

APPROACH TO FACILITATE DELIBERATIONS ON THE AGREEMENT-SPECIFIC S&D PROPOSALS

Communication from the United States

The following communication, dated 29 January 2003, has been received from the above delegation.

I. INTRODUCTION

1. In earlier submissions, the United States has contributed to the work of the Committee on Trade and Development (CTD) and the Special and Differential (S&D) treatment review currently underway. This submission focuses on our work on the agreement-specific proposals under discussion with the aim of facilitating our deliberations. The United States joins other Members in expressing its gratitude for the efforts of Chairman, Ambassador Ransford Smith (Jamaica) in directing the work-to-date.

2. The United States recognizes the importance of the issues raised to Members, particularly to developing and least-developed Members. As discussions have shown, some of the issues raised are complex and have long-term consequences for the operation of the multilateral trading system.

3. We take as a starting point the very positive environment in which our deliberations have taken place. Issues have been raised and discussed with the following results thus far. On some issues we have seen a convergence of views, in other areas we have seen that there is a relationship between the issues raised and the implementation work undertaken at Doha. We have also noted that some issues are closely aligned with issues raised in the Doha negotiations and still other issues are those where, despite good will and constructive spirit, a convergence will not be possible. The United States is interested in a positive result to this element of our work on S&D, and is sensitive to concerns that delegations are able to manage their resources carefully in terms of participating in the broader agenda before us. Accordingly, we have grouped these issues into three broad headings:

- (a) Issues for focused dialogue and clarification where a near-term outcome may be possible based on the Chairman's text;
- (b) Issues identified as concerns, but more appropriately addressed in the on-going negotiations, special sessions, or committees agreed as part of the Doha Development Agenda; and
- (c) Issues and concerns identified on which, despite best efforts, consensus remains elusive and is not likely.

II. ISSUES FOR FOCUSED DIALOGUE AND CLARIFICATION WHERE NEAR-TERM OUTCOME MAY BE POSSIBLE BASED ON THE CHAIRMAN'S TEXT

4. Like others, we appreciate the work by Chairman Smith to find areas of possible consensus and we look forward to working with the Chairman in reaching an understanding on a set of issues. The Chairman's proposals in these areas provide the basis for further dialogue, but do not prejudice the final outcome of this dialogue. We note that delegations have made a particular effort to address proposals from the poorest and least-developed countries in this effort, and see this as an appropriate emphasis at this time. Similarly, we share the view of others that issues that have been raised and addressed, including in the implementation exercise, need not burden the process again.

5. The WTO membership shares the goal of fostering economic development of all Members. Committee discussions are most productive when considering avenues that encourage the best use of S&D in support of economic development. The December process yielded agreement on four items. This consensus suggests lessons for the Committee on achieving additional progress. We note for instance, the agreed items in TRIPs and Services articulate pragmatic steps that Members and the WTO can accommodate to facilitate the flow of information and to provide more effective technical assistance. Opportunities for progress are enhanced if recommendations take into account a Member's level of development, in particular, least-developed Members.

6. In reviewing a number of submissions by Members, our delegation came across proposals in the areas of waivers, pre-shipment inspection, rules of origin, and notifications where the intended effects and implications were not immediately apparent. Based on the Chair's list, the Committee should discuss and clarify these proposals further. (See Annex I for an indicative list of Agreements, Understandings, Decisions, and relevant provisions.)

III. ISSUES IDENTIFIED AS CONCERNS, BUT MORE APPROPRIATELY ADDRESSED IN THE ON-GOING NEGOTIATIONS, SPECIAL SESSIONS, OR COMMITTEES AGREED AS PART OF DOHA DEVELOPMENT AGENDA

7. The United States holds the view that a number of S&D proposals, and consideration of their implications, require the involvement of other Doha Development Agenda (DDA) bodies. We believe collaboration with other bodies is crucial for a number of reasons. First, given that a number of S&D proposals are tied directly to topics under discussion in other areas of the DDA, grouping topics within a single body is simply efficient management of our resources. Second, practically speaking the CTD is not best suited to provide thorough consideration of the legal, economic, and technical implications of these proposals. Finally, a number of proposals impact the carefully negotiated balance of the existing Agreement. Thoughtful consideration of a proposal's implications must take place within the context of the balance of rights and obligations under specific Agreements. For example, there are several proposals that suggest a major change to the operation of the Agreement on Subsidies and Countervailing Measures (SCM). The United States has already signaled its willingness to discuss such issues of importance to developing-country Members in the context of these negotiations. We believe that this is a more efficient and meaningful way to proceed.

