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## NATIONAL FOREIGN TRADE COUNCIL POSITION AND RECOMMENDATIONS THE DOHA DEVELOPMENT AGENDA

### I. INTRODUCTION

The National Foreign Trade Council (NFTC) believes the Doha Development Agenda (the Doha Agenda) of new WTO negotiations presents an enormous opportunity to revitalize and strengthen the global trading system. The Doha Agenda offers the chance to raise living standards and health around the world by creating a more prosperous global economy that brings widespread benefits through increased economic growth. All WTO Members should seize this important opportunity to move the Doha Agenda forward in a manner that will ensure that the global rules-based trading system continues to serve as a powerful engine of global economic engagement and growth.

***NFTC calls upon WTO Members to set bold objectives in response to the twin challenges of globalization and increased regionalism.***

Above all, the NFTC calls upon WTO Members to boldly address two systemic challenges facing the global trading system -- the proliferation of bilateral and regional trading agreements and the rapid pace of globalization. In rising to these challenges, the NFTC urges the United States and other WTO Members to set two overriding objectives for the Doha Agenda – advancing meaningful trade liberalization across all sectors and integrating developing countries as full and self-interested participants in the trading system.

***A failure to embrace a bold vision for the Doha Agenda could make the WTO increasingly irrelevant.***

The WTO is at a critical juncture and turning point. It has been almost sixteen years since the last GATT/WTO round of trade talks – the Uruguay Round – was launched. Failure to embrace a bold vision for the ultimate outcome of the Doha Agenda, and conclude it within the three-year deadline set in the Doha Ministerial Declaration, could place the WTO at risk of becoming irrelevant to the realities of the global marketplace as an institution and as a force for trade liberalization. To ensure the WTO meets the three-year deadline set for the Doha Agenda, it is essential that built-in deadlines for progress be met and that the WTO's Fifth Ministerial Conference next year in Mexico demonstrate in concrete terms the forward movement on all key issues in the negotiation.

### A. THE DOHA AGENDA: RISING TO THE CHALLENGE OF REGIONALISM

Currently, there are more than 150 bilateral and regional trade agreements (RTAs) in place which have established separate trade and tariff rules among the various parties to the agreements. While these

agreements can be building blocks to broader trade liberalization, they are also creating more complex and costly trade regimes. For example, RTAs have led to a growing number of different customs rules of origin, tariff schedules, regulatory standards and other rules, which are increasingly costly and burdensome to administer, particularly for developing countries and small businesses. Many of these agreements will create tariff-free trade throughout important regions of the world, while leaving high tariffs and other barriers in place in other regions.

***The growth in regionalism may leave many poor countries behind.***

The growth in regionalism may weaken support for greater multilateral trade liberalization and rules-based trade, because vested interests in some of the participating economies may prefer to freeze in place the benefits they gain from more limited and exclusionary preferential trading arrangements. Many developing countries are being left outside of large free trade arrangements, either by choice or by accidents of geography.

For the WTO to continue to serve as the foundation of the global trading system, the NFTC urges WTO Members to build the momentum for bilateral and regional free trade into strong support for multilateral free trade by embracing a Doha Agenda vision of broad and meaningful trade liberalization. Such a vision must include the effective integration of developing countries into the global trading system so that these economies benefit fully from the potential gains from open, rules-based trade. The NFTC's recommended bold initiatives for the Doha Agenda are summarized in the box below.



***NFTC's Vision for the Doha Agenda***

- 1. Progressively eliminate tariffs on industrial goods by 2020.***
- 2. Eliminate or minimize tariffs on agriculture commodities and finished food products, and eliminate trade distorting agricultural subsidies and supports by a date certain.***
- 3. Achieve broad services market liberalization covering all sectors and include new sectors such as energy services.***
- 4. Pursue measures to eliminate existing and prevent new non-tariff barriers to trade.***
- 5. Eliminate tariffs on the products of least developed economies before 2005.***
- 6. Provide focused & meaningful technical assistance to developing economies.***
- 7. Achieve greater differentiation among economies for special & differential treatment.***
- 8. Adopt effective rules on trade facilitation and transparency in government procurement.***
- 9. Reform WTO rules on antidumping and subsidies and countervailing duty measures.***
- 10. Implement agreed WTO commitments and improve WTO dispute settlement rules.***

Both developed and developing economies have a stake in embracing deep and meaningful market access liberalization, and people in all WTO Members stand to benefit from a bold approach. The NFTC, in representing American businesses across all sectors of the economy, supports tackling sensitive U.S. measures and trade restrictions, including high tariffs and tariff escalation. We also endorse immediate duty and quota free treatment for least developed countries (LDCs). In return, the NFTC calls for similar action on the part of all other WTO members. American businesses continue to face substantial trade barriers in all markets – including tariff peaks and tariff escalation -- and cannot support eliminating U.S. trade barriers without reciprocal action by other WTO members. The Doha Agenda should achieve more open markets globally, not create new mechanisms, or weaken existing rules, to prevent market opening.

## **B. THE DOHA AGENDA: RISING TO THE CHALLENGE OF GLOBALIZATION**

In key respects, the GATT and WTO have played a remarkably important role in helping economies benefit from globalization. By establishing open, rules-based trade, the WTO has been essential to generating decades of trade growth and improved trade governance. Since World War II, this has led to growing prosperity, rising living standards and alleviation of poverty. According to a University of Michigan study, elimination of persistent barriers to trade in services, goods, and agriculture could generate \$1.8 trillion in additional global welfare.

While the WTO is one way to address the challenges of globalization, the WTO is not a panacea. It cannot solve many of the deep-seated challenges confronting economies and the global commons. The WTO cannot, for example, build the necessary infrastructure of a well-functioning economy, such as

*Developing country  
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transportation, healthcare, education, social safety nets, and other essential components of a vibrant economy. Reforms undertaken outside the purview of the WTO are key to realizing many of the benefits of trade liberalization.

At its inception, 11 of the 23 founding members of the GATT were developing countries. Today, two-thirds of the WTO's 144 members are developing countries. A challenge before the WTO and before many developing economies is to advance the Doha Agenda in a manner that recognizes that it is in developing countries' own self-interest to become full participants in the multilateral trading system.

The evidence is overwhelming that those economies that participate openly in the global economy grow and develop more quickly. According to the World Bank, for example, developing country "globalizers" grew three and one-half times faster than developing country "non-globalizers". As UN General Secretary Kofi Annan has stated, "(t)he poor are poor not because of too much globalization, but because of too little."

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*--Kofi Annan, UN  
Secretary General*

Countries like Mexico, Chile, Poland, and China are among those that have embraced trade reform, and the WTO has been an important ingredient of their success. With targeted trade-related technical assistance and capacity building, and with a strong commitment to becoming full participants in the trading system, developing countries stand to gain the most from the Doha Agenda.

## **II. RECOMMENDATIONS AND POSITIONS ON MAJOR ISSUES**

### **A. TECHNICAL ASSISTANCE AND CAPACITY BUILDING/SPECIAL AND DIFFERENTIAL TREATMENT**

**1. Technical Assistance/Capacity Building:** The NFTC supports effective trade-related technical assistance (TRTA) to improve the capacity of developing countries to implement existing WTO Agreements, negotiate effectively in the Doha Agenda, and integrate trade more fully into domestic policymaking and regulation. Building such capacity is essential to a developing country's ability to benefit fully from the WTO Agreements, and to achieve economic growth through trade liberalization.

The NFTC strongly supports the long-overdue attention to the TRTA needs of developing economies. Recent action by the WTO, other intergovernmental institutions, such as the World Bank and UNCTAD, and the United States has reflected substantial progress in formulating new approaches in this area. The recent WTO Pledging Conference in March more than doubled funding for TRTA (\$19 million). The

Integrated Framework (IF) coordinates an intergovernmental program for least developed countries, and the U.S. government has provided more than \$1.3 billion in TRTA over the past three years. These are all indicative of the serious effort now underway to help developing countries implement their WTO obligations and to include trade as a mainstream component of economic policy. In that regard, the NFTC strongly endorses the incorporation of this concept in World Bank poverty reduction strategies. Such a step is long overdue.

