity and advance national prosperity. Public sector businesses started conducting international trade in addition to domestic business. That through this organizations, the country's government was charged with managing foreign trade.

The act of purchasing or selling necessary commodities for managing risk or speculation is known as trading.

OBJECTIVE:

1. State trading may be used to discriminate in favors of specific trading characteristics,

¹¹ Rude, James " European Union Grain Export practises: Do they constitute State trading Enterprises" in International Law and Trade policy" (2002)

protect home output against imports and encourage exports, maintain consumer prices or incomes.

2. State trading enterprises utilized to enhance trade conditions and so strengthen the state trader's position in international commerce.
3. State trading could be used as a tool to preserve control over the trade account's constituents or to improve the nation's balance of payments.
4. State trading may be used to regulate domestic consumption of goods including prescription medications, cigarettes, and alcoholic beverages for the sake of the public's health and welfare.
5. Financial system may be served by state trading, by considering by allocating trade earnings to the government.
6. By maintaining government regulation of trade in military weaponry and other defense-related goods, state trading may support national security goals.
7. To encourage exports, developing unique, homegrown, organic, conventional, and non-conventional agricultural products.
8. Small industries, which cannot participate in international trade without the backing of STEs, have benefited particularly from the STEs marketing skills.

CASE LAWS:

Shrimp-Turtle¹²:

In this case, a US rule that prohibited the importation of prawn items obtained by specific fishing techniques that endangered sea turtles was being challenged. India and Malaysia were among the complainants, who claimed that the prohibition discriminatory against them since it wasn't applicable to local prawn growers in the US or to nations that employed comparable fishing techniques. Due in part to the prohibition's exemption of domestic manufacturers and

¹² WTO Case No. 58 and 61 (1998)

lack of STEs exclusions, the dispute panel determined that the restriction breached the WTO's non-discrimination principle.

Canada- Aircraft case¹³:

In this instance, Canada's support for Brazil's local aircraft sector, which included providing direct financial support to STEs like Bombardier, was contested by Brazil. According to Brazil, the subsidies unduly skewed global competition and broke WTO regulations. The dispute panel determined that Canadian had in fact broken those regulations and suggested that it remove or change the subsidies in order to conform to WTO standards.

China- Raw Material case¹⁴:

In this lawsuit, the U.S, the European Union, or Mexican contested China's export limits on a few raw resources, claiming that the limitations were unfair to international businesses and provided Chinese state commercial enterprises a competitive advantage abroad. The panel found in favors of the parties that had filed the complaints and commanded China to lift its ban on the export of raw materials.

Australia- apple case¹⁵:

In this case, New Zealand sought to overturn Australia's restriction on the importation of New Zealand apples because of concerns about the fire blight apple disease. The restriction, according to New Zealand, was unfair and went against WTO regulations. On several points, the arbitration panel ruled in New Zealand's favor, but it also determined that Australia's STE for apple trade restrictions did not contravene WTO regulations.

FUTURE OF STATE TRADING ENTERPRISE:

Since, State trading enterprises are state-owned businesses that engage in global commerce, primarily in commodities like energy, grains, and minerals and hence, somewhere they assist the government in making money by exporting home goods. The government can manage the pricing and supply of necessary goods as well as exportation and importation of products, resulting in steady economic growth.

¹³ WTO Case No. 70 (1997)

¹⁴ WTO Ds 394 (2009)

¹⁵ WTODs 367 (2008)

1. **Increasing Exports:** STEs can aid in the development of a strong export infrastructure that will help to promote and increase the exports of goods and services made in the area. As a result, the country's economy may benefit from higher foreign exchange revenues.
2. **Price Stabilization:** STEs can keep prices steady and predictable by maintaining control over important commodities like food grains, oil, and metals. This aids in easing the economy's inflationary pressures.
3. **Encouraging Innovation:** STEs can collaborate with regional manufacturers and business owners to develop fresh lines of products and market technological advancements. This can improve economic diversification, lessen reliance on a small number of goods, and increase the competitiveness of the nation's industries.
4. STEs can utilize its assets to **advance social welfare** initiatives including those that deal with healthcare, education, and poverty eradication. This may contribute to raising the standard of living for those living in the nation and fostering social justice.
5. STEs can **encourage international investments** who are eager to access the country's resources and markets by offering a dependable and effective market for international trade. This can promote economic growth and job creation.

REASON FOR ADOPTING STATE TRADING ENTERPRISE BY GOVERNMENT:

1. To safeguard domestic industries as by giving them a secure market for their goods, state trading companies can help safeguard domestic industries. This can aid in the expansion and competitiveness of these industries.
2. The prices of essentials such as food and fuel can be managed through the use of state trading businesses. The government can guarantee that these products are accessible to everyone by regulating the supply.
3. To produce income as state trading companies can bring in money for the government by selling goods and services. The construction of infrastructure and other government initiatives can be financed using this revenue.

4. Trade facilitation by acting as a dependable and trustworthy middleman, state trading companies can aid in trade facilitation between nations. This may aid in lowering trade restrictions and boosting economic integration.
5. By regulating the trade in and out of strategic products, state trading companies can be employed to uphold national security. This may aid in stopping the importation of armaments and other hazardous items.

CONCLUSION:

International trade provides a chance for buyers and sellers to become acquainted with new items and market conditions. Through collaboration with state undertakings, cooperative organizations, and others in specific and specified sectors, it has established a solid supply base for the manufacturing of high-quality commodities. If necessary, STC will invest in the growth of such a production base. By assuring an adequate quantity of imports and removing speculative activity in international trade, which are a primary cause of price fluctuation, state trading may assist the government in achieving its goal of price stabilization. In developing nations, STEs are crucial to regional development, food security, trade, and market difficulties. Most marketing boards don't have much of an effect on prices and trade in rich countries, other from taking part in managing risk and supplying production inputs that the private industry lacks in poor countries. Groups can strengthen their collective negotiating power and become more efficient by integrating or increasing their activities and handling costs by creating legal and informal associations for exporters and importers. In accordance with structural adjustment strategies, several emerging nations in Africa have decentralized their markets, mainly through selling off parastatals and increasing the contribution of the private sector.