

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

General Council Discussions on Implementation Issues

26 October 1998

Communication from the United States

At the September 1998 WTO General Council meeting, Members agreed to pursue a discussion of the issues identified in paragraph 9 of the May 1998 Ministerial Declaration, beginning with agenda item 9(a)(i): "issues including those brought forward by Members, relating to implementation of existing agreements and decisions." In August 1998, the U.S. Administration published an extensive request for public comments in the Federal Register with respect to preparation for the 1999 Ministerial, drawing attention to the specific issue areas identified in the May 1998 Declaration. The following provides an initial review of implementation issues of concern to the United States or views with respect to issues raised by other Members. We are still receiving and reviewing comments and conducting consultations, but wish to contribute to the discussion that will take place on October 26-27.

The United States agrees with other Members that full and effective implementation of the Agreements concluded in the Uruguay Round must remain a top priority for the WTO as we prepare for the forward agenda that Ministers will consider in November 1999. In the light of experience to date, several points emerge: (1) we can identify areas where affirmative action is needed by national governments to comply with existing agreements and decisions (e.g., enacting domestic legislation), including in some cases where work can be facilitated by respective WTO bodies; (2) some problems related to implementation will require further clarification, including possibly through negotiation; (3) since transition periods for most agreements will be ending by 2000, a more concerted effort by all partners is called for to ensure compliance on schedule; and (4) further attention to technical assistance, in particular setting objectives with recipients, is necessary if such assistance is to fulfill the desired results of facilitating implementation.

The following is an initial and preliminary review of implementation concerns as outlined in the various Agreements. We note that we will have further opportunity to supplement our views and that some issues which others may regard as implementation issues may be addressed in subsequent scheduled discussions of the General Council.

Agriculture

WTO members are generally implementing the commitments under the Uruguay Round Agreement on Agriculture, and the Committee on Agriculture is functioning as an effective mechanism for monitoring implementation and identifying issues of concern. In some cases, Members have successfully used the multilateral setting to find solutions to current problems. However, our experience to date has identified a number of areas for improvement, including several

implementation issues such as those enumerated below that likely require additional clarification and establishment of new disciplines.

Tariff Rate Quota Administration: In the area of market access, we share the concern of others that the lack of specific disciplines developed to implement tariff rate quotas (TRQs) may have stifled market access opportunities in some markets.

- We should ensure that TRQ administration is given a high priority in the upcoming negotiations given its impact on scheduled commitments.

Tariff Bindings: In some instances tariffs are applied at levels below bound rates, including through tariff regimes that appear to be complex, non-transparent and discriminatory.

- We should agree that an important objective in the upcoming negotiations will be to improve and expand market access opportunities by lowering bound tariff rates to eliminate the disparity between applied and bound rates and by ensuring that the market access results provide greater certainty and transparency in the operation of tariff regimes.

Export Subsidies: Experience to date has demonstrated significant difficulties in preventing the circumvention of export subsidy commitments, e.g., the activities of certain state trading enterprises as well as the problems raised regarding the subsidization of component products in relation to existing commitments on further processed products.

- Tighter rules should be elaborated to preclude the circumvention of export subsidy commitments so that there is a fully shared understanding of what is permitted and precluded by commitments on export subsidies.

Notifications: We need to improve the transparency, comprehensiveness and timeliness of existing notification requirements (e.g., more timely annual notifications on subsidy levels, TRQ fill rates and more comprehensive descriptions of domestic support policies).

- We should streamline the reporting requirements in some areas to facilitate timely notifications. We note that this has been an issue in the Committee but without resolution or agreement to move forward. The Council should facilitate progress in this area.

Food Aid / Security of Food Supplies: At the Special Session in September, some delegations raised concerns with respect to food security and the fact that efforts to discipline trade-distorting subsidies could undermine the interests of those countries with serious food security concerns. The United States notes that WTO Members pledged at Marrakesh and Singapore to conclude negotiations on a new Food Aid Convention.

- Discussions are actively underway in another forum to conclude an agreement before the current Food Aid Convention expires at the end of June 1999. The United States attaches importance to completion of this new Convention as part of our overall commitment to full and effective implementation.

Export Credit Guarantees: As was noted by certain delegations at the September Special Session, it has not yet proved possible to reach agreement on disciplines on the provision of export credits and similar arrangements as foreseen in Article 10.2.