The nature and extent of TRTA should be agreed upon as soon as possible. Such an agreement will encourage donors to provide assistance and put constraints on recipients from claiming they have not received enough TRTA and, therefore, not negotiate in good faith and in a timely fashion during the Doha Agenda. To ensure success, further clarity is needed in defining the scope of WTO-related TRTA. The NFTC supports the following modalities:

***The NFTC strongly supports the long-overdue attention to the trade-related technical assistance needs of developing economies.***

- Establish a transparent central database of the funding and assistance activities being taken by the WTO, member governments, and other intergovernmental institutions. This will help to avoid unnecessary duplication and will inform bilateral donors, international institutions and recipient governments the level and content of TRTA activities.



### ***Recommendations on Technical Assistance and Special Treatment***

- 1. Assistance should be targeted to matters directly related to WTO commitments and WTO negotiating capacity. Advice on developing sound taxation systems to replace revenues previously derived from tariffs and building institutional capacity on intellectual property rights and customs modernization are examples where TRTA is needed.***
- 2. Agree as soon as possible on nature and extent of TRTA.***
- 3. Special and differential treatment should generally be granted through longer phasing-in of commitments, not through lesser commitments.***
- 4. Some process for "graduating" countries from S&D treatment should be developed. Countries belonging to the OECD should automatically be graduated.***

- Focus WTO-related TRTA on the implementation of previous WTO agreements and the Doha Agenda negotiations. Targeted resources and programs will ensure greater clarity on what should and can be realistically achieved.
- Establish demand-driven programs and appropriate measurements of results so that developing country participants have some responsibility for making the best use of TRTA and being specific about their trade-related capacity needs. The Trade Policy Review Mechanism could issue an annual accounting of the results. Both donors and recipients should be responsible in ensuring the ultimate effectiveness of TRTA.

**2. Special and Differential Treatment:** The effective integration of developing economies into the global trading system is the best proven path towards economic growth and development. The experience of Mexico, Chile, Hong Kong, Poland, Korea, and China has demonstrated this. While the NFTC recognizes some need for continued “special and differential” (S&D) treatment, particularly for least developed countries, we urge the United States and other WTO Members not to over commit to new S&D approaches. An over-arching principle is that S&D treatment should not become an excuse to keep harmful trade restrictions in place, adopt new restrictions or maintain high tariffs. Specific recommendations on technical assistance and S&D treatment appear in the box above.

The NFTC recommends that the WTO, like its sister organization the World Bank, distinguish among developing economies. It should encourage developing economies, particularly middle income developing economies, to become fuller participants in the global trading system and gain all the economic benefits that follow such participation. S&D treatment should be limited to those countries which truly need it, which often is a small enough share of trade to prevent significant trade distortions.

There are several ways to develop criteria for "graduating" countries from S&D status, such as levels of income and indebtedness. Without such a graduation process, fundamental principles of the WTO, such as non-discrimination and most-favored-nation treatment, will be seriously undermined. This would create a trading system that perpetuates poverty and despair by failing to encourage developing nations to move toward more open and transparent rules-based trade.

## **B. MARKET ACCESS FOR NON-AGRICULTURE MARKET ACCESS – ZERO GLOBAL TARIFF OBJECTIVE**

**1. Tariffs - Why Zero?** In 2001, the NFTC issued a bold proposal, calling for the progressive elimination of all industrial tariffs in all WTO Members as a centerpiece objective of the new Doha Agenda negotiations. We strongly re-affirm that call to action. Here we put forward a rationale for phased tariff elimination in the WTO context, and some suggested modalities for the negotiations.

• **Industrial Tariffs are Still a Problem:** According to a World Bank study, industrial tariffs impose an annual cost of \$190 billion on the world economy each year. Industrial goods account for about two-thirds of annual total world tariff payments, with agricultural products and minerals making up the rest. As the NFTC has pointed out, this extraordinarily high tax on world commerce is not just the result of high tariff rates in certain countries. For while *tariff rates* in developed countries are relatively low, the sheer volume of trade among such countries results in large amounts of *tariff payments* on routine flows of materials between production facilities in the developed nations. Indeed, some \$16 billion is paid every year in tariffs on North-North trade. Very often, the tariff rates on such trade are too low to serve any protective purpose, and indeed production of like goods often exists in both exporting and importing nations. These "residual" tariffs left over from the Uruguay Round do little other than impose an enormous tax on trade that is ultimately passed on to consumers.

*Industrial tariffs cost the world economy \$190 billion per year.*

• **The Growing Importance of South-South Trade:** About 40% of developing country exports are sent to other developing countries, and this percentage is increasing rapidly. According to the World Bank, it is expected that by 2005, South-South trade will account for more than 50% of developing country exports. Most of these exports are industrial products: 75% of developing country exports were industrial goods in 1995.

***70% of the tariffs paid by developing countries are paid to other developing countries.***

• **Developing Countries Pay Most of Their Tariffs to Each Other:** Developing countries bear a disproportionate burden of world tariff payments on industrial goods. Indeed, developing countries pay 40% of the annual world tariff bill on industrial goods (about \$80 billion per year), even though they only account for about 22% of world GDP. Protectionist tariff "peaks" in developed countries are partly responsible for this, but they do not explain the whole problem. In fact, an exclusive focus on "peaks" ignores a much more serious issue: 70% of the tariffs paid by developing countries (\$57 billion annually) are paid to *other developing countries*. This is a result

of two factors: the rapid growth in South-South trade, and very high tariff rates in developing countries. As South-South trade continues to grow, this problem will be exacerbated.

• **High Tariffs in Developed Countries:** Much has been written about tariff "peaks" in developed countries, and indeed developing-country products face tariffs in rich economies that are about 4 times higher than the tariffs imposed on North-North trade. This is because of high tariff rates on imported clothing, footwear and textiles in developed countries. While there is no question that such protectionism hurts the poor in producer countries, it is not well known that such tariffs also disproportionately hurt poor *consumers* in developed economies. In the United States, half of all collected tariff revenue comes from just two basic necessities: clothing and shoes. While these two products account for less than 7% of U.S. imports by value, they account for fully 47% of U.S. tariffs collected. The Progressive Policy Institute has shown that U.S. tariffs tend to be skewed against poor consumers, with luxury imports often duty-free and everyday goods highly taxed. Single mothers with young children--who spend more of their income on clothing than any other type of family in the United States--are the hardest hit.

***Tariff "peaks" in rich countries hurt poor consumers at home, as well as producers in poorer countries.***

• **High and Escalating Tariffs Hurt Developing-Country Competitiveness:** The key to economic growth in developing countries is attracting foreign investment. Such investment is typically geared toward producing goods for export, and therefore an important factor in investment decisions is the local cost of component materials and intermediates. Because of high tariff rates, developing countries pay more for intermediate goods per dollar of manufactured output, making their production costs higher and their economies less competitive. Tariffs on intermediates account for 14.4% of manufacturing costs in developing countries, versus 9% in developed countries. This is part of the reason why most foreign investment goes to *other developed countries*, rather than to developing economies (indeed, in 2000, 82% of FDI went to the U.S., EU and Japan). It is for this reason that many developing countries recognize the importance of reducing their own tariffs. In India, for example, a 2001 Advisory Council Report, commissioned by the Prime Minister, recommended that India's high average industrial tariff level of 34% be reduced to the East Asian average of 12% by 2005. At the same time, tariff escalation in developed countries can distort trade in ways unfavorable to developing countries.

***Nearly half of all world trade is already duty-free. But the spread of FTAs may leave poor countries behind.***

• **Reliance on Tariffs for Revenue is Counterproductive to Sound Economic Development:** The call for elimination of industrial tariffs underscores the vital importance of reforming domestic tax systems alongside trade liberalization to ensure that adequate levels of revenue are maintained in poor countries which may rely heavily on import tariffs as a source of government revenue. Reliance on trade taxes for revenue is not an optimal policy. It prevents countries from securing the benefits of trade liberalization and tends to discourage foreign investment. Best practices among developing countries that have reduced or

eliminated their tariffs call for parallel policies of reforming tax regimes to rely more heavily on income and broad-based sales taxes.