8. The United States has identified approximately 28 proposals that are more appropriately addressed in the Special Session on Agriculture, Dispute Settlement, or Services; or, by the Negotiating Group on Rules or Non-Agricultural Market Access. In addition, there are about 16 other S&D proposals directly related to the work program laid out in the Ministerial Declaration and Implementation Decision. Such proposals should be considered within those work programs, for example: "Antidumping Agreement" Article 15; negotiating rights of small and medium-sized exporting Members; and the

Decision on Net-Food-Importing Developing Countries. Proposals could be handled within the various DDA bodies in a manner similar to the implementation issues. (See Annex II for an indicative list of Agreements, Understandings, Decisions, relevant provisions, and recommended involvement of other DDA bodies.)

9. Involving other Doha negotiating bodies and special sessions should not be viewed as a step that would alter or diminish the CTD's mandate in either paragraph 44 of the Doha Ministerial Declaration or paragraph 12 of the Implementation Decision. The United States and other Members recognize the crucial role the CTD must play in monitoring S&D in negotiations and more broadly discussing the developmental aspects as outlined in paragraph 51 of the Doha Declaration. In our view, Ministers intended for the CTD to collaborate with other bodies to discharge the paragraph 44 mandate. The CTD should offer its oversight of the S&D issue and continue to provide its development perspective across Agreements.

IV. ISSUES AND CONCERNS IDENTIFIED THAT, DESPITE BEST EFFORTS, CONSENSUS IS NOT LIKELY AND REMAINS ELUSIVE.

10. *Proposals for permanent exemptions or automatic extensions:* In our June 2002 submission, the United States outlined the benefits of an open, rules-based trade regime in fostering growth and development. We are guided by the conviction that the greatest developmental benefit that S&D can offer is through a gradual process leading to increased participation in the WTO system. S&D proposals which call for automatic extension of transitions and permanent exemptions to WTO commitments will not, in our view, foster development. Adoption of such an approach will push the WTO toward a permanent system of dual commitments, which is neither sustainable nor desirable.

11. We encourage Members to consider the underlying concerns and creative approaches other than a permanent exemption from a particular WTO commitment. We offer to consider well-motivated requests by Members that take level of development into account on the basis of objective criteria applied to individual circumstances.

12. *Proposals requiring mandatory technical assistance:* While the United States is committed to providing technical assistance, suggestions that provision of assistance become mandatory are simply not acceptable or appropriate. That said, we have found the discussion-to-date useful in helping to shape our bilateral contributions for assistance, as well as in the contributions to the WTO trust fund. The increases that have been realized in assistance, along with the more intensive cooperation of other international institutions, are already yielding positive results.

13. *Proposals for longer time frames for implementing measures to protect health and safety:* The United States supports all Members' right to use sanitary and phytosanitary measures necessary to protect public health. Proposals to mandate longer-implementation periods for developing-country Members to comply with SPS measures would seriously limit a Member's (including developing Members) ability to protect human, animal, and plant life particularly in situations that call for urgent action. Other means to address developing member's concerns must be considered rather than lowering importing Member's health standards.

(See Annex III for an indicative list of Agreements, Understandings, Decisions, and relevant provisions.)

ANNEX I

Issues for focused dialogue and clarification where near-term outcome
may be possible based on the Chairman's text.