- The United States has been active participant in the OECD negotiations and we have submitted a proposal to establish international disciplines on export credit guarantees. We

encourage other participants to submit negotiating proposals so we can intensify the pace of those negotiations.

Agreement on Sanitary and Phytosanitary Measures (SPS)

The United States attaches priority to full and effective implementation of the provisions of the Agreement and looks forward to a comprehensive review of outstanding implementation issues through the Agreement's review in the SPS Committee.

- Delegations should be prepared to discuss this matter further in the context of the next discussions in the General Council on the mandated negotiations and the built-in agenda given the increasing importance of SPS measures to international trade.

Agreement on Technical Barriers to Trade (TBT)

The TBT Committee has been active in monitoring compliance with the Agreement. It just completed its mandated three-year review and conducted a meeting of officials responsible for information exchange and the management of the enquiry points obligated by the Agreement. These discussions identified a number of practical problems important to ensuring effective implementation which should be easily addressed in the short term.

Notification: The Agreement contains many procedural obligations that enhance transparency and the effective operation of the Agreement.

- We suggest that the Committee advise the Council on the status of notifications pursuant to Article 15.2 on the steps Members have taken to establish domestic procedures for compliance.
- The Committee should undertake additional streamlining of the notification process, including through the promotion of electronic information exchange.

Conformity Assessment Procedures: The current Agreement encourages Members to recognize conformity assessment procedures performed by bodies located in Member countries. Negotiation of mutual recognition agreements is only one way to accomplish this result; there are other avenues which are potentially less burdensome, such as relying upon a supplier's declaration of conformity or providing for national treatment under accreditation programs.

- Further information on Members' experience in relying (or not) on a supplier's declaration of conformity, or other approaches to unilateral recognition, will facilitate implementation of the existing Agreement, and determine whether any additional clarification is warranted.

International Standards: A major concern to Members participating in the review is the lack of transparency and discriminatory treatment in international standards development.

- Intensification of the Committee's current work program in this area should result in improvements based on the existing Agreement. There is no reason why such work should be held up pending preparation of the WTO's post-1999 agenda.

Trade in Services

The work on services is proceeding in various ways: from implementation of the Basic Telecommunications Agreement which has been in force for nearly one year, to ratification of the Financial Services Agreement concluded last December, to the active program of work led by the

GATS Council on rules issues and liberalization. The United States attaches high priority to the fullest possible implementation of these two landmark agreements, and the work of the GATS Council.

Work of the GATS Council

Rule Writing: Rule writing (on safeguards, subsidies, and procurement) is work left unfinished from the Uruguay Round. Discussions thus far have shown that there is a wide divergence of views as to whether an Article XIX-type safeguard provision for services is workable. A similar question could be asked with respect to whether the current rules for industrial subsidies in the goods area are adaptable to the services context.

- Members should reach an early conclusion to their deliberations as to whether rules on safeguards and subsidies would be workable.
- A rationalization of the work on procurement, particularly given the Singapore working group on transparency, might be an efficient way to address increasing burdens on resources.

Preparing for the Mandated Negotiations: The GATS Council has a process underway to prepare for the mandated negotiations that will be launched at the 3rd Ministerial Conference. The sectoral information exchange has been extremely positive and, when completed in December 1998, should provide Members with substantial analytical work. The GATS Council will then proceed to an assessment of trade in services with respect to the objectives of the Agreement, including those related to developing countries. At its November meeting, the GATS Council will have its first broad discussion of domestic regulation, in preparation for development of appropriate disciplines to ensure that domestic regulation does not unnecessarily restrict trade. Experience to date has shown that there is a need to enhance working relationships between domestic regulatory authorities and trade negotiators to facilitate progress. Results on these issues with respect to one sector -- accountancy -- have been disappointing.

- The GATS work will enable Members to address a number of concerns raised with respect to the development dimension of the GATS, including the results secured thus far with respect to movement of persons and improved access to distribution channels and information networks.
- We should consider convening seminars involving regulators and trade negotiators to facilitate more effective implementation and better preparation for further negotiations.

Basic Telecommunications Agreement

This Agreement has been in force for nearly one year. Practical steps are needed to address the technical assistance needs in this area. The International Telecommunications Union (ITU) and many Members' telecommunications agencies have been busy responding to countries' increasing requests for assistance in regulatory reform efforts that are both associated and unassociated with the WTO Basic Telecommunications Agreement. The need for technical assistance appears to be widely and deeply felt, in the developing and also the industrialized world, regarding, e.g., the establishment of an independent regulator; the setting of cost-oriented, non-discriminatory interconnection prices; the prevention of anti-competitive practices; and the establishment of transparent government regulations.

