

# WORLD TRADE ORGANIZATION

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Negotiating Group on Market Access

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## MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

### Proposal on modalities for addressing Non-Tariff Barriers (NTBs)

*Communication from the United States*

#### Addendum

The following communication, dated 21 March 2003, has been received from the Permanent Mission of the United States.

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The United States is pleased to submit the following proposal on negotiating modalities for non-tariff barriers. This proposal builds on the "indicative list" we tabled in January 2003 and which was circulated as part of document TN/MA/W/25.

#### Introduction: NTB<sup>1</sup> Negotiations Must Be An Integral Part of NAMA Negotiations

It is critical that WTO Members develop appropriate, transparent methods to negotiate the reduction or elimination of non-tariff barriers as we proceed with the overall negotiations on non-agricultural market access. Members can all agree that work on this front is vital if we are to negotiate meaningful improvements in market access and overall liberalization as part of the current negotiations.

We should not underestimate the challenge that lies before us. The United States agrees with those members who have emphasized the need for devising a manageable process that delivers results. Members have already identified a variety of so-called non-tariff barriers in submissions to this negotiating group. A review of submissions suggests that we will need a variety of negotiating methods to effectively address many of these barriers.

Members also need to think about how the results of negotiations on non-tariff barriers should be recorded. We must develop appropriate ways to capture the results of negotiations and to record commitments.

This paper lays out the initial views of the United States on these and related topics. We are of

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<sup>1</sup> The views expressed in this paper are without prejudice to the issue of an agreed definition of NTBs. Many of the submissions presented thus far identify problems which are not traditional "NTBs" in the WTO sense. We note that many submissions from Members and from industry concerning market access barriers may represent commercial obstacles but do not necessarily constitute non-tariff barriers capable of resolution within the Doha negotiating context or may constitute legitimate measures outside the scope of the Negotiating Group on Market Access.

course open to suggestions from other Members, and in fact have found material put forward by Canada, New Zealand, and Trinidad and Tobago, among others, to be helpful in developing our own thoughts. Ultimately, Members will need to balance the need to be creative in terms of devising appropriate modalities to address non-tariff barriers with the need to be pragmatic and efficient in negotiating the reduction or elimination of those barriers.

### NTBs and the Doha Mandate

The Doha Mandate makes clear that negotiations to reduce or, as appropriate, eliminate tariffs shall also aim to reduce or eliminate non-tariff barriers. The view of the United States is that Members must implement this clear and unequivocal direction from Ministers without getting caught up in an exercise that involves only listing and categorizing non-tariff barriers. The focus must be on developing practical and effective approaches that actually result in the reduction or elimination of many of these barriers and enhanced trading opportunities for all Members. This may entail, as we discuss later in this submission, working closely with other negotiating groups while respecting the parameters set out in the Doha Declaration.

### A variety of negotiating modalities will be needed to effectively reduce and eliminate NTBs

As envisioned in our February 2003 indicative list of non-tariff barriers, WTO Members will need to rely on a variety of negotiating modalities in order to adequately address NTBs. The United States' thinking in this regard follows ideas similar to those laid out by New Zealand in its February 17, 2003 submission to the Negotiating Group (TN/MA/W/4/Add.1).

#### **1. NTBs which relate to existing rules** (e.g. Import Licensing Agreement, Rules of Origin, Customs Valuation, TBT Agreement, SPS Agreement)

Many of the non-tariff barriers identified by Members in their NTB notifications to Chairman Girard may fall under the purview of existing WTO Agreements, and in fact may have been under discussion in Committees for some time. Solving these types of problems need not be deferred until the end of the Doha negotiations. NTBs which relate to existing rules may or may not be consistent with WTO obligations. As others have indicated, only the dispute settlement system can determine if the NTBs that are arguably covered by existing agreements are WTO legal. In addition, there is no mandate to reopen existing agreements.

Consequently, Members may wish to raise these barriers in the appropriate existing WTO Committee, where it may be possible to address practical problems involving the administration of agreements through dialogue, best practices, and sharing positive experiences, thereby enhancing the interaction between existing agreements and real market access. Committees have made use of a variety of tools to resolve issues and can decide on the appropriate way to address the NTBs raised by Members. To facilitate transparency in the negotiations, Members choosing to highlight NTB issues in existing WTO Committees may wish to inform the NGMA that they have done so.

Specific bilateral issues relating to existing WTO disciplines might be raised by Members in the NGMA to pursue through a request/offer procedure. The United States also suggests that Members consider the possibility of a new approach, in which a core group of countries would make positive commitments in a particular area – essentially, a plurilateral NTB agreement. For example, in a particular situation or for a specific set of products, a group of Members would agree to implement specific international standards, which would then be applied on an MFN basis.

#### **2. NTBs which relate to other areas of the Doha Declaration** (e.g. Trade Facilitation,

## Transparency in Government Procurement, and Services)

A significant number of NTBs might most appropriately fall under the purview of other areas already covered by the Doha mandate of the Doha Declaration, including Transparency in Government Procurement and especially Trade Facilitation. The United States also notes that Members' notifications to Chairman Girard included non-tariff barriers that related to the distribution of goods, which relates in large measure to services.