Trade reform need not entail diminished revenue. As we have seen in countries that have recently acceded to the WTO, those that reduce tariffs have had greater tariff collection at the border and have successfully eliminated fraudulent activities to avoid tariffs. In the 1990s, for example, Ghana, Kenya, Senegal and Malawi all implemented trade reform without significant loss in government revenue as a percentage of GDP. And Cambodia introduced broad-based consumption taxes that reduced dependence on customs duties. The NFTC supports targeted technical assistance to help developing countries improve their domestic tax regimes and tax-collection systems in parallel with the phased elimination of industrial tariffs.

• **We're Already Halfway There:** The WTO estimates that 55% of world trade is *already duty-free*, under one of more than 150 preferential free trade agreements. By 2005, with the completion of several major FTAs presently under negotiation, this figure will grow significantly. Yet the rapid proliferation of FTAs threatens to ensnare world trade in a spider's web of conflicting agreements, complex rules of origin, and a distortion of comparative advantage. Most ominously, the proliferation of FTAs threatens to leave the poorest nations behind, locked out of the benefits of preferential trade deals because of their small markets, a lack of negotiating leverage, or simple accidents of geography.

The box below summarizes why NFTC's global zero tariff initiative on industrial products makes sense for both developed and developing countries.

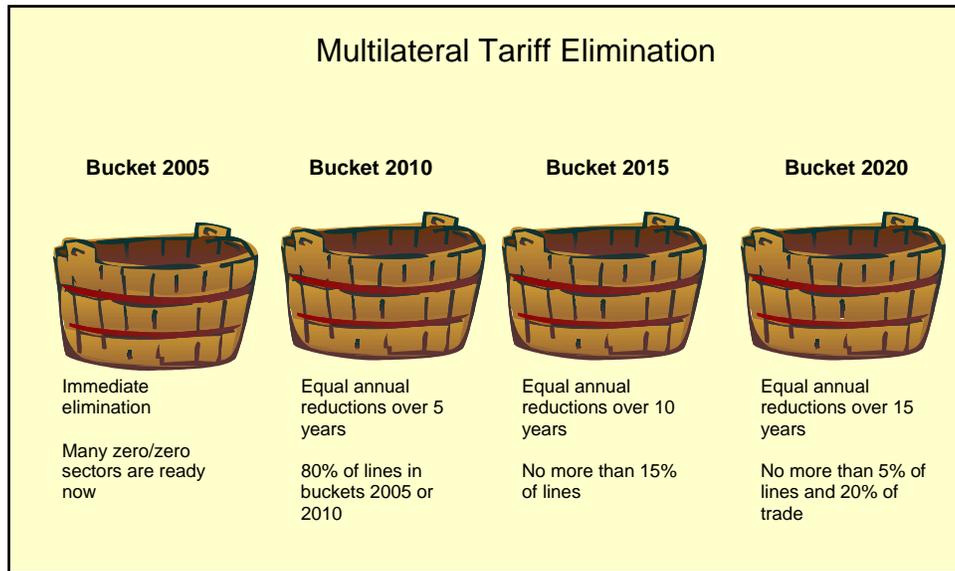
**2. Modalities - How To Get There:** Countries should approach the coming Doha Agenda negotiations as they would approach a regional or bilateral free-trade agreement: establish *first* that the goal is zero tariffs, and *then* negotiate on the phase-out period for each product in each country.



***Industrial Tariffs: Why Zero Makes Sense***

- 1. Developing countries pay most of their tariffs to each other, face high and escalating tariff "peaks" in developed markets, and need to reduce costs of production to attract foreign investment.***
- 2. Developed countries need to reduce the \$16 billion they pay annually on North-North trade due to "residual" tariffs, and need increased access to developing markets.***
- 3. 55% of world trade is already covered by a zero-duty agreement. But increasing regionalism threatens more complexity and cost, and may leave poor countries behind.***
- 4. Comprehensive tariff elimination is a grand political bargain, and offers the greatest hope of overcoming protectionist resistance in both developed and developing nations.***

NFTC proposes a simple negotiating modality. First, countries should agree that product and country coverage will be comprehensive, with no exclusions. Second, it should be established that special and differential treatment will be granted to developing countries with respect to the *timing* of phased tariff elimination, but not with regard to the *end-point* of zero. Third, negotiators should establish four "buckets" into which all countries will group all tariff lines through a request-offer process.



By using this approach, all tariffs on all industrial goods will be eliminated not later than 2020. As a general rule, we suggest that countries group not less than 80% of their tariff lines into buckets 2005 or 2010, not more than 15% into bucket 2015, and not more than 5% into bucket 2020. In the case of bucket 2020, the 5% of tariff lines should in no case exceed 20% of a country's trade. Different percentage spreads might be considered as one way of offering special and differential treatment to lesser developed countries.

We believe the best approach to the difficult issue of "bound vs. applied" rates is to negotiate a standstill arrangement on MFN applied rates at the outset of negotiations, to remain in effect during the period of negotiations. Negotiations on placing items in tariff elimination baskets would proceed from the assumption that tariff elimination would be phased in (in the cases of buckets 2010, 2015 and 2020) from WTO bound rates.

### **C. NON-TARIFF BARRIERS TO INDUSTRIAL PRODUCTS**

While it is important to eliminate tariffs, there should be no question that tariff elimination must be accompanied by aggressive elimination of non-tariff barriers as well. Indeed, in many industrial sectors, tackling non-tariff measures is necessary if the benefits of tariff elimination are to be realized. Market access can often be prevented through the erection of disguised barriers to trade and investment. To be successful, the Doha Agenda negotiations must address the increasing use of non-tariff barriers in the following ways:

**1. Compliance with Existing WTO Agreements:** Existing WTO agreements and provisions addressing non-tariff barriers, including the Agreements on Technical Barriers to Trade (TBT), Import Licensing Procedures, Trade-Related Investment Measures (TRIMs), Customs Valuation, and Rules of Origin should be reviewed carefully to determine whether they are being fully implemented by WTO members. The NFTA is particularly concerned about the growing use of technical standards, non-science-based sanitary and phytosanitary rules, and the lack of regulatory transparency as ways to block trade. Ensuring effective implementation of existing agreements and commitments is an essential component of a well-functioning multilateral trading system.

*NFTA is concerned about the growing use of technical standards, SPS rules, and regulations as non-tariff barriers to trade.*

**2. Improvement and Clarification of Rules and Commitments:** Several steps should be taken to improve existing rules and adopt new commitments to eliminate specific non-tariff barriers to trade. These should include rules to address the lack of regulatory transparency, the lack of access to distribution networks, and trade-distorting tax policies. These non-tariff barriers have been particularly prevalent in important industrial sectors such as autos and consumer goods. Some issues to focus on include:

- **Discriminatory Excise and Sales Taxes:** Discriminatory excise and sales taxes (in excess of VAT and other traditional tax regimes) are a major impediment to market access and penalize globally-recognized U.S.-branded products in several developing countries. These taxes depress consumer demand, distort trade, impede new investments, and unfairly single out global companies and their local partners. These discriminatory taxes affect thousands of local workers, distributors and suppliers who depend on the industry to survive. They also impact a number of other U.S.-trade related activities, including the flow of goods, investment, distribution and retail services and, most importantly, the strength of U.S. trademarks.

These discriminatory taxes affect the two leading U.S. soft drink players in several ways. In India, for example, carbonated soft drinks face a 32% excise tax, whereas other substitutable beverages are subject to only an 8% tax. And in several other countries, like Egypt, soft drinks are penalized at “sin tax” levels (28-30%), while competing beverages are exempt from taxes.

- **Labeling Schemes and Conformity Assessment:** Labeling schemes which lack sound scientific or consumer protection criteria are of growing concern as a trade barrier. The Committee on Technical Barriers to Trade should bring greater clarity to the harmful effects of these labeling schemes, including the costs of such schemes to developing economies. A greater TBT focus on labeling schemes should consider whether new rules-based disciplines are needed in this area. The NFTC encourages a focused TBT effort in this area as a primary focal point of negotiations. Furthermore, the NFTC recommends that the TBT be closely involved in the Committee on Trade and Environment (CTE) discussions of eco-labeling.

