

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

General Council Discussion on Mandated Negotiations and the Built-In Agenda
23 November 1998

Communication from the United States

The following communication, dated 19 November 1998, has been received from the Permanent Mission of the United States.

At the October 1998 General Council meeting, the United States presented WT/GC/W/107 containing preliminary views with respect to paragraph 9 (a)(i) of the May 1998 Ministerial Declaration regarding "issues including those brought forward by Members, relating to implementation of existing agreements and decisions." This submission is intended to supplement our initial contribution by focusing on paragraphs 9(a) (ii) and 9(a) (iii) of the Declaration regarding "the negotiations already mandated at Marrakesh, to ensure that such negotiations begin on schedule"; and "future work already provided for under other existing agreements and decisions taken at Marrakesh." Taken together, these submissions are aimed at building consensus among Members so that we may develop recommendations for Ministers on decisions concerning the further organization and management of the work program, including the scope, structure and time frames that will ensure that the negotiations and work programs will be begun and concluded expeditiously.

The Council's initial discussion of implementation confirmed that all Members give the highest priority to full and effective implementation of the Agreements concluded in the Uruguay Round and to ratification and implementation of the post-Uruguay Round agreements on basic telecommunications and financial services. Equally important, it was clear that as we prepare the forward agenda that Ministers will consider in November 1999, the challenges of implementation are certainly within the realm of the manageable and do not stand as an impediment to pursuing additional work and liberalization. For the sake of brevity, the United States will not reiterate here all the points on implementation previously raised that are relevant to the future agenda of the WTO.

Turning to the current agenda item, we draw several conclusions from our initial examination of the issues: (1) substantial preparatory work has already been commissioned in a variety of fora sufficient to ensure that negotiations will be initiated on schedule; (2) in light of current commitments to negotiations, our discussions should pave the way for development of recommendations for Ministers that include negotiating objectives and detailed plans to enable negotiations to begin as envisioned; (3) preparing recommendations on how to structure the WTO's future agenda must take into account the existing time frames and modalities established in current Agreements, and the fact that the Ministerial Conference is scheduled to meet every two years; and (4) deadlines already established, particularly with respect to the built-in agenda and reviews, need to be honored and not

held in abeyance as they will facilitate more effective participation in the system, including by trading partners at lower levels of development.

The following is an initial and preliminary review that takes into account comments received thus far in our on-going domestic consultations. We note that we will have further opportunity to supplement our views at subsequent scheduled discussions of the General Council.

I. MANDATED NEGOTIATIONS - PARAGRAPH 9(A)(II)

A. AGREEMENT ON AGRICULTURE

Article 20 of the Agreement calls for Members to continue the reform process in agriculture by continuing substantial progressive reductions in support and protection through further broad-based negotiations which ensure that the results address the full range of trade-distorting measures. Members have the benefit of extensive and detailed work as a result of the Analysis and Information Exchange (AIE) process begun at Singapore. It has allowed Members to identify areas of the Agreement requiring improvement, including the existence of significant trade distortions, and initiated the collection of data that will be required by members to make informed negotiating decisions, in addition to the Integrated Data Base (IDB) managed by the Market Access Committee. At the Third Ministerial Conference, Ministers will agree on the scope, modalities and time frames for the negotiations.

Mandate for Further Reform: Members should agree that the overall objective for the negotiations should be to expand market access opportunities by ensuring further deep reductions in support and protection and by strengthening the rules governing trade in agriculture as further articulated below. Commitments in the Round began the liberalization process in agriculture by reducing support and protection while encouraging non-trade distorting approaches for supporting farmers and the rural sector. The current Agreement resulted in disciplines in three main areas: market access, export subsidies, and domestic support. Commitments in these areas establish a baseline of binding commitments from which further reduction commitments should be made, and supplemented by additional disciplines.

- Members should agree that the existing framework provides the basis on which to pursue further reform, and will supplement this framework to ensure that the second stage of reform addresses new challenges facing the agricultural sector.

Expanding Market Access Opportunities:

- Members should agree to pursue an outcome that is ambitious.
- Members should agree that the results will improve and expand market access opportunities by lowering bound tariff rates to eliminate the disparity between applied and bound rates and by simplifying complex tariff regimes (e.g., the use of compound rates).
- Members should ensure that the market access results provide greater certainty and transparency in the operation of tariff regimes.
- Members should agree to establish new disciplines on tariff-rate quota administration.
- Members should agree that further disciplines are needed on the import activities of state trading enterprises; and

- Members should agree to further limit the use of the special agricultural safeguard.

Further Disciplining Export Subsidies:

- Members should agree to pursue an outcome that will result in an elimination of all remaining export subsidies.
- Members should agree to clarify and strengthen rules on measures that can circumvent export subsidy disciplines, such as disciplining activities of state trading enterprises, distortive uses of export taxes and disguised export subsidies (e.g., pricing policies).

