

**Trade Policy Review Body**  
**14 and 16 January 2004**

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**TRADE POLICY REVIEW**

UNITED STATES

Minutes of Meeting

Addendum

*Chairperson: H.E. Mrs. Mary Whelan (Ireland)*

This document contains the advance written questions from Members.<sup>1</sup>

**Organe d'examen des politiques commerciales**  
**14 et 16 janvier 2004**

**EXAMEN DES POLITIQUES COMMERCIALES**

ÉTATS UNIS

Compte rendu de la réunion

Addendum

*Présidente: S.E. Mme Mary Whelan (Irlande)*

Le présent document contient les questions écrites communiquées à l'avance par les Membres<sup>1</sup>.

**Órgano de Examen de las Políticas Comerciales**  
**14 y 16 de enero de 2004**

**EXAMEN DE LAS POLÍTICAS COMERCIALES**

ESTADOS UNIDOS

Acta de la reunión

Addendum

*Presidenta: Excma. Sra. Mary Whelan (Irlanda)*

En el presente documento figuran las preguntas escritas presentadas anticipadamente por los Miembros<sup>1</sup>.

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<sup>1</sup> In English and Spanish only./En anglais et en espagnol seulement./En español e inglés solamente.



## ADVANCE WRITTEN QUESTIONS FROM MEMBERS

### NEW ZEALAND

#### Tariffs

The contrast between the low average U.S. tariff and the tariff peaks in sectors such as agriculture remain a feature of U.S. trade policy and appear to be an obvious contradiction to the statements in favour of open trade that are a feature of the U.S. Government report (SI/ page 32, paras. 8-9).

The average MFN tariff for non-agricultural products in 2002 was 4.2%, this contrasts with agricultural tariffs which had an average tariff of over double this amount at 9.8% (S/III, Table III.2).

The Secretariat notes that: "In 2002, some 6.6% of tariff lines bore tariffs exceeding 15%" which tended to be concentrated in a few "sensitive" sectors. The Secretariat also noted that tariff escalation was particularly noticeable in food industries where *ad valorem* equivalent tariffs rates range to 350% (S/III/para. 50). These barriers have a negative impact on high-value added exports, from developing and developed countries.

In view of this, what is the U.S.' justification for maintaining high tariff protection in sectors such as agricultural food products?

What programme does the U.S. have for the reduction and eventual elimination of such tariffs?

When does the U.S. intend to reduce or eliminate tariff peaks?

#### Import Licensing

The Secretariat report states at S/III, para. 142:

"APHIS has regulatory responsibility to safeguard U.S. animal and plant resources from exotic pests and diseases. Its Import Authorization System (IAS) allows importers to submit applications for permits to import fruits and vegetables, and animal products and organisms. It publishes a list of USDA-recognized animal health status of countries/areas regarding specific livestock, poultry, and meat diseases."

We note that the U.S. has an express prohibition on the entry of plants, plant products and honeybees from all countries except those recognised by the Code of Federal Regulations. We also understand that there is a substantial backlog of partially processed applications for market access (in excess of 300) which are delaying the review of new applications. Furthermore even after the Animal and Plant Health Inspection Service has completed its Pest Risk Assessment (PRA) process which includes public consultation, and determined there are less trade restrictive measures applicable, prohibitions are still maintained for an extended period of time until the new regulations can be proposed, published, further commented on, and republished a final rule. These facts give rise to a number of questions.

How does the United States justify the long standing delay in resolving New Zealand's request for access to the United States for live honey bee and honey bee semen, in particular when, in view of New Zealand's honey bee health (New Zealand has superior honey bee status than Australia, Bermuda,

France Great Britain and Sweden) and there is no scientific basis for further denying such access on SPS grounds?

When will USDA publish the Proposed Rule and associated Risk Assessment for New Zealand honeybees?

### **Export Credits**

The Secretariat's report provides that officially supported export credits rose from US\$3.1 billion in the 2000 FY to \$3.4 billion in 2002. (S/IV, paras. 40-43). We have continued concerns about those government financed export credits, which act as a type of export subsidy.

Could the United States please advise what steps it is taking to mitigate the effect that the use of government financed export credits and export guarantee programmes has on other exporters?

### **U.S. Dairy Policy**

New Zealand welcomes the confirmation in the U.S. Government's statement on the United States Economic and Trade Environment as maintaining "an open, competitive market at home, compliance with WTO obligations, and leadership in the multilateral trading system -- are unchanged despite challenging economic times" (G/I, page 5, para. 3). We also welcome the U.S. undertaking that it is "committed to pursuing open market policies at home and the negotiation of agreements further liberalizing U.S. and global trade" (G/I, page 6, para. 8)

Certain U.S. industries, such as dairy, with its complex systems of tariffs, import licensing and quota administration regulating dairy imports, mandatory dairy promotion, export subsidies, price supports and milk marketing orders, appear to not to be so open and competitive.