Another area of potential improvement to TBT rules includes expediting onerous conformity assessment procedures through the adoption of the principle of “one standard, one test, supplier’s declaration of conformity” or through common dossier procedures. Harmonization of industrial standards and certification processes are particularly important to the automotive and aerospace sectors.

**3. Forging New Agreements on Trade Facilitation and Transparency in Government Procurement:** The opportunity to negotiate new WTO rules on trade facilitation and transparency in government procurement would address some of the more prevalent non-tariff measures. These issues should be addressed as market access issues and the NFTC urges WTO Members to move ahead now with these negotiations. Additional NFTC recommendations on these separate areas negotiation are in other sections of this paper.

## **D. SERVICES**

### **1. Objective of Negotiations**

- **Further Liberalization:** The central aim of the Doha Agenda should be to achieve a progressively higher level of liberalization and market access. The Uruguay Round basically resulted in a binding of the current level of services regulation. This was a significant achievement, given that GATS was the first multilateral agreement covering trade in services. The current negotiations must aim for genuine services market liberalization. In principle, the NFTC believes that WTO Members should aim to

expand national treatment and market access obligations to cover all services and modes of supply, and to increase the sectoral coverage of specific commitments. The services negotiations must have ambitious liberalizing objectives while recognizing that there may be a need to accept less than full liberalization in certain circumstances for countries with lower levels of development consistent with Article XIX.

There is widespread agreement that liberalization of trade in services is desirable, largely because service sectors are growing in importance in all economies. Moreover, imported services stimulate the efficiency of domestic service industries and facilitate trade in goods.

Setting the GATS agenda was uncontroversial at the Doha Ministerial, not least because negotiations were already underway and Article XIX had previously set out clear objectives for future negotiations. One thing that the Doha Declaration did do was to impose a timetable on the services negotiations: requests must be made by June 30, 2002 and initial offers are due by March 31, 2003.



### *NFTC Recommendations on Services*

1. *Deal with outstanding issues, such as:*
  - *An assessment of trade in services;*
  - *How to treat liberalization undertaken since the Uruguay Round;*
  - *Address government procurement of services;*
  - *Create a framework for e-commerce to flourish.*
2. *Ensure meaningful liberalization is achieved. Pursue horizontal and transparency in domestic regulation commitments.*
3. *Include energy services in the negotiations, seeking to reduce limits on market access. In addition, seek to address discriminatory regulatory systems through a pro-competitive regulatory reference paper on energy services, as was used in the basic telecom agreement.*

• **Focus on Domestic Regulation:** Trade in services is conceptually very different than merchandise trade. Whereas the focus of more than 50 years of GATT liberalization has been on border measures, the nature of services is such that border measures virtually do not exist. From the outset, liberalizing trade in services inevitably involves obligations on the domestic regulation of services. Thus, the focus of future negotiations will involve detailed discussions on the way in which service industries are regulated under WTO Members' domestic economic policies.

That said, the NFTC believes it is crucial to note that the purpose of negotiations on services is to avoid domestic regulation that is more trade restrictive than necessary. It is important to recall that GATS does not place restrictions on a Members' right to regulate its own service sectors, unless the country has itself chosen to accept such obligations.

• **Dealing with Outstanding Issues:** The NFTC believes that WTO negotiators must address a number of important issues before real progress can occur on liberalization :

- Members have agreed to carry out an ongoing assessment of trade in services.
- Members must decide how to treat liberalization undertaken autonomously since previous negotiations.

- Members must complete the ongoing assessment of whether emergency safeguard measures are feasible.
- Negotiations on government procurement in services must be undertaken.
- Members should enter into negotiations on trade-distorting subsidies.
- Members must create a framework within which e-commerce can flourish, as this is a major means of distribution for many services.

## 2. Achieving Further Liberalization

• **Ensuring that the Remaining Issues Are Resolved:** The NFTC recommends that the outstanding issues highlighted above be resolved as quickly as possible. This will allow the request and offer process to be completed within the envisioned timetable and will give the services negotiations the best chance of achieving deeper liberalization. Most of these issues can be resolved before the negotiations conclude. Indeed, in some cases it is necessary that they are resolved before the request and offer process can produce meaningful results, e.g. credit for autonomous liberalization.

• **Pursuing Horizontal Commitments and Transparency in Domestic Regulation:** The NFTC supports the adoption of "horizontal commitments" which would bring some of the advantages of a "negative listing" approach to GATS. The benefits of such an approach would reinforce and magnify liberalization commitments across service sectors. Applying principles of transparency in domestic regulation, including prior public consultations on new regulatory rules, will result in more effective regulation. This is an area that deserves targeted technical assistance, which the NFTC fully supports.

• **Bringing Developing Countries on Board:** Developing countries need to see practical results and examples that show liberalizing services are not only good for the economy as a whole, but also can stimulate the domestic service sector over the long term. Politicians need hard evidence of such long-term benefits in order to take politically difficult decisions. In this regard, a number of developing countries have cited the importance of the "assessment" process (as discussed above) as a way to illustrate that the GATS has produced tangible and positive benefits.

Of particular importance to developing countries is the movement of persons (mode 4) where concessions under the current agreement are limited. The NFTC recognizes that some developing WTO Members will not agree to further liberalization of capital intensive services such as banking, insurance and telecoms if they cannot benefit in return in more labor intensive services where they have a comparative advantage, such as health, software, engineering & accountancy. It can be noted that developed countries also have an interest in mode 4 with regard to movement of staff in multinational organizations.

*In energy services, both market access and regulatory principles must be addressed.*

Recognizing the concerns of some developing countries over further financial liberalization, after the experience of the Asian financial crisis, the NFTC has supported the useful dialogue among WTO members to assess the feasibility of limited safeguard measures.

• **Including Energy Services:** All nations and all economic activity depend on the production of clean, reliable energy that is efficiently produced and reasonably priced. An important component of the production of energy is the energy services industry. The NFTC strongly supports including energy services in the GATS.

While there is no internationally agreed definition of energy services, the U.S. Energy Services Coalition (ESC) defines it as those services related to the exploration, development, extraction, production,

generation, transportation, transmission, distribution, marketing, consumption, management and efficiency of energy, energy products and fuels.

Energy services do not have a discrete classification under the current WTO Sectoral Classification List, although W/120 contains three classifications that are elements of energy services: services incidental to mining; energy distribution; and pipeline transport. W/120 needs to be broadened to include the full array of commercial activities by energy service providers, now and in the future.

Barriers to energy services fall into two major categories: limits on market access, and restrictive or discriminatory regulatory systems. Market access restrictions are similar to those faced by other service providers and include restrictions on the right of establishment, an inability to provide cross-border service, restrictions on allowing entrance to personnel and equipment, and restrictive government procurement practices.

Regulatory frameworks in the energy field are often opaque, discriminatory, arbitrary and simply confusing. The best way to ensure a meaningful liberalization of energy services would be the negotiation of a broad set of market access commitments in energy services, combined with a pro-competitive regulatory reference paper.

## **E. AGRICULTURE**

The NFTC believes the Doha Agenda offers an unprecedented opportunity to make substantive improvements in agricultural trade across all commodities and finished food products. The overall objective should be to end prohibitively high tariffs and quantitative restrictions, and to eliminate export subsidies, trade-distorting domestic supports, and other market access barriers. These barriers contribute to doubling and tripling the cost of commodities and finished foods to industry and consumers. The NFTC hopes that the economic and financial pressures of EU enlargement and the expiration of the “peace clause” in 2003 will result in meaningful agricultural reform in the Doha Agenda. To achieve meaningful and balanced liberalization, market access barriers, export subsidies, and trade-distorting domestic support measures must be addressed simultaneously.