Further Disciplines and Reform of Domestic Support:

- Members should agree to set an ambitious target for the reduction of trade-distorting domestic support.
- Members should agree to strengthen the rules so that all production-related support is subject to discipline.
- Recognizing the importance of a sound agricultural sector in all members, Members should agree that the results ensure that the “green box” exemptions continue to sustain the primary objectives of minimizing the link between support and production and allowing members to provide non-distortive support through appropriately-specified policies.

Addressing New Challenges to the Agricultural Sector:

- Members should agree that an important outcome of the reform process will be to address additional measures that unjustifiably distort international trade and to subject them to rules and disciplines, including possibly outside of the Agriculture Agreement.
- Members should agree to pursue additional multilateral approaches for implementing commitments (for example, in the Agreements on the Application of Sanitary and Phytosanitary Measures and on Technical Barriers to Trade) to bring more predictability and discipline to measures affecting agricultural products while protecting health and the environment.
- Members should agree to pursue additional approaches that address market access issues for biotechnology products.

Developing the Modalities for Negotiations: The AIE process has resulted in extensive submissions by Members, and work by the Secretariat to provide information on commitments, performance, and issues of particular importance to developing countries.

- Members should be prepared to consider negotiating modalities, including possible plans for conducting the negotiations, by the 2nd quarter of 1999.
- Members should complete the IDB requirements to ensure that market access negotiations will proceed, as scheduled.

Time frame for Conducting Negotiations: The current Agreement provides for the implementation of commitments with different timetables, and for the expiry of certain exemptions from current rules. An issue Ministers will need to address is the avoidance of a pause in the reform process as the next set of commitments are negotiated.

- Members should establish deadlines for the new commitments to be undertaken, taking into account the expiration of due restraint provisions. Members should establish mid-points to ensure progress continues on schedule, and a means to ensure that there is no pause in the liberalization program.

Food Aid / Security of Food Supplies: Further reform should not adversely affect the ability of developing countries to meet their food import needs.

- Members should agree to take into account the results of the negotiations on a new Food Aid Convention in developing the program of negotiations.

B. GENERAL AGREEMENT ON TRADE IN SERVICES

The Council for Trade in Services (CTS) has five main areas of preparatory work that Members must advance if we are to develop appropriate recommendations for the scope, modalities and time frames for negotiation.

Information exchange: The CTS took up this work in June and, by December, will have completed exchanges of information on 18 sectors.¹ Submissions by Members and by the Secretariat have produced a broad and useful base of information on the nature and importance of trade in services in the particular sectors, the evolution of new or newly-tradable services, the scope of existing commitments, and the issues requiring further attention.

- Members already have identified classification issues as requiring more attention, and the CTS has asked the Committee on Specific Commitments to take account of information developed to date in its classification work.

Assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS, including Article IV:1 (benefits for developing countries): Discussions on this topic will begin at the January CTS meeting, although this assessment already has been proceeding sector by sector during the information exchange.

- Given the important role that services can play in the development of Member economies, the assessment will facilitate the development of an appropriate negotiating scenario that takes into account the benefits for developing countries of services trade liberalization and GATS bindings, consistent with Article IV:1.

¹June: postal and courier services, audiovisual services, construction and engineering services, distribution services; July: legal services, advertising, architecture and engineering, computer services, environmental services; October: health and social services, education, tourism and travel-related services, energy; November: air, rail, road, and sea transport; December: telecommunications, financial services, accounting, "modes" of delivery.

Establishment of negotiating guidelines and procedures, including modalities for the treatment of autonomous liberalization since previous negotiations, and for special treatment for least-developed country Members under Article IV:3:

- This phase of the preparatory process will build on both the information exchange and the assessment. The guidelines and procedures will need to reflect the overall mandate for the negotiations, the results of which should be both liberalizing and comprehensive in scope; that is, the next GATS negotiations should yield broader and deeper commitments, particularly from Members that have not participated fully in past negotiations.

Article VI:4: measures relating to qualification requirements and procedures, technical standards and licensing requirements: Ministers mandated an examination with a view to taking the work as far as possible before the commencement of the next GATS negotiations.

- This work will begin at the November 23-24 meeting of the CTS. During the information exchange, the CTS has developed information on sectors in which such disciplines may be appropriate, as well as on relevant work already undertaken in other fora. Thus, it is timely that the CTS take up this work toward the conclusion of the information exchange.

Improved classification: The Committee on Specific Commitments has attempted to develop improved classification of services, an important basis for enabling Members to schedule clear and commercially-relevant commitments.

- The Committee was instructed by Ministers to make recommendations for improving the technical accuracy and coherence of schedules of specific commitments and lists of exemptions from Article II of the GATS before the start of the next GATS negotiations.

In addition to the preparatory work, Members should undertake other work related to the next GATS negotiations:

Review of MFN exemptions: Not later than five years after entry into force of the WTO Agreement, the CTS must conduct its first review of all MFN exemptions that have been granted for a period of more than five years.

