

**Meeting of the WTO General Council
December 16-17, 2020
U.S. Statements delivered by
Ambassador Dennis Shea**

**TRADE RELATED CHALLENGES OF THE LEAST DEVELOPED COUNTRIES AND
WAY FORWARD: A DRAFT FOR MC DECISION – COMMUNICATIONS FROM
CHAD ON BEHALF OF THE LDC GROUP (WT/GC/W/806, WT/GC/W/807)**

We thank the LDC Group for its communications, which we are beginning to review.

For today's discussion, I would like to share some initial questions we have about the proposal, as we work to increase our understanding of it.

First, we would like to better understand the mechanics of the twelve-year extension in Paragraph 1. We understand that the UN Committee for Development Policy (CDP) reviews the list of LDCs every three years and makes recommendations on graduation from that category. In practice, the CDP may postpone graduation for up to nine years when all possible extensions are fully employed.

Our question is, would the twelve-year period in Paragraph 1 of the draft Decision overlap with the nine-year graduation process at the UN, or would the twelve-year extension begin after the nine-year graduation process?

Second, we would like to better understand whether the LDC Group is pursuing changes to the graduation process that would address its goals. For example, has the LDC Group considered seeking a longer graduation process in the UN, if a longer timeframe is warranted for a graduating LDC?

Third, and finally, we would note that under the proposal, a newly graduated LDC could have similar or even higher development indicators than some non-LDC developing countries. However, the graduating LDC would receive more benefits at the WTO than the similarly-situated non-LDC developing countries. Has the LDC Group considered this scenario?

We appreciate the opportunity to have this discussion.

COVID-19 AND BEYOND: TRADE AND HEALTH – STATEMENT BY COSPONSORS OF WT/GC/223

The United States takes note of the communication in WT/GC/223 and thanks the co-sponsors for their statement. We have some initial observations to share today.

Some context might be helpful. The most recent Trade Monitoring Report by the Secretariat, which was discussed in the TPRB last week, included these assessments:

- “Members have generally expressed and followed a commitment to ensure that trade could flow freely during the pandemic.”
- “Most of the COVID-19 related measures taken on goods since the outbreak of the pandemic were trade-facilitating.”
- “In the services sectors heavily impacted by the pandemic, most of the 124 COVID-19 related measures adopted by WTO Members appeared to be trade facilitating.”

Against this backdrop, it’s not clear what problem the cosponsors aim to solve, nor how the proposed measures would solve that problem.

We would encourage deeper reflection. For example, supply chain resiliency doesn’t seem to be about lowering tariffs, or increasing Secretariat monitoring, or encouraging vague cooperation between the WTO and other IOs. It’s about how to prevent disruption when production somewhere beyond your shores is shut down due to an unexpected shock, or when a supplier beyond your shores is suddenly unreliable.

A second observation also requires some context. The world has been grappling with a pandemic for nearly a year. The public health situation remains very difficult and has been worsening. As of today, more than 1.6 million people have died around the world, including more than 300,000 in the United States.

Against this backdrop, we question the prudence of asking Members to put new constraints on their rights under the WTO Agreement—not to mention on their duty—to undertake measures to protect human health and life. For example, the idea that such measures might be granted a period of validity of three months seems to misunderstand the moment.

We take a different view. WTO rules may not have been drafted with a pandemic at front of mind, but our initial observation is that the WTO Agreement seems fit for purpose. Its balance of rights and obligations, if adhered to by Members, will continue to provide stability and predictability as we navigate this very difficult period and, finally, recover.

We would also like to take this opportunity to highlight an initiative launched in the Trade Facilitation Committee, sponsored by the United States and eight other WTO Members, found in G/TFA/W/25/Rev.1 entitled “Supporting the Timely and Efficient Release of Global Goods through Accelerated Implementation of the WTO Trade Facilitation Agreement.”

This initiative puts a focus on tangible actions WTO Members can take to contribute to timely and efficient movement of health and medical products.

We encourage all WTO Members to join us in this initiative.

IMPORTANCE OF MARKET-ORIENTED CONDITIONS TO THE WORLD TRADING SYSTEM – JOINT STATEMENT BY BRAZIL, JAPAN, AND THE UNITED STATES (WT/GC/W/803/REV.1)

The United States, Brazil, and Japan have requested this agenda item to continue highlighting the importance of market-oriented conditions to the global trading system.

As a result of our work together, Brazil, Japan, and the United States have released a joint statement (WT/GC/W/803/Rev.1). The joint statement reflects our shared belief in one of the core principles of the WTO: that market-oriented conditions are fundamental to a free, fair, and mutually advantageous world trading system.

To that end, the Brazil-Japan-U.S. joint statement affirms that Members’ enterprises should operate under market-oriented conditions and notes the elements that indicate and ensure those conditions for market participants. These criteria reflect the market-oriented conditions and disciplines to which our own enterprises are subject.

At the last General Council meeting in October, we encouraged Members to review these elements in detail to facilitate more robust engagement on this important issue.