- We suggest that the WTO Services Council convene an "Information Session on Telecommunications Services Agreement Technical Assistance Sources and Needs" in the near future. The session's purpose would be to share views on the results of the Agreement

thus far and, in particular, to discuss what technical assistance efforts already have been undertaken and what is needed in the future.

- An “Information Session on Telecommunications Services Agreement Technical Assistance Sources and Needs” would help inform the current deliberations of the GATS Council on whether and, if so, how to finalize a cooperation agreement proposed by the ITU.
- The Information Session also would provide for useful dialogue on the availability and demand for technical assistance in support of regulatory reform, e.g., with respect to the Basic Telecommunications Agreement’s Reference Paper principles.

Financial Services Agreement

To date, a relatively small number of Members have ratified the protocol. The U.S. Administration is in the final stages of necessary domestic consultations and expects to ratify the protocol shortly. Particularly in view of global economic conditions, it is important that all Members take all necessary steps to meet the January 29, 1999, deadline and ensure that their commitments enter into force on schedule, on March 1, 1999.

TRIPS

The priority TRIPS implementation issue over the next year is the preparation by developing country WTO Members for the full implementation of their TRIPS obligations no later than January 1, 2000. While a number of countries have taken steps to begin the process of conforming their laws to the TRIPS Agreement with the deadline in mind, we remain concerned that many Members have yet to inform the Council of the actions that they are taking to bring their respective regimes into compliance.

In this regard, we note that important steps have just been taken with respect to technical cooperation related to the TRIPS agreement. Specifically, the WTO and WIPO recently announced a new joint initiative to provide enhanced technical assistance to those Members that request assistance as they prepare to fully implement their obligations by January 1, 2000. We understand that there is adequate funding and staff in both organizations to accomplish this task. The United States expects countries to take full advantage of this program, where necessary, to ensure that their efforts to come into compliance with the agreement are as successful as possible. We are concerned that few countries have yet to take advantage of this assistance, and we will not be sympathetic to claims that implementation cannot be met because of a lack of assistance.

- To ensure that this opportunity for technical assistance is not missed by individual members, the United States suggests that the Secretariat, working with the TRIPS Council, develop a preliminary assessment of progress by developing countries made to date toward implementation of their TRIPS agreement obligations.

Agreement on Customs Valuation

More than 50 developing countries are scheduled to implement the Agreement by the end of 2000, if not over the next year. The challenge of technical assistance directed toward implementation is often a matter beyond ad hoc teaching seminars and involves longer term “infrastructure” development requiring follow-through: i.e., changes in laws and regulations, as well as what often amounts to a fundamental restructuring of the system of customs administration. A second issue of increasing concern that affects implementation of this agreement is the increased use by some Members of a questionable valuation methodology, sometimes combined with a preshipment

inspection regime, as a substitute for more selective trade remedies, or to otherwise raise broad market access barriers in response to fears about increased import penetration.

- The Committee is currently attempting to promote “individualized” technical assistance geared toward implementation needs and performance.
- An immediate priority should be to translate the information provided by individual developing countries on their implementation needs, and by the Secretariat on past multilateral, regional and bilateral technical assistance activities, into a more active assessment of where countries are with respect to implementation and what technical assistance resources are available to focus on their specific needs. This process should be geared toward ensuring that no WTO Member that is currently taking advantage of the transition period will not be able to implement on schedule because its needs were ignored.
- Members should be prepared to consider appropriate ways to address the misuse of valuation methodologies short of dispute settlement procedures, given the important relationship between valuation and market access.

Agreement on Rules of Origin

Harmonization Negotiations: The United States shares the concerns raised by others that completion of the work program to harmonize nonpreferential rules of origin was not achieved within the three years set forth in the Agreement. Two main problems emerged with respect to progress. First, the complexity and amount of technical work was far greater than originally anticipated. As deliberations began by the WTO Committee on some of the product-specific issues, it soon became clear that such work could not be conducted properly until all of the technical work was completed by the World Customs Organization. Second, there is no common understanding among Members as to the implications of the future discipline to “equally apply” the harmonized rules of origin for “all purposes.”