- The CTS should take up this issue early in 1999 so that recommendations may be made.

Review of the Annex on Air Transport Services. At least every five years, the CTS must review developments in the air transport sector and the operation of the Annex on Air Transport Services with a view to considering the possible further application of the GATS to that sector.

- The United States believes the CTS should take up this issue early in 1999. This discussion can build on the November information exchange session on air transport services.

II. BUILT IN AGENDA ISSUES - PARAGRAPH 9(A)(III)

A. AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

The TRIPS Agreement provides for further negotiation and/or review of several provisions of the Agreement, including the issue of biotechnology patents. In addition, the TRIPS Agreement provides for a review in 2000 to examine, inter alia, "relevant new developments which might warrant modification or amendment of the Agreement." In this submission, the United States calls attention to

what we consider to be the most critical issues Members will need to consider in terms of the reviews required by the built-in agenda.

Patentable Subject Matter: Article 27.3(b) allows members to exclude from patentability plants and animals. It also states that the provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

- The TRIPS Council will initiate work on this item in 1999, to consider whether it is desirable to modify the TRIPS Agreement by eliminating the exclusion from patentability of plants and animals and incorporating key provisions of the UPOV agreement regarding plant variety protection.

Dispute settlement: non-violation cases: Article 64.3 requires the Council for TRIPS to examine, during the five years from the date of entry into force of the WTO Agreement, the scope and modalities for the complaints provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to the TRIPS Agreement, and to submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the 5 year moratorium on non-violation cases provided under Article 64.2 shall be made only by consensus.

- The United States believes that the moratorium on non-violation cases should be allowed to expire on schedule, on January 1, 2000.

Implementation Review: Article 71.1 requires the Council for TRIPS to review the implementation of the TRIPS Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65, namely after 1 January 2000.

- The United States had made suggestions regarding implementation in its earlier submission; the review gives additional importance to ensuring effective implementation.

B. AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

The Agreement calls for various reviews of the operation of certain provisions, and several reviews have been or are to be completed prior to the Third Ministerial Conference. In this submission, the United States calls attention to what we consider to be the most critical issue Members will need to consider in terms of the reviews required by the built-in agenda.

Dark Amber and Green Light Rules : Article 31 refers to the operation of Articles 6.1, 8 and 9 of the Agreement, the so-called "dark amber" and "green light" rules. Article 6.1 establishes in certain circumstances rebuttable presumptions of serious prejudice caused by actionable subsidies; Articles 8 and 9 determine the treatment and non-actionable status of certain subsidies provided for specified industrial R&D, regional development or environmental compliance purposes. Article 31 provides that Articles 6.1, 8 and 9 will apply for a period of five years from the entry into force of the WTO and that, not later than 180 days before the end of this period, the Subsidies Committee will review the operation of these provisions "with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period."

- The Council should be informed, at the appropriate time, of the progress of the Subsidies Committee in its deliberations, recognizing that the Committee has invested significant time and attention in the first years of the Agreement to work on formats, procedures and guidelines to clarify and facilitate the use of these provisions.

C. AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES (TRIMS)

Article 9 of the Agreement requires a review of the Agreement not later than five years after the date of entry into force by the Council on Trade in Goods. Its purpose is to consider the operation of the Agreement, propose amendments as appropriate and consider whether the Agreement should be complemented with provisions on investment policy and competition policy. Neither the Committee nor the Council have established any plans or procedures for conducting this review, which is to be conducted before the end of next year.

Issues for the Review: The work of the TRIMs Committee is likely to be influenced by work underway in the Working Groups established at Singapore on Investment and on Competition Policy and the reports to be submitted to the General Council before the end of the year. Nonetheless, the Committee and Council on Trade in Goods should examine additional improvements in the review.

- The Committee and the Council should consider the desirability of broadening the Agreement by expanding the disciplined list of TRIMS to include export performance requirements, technology transfer requirements, and product mandating requirements.

D. TRADE POLICY REVIEW BODY

The Trade Policy Review (TPR) was one of the early agreements concluded in the Uruguay Round, with implementation provided for on a provisional basis pending the conclusion of the negotiations. The Agreement is to be reviewed before the end of 1999, and any improvements should be implemented immediately thereafter. While all Members will agree that the TPR plays an important role in ensuring greater transparency and better understanding of the overall trade regimes of individual WTO Members, it is resource-intensive for both the Secretariat and delegations.

Cooperation with Other International Organizations: As part of overall efforts on coherence and rationalization of resources, greater effort is needed to ensure the WTO Secretariat is coordinating its work on TPRs with other international organizations. (We note that in the case of the least-developed countries, this was an important element of preparations for the High Level Meeting and the roundtables.)

- The TPR provides an excellent, on-going means for the Secretariat to consult and share information with relevant international organizations and UN bodies to maximize resources while covering the widest range of issues.
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