***Agriculture liberalization is critical not only to the United States, but to many developing countries as well.***

Agricultural liberalization is critical not only to the United States, but also to developing countries, many of which rely heavily on commodity trade as a source of exports. Liberalization will also directly benefit the poor through lowered prices and greater availability of food products to consumers. According to the OECD, advanced countries spend \$1 billion per day in agriculture subsidies – six times the amount of all development aid to poor countries. Elimination of these trade-distorting subsidies is particularly critical to the 50 developing countries that, according to the WTO, depend on agricultural exports for one-third of their export earnings.

The two largest markets and the two most important players in any agriculture reform initiative are the United States and Europe. And two bellwether commodities by which the success of global agricultural reform will be judged are sugar and dairy. Europe and the United States control domestic production and limit market access in order to maintain high domestic prices. This round of agriculture negotiations is an opportunity to break the cycle and facilitate an end to trade practices which: 1) create prohibitively high tariffs on these commodities and the finished foods that contain them; 2) necessitate the use of export subsidies that distort markets; and 3) deny developing countries fair access to markets on which they depend for economic growth.

**1. Deep and Meaningful Reform of Agricultural Tariffs and Quotas:** Existing tariffs on agriculture are prohibitively high and should be substantially lowered and eliminated. Combined with meaningful reform of export subsidies and tariff rate quotas, the Doha Agenda should fundamentally liberalize trade in agriculture in a manner that is balanced and fair.



***NFTC Recommendations on Agricultural Trade***

- 1. Eliminate or substantially reduce tariffs by a date certain.***
- 2. Achieve sectoral liberalization and zero-for-zero agreements across commodities and finished food products.***
- 3. Phase out all tariff rate quotas beginning not later than January 1, 2006, and concluding by 2015 at the latest.***
- 4. Prevent increasing use of non-tariff barriers, such production process method (PPM) and eco-labeling schemes, excessive certification, and other non-tariff barriers.***
- 5. Eliminate trade-distorting internal support mechanisms and export subsidies by a date certain to be negotiated.***

The existence of applied and bound tariff rates in excess of 100% is simply unacceptable in any country, developed or developing. Countries emerging from the Uruguay Round with such prohibitively high tariffs will have already benefited from more than 10 years of absolute protection. They should be prepared to undertake steeper liberalization measures than others. Countries with higher tariff rates should not be given more time to reduce; they should be given less. The NFTC recommends that all agriculture tariffs, both applied and bound, above 100% be reduced to 100% as the starting point for further reductions.

A few examples include peanuts in the United States, for which the applied out-of-quota tariff rate is 164% for in-shell peanuts and 134% for out-of-shell; the EU sugar regime, with a support price mechanism that imposes an effective duty rate of 150-250% on imported sugar; Mexico's 198% duty on yellow corn; and Norway's duty of 288% on prepared vegetables.

To reduce or eliminate agricultural tariffs by a date certain, the NFTC recommends a staging approach similar to that taken to implement free trade agreements. This approach could help harmonize tariff levels by using tariff rate ceilings as a staging tool, i.e. "not higher than," by specific dates in the reduction process.

Tariff reductions should begin from a base of the applied rates in effect in 2000 or the final year of tariff reductions in accordance with the Uruguay Round commitments. In many countries, the base rates used in the Uruguay Round negotiations were set artificially high, which left residually high tariffs even after the formula cuts. Negotiations from bound rates would tend to preserve these high bound tariffs. It is important for the trading community that dual tariff systems (applied and bound) be eliminated and that there be one unified, transparent and predictable tariff rate structure underpinning global agriculture trade.

The NFTC supports immediate sectoral liberalization for those commodities and processed foods where global agreement can be reached. We urge attention to the elimination of tariff peaks and escalations which burden trade in many processed foods.

Consistent with the goals set out in the Uruguay Round, the NFTC urges the aggressive elimination of quantitative restrictions on trade to be replaced by ad valorem duty rates. Therefore, a priority goal must be the phasing out of all tariff rate quotas beginning not later than January 1, 2006 with the goal of elimination by 2015. In addition:

- Quota levels should reflect substantial annual increases relative to domestic consumption of the commodity under quota.
- Out of quota duty rates should conform to staged reductions outlined above, i.e., no rate higher than 100%, and staged reductions to minimal or zero duty by a date certain.
- Tariff rate quota administration should include two important criteria (a) priority access for efficient suppliers who do not subsidize exports; and (b) for as long as quotas are maintained, there should be new or increased guaranteed allocation of access for developing countries, especially for tropical products and products of importance to the diversification of production away from the growing of illicit narcotic crops.

**2. Elimination and Prevention of Non-Tariff Agriculture Trade Barriers:** Too often the positive effects of market opening measures are lost because of the imposition of non-tariff barriers. The NFTC is particularly concerned about labeling schemes, inspection and product certification requirements, including demands for proprietary product formulas, and the subversion of legitimate food safety objectives for protectionist purposes. The NFTC urges focused attention to these matters in the work programs of the Committee on Technical Barriers to Trade and the Committee on Sanitary and Phytosanitary Measures with the possibility of enhancements to both Agreements.

*NFTC is concerned about food labeling requirements based on production process methods.*

- **Labeling:** A priority NFTC concern is labeling of “non-product related processes and production methods” (PPM) which do not change the end characteristics of the final product. Examples include eco-labeling, egg labeling based on farming conditions, and mandatory labeling of genetically-engineered foods. The potential end-result of PPM labeling is to directly allocate market access based on how products are produced; or to indirectly achieve such allocation by suggesting to consumers, via labeling, that one product is superior to another for reasons other than product-related characteristics. The potential for unfair trade discrimination among identical or equivalent products is profound. We urge the TBT Committee to find alternative methods of conveying product information to consumers guided by the principles of truthfulness, science-based evaluations, not misleading consumers, and the enforceable requirement to substantiate all claims.

- **Inspection and Certification:** Exporters of commodities and finished foods report increased incidents of quarantine inspection, sampling, testing, and demands for exporting country government-issued certificates for products and individual ingredients. In many instances, the products in question are low risk and the documentation requirements imposed on suppliers add significantly to the cost and complexity of exporting. Frequently, importing country regulators ignore science-based risk assessment and choose instead to delay or reject imports. Some countries demand proprietary product formulas and manufacturing processes as a safety prerequisite for market access. Such broad and intrusive information demands are rarely necessary to establish the safety of a finished product.

- **Subversion of Legitimate Safety Concerns:** The NFTC strongly opposes any weakening of Article 5.7 of the SPS Agreement, which gives clear authorization to Members to adopt protective sanitary and phytosanitary measures in the event of real or suspected risk to health and environment and there is not yet sufficient scientific evidence. The temporary nature of this provision is an important incentive to Members to pursue, and rely on, science-based evidence and to minimize in both scope and duration and impact on trade.

- **Minimum Entry Price Schemes and Price Band Systems:** The NFTC urges prompt elimination of any residual use of minimum entry price schemes and price band systems for imported commodities and related finished products. Such practices contravene the WTO Agriculture and Customs Valuation Agreements.

**3. Reform of Safeguard Provisions:** The NFTC believes that safeguard provisions should be reformed in a manner that makes their use more effective and ensures that safeguard measures are only used for legitimate purposes. Some reforms should include minimizing the number of agricultural products covered by safeguards, preventing their abuse and overuse, and ensuring that such measures are temporary (with the meaning of temporary specifically defined).

**4. Elimination of Agriculture Export Subsidies and Trade-Distorting Domestic Support:** Export subsidies pose a major barrier to the expansion of US agricultural and developing country exports. The European Union provides an estimated 90% of all export subsidies, which places all other agricultural producers at a serious disadvantage. It is essential that they be eliminated for meaningful agricultural reform and liberalization to be achieved. The NFTC endorses the U.S. continued strong pursuit of the elimination of trade distorting internal support mechanisms and export subsidies. There should be no exceptions for State Trading Enterprises (STE). Similar to the aggressive market access objectives recommended earlier, it is necessary to set a date certain by which export subsidies will be eliminated.

## **F. TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

The NFTC believes that the Agreement on Trade-Related Intellectual Property Rights (TRIPs Agreement) is an essential component of an effective global trading system. It would be a serious step backwards if the TRIPs Agreement were weakened. We note that the obligations contained in the agreement, including those on effective enforcement, have not yet been fully implemented by many WTO Members. Full and effective implementation of the TRIPs Agreement is necessary for innovative and creative industries worldwide to reap the real commercial benefits that were contemplated by the TRIPs negotiators. For now, many elements of the TRIPs Agreement remain only promises.