- The Council should request from the WCO a calendar of future WCO technical work and determine whether any additional steps are needed to enhance prospects for progress on the technical work.
- The Council may have to consider, pending further discussions in the Committee, whether the divergent views on the scope of application of the to-be-completed harmonization agreement can be resolved by further consultations with other WTO Committees or will require further negotiation.

Procedural Obligations of the Agreement: Often overlooked because of the focus on the harmonization effort are the Agreement’s important procedural disciplines designed to capture “best customs practices” (e.g., within 150 days of a request, Members must provide to private traders binding assessments of origin they would accord to a particular good) and provide transparency to traders. Early results of a Secretariat survey indicate a potentially significant lack of compliance with these obligations, including among developed country Members.

- Urgent and immediate attention to this area is needed to renew confidence as the broader work on the harmonization work program proceeds.

Agreement on Preshipment Inspection

For the past two years a working party has examined the operation of this agreement, which presents the unusual situation whereby Members' compliance with the Agreement's obligations are contingent on the behavior of private entities (i.e., preshipment inspection companies). The Agreement did not provide for a Committee, and there is likely to be little interest in the creation of another Committee. However, there appears to be broad agreement within the Working Party that the absence of any regular monitoring by a WTO body has been unacceptable. Some Members have taken the view that this should be a responsibility for the Council on Trade in Goods, while others have suggested either the Committee on Market Access or Committee on Customs Valuation should undertake such work. Resolution of this issue may be related to whatever emerges from the ongoing CTG efforts on trade facilitation.

- The Council needs to provide some direction regarding regular monitoring of the Agreement, recognizing that many Members want to avoid the establishment of another free-standing WTO Committee.

Market Access Committee

Loose Leaf Work Program: The ongoing loose leaf exercise will consolidate into a single document all Uruguay Round (and earlier) tariff concessions, 1996 updates to the Harmonized System tariff nomenclature and bindings, and any other modifications to the WTO schedule (e.g., participation in the Information Technology Agreement (ITA)). These consolidated schedules will improve the transparency of existing WTO tariff obligations by eliminating the need to look in several documents to determine a tariff binding in current HS nomenclature, as is the current situation. The loose leaf schedule will be the basis for conducting future tariff negotiations in the WTO, such as the mandated negotiations on agriculture. A key ingredient in the loose leaf work program is how to best organize the resources available to the Secretariat and member countries to facilitate the timely preparation of the updated schedules.

Integrated Data Base: Considerable effort has been made in the past year to simplify the reporting formats and software so that all Members can comply more readily with the mandatory reporting requirements established by the General Council in July 1997. The simplified data base is known as the PC-IDB (or PC- Integrated Data Base). The Secretariat also is making software available to facilitate the preparation of the data electronically. Thus far, only a limited number of countries have complied. Further action is needed to facilitate the timely presentation of this information. The tariff data are needed to ensure that Uruguay Round obligations are in fact being met. The trade data also will be needed to develop a "base" to determine principal and substantial suppliers for future tariff negotiations. The Secretariat also is making software available to facilitate the preparation of the data electronically.

- The Committee needs to develop, on an urgent basis, procedures to assist Members in preparing an updated version of their respective tariff bindings so that all WTO tariff obligations are in a single, electronic document (the so-called "loose leaf" schedules).
- Every Member needs to fulfill its existing obligation to report annual trade and tariff data to the WTO.

Trade-Related Investment Measures (TRIMs)

Measures maintained or instituted by WTO Members with respect to investment should be consistent with those Members obligations under the TRIMs Agreement. We are becoming increasingly concerned that many countries which have notified TRIMs to the TRIMs Committee

have not provided information on the steps that they are taking to phase out such TRIMs by the agreed deadline of January 1, 2000. To date, no country has shared information with respect to its domestic plans or processes to remove TRIMs, notwithstanding repeated requests by the United States, supported by other countries and the Chairman of the Committee. The transition provided in the Agreement was part of an overall balance in the Uruguay Round negotiations, which we know that all governments intend to respect fully.

- In order that Members might be assured that the obligations of the TRIMs Agreement will be fully respected in a timely fashion, all Members which have notified TRIMs to the Committee should provide information, before the end of April 1999, on the steps that they are taking to phase out existing TRIMs by the January 1, 2000 deadline.