The modalities adopted by the Negotiating Group on Market Access should recognize that Members may wish to address such NTBs in the context of negotiations in these other areas. Appropriate mechanisms to ensure that the NGMA is fully informed of the developments in other committees or negotiating groups concerning such NTBs should be considered. In addition, this area may offer another opportunity for new positive commitments as described in the preceding section.

### **3. NTBs which relate to the work of the Negotiating Group on Market Access, and that might be dealt with either horizontally (across all industries) or vertically (with regard to a single industry)**

The NGMA may have an opportunity to promote a positive approach to enhance the trade opportunities for all Members by examining the possibility for new commitments that effectively deal with non-tariff barriers horizontally or vertically. WTO Members have some degree of experience in negotiating horizontal agreements, such as the Customs Valuation Agreement and the Agreement on Import Licensing Procedures.

WTO Members have less experience in the WTO with vertical NTB negotiations, although we note the Information Technology Agreement NTB work. In addition, some Members have participated in similar work of this type in various regional fora. For example, the APEC Chemical Dialogue, an industry/government partnership that works to facilitate trade and enhance the competitiveness of the chemical industry in the Asia-Pacific region, includes a focus on NTBs as part of its work. Also, both the APEC Automotive Dialogue and the World Forum for Harmonization of Vehicle Regulations have worked toward the reduction of NTBs in the automotive sector.

We note that New Zealand has made suggestions regarding forest products and fish as possible sectors for consideration in this regard. Our own thinking in response to comments from industry and WTO Members indicates that possible candidates for vertical focus in terms of NTB reduction/elimination also may include automotive products and textiles and apparel. We look forward to other Members' input for possible inclusion in this type of discussion.

### **4. NTBs which might best be addressed bilaterally or plurilaterally through a request/offer procedure, either in the Negotiating Group on Market Access or elsewhere**

Addressing some product-specific NTBs bilaterally or with a core group of countries "plurilaterally" through a request/offer procedure, either in the Negotiating Group on Market Access or elsewhere in the WTO could act as a residual method of negotiating to take up issues that do not fit neatly into the various multilateral methods outlined above.

In addition, as indicated in previous sections, the United States believes a significant contribution to an ambitious NTB result can be achieved through the negotiation of positive commitments on a multi-country or "plurilateral" or even wider basis. Such agreements might be particularly useful in

advancing vertical NTB negotiations, and could address issues relating to work in the NGMA, in existing WTO Committees, or in other areas of the Doha Declaration. For example, as indicated previously, in a particular situation or for a specific set of products, a group of Members would agree to implement specific international standards on an MFN basis. We note that several other Members have made suggestions along similar lines. We encourage Members to suggest potential positive agreements that would contribute to an ambitious market access result. Our initial thinking is that, even if the suggested agreements relate to issues not strictly under the purview of the NGMA, it may still be possible and desirable to negotiate them in the NGMA, with assistance from experts in existing groups, as appropriate.

### **Other issues**

The United States also wishes to draw attention to several other issues that are relevant to the development of modalities for the NTB negotiations:

#### The Role of Intergovernmental Bodies

Canada has suggested that the World Customs Organization might be helpful in resolving non-tariff barriers rooted in tariff classification issues. We think that Canada's suggestion is worthwhile and that this concept merits further consideration by Members. We suggest that Members might also consider at the appropriate time later in the negotiations whether other intergovernmental bodies might be venues where progress could be made in addressing NTBs. We are not suggesting that negotiations properly conducted in the WTO take place elsewhere. Rather, we think that Members ought to consider what role other intergovernmental bodies might have in addressing problems that are related to market access concerns. We look forward to the views of other members on this issue.

#### Capturing the Results of the Negotiations

The United States believes that, as a part of the negotiating modalities, Members must agree on a means of capturing the results of negotiations on non-tariff barriers. There are a variety of ways to do this, and we welcome other Members' thoughts. We note that the Uruguay Round goods schedules provide in Part III a section for recording additional commitments, and that services commitments are recorded in an additional column to the services schedules. We might also consider using headnotes or footnotes to schedules in order to memorialize commitments. Ultimately, we must ensure that commitments are recorded in an open and transparent manner and done on an MFN basis.

#### The Process for Undertaking Future Work

Members must keep in mind the link between liberalization in tariff and non-tariff barriers as we proceed with work in this negotiating group. Negotiating modalities for the non-agricultural market access talks cannot be considered complete until we have reached a consensus on how to handle both aspects of the negotiations.

While the most efficient way forward may not be clear until we have agreed on modalities, we believe that we can identify some important steps that should be taken early in the negotiating process. These steps are an outgrowth of our modalities proposal. Members would need a process for identifying NTBs that they believe should be considered for a vertical approach, and initiate work early in the process to begin trying to build consensus for their specific proposals. The same holds true for NTBs which Members propose should be handled on a horizontal basis. Informal or formal mechanisms could be considered with regard to monitoring progress on NTBs that might be raised by Members in the context

of other negotiating groups or existing committees. Additionally, we will need to establish appropriate mechanisms for pursuing NTB reduction and elimination on a bilateral or plurilateral basis. In each case, appropriate measures to ensure transparency will need to be included.

Once modalities are agreed, Members should set firm dates for accomplishing these tasks, so there is progress concurrent with tariffs. Among those deadlines should be a date certain for Members to indicate more precisely those NTBs they wish to address in these negotiations.

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