*The criticism of TRIPs fails to recognize that intellectual property protection encourages investment and growth.*

The current criticism of the TRIPs Agreement fails to recognize that intellectual property protection encourages investment and sustainable economic growth by rewarding innovation and creativity. It would be unfortunate indeed if the Doha Agenda were to weaken the very intellectual property protections that enhance the conditions for investment and encourage the development of local industry in developing countries.

The NFTC continues to oppose any re-negotiation of the TRIPs Agreement and urges WTO Members to ensure that the work program assigned to the TRIPs Council by the Ministers at Doha does not undermine or weaken the obligations contained in the agreement.

**1. Geographical Indications:** The only TRIPs-related issue that is formally included in the Doha Agenda is a negotiation on geographical indications for wines and spirits already mandated by TRIPs Article 23(4) and currently underway in the “Special Session” of the TRIPs Council. The NFTC believes that such a system should take the form of a data base of asserted geographical indications for wines and spirits, permitting each WTO Member to set forth its own approach to geographical indication protection while at the same time permitting global notification. Such a system would not significantly burden trademark owners or other interested parties.

**2. TRIPs Council Work Program:** The work program of the TRIPs Council is outside the current negotiating framework of the Doha Agenda. The NFTC believes that, given the current climate, WTO Members should avoid any new negotiations or issues which could result in calls to re-negotiate the TRIPs Agreement. For example, the so-called “implementation issues,” such as not granting patents that are inconsistent with Article 15 of the Convention on Biological Diversity (CBD) or amending TRIPs Article 27.3(b) “in light of the CBD,” seek to weaken the current level of intellectual property protection found in the TRIPs Agreement and should be opposed by United States and other WTO Members.



### ***NFTC Recommendations on TRIPs***

- 1. Oppose any re-negotiation of the TRIPs Agreement, beyond the specific negotiations on geographical indications already agreed at the Doha Ministerial.***
- 2. In geographical indications, establish a database of asserted indications for wines and spirits that permits global notification.***
- 3. Avoid seeing TRIPs Council work program being converted into a re-negotiation of basic TRIPs rules or implementation dates.***

The Ministers at Doha also instructed the TRIPs Council to address the issue of extending geographical indications protection beyond wines and spirits to other products, with a report due back to the Trade Negotiations Committee (TNC) by the end of 2002. The NFTC is very concerned about this exercise, since it could result in casting aside the principle of “first in time, first in right,” which is embodied in TRIPs Article 16(1) and which gives the owner of a registered trademark the exclusive right to prevent third parties from using identical or similar signs. Extending geographical indications to other products would force trademark owners to co-exist with a later geographical indication or, worse, to lose their rights altogether. The NFTC believes that the TRIPs Council should simply report to the TNC on its discussions without making any proposals on the extension of geographical indications.

By far the most contentious issue on the current agenda of the TRIPs Council is the matter of TRIPs and public health. The mandate under paragraph 6 of the Doha Declaration on TRIPs and Public Health (Doha Declaration) is to develop a “solution” by the end of 2002 to deal with the “problem” of “WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector” that, “could face difficulties in making effective use of compulsory licensing under the TRIPs Agreement.” In this regard, it is important to recall that the “problem” alluded to in paragraph 6 of the Doha Declaration has its origins, as stated in paragraph 1 of the Declaration, in the grave “public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.”

It is also important to note that the principal impetus to the Declaration was WTO Member concern over the severe health crisis posed by the HIV/AIDS pandemic in sub-Saharan Africa. Tragically, the problem of access to medicines is largely due to lack of health care infrastructures, lack of financing, and lack of education. It makes thus little sense -- and indeed is counterproductive -- to divert attention from these underlying causes by trying to make the TRIPs Agreement and drug patents the scapegoat for a humanitarian crisis in Africa. There are few patents on drugs for HIV/AIDS, malaria or tuberculosis in the poorest countries of Africa, so patent protection itself is not the problem.

While the NFTC does not object to the discussions mandated by paragraph 6 of the Doha Declaration, it is concerned that any "solution" to the Paragraph 6 problem could have profound implications for the integrity of the TRIPs Agreement and the future of new drug innovation throughout the world. Furthermore, the NFTC believes that any solution sanctioning the copying of a patented product under a compulsory license for export is a significant erosion of the innovator's rights and must include significant and tangible protections against diversion and other abuses.

The NFTC strongly encourages the WTO to ensure that effective technical assistance is being provided to developing economies on the TRIPs Agreement. Such assistance should create improved understanding of the importance of the TRIPs Agreement to a country's ability to develop economically, as well as improving enforcement of the Agreement in developing countries.

## **G. WTO RULES**

The opportunity to identify, clarify and improve WTO disciplines in the four areas of antidumping, subsidies and countervailing measures, fishery subsidies, and regional trade agreements should aim to ensure existing rules are functioning as intended. In addition, new approaches may be appropriate to eliminate trade-distorting practices and improve transparency and due process. The NFTC's recommendations in these four areas are as follows:

*From 1995 to mid-2001, about 60% of all anti-dumping measures were imposed by developing countries.*

**1. Antidumping:** A notable phenomenon since the conclusion of the Uruguay Round has been the growing use of antidumping (AD) measures by WTO members. According to recent WTO reports, some 65 countries have notified the WTO of their AD laws. Not only are these laws now in place in many more countries today than when the Uruguay Round was negotiated, but these laws are often applied to American exports, particularly in developing country markets. India, for example is the second largest user of AD laws, with 140 cases during 1995-2000. Other active new users of AD measures include South Africa, the fourth largest user from 1995-2000.

Indeed, although antidumping action was traditionally the preserve of developed countries such as the United States, Canada, the EU and Australia, the situation today is reversed. Over the period January 1, 1995 to June 30, 2001, 60% of all antidumping measures were imposed by developing countries. Argentina, Brazil, India, Indonesia, Malaysia, the Philippines, South Africa, Venezuela and China are the most prominent developing country users of antidumping laws. The United States is one of the largest targets of antidumping actions taken by developing countries. Mexico, Brazil, India and Argentina are among the largest users of antidumping actions against U.S. exports.

The NFTC is concerned about the lack of due process and transparency by new users of AD regimes. For example, in some countries, the laws are simply on the books without any administrative office or capacity to implement the requirements of WTO antidumping rules. In other countries, there is little or no due process. There are instances, for example, in which American companies subject to an AD complaint did not even receive notification of the investigation until after the comment period had

expired. Another more troubling concern is that some WTO Members do not adhere to the causality link requiring proof that dumping caused injury or to the requirement of a fair comparison. In these and other instances, WTO rules are not being followed, and AD measures are simply being used as protectionist measures. The NFTC believes these issues should be a primary focus of the Doha negotiations on antidumping rules. The NFTC recognizes that the AD negotiation will entail a discussion of the U.S. antidumping regime and supports that process based on the ministerial mandate.

**2. Subsidies and Countervailing Measures:** The NFTC views the negotiation on subsidies and countervailing duty measures (SCMs) as a critical opportunity to clarify existing rules which tilt the trading system unfairly based on different systems of taxation. In addition, the SCM discussions offer the chance to eliminate trade-distorting and environmentally harmful fishery subsidies, and to a potential sectoral agreement governing the use of steel subsidies. The NFTC is concerned that some European states will attempt to weaken the disciplines achieved in the Uruguay Round that limit government subsidies to the aerospace sector and urges WTO Members to maintain vigorous and effective disciplines on subsidies practices with respect to civil aircraft products under the SCM Agreement.