Subsidies and Countervailing Measures

The SCM Committee has made reasonably good progress in implementing through clarification and elaboration those provisions where further work was either explicitly called for by the terms of the Agreement or was deemed appropriate by the Members. More specifically, the Committee has agreed upon formats for the notification of subsidies under a variety of Agreement provisions; the Informal Group of Experts completed work on a number of recommendations concerning the calculation of subsidies; and the Committee established a Permanent Group of Experts, as mandated by Article 24 of the SCM Agreement (even if it has not been possible to finalize agreement on rules of procedure for this body).

An important implementation issue is adherence by developing countries, and countries in transition from centrally planned to market economies, to requirements to phase out or eliminate certain otherwise-prohibited subsidies by a date certain. The drafters of the Agreement did not provide for tailored or ongoing notification requirements with respect to these provisions, thereby making it difficult to determine the quality of compliance and reducing the incentive to do away with such measures in an incremental and orderly fashion. The United States and certain other Members have attempted to integrate questions about this into their review of general subsidy notifications made under Article 25 of the Agreement, but the information supplied has been incomplete.

Finally, in regard to Article 25 notifications, the record is akin to the half-full, half-empty glass metaphor. In sum, the track record of subsidy notifications is much improved over the pre-WTO record, but risks slipping if shortcomings aren't addressed. (Already, delays in the submission of notifications threaten to backlog and complicate the review process.)

- With respect to the situation where developing countries and countries in transition from centrally planned to market economies are subject to requirements to phase out or eliminate certain otherwise-prohibited subsidies by a date certain, they should inform the Committee of their intentions sufficiently ahead of the deadline to provide other Members with an assurance that their obligations will be met in a timely fashion.
- On notifications, the United States and some other Members have suggested that implementation could be improved by modifying the notification/review process such that updating notifications are eliminated and full notifications are made every other year, permitting a regular cycle in which subsidies are notified in the first year and reviewed in the second, etc.

Agreement on Textiles and Clothing (ATC)

Council debate thus far suggests that there are strong differences of view with respect to implementation. Developing countries have registered complaints that while the implementation has

been entirely consistent with the rules, it has not resulted in a substantial increase in commercial opportunities. The United States reaffirms that U.S. implementation of the ATC is in accord with its terms and the Agreement has, in fact, led to improved access to the U.S. market. In addition, Article 7 of the ATC commits all Members to "achieve improved access to markets for textile and clothing products." Through a combination of high tariffs and non-tariff measures, some of which have no justification, improvements in many cases have not been made. While the ATC expires in 2004, when quota regimes are no longer permitted, improved market access for textiles will not have been undertaken by all Members, creating an unbalanced situation for those who have fully complied with the textile integration program and the phase out of the MFA. Finally, the United States underscores that provisions of Article 5 designed to deal with illegal transshipments have not been rigorously followed.

- The ongoing problem of illegal transshipments should be addressed through exporting Members' more rigorous implementation of the provisions of Article 5 of the ATC.
- As appropriate, Members should take steps to ensure that an unbalanced market access situation is not created in 2004 for those who have fully complied with the textile integration program.

CONCLUSION

The above review is intended to stimulate debate about how best to move forward on the WTO's agenda as we prepare for the 1999 WTO Ministerial. Our review was not intended to be exhaustive, but rather to highlight for other Members' consideration four broad themes which have emerged from our preliminary analysis of implementation issues. In the view of the United States, this review illustrates the need for ongoing attention, vigilance and creativity in meeting existing obligations as we look toward the WTO's future. At the same time, 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 if that is the consensus of Members. The four broad themes which we have identified preliminarily can be summarized as follows.

- First, we have identified areas where more attention by Member governments is needed to comply with existing agreements and decisions (e.g., enacting domestic legislation) and, in some cases, this work can be facilitated by respective WTO bodies.
 - Second, we have identified problems related to implementation that require further clarification of provisions in Agreements and in practice. Moreover, our review finds that we should consider further whether in some cases the transparency or notification provisions could be revised to be more responsive to the needs and interests of governments and stakeholders while being less of an administrative burden to those providing the information.
 - Third, since transition periods for most agreements will be ending by 2000, a more concerted effort by all partners is needed to ensure compliance on schedule.
 - Finally, we have identified a number of areas where further technical assistance is required and available, but Member governments do not appear to be taking full advantage of such resources to fulfill the desired results of facilitating implementation.
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