

**Statement by Ambassador Dennis Shea
General Council Meeting, July 23, 2020**

Item 11. STATEMENT ON THE IMPORTANCE OF MARKET-ORIENTED CONDITIONS TO THE WORLD TRADING SYSTEM – UNITED STATES

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

As a result of our work together, Brazil and the United States have released a joint statement that reflects the importance we attach to market-oriented conditions for the world trading system. This statement further elaborates the draft General Council decision previously circulated.

The joint Brazil-U.S. statement reflects our shared values as WTO Members and our recognition of fundamental issues that support the trading system.

We jointly affirm that market-oriented conditions are fundamental to a free, fair, and mutually advantageous world trading system.

We affirm a number of criteria that reflect the market-oriented conditions and disciplines to which our own enterprises are subject.

And we affirm that all Members' enterprises should operate under these conditions to ensure a level playing field for our citizens, workers, and businesses.

We continue to welcome the support and engagement of Members who wish to become co-sponsors of this statement. To that end, we are

willing to discuss the statement with any delegations who may have questions about it.

In the time since we first introduced the draft General Council Decision on market-oriented conditions, in March of this year, much has changed. But we are still faced with the same basic questions we posed at that meeting: What is the purpose of this organization? What values do we uphold?

For the United States, the WTO is and should be a place where countries come together to work towards developing and enforcing rules that promote the common goal of free and fair trade on the basis of openness and market principles.

This reflects the long-held understanding that the WTO was established to promote Members' participation in a world trading system "based on open, market-oriented policies and the commitments set out in the Uruguay Round Agreements and Decisions".¹

When Members opened their economies to competition through the WTO, they did so with a shared understanding that market-oriented conditions would take hold in each of their economies and this would help ensure a level playing field for that competition to take place.

The market-based reform efforts of many GATT parties and WTO acceding Members reflect that shared understanding that market-oriented conditions are essential for Members to fully benefit from the reciprocal and mutually advantageous commitments that we have undertaken.

Yet more recently, non-market-oriented policies and practices have been working against that collective goal, creating unfair competitive conditions that hurt other Members' workers and businesses.

¹ Marrakesh Declaration of 15 April 1994, fifth preambular paragraph.

As we see it, some of the key elements that indicate that market-oriented conditions exist for market participants are:

1. Decisions of enterprises on prices, costs, inputs, purchases, and sales are freely determined and made in response to market signals;
2. Enterprise decisions on investments are freely determined and made in response to market signals;
3. The prices of capital, labor, technology, and other factors are market-determined;
4. Capital allocation decisions of or affecting enterprises are freely determined and made in response to market signals;
5. Enterprises are subject to internationally-recognized accounting standards, including independent accounting;
6. Enterprises are subject to market-oriented and effective corporation law, bankruptcy law, competition law, and private property law, and may enforce their rights through impartial legal processes, such as an independent judicial system; and
7. Enterprises are able to access freely relevant information on which to base their business decisions.
8. Moreover, in all of these areas, there should be no significant government interference in enterprise business decisions.

When workers and businesses in each Member's economy are subject to these market constraints and disciplines, they compete on a level playing field. But when a Member's non-market policies and practices shield its producers from these market constraints and disciplines, it confers an advantage that is fundamentally unfair.

Simply put, if your workers and businesses *are* subject to market constraints and disciplines, it is fundamentally unfair to force them to compete with another Member's enterprises that are *not* subject to these same constraints and disciplines.

In the March General Council meeting discussion, some Members misunderstood the draft Decision and drew a false equivalence between market-oriented conditions and a rejection of governance altogether. But of course that's not the case.

The proposed elements themselves recognize the importance of effective corporation law, bankruptcy law, competition law, and private property law.

However, when the state puts its thumb – or even its fist – on the scale to distort competition and drive preferred outcomes to benefit certain domestic actors, that is unfair.

Conversely, we have witnessed recent interventions as a result of the COVID-19 pandemic. While those interventions should be temporary, the underlying importance of market-oriented conditions has not changed.

What we're concerned with is ensuring fair competition and a level playing field; not interfering with the ability to govern.

There are others who appear to recognize the value of market orientation, but then assert that efforts to affirm that value are intended to interfere with government regulation, or prevent interventions to address market failures. That understanding, however, is incorrect. The importance of market-oriented conditions is not about interfering with government policies, but rather is concerned with ensuring equality between market participants.

Indeed, following the discussion of the draft General Council Decision the United States introduced earlier this year, Brazil and the United States have taken into account the reflections shared with us by other Members so that we can be clear about our values. In this joint statement, we have made clear that “[w]e recognize the importance of a Member's right and ability to regulate in the public's interest, promoting

the public's welfare and helping to establish a level playing field for all market participants.”

Still others appear to take the position that market-oriented conditions are not important as if they do not *want* to provide a level playing field for other Members. If that is the case, this discussion is even more important to have. These Members should explain how we can have a level playing field if some Members offer market-oriented conditions but others do not.

Indeed, we view this discussion as necessary to make progress towards the WTO reform we have all been discussing. To build confidence in this organization as promoting free and fair trade, WTO Members need to discuss and reinforce our commitment to market-oriented values.

At a time when much is beyond our ability to change, taking this step together to reaffirm the importance of market-oriented conditions for the world trading system is something we can do – and must do – if we want to maintain the continued vitality and, in fact, the very relevance of the WTO.