*NFTC recognizes that the anti-dumping negotiation must entail a discussion of the U.S. regime as well.*

• **Artificial Distinction Between Direct and Indirect Tax Systems:** The NFTC strongly believes that the recent WTO decisions involving the U.S. foreign sales corporation tax law have highlighted an unjustifiable disparity in the way different systems of taxation are treated under WTO rules. It has become clear that WTO rules under the SCM Agreement are outdated and have created an artificial distinction between direct and indirect taxes. The NFTC urges that this artificial distinction be eliminated in the SCM Agreement and in the Agreement on Agriculture. In light of the current imbalance in how the WTO treats different taxation regimes due to the artificial distinction between direct and indirect taxes, the NFTC calls upon WTO Members to suspend any retaliation under WTO rules and agree to a “peace clause” in this area until this issue is resolved as part of the Doha Agenda.

• **Fishery Subsidies:** The NFTC endorses the elimination of harmful fishery subsidies, which, according to some reports, amount to \$28 billion in government funding on an annual basis. Eliminating these subsidies would demonstrate clearly how the elimination of trade distortions can be mutually supportive of the environment.

• **Steel Subsidies:** The SCM negotiations may create an important opportunity to address the issue of overcapacity of steel production and government subsidies. Because the subsidization of the steel sector globally has distorted steel trade and caused problems for the smooth functioning of the multilateral trading system, WTO Members should consider a sectoral approach to discipline steel subsidies. This suggests the possibility of bringing the current OECD discussions in this area under the WTO negotiations on subsidies.

• **OECD Disciplines on Export Finance Subsidies:** The NFTC recommends that the United States and other WTO Members not weaken the existing OECD Arrangement governing the use of official export credits. Participating countries in the Arrangement are net providers (i.e., creditors) of official export credits. They seek to reduce government subsidies in the field of official export credits and also seek to encourage competition among exporters on commercial terms, rather than on trade-distorting officially supported terms. The NFTC notes that the SCM Agreement acknowledges the Arrangement’s disciplines under Item k to Annex 1 (Illustrative List of Export Subsidies). The NFTC supports revising the fourth line of the second paragraph of Item k to Annex 1 to state “applies the provisions of” instead of “applies to the interest rate provisions of” to rectify the recent confusion over the relationship of the Arrangement to WTO rules.

The NFTC strongly opposes any weakening of these OECD Arrangement disciplines in the WTO SCM Agreement, as has been proposed by certain developing countries. Should this issue be addressed in the



### ***NFTC Recommendations on Subsidies Negotiations***

- 1. Eliminate the SCM Agreement's artificial distinction in the treatment of direct and indirect taxes, thus helping to resolve the long-running US-EU dispute over taxation.***
- 2. Seek to address the issue of steel over-capacity and subsidies in the negotiations on the SCM Agreement.***
- 3. Eliminate environmentally harmful fish subsidies.***
- 4. Do not weaken existing OECD Arrangement disciplines governing the use of official export credits.***

context of the WTO subsidies discussion, the focus should be on the need to eliminate completely official export credits, particularly for buyers in investment grade countries where adequate market-based financing is available. Additionally, any WTO discussion of these issues should also address the need for disciplines on the growing phenomenon of “market windows,” an undisciplined form of official export credit support that lacks transparency and leads to trade distortions. Finally, any discussions should also examine the benefits of developing countries becoming participants in the OECD Arrangement for disciplining export finance credits.

**3. Regional Trade Agreements:** The NFTC views the proliferation of bilateral and regional trade agreements as a major challenge to the smooth functioning of the multilateral trading system. Although such agreements can serve as a catalyst toward free trade, they also threaten an ever-more complex web of differing rules of origin and distortions of economic comparative advantage. We believe the spread of such agreements is one compelling reason why the WTO must seek global zero tariffs. The NFTC has long urged the WTO to be much more effective in policing the numerous RTAs, which now number more than 150, to ensure they meet existing GATT Article XXIV requirements. Many RTAs do not, in fact, cover “substantially all trade,” as required by the WTO. And the web of differing rules of origin and tariff schedules creates a challenge particularly for developing economies (especially those that are left outside of major RTAs) and small businesses that find it difficult to comply with a growing number of tariff rates and rules.

***The spread of regional trade agreements may leave poor countries behind.***

Rather than only attempting to improve and clarify existing rules on RTAs, the NFTC urges WTO negotiators to embrace a zero tariff vision that will prove that RTAs are indeed building blocks to greater multilateral trade liberalization, rather than stumbling blocks.

## **H. TRADE FACILITATION**

As highlighted in the comments above in the section on market access for non-agricultural products, the NFTC views trade facilitation as a key tool for all WTO Members in achieving market access and urges moving ahead now with trade facilitation negotiations and to seek adoption of an agreement in this area

by the time of the next ministerial meeting in Mexico. The NFTC supports providing effective technical assistance to developing countries to help modernize their customs regimes and implement highly beneficial customs reforms to implement modern and transparent customs regimes that include trade facilitation rules. Finally, the NFTC recommends that WTO Members fully implement existing agreements in the customs area, particularly the Customs Valuation Agreement. These steps are critical to providing incentives for good governance and creating a level of certainty for traders.

**1. Benefits of Modernizing Customs Practices:** A successful agreement on Trade Facilitation rules is essential to delivering the increased market access that all member countries expect from Doha Agenda negotiations. Eliminating “red tape”, excessive customs documentation and non-transparent practices would provide major economic benefits and help developing economies achieve their full economic potential. According to some studies, customs-related transaction costs – red tape – can account for up to 10% of a shipment’s value. These costs are further compounded by corruption and delay.

A key consideration for investment decisions today is the ability of the host country to provide an environment conducive to world class manufacturing that will serve both domestic and export markets. Logistics – the efficient movement of goods to and from a manufacturing facility – is critically important. It is here that customs administrations play a role in their nation’s attractiveness to foreign investors.

*Customs-related transaction costs can account for up to 10% or more of a shipment's value.*

Slow customs clearance and cargo release, complex documentation, non-transparent and discriminatory rules, and corruption are identified by investors as reasons to not invest in a country. All WTO Members, but especially developing countries, have an interest in removing customs-related disincentives by embracing trade facilitation reform.

According to UNCTAD, an average customs transaction involves 20-30 different parties, 40 documents and 200 data elements, many of which are repeated. The costs of complying with these inefficient, burdensome and often non-transparent customs practices sometimes exceed the costs of duties to be paid. Trade-distorting customs practices include arbitrary obstructions of import clearance, manipulation of the base value for duty assessment, arbitrary customs classification decisions, and corruption. A further problem relates to the lack of any due process procedures for importers to appeal against such arbitrary practices.

The absence of transparent and simplified rules-based customs procedures hinders development and the expansion of trade for much of the developing world. According to an APEC study, trade facilitation measures could generate 0.26% in real GDP gains and savings of 1-2% in import prices among developing countries in the APEC region. Regrettably, these problems are most prevalent in trade between and among developing countries. Adherence by developing countries to the existing WTO Agreements on Customs Valuation, Pre-Shipment Inspection, and the Harmonized System protocol is critical. Building on those rules with an agreement on Trade Facilitation would achieve further major progress in building sound trade infrastructure as a foundation of economic growth and stability.

**2. Specific Recommendations:** Achieving a successful agreement on Trade Facilitation, combined with targeted technical assistance for developing countries, must be a priority objective for the Doha Agenda negotiation. As result of long-standing efforts by many countries, much of the groundwork has already been provided for substantive negotiations and, we urge that this readiness not be abandoned to the less mature status of the other “Singapore Issues.”

In terms of modalities, the roadmap to customs modernization is already available in the form of the Revised Kyoto Convention on Simplification and

*The roadmap to customs modernization is already available in the Revised Kyoto Convention on Customs.*

Harmonization of Customs Procedures. Its core practices, such as account-based entry processing, risk assessment and audit based controls, increased use of automation and the separation of duty payment and cargo clearance activity are the necessary tools to engage and benefit meaningfully in the global economy. Evidence shows that customs modernization results in higher revenues from increased trade flows, faster import processing, and more efficient, secure collection. It also supports domestic manufacturers by facilitating access to raw materials and other intermediate inputs.