It is notable that both in the General Council and informal meetings, we have considerable agreement from Members that these criteria do promote fair trade and have *not* heard any Member assert that trade is fair if market-oriented conditions are denied by a Member.

We have heard statements from one Member dismissing market-oriented conditions as academic, questioning whether these concepts can ever be defined, and asking why we should bother to engage on this topic at the WTO.

We would like to address these criticisms directly: these concepts are not new; they are not academic; and they have been recognized by others as critical to our efforts to ensure the proper functioning of international trade.

To give one, prominent example: steel is an area where Members have focused significant attention on the problems caused by non-market policies and practices. Let us consider what the G20 and interested OECD members said in the Global Forum on Steel Excess Capacity, in particular in their 2017 report approved under the German presidency of the G20.

In examining the conditions leading to excess capacity and recommending an effective response, these countries considered that steel excess capacity “is a global issue which requires . . . effective policy solutions to enhance the market function.”¹ They considered that “the enhancement of market function is essential to ensure that exchanges at the national and international level are based on genuine competitive advantages.”²

They considered that “[o]pen and competitive markets and a market-driven approach to resource allocation based on the competitive positions of steel enterprises should be the driving forces of the steel sector. New investment, production and trade flows should reflect market-based supply and demand conditions.”³

Among their “Key recommendations,” these countries concluded that “Members should consider the extent to which their framework conditions and institutional settings ensure proper market functioning.”⁴

They emphasized that “[p]articular attention should be given to ensure that,” *inter alia*, “competition law, trade and investment policies . . . foster a level playing field for competition among companies irrespective of ownership, both domestically and internationally;” that “bankruptcy legislation is effective and procedures are expedited efficiently;” and that “the internal financial market is able to price risk and deal with non-performing loans.”⁵

These countries concluded, among their key recommendations, that “[a] level playing field should be ensured among steel enterprises of all types of ownership” and that “[a]ll enterprises

¹ Global Forum on Steel Excess Capacity Report, 30 November 2017, p. 8.

² Global Forum on Steel Excess Capacity Report, 30 November 2017, p. 8.

³ Global Forum on Steel Excess Capacity Report, 30 November 2017, p. 9.

⁴ Global Forum on Steel Excess Capacity Report, 30 November 2017, p. 11.

⁵ Global Forum on Steel Excess Capacity Report, 30 November 2017, p. 11.

acting in a country's steel market should follow the same rules and regulations with economic implications, including bankruptcy procedures.”⁶

They emphasized that “[i]n order to ensure fair competition and a level playing field in the steel industry, it is important that all steel enterprises follow the same rules and reporting requirements.”⁷

These conclusions and others agreed by numerous Members under the German G20 presidency confirm a wide recognition that market-oriented conditions are essential to solving the problems we face.

As we see it, the WTO is an appropriate place for Members to work to address these problems of non-market conditions that undermine fair trade. To say that the WTO is *not* the place to discuss these concerns is really to assert that the WTO is and should be irrelevant – and we respectfully disagree.

The elements and criteria identified in our joint statement with Brazil and Japan are essential to ensuring that market-oriented conditions exist across sectors – not just in steel – so that all market participants compete on a level playing field.

We disagree with those who would say that the importance of these conditions is only academic. The example of the conclusions reached by G20 and interested OECD members on the need for market-oriented conditions in the steel sector demonstrate vividly that this discussion is not academic but is rather at the heart of some of the most significant stresses in the international trading system.

When a Member takes the position that market-oriented conditions are not worth the time or concern of WTO Members, it sounds as if they do not *want* to provide a level playing field for other Members. If that is the case, then this discussion is even more important to have. A Member who would dismiss these concerns should explain how we can have a level playing field if some Members offer market-oriented conditions but others do not.

If one examines the market-oriented conditions criteria, it is clear how each contributes to conditions of fair competition and trade. A review of these criteria also helps to illustrate how a failure to meet these criteria is unfair.

⁶ Global Forum on Steel Excess Capacity Report, 30 November 2017, pp. 13-14.

⁷ Global Forum on Steel Excess Capacity Report, 30 November 2017, pp. 13-14.

Take, for example, a business that may try selling into a market, only to find that its competitor is directed to sell at non-market or unprofitable prices.

Or, for example, consider a business that would like to expand and seeks financing at a market rate, only to find that its state-backed competitor can obtain financing from another State Enterprise at a non-market rate.

Or, for example, consider a firm that seeks financing from the market at a rate to make its business case, only to be denied because competitors have access to non-market financing that results in over-investing and excess capacity.

Likewise, it is well known that forced technology transfer remains a large and growing concern. These policies and practices also reflect a failure to respect market-oriented conditions because a forced transfer – or an outright theft – is not voluntary. Forced technology transfer unfairly deprives one actor of its intellectual property, trade secrets, “know-how,” or other valuable knowledge, and gives them to another on non-market terms. We do not think any Member would try to defend cyber hacking or cyber theft to transfer technology to a domestic commercial actor as fair.

In each of these examples, the failure to ensure market-oriented conditions generates a result that is fundamentally unfair.