How does the United States reconcile maintaining a highly protected dairy sector with its commitment to maintaining an "open competitive market at home" (G/I para. 3, p. 5)?

In particular, what justification does the United States have for the continued use of export subsidies under the DEIP, when these have a price distorting effects in an area already depressed global commodity market?

What measures are envisaged to reform the U.S. dairy industry to make it more open and competitive by submitting it to the same market disciplines as other industries?

The 2002 Farm Act also does nothing to reduce U.S. Government's subsidies for agriculture production. The Act, in fact, includes aspects such as greater provision for subsidising exports, the re-instatement of production-linked income protection through a counter-cyclical payment programme and extending the milk price support programme through to 2007 (S/IV, page 111, para. 41).

How does the U.S. reconcile the 2002 Farm Act with the U.S. commitment to maintaining an "open competitive market at home"?

## **Food Aid**

The Secretariat report notes that the United States is the world's largest food aid supplier, accounting for 62% (by volume) of food aid delivered in 2001 (S/IV page 112, para. 46). The report also notes that the U.S. attempts to donate food aid in a way that limits disruption of commercial sales in markets. We question some donations of U.S. food aid, where the rationale would appear to be disposal of surplus production caused by domestic support in the United States, for example of Skim Milk Powder.

To what extent do USDA expect food aid donations to continue and at what volume?

What has been undertaken since the last U.S. Trade Policy Review to minimise potential disruptions on trade caused by Food Aid?

Is USDA notifying these donations through the CSSD mechanism of the FAO?

## **Government Procurement**

The Secretariat report notes, “the policy of the United States with respect to government procurement market access is to grant national treatment to any country willing to grant reciprocal treatment” (S/III, page 85, para. 239). To our understanding New Zealand gives the United States national treatment rights with respect to government procurement but New Zealand does not receive the same treatment in return.

What criteria does the United States use to assess whether a country accords its national treatment and therefore should be granted reciprocity vis-à-vis government procurement?

In what way(s) does the United States perceive New Zealand does not fulfil the criteria set out in the answer to the question above?

## **Security Initiatives**

The Secretariat's report refers to new provisions that the U.S. has implemented in order to better protect the U.S. from the threat of terrorism. Initiatives include the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (“the Bioterrorism Act”) (S/III page 65, paras. 146-149), the 24-Hour Advance Vessel Manifest Rule (S/III page 36, paras. 26-29) and Container Security Initiative (“CSI”) (S/III page 35, paras. 20-25). New Zealand shares a commitment to cooperate on effective measures to combat the threat of terrorism however, these initiatives create further compliance costs to access U.S. markets, particularly for small businesses.

While measures such as the Bioterrorism Act, CSI and 24 Hour Advance Manifest Rule are key elements in the campaign against terrorism, it would be helpful if the U.S. could indicate what steps it is taking to minimise their impact on legitimate trade?

## **Trade Agreements**

The Secretariat's report discusses the president's 2003 International Trade Agenda, which includes a strategy to ignite “in close partnership with the Congress, a new era of global economic growth through a world trading system that is dramatically more open and more free” (S/II/page 18, para. 17). The U.S. has recently undertaken a drive for regional and bilateral FTAs, with “this strategy [being] based

on the United States “exerting its leverage for openness, creating a new competition in liberalization” (S/II/page 18, para. 17).

What is the strategy and criteria for conducting further regional and bilateral free trade agreements, in particular with countries which are already strong advocates of free and open trade?

Could the U.S. elaborate on how it sees bilateral trade agreements as complementing multilateral negotiations?

## **INDIA**

### **A. TARIFF BARRIERS**

1. **De-minimis Competitive Need Limitations (CNL) waivers:** The USTR issued a Federal Register Notice regarding possible de-minimis Competitive Need Limitations (CNL) waivers with respect to articles covered under the U.S. GSP Scheme and the imports of which have exceeded the CNL value/quantity limit from particular GSP recipient countries. The countries who have crossed the CNL by value/quantity stand to lose the GSP benefit in respect of such items unless a special waiver is granted by U.S. President. The products on which India is likely to lose GSP benefit unless a waiver is granted includes whole buffalo skin leather, unsplit buffalo leather and uppers for footwear materials to the U.S. Could the United States provide details of the methodology used for granting a waiver and also consider granting India a waiver in respect of the aforesaid items.