## **I. TRANSPARENCY IN GOVERNMENT PROCUREMENT**

The NFTC strongly endorses a WTO Agreement on Transparency in Government Procurement. Given the extensive work that has already been carried out in this area since the WTO Singapore Ministerial, and the demonstrable benefits to economic development that procurement transparency brings with it, the NFTC urges WTO Members to seek adoption of an agreement in this area by the next WTO Ministerial meeting in Mexico. An agreement would bring substantial benefits to developing countries, including more efficient utilization of scarce government resources, greater competition, increased public confidence and trust in government officials and procedures, and the rooting out of corrosive corruption.

The costs of non-transparent procurement and corruption are substantial. According to a former head of procurement at the World Bank, these costs can add 25-50% to the costs of procurement. Significant savings through improved transparency and due process in government procurement practices can be achieved. The Buenos Aires city government, for example, reduced government costs by 35-60% in food supplies for hospital and schools, garbage collection, and public lighting maintenance through the adoption of transparent, clear and open procurement procedures. This resulted in approximately \$200 million in savings in one year. Greater transparency in the Guatemala's Ministry of Health procurement process resulted in savings of 43% and lowered the costs of medicines by 20%.

***Lack of government procurement transparency can add 25-50% to procurement costs.***

An Agreement on Transparency in Government Procurement is a key element of sound economic development. In addition to the direct benefits above, there are also significant indirect benefits of an agreement in this area, including greater overall foreign investment.

Modalities for such an agreement should involve obligations to provide publication of all governmental procurement laws, regulations, and policies, sufficient public notification of specific contract opportunities, transparent and objective bid specification and evaluation procedures, effective bid protest mechanisms, public notification of central points of contact, and transparent public access to information on contract awards. The NFTC strongly supports targeted technical assistance designed to help developing countries put in place the proper framework to integrate transparency best practices into government procurement regimes.

## **J. TRADE AND INVESTMENT**

In the lead up to the Fifth Ministerial decision on launching negotiations on trade and investment, the NFTC recommends that WTO Members focus on the basic benefits of a sound investment climate for private investors. Providing a sound climate for foreign direct investment (FDI) can provide substantial benefits to an economy in terms of job creation and economic development. In view of the increasing importance of investment flows, it is important to have strong rules on investment and, given the existence of over 1850 bilateral investment treaties (BITs) among WTO members, any new WTO rules should aim to set standards at least as high as those in BITs. Therefore, the

***NFTC supports a WTO agreement on investment covering transparency, national treatment, and the right of establishment.***

WTO should focus on a subset of issues where consensus on a high standard can be reached, particularly by agreeing to basic principles covering transparency, national treatment, and the right of establishment.

In 2000, 82% of FDI went to the U.S., EU and Japan. Developing countries could attract greater FDI through improved rules on trade and investment. The magnitude of the potential benefits is underscored by the fact that private FDI is ten times World Bank lending and four times the level of overseas developmental assistance.

In addition to supporting an agreement on basic WTO principles on investment, such as transparency, national treatment and right of establishment, the NFTC believes that existing WTO rules affecting investment, such as the TRIMs Agreement, should be improved so that they are effectively implemented.

#### **K. TRADE AND COMPETITION**

The NFTC views the issue of the relationship between trade and competition policy as a complex subject and in need of careful analysis and examination prior to any decision to negotiate WTO rules on trade and competition policy. This may be an area where future adherence to an agreement should be optional through an “opt-in” or “opt-out” clause. One primary concern of the NFTC is that the issue of trade and competition not divert attention away from more important and relevant areas of the Doha Agenda, particularly in the area of market access.

#### **L. TRADE AND ENVIRONMENT**

In line with the mandate of the Doha Ministerial Declaration, the NFTC recommends that the primary focus of negotiations on trade and the environment be in two areas where “win-win” benefits are possible:

***Because no MEA has ever been the subject of a WTO case, it is not clear that an Article XX clarification is needed.***

the elimination of fishery subsidies and the reduction and elimination of trade barriers to environmental goods and services. Talks on fishery subsidies offer the opportunity to eliminate trade-distorting subsidies that are harmful to the environment because they encourage over-fishing. A similar win-win scenario exists in agricultural subsidies and environmental goods and services. Eliminating barriers to trade in environmental goods, for example, will promote their greater use.

The NFTC also endorses an effort to ensure regular information exchange between Multilateral Environmental Agreement (MEA) Secretariats and the relevant WTO committees. This will promote better understanding of the ways in which trade liberalization and environmental protection can be mutually supportive, including the various WTO rules and agreements which explicitly recognize the importance of environmental concerns.

A fourth area of the negotiation relates to the relationship between existing WTO rules and specific trade obligations set out in MEAs. We note that this negotiation is not aimed at addressing non-parties to MEAs. The fact that an MEA has never been the subject of a WTO dispute settlement process suggests there is no need to re-open WTO rules under Article XX. Should WTO Members believe a clarification of Article XX is warranted, the NFTC recommends that such clarification involve a criteria-based approach with regard to the MEA itself and with regard to the trade measures used for its enforcement. These criteria should include, among other provisions, that the MEA be based on sound science, be open to all parties, and include a majority of the countries which account for a substantial portion of the activities addressed by the agreement or which are affected by it. The criteria for an MEA trade measure should include that the trade measure be explicitly identified in the MEA and adopt basic proportionality guidelines in key WTO agreements, including adherence to least trade restrictive criteria.

With respect to the future work program under the Committee on Trade and Environment, particularly on labeling and TRIPs, the NFTC urges that such work be conducted in close coordination with the Committee on Technical Barriers and the TRIPs Council. An overriding principle in these discussions should be to avoid undermining the relevant provisions of these agreements. Above all, these discussions should not be a back door mechanism for weakening basic WTO rules and principles.

### **M. DISPUTE SETTLEMENT**

The NFTC believes that the WTO's Dispute Settlement Understanding (DSU) has, on balance, operated well in resolving disputes and plays a vital role in ensuring WTO obligations are implemented. With six years of experience, the Doha Agenda presents an important opportunity to examine the need for limited changes to improve DSU rules.



#### ***NFTC Recommendations on Dispute Settlement***

- 1. Implement by May 2003 the package of initial DSU reforms agreed at Seattle.***
- 2. Undertake a fuller review of the DSU, to include examination of the following:***
  - ***A system of permanent panelists;***
  - ***Reducing timeframe for dispute settlement cases;***
  - ***Allowing the filing of amicus briefs without increasing the costs of litigation;***
  - ***Opening hearings to public observation;***
  - ***Lending greater weight to compensation over retaliation, in cases of non-compliance.***

The NFTC recommends a two-track approach on dispute settlement. The first track would be to adopt, by May 2003, the package of practical reforms that were agreed to by all WTO Members at the Seattle Ministerial. The second track would be to examine more recent issues regarding the functioning of the DSU with the goal additional reforms by the end of the Doha Agenda negotiations. Among the issues to explore would be creating a professional panelist system, changes in DSU timeframes, potential changes to the provisions on retaliation and compensation, allowing the filing of amicus briefs, and opening the hearing process to the public.

The NFTC is concerned about the frequent use of the dispute settlement mechanism as a first choice rather than a last choice in settling disputes. Alternative approaches to retaliation should be examined, including whether to place greater emphasis on compensation-based or other solutions to disputes.

Experience with the dispute settlement process since 1995 demonstrates that the system works reasonably well where traditional trade issues or well-established doctrines are involved. However, where the WTO is asked to interpret unclear or untested provisions, or where it is forced to delve into complex areas outside of trade (i.e., direct taxes or measures to avoid double taxation), the absence of an ongoing process to clarify rules without resorting to dispute panels, can lead to bad decisions and bad results. This outcome is further exacerbated by the WTO lacking a meaningful process for promoting settlement rather than litigation of cases to their ultimate conclusion.

**N. E-COMMERCE**

The NFTC supports the formal adoption by WTO Members of four guiding principles on the trade-related aspects of international e-commerce: 1) governments should recognize that existing WTO Agreements, namely the GATT, GATS, and TRIPs apply to e-commerce; 2) governments should ensure that electronically delivered products receive no less favorable treatment than like products delivered in physical form; 3) governments should refrain from creating new or discriminatory trade barriers to e-commerce. Additionally, the NFTC strongly supports making permanent duty-free treatment for electronic transmissions.