WTO Agreement, Understanding, or Decision and relevant - Article(s)
<p>Agreement on PSI - Article 3.3</p> <p>Agreement on Rules of Origin</p> <p>Annex of Telecom 6(e)</p> <p>Decision in Favor of LDCs</p> <p>Dispute Settlement Understanding - Article 8.10</p> <p>Enabling Clause</p> <p>GATT - Article XVIII</p> <p>Rules on Notification</p> <p>Services Agreement (GATS) - Article IV.1 & 3</p> <p>Services Agreement (GATS) - Article XXV</p> <p>TRIPS Agreement - - Article 67</p> <p>Understanding on BOP</p> <p>Understanding on GATT - Article XXIV</p> <p>Understanding On Waivers of Obligation</p>

ANNEX II

Issues identified as concerns, but more appropriately addressed in the on-going negotiations, Special Sessions, or Committees agreed as part of Doha Development Agenda.

* WTO Agreement, Understanding, or Decision & relevant Article(s)	Related DDA Group, Session, or Committee
<i><u>Doha Negotiating Groups and Special Sessions</u></i>	
* Services Agreement (GATS) - Article IV.2	CTS Special Session
* Dispute Settlement Understanding - Article 4.10	DSB Special Session
* Dispute Settlement Understanding - Article 12.10	"
* Dispute Settlement Understanding - Article 12.11	"
* Dispute Settlement Understanding - Article 21.2, 21.7, and 21.8	"
Dispute Settlement Understanding - Article 27.2	"
GATT - Article XXXVII	Negotiating Group on Market Access
* Enabling Clause	"
* Enabling Clause Para 1 and 2(d)	"
* Enabling Clause Para 3(d)	"
* SCM Agreement - Article 27.1	Negotiating Group on Rules
* SCM Agreement - Article 27.3	"
* SCM Agreement - Article 27.4	"
* SCM Agreement - Article 27.8	"
* SCM Agreement - Article 27.9	"
* SCM Agreement - Article 27.13	"
* SCM Agreement - Article 27.15	"
* Services Agreement (GATS) - Article V: 3	"
Antidumping Agreement - Article 15	"
* Agriculture Agreement - Article 6.2	Special Session on Agriculture
* Agriculture Agreement - Article 15.1	"
* Agriculture Agreement - Article 15.2	"
* Agriculture Agreement - Article 15.2	"
<i><u>Implementation-Related Issues</u></i>	
Decision on LDC & Net Food-Importing Developing Countries	Agriculture Committee
GATT Understanding on - Article XXVIII	Market Access Committee
Agriculture Agreement - Article 14	SPS Committee
GATT - Article XXXVI	Monitoring Mechanism
GATT - Article XXXVIII	"
Decision in Favor of LDCs Para.	"
Enabling Clause	"
Safeguards Agreement - Article 9.1-2	Safeguards Committee
* TRIMS Agreement Whole	TRIMs Committee
* TRIMS Agreement - Article 3	"
* TRIMS Agreement - Article 4	"
* TRIMS Agreement - Article 5.3	"
Agreement on Textiles and Clothing	Council for Trade in Goods
TRIPS Agreement - Articles 7, 8, 66.2	TRIPS Council

Note: Some Agreements or Decisions may appear under more than one DDA group depending the focus of the individual proposal.

* - Original proposal requests an automatic or permanent exemption from a WTO discipline.

ANNEX III

Issues and concerns identified that, despite best efforts, consensus is not likely and remains elusive

WTO Agreement, Understanding, or Decision and relevant Article(s)
<p><u><i>Automatic or permanent exceptions to WTO disciplines</i></u></p> <p>GATT Understanding on - Article II:1(b) GATT - Article XVIII:B Understanding on GATT - Article XVII Agreement on the Application of SPS - Article 10.3 Customs Valuation - Article 20.1-2 Agreement on Import Licensing - Article 1.2 Agreement on Import Licensing - Article 3.5(a) Agreement on Import Licensing - Article 3.5 (j) TRIPS Agreement - Article 66.1 TRIPS Agreement - Article 65, 66.1, 70.8, 79.9</p> <p><u><i>Mandatory technical assistance</i></u></p> <p>Customs Valuation - Article 20.3 Agreement on the Application of SPS - Article 9.2 Agreement on the Application of SPS - Article 10.1 Agreement on the Application of SPS - Article 10.4 TBT Agreement - Articles 11 and 12 TBT Agreement - Article 12.3</p> <p><u><i>Implications for human health</i></u></p> <p>Agreement on the Application of SPS - Article 10.2</p>