And we have not heard any Member argue for a different position. Do any Members really believe that fair trade can result when special advantages are given to domestic entities under these conditions?

Ensuring that market-oriented conditions exist for market participants is critical to realizing the benefits of the international trading system that come from our mutual commitment to these rules. This common foundation is necessary to ensure a level playing field for all Members.

As we see it, the continued relevance of the WTO will depend on whether it can deliver on the promises of a world trading system based on open, market-oriented policies. The success of our reform efforts will depend on our ability to ensure the fundamental premise of free, fair, and mutually advantageous trade remains intact.

As we keep in mind the imperative to reform the WTO, we will continue to welcome engagement with Members who seek to strengthen our collective commitment to open, market-oriented policies, to move closer toward these market-oriented conditions, and to ensure a level playing field that benefits us all.

SECOND INTERVENTION

The United States would like to thank all the Members who took the floor to provide their comments. We look forward to continuing this important conversation in future meetings.

On another subject, let me now take this opportunity to inform colleagues that the United States will be circulating a draft Ministerial Conference Decision shortly entitled, “Advancing Sustainability Goals through Trade Rules to Level the Playing Field.”

We look forward to submitting this proposal for consideration during the upcoming Structured Discussions on Trade and Sustainability.

The draft Ministerial Conference Decision aims to reinforce our view that failure to adopt, maintain, implement and effectively enforce laws and regulations that ensure environmental protections at or above a threshold of fundamental standards constitutes an actionable subsidy under the Agreement on Subsidies and Countervailing Measures.

PROCEDURES TO STRENGTHEN THE NEGOTIATING FUNCTION OF THE WTO – STATEMENT BY THE UNITED STATES (WT/GC/W/757/REV.1 AND WT/GC/W/764/REV.1)

The United States is pleased to continue our discussion of this important reform initiative. The pandemic has not permitted us to have the kind of engagement with Members in 2020 that we know is needed to advance this reform. We look forward to better days ahead, and to returning to substantive discussions on our proposal next year.

The issue at the heart of this reform effort—the lack of differentiation among self-declared developing country Members—has undermined the negotiating arm of the WTO for years, and it will continue do so until Members address a practice that is grossly unfair to the poorest, least-integrated Members of this institution.

We are encouraged by the progress of our S&D reform initiative to date. Prior to the U.S. analytic paper that began our discussion in early 2019, an open discussion of this problem was taboo in Geneva.

It is true that Members from across the development spectrum thought that the lack of differentiation in the WTO was already a problem many years ago. One relatively poor Member cited the lack of differentiation as a major cause of the failure of the Doha Round. But no one dared to speak about this problem, or about how to solve it, with the microphones on.

That has changed. As a result of that change, we are seeing the green shoots of reform.

Our analysis of the differentiation problem, and our conviction that the WTO urgently needs to adapt to a changed reality, gained traction with a wide swath of the Membership.

Members began to take action on their own initiative, stating they would not seek S&D in current and future negotiations. To our ears, they shared a common goal – to help improve the negotiating function of the WTO, so that Members can undertake and conclude meaningful trade negotiations here.

For our part, we are clear-eyed about the challenges to advancing this important reform. We are also clear-eyed about the challenges of failing to reform.

At the start of our conversation on S&D reform in February 2019, I said that the WTO faces a choice – reform or irrelevance. That remains true, but irrelevance would not be an endpoint. The resulting vacuum would not go unfilled.

Already, we see other forces taking shape in the international system. We are profoundly concerned with what we see - the foundations and scaffolding for a system based on privileges not rights; and power not rules.

We wish for a different future, and we will work hard with any Member, rich or poor, to achieve it.

STRENGTHENING THE WTO TO PROMOTE DEVELOPMENT AND INCLUSIVITY
– COMMUNICATION FROM THE AFRICAN GROUP, CUBA, AND INDIA
(WT/GC/W/778/REV.3)

We note that the proponents have submitted an updated paper. Compared to the previous version, the paper appears to have a few new paragraphs and fewer co-sponsors.

We continue to disagree with the vast majority of the paper. It is backward-looking and unhelpful, completely disconnected from where this organization and the international business community are today. We provided detailed comments on this paper at previous meetings of the General Council, and we see no benefit to providing a long restatement of our views.

The heart of this paper continues to directly call into question whether Members share a common understanding that WTO rules, and the implementation of those rules, are helpful to development and economic growth.

In Paragraphs 1.3 and 1.4, the remaining co-sponsors once again tell us that the framework of WTO rules is onerous, unfair, and anti-development. Further, they conceive of S&D as a means for self-declared developing countries to disconnect from various WTO rules, including in the TRIPS Agreement, TRIMS Agreement, and the SCM Agreement.

For Members who hold this view, the common rules of this house are rules for others – not themselves. They want the opportunities that WTO membership offers, but they no longer want to contribute to creating those opportunities through the full implementation of existing WTO rules.

We encourage the proponents to return to the premise that we believe in the rules, and in their full implementation.

Without this common understanding, it is hard to understand how reform efforts can succeed.