2. **Sugar tariffs:** The sugar industry is protected by high tariffs (to the extent of 32.8% MFN tariffs on raw sugar and 42.5% on refined sugar). These tariffs, in addition to providing protection to domestic sugar producers, have also increased the use of alternative sweeteners such as high fructose corn syrup, eroding the natural sugar market in the U.S. In the long run, the high tariffs will lead to a permanent change in the sugar demand patterns in the U.S. Please provide the U.S. view on this point and on the unintended effects of high tariffs.

3. **Seasonal tariffs:** The U.S. operates a complex system of seasonal duties, quotas and entry prices to regulate fruit and vegetables imports. We would like to have a clarification from the U.S. authorities on the reasoning behind such seasonal duties and on the method of customs valuation for imposing such duties.

4. **GSP system:** GSP concessions given to India for agro-chemicals and pharmaceuticals were withdrawn in 1992 on the ground that we had not given adequate IPR protection. While all necessary steps have been taken by India and we are TRIPS compliant as of date, the restoration of the GSP concession to these products is awaited. We would request the U.S. authorities to indicate as to when India can expect the restoration of GSP concessions on these items.

5. **Jute export:** Although India is a beneficiary of the GSP, it has been noticed that inappropriate customs duty is being imposed by U.S. authorities on imports of Jute Yarn, Net Leon, Wave Fabric and Jute Bags. Further, the U.S. authorities insist upon production of VISA for export of Jute Bag, which is normally applicable to textiles under quota. Would the U.S. authorities take steps to remove this anomaly.

## **B. TRQs**

6. **TRQ on leaf tobacco:** Imports of leaf tobacco into USA are subject to TRQs from September 1995. Of a total quota of under TRQ for 2002/2003 of 1,50,700 tons (both Flue cured and light air cured tobacco including Burley), the bulk of the quota is allocated to 9 designated quota recipient countries. A residual TRQ of 3,000 tons is available to all other countries including India, although India is the second largest producer of tobacco in the world. The out of quota tariff rate is 360%. Prior to 1995 India could export any volume of tobacco at MFN duty rates to USA. After introduction of TRQ Regime in 1995, Indian exports of tobacco to the U.S. are rendered uneconomical. In view of this, the U.S. delegation is requested for information on whether they propose to take action to review TRQ regime in tobacco and enhance the residual quota from its present level of 3000 tons. The U.S. authorities are also requested to provide information on the mechanism for allocating unfilled TRQs in tobacco.

## **C. NTBs – CUSTOMS PROCEDURES, DOCUMENTATION**

7. **Delays in testing export consignments of processed food to the United States:** It has been noticed that processed food consignments exported to the United States are delayed by the long time taken to test these consignments at various laboratories. In the case of mangoes, it took over a year to send a report while the approval for export of egg powder into the U.S. is still awaited. We would request the U.S. authorities to address the problem and take remedial action to speed up the processes.

8. **Burdensome Customs Procedures under the Bio-terrorism Act:** Under this Act, cargo meant for export to the USA needs to be approved by the USA customs as non-hazardous and the concerned manifest of all the ships calling at USA ports are required to be filed 24 hours in advance of loading of cargo from Indian ports. Shipments can be made only after the necessary approval is received. Under Section 305 of the Act, domestic and foreign food facilities that manufacture, process, pack, or hold food for human or animal consumption in the U.S. are required to register with the USFDA by December 12, 2003. The information required in the registration includes details of the facility, owner and the products being manufactured. Section 307 requires prior notice to be given to USFDA by noon of the calendar day before the day the imported food will arrive at the U.S. port to allow FDA to target inspections more effectively.

Although the objective of the Act is understandable, this procedure has led to considerable difficulties to shippers in terms of the information to be provided by them, the uncertainty in being allowed to ship and the costs involved. We would like to know whether the U.S. is considering instituting less onerous procedures which while meeting its security concerns do not act as an additional barrier to trade.

9. **Burdensome customs procedures in textiles, clothing and footwear:** For these products, customs formalities require providing excessively detailed and voluminous information. Some of the information asked for seems irrelevant for customs or statistical purposes. For example, in the case of garments with an outer shell of more than one construction or material, it is necessary to give the relative weight, percentage values and surface area of each component; for outer shell components which are blends of different materials, it is also necessary to include the relative weights of each component material. Would the U.S. authorities give the underlying reason for seeking such voluminous information.

#### **D. NTBs – FEES AND CHARGES**

10. **Additional charges to meet the requirements of the Bio-Terrorism Act:** In order to meet the additional procedures and information requirements imposed by the Bio-Terrorism Act, exporters are being asked to pay additional charges. For exporters with small volumes or value, these charges are a significant additionality and operate as a tax. We would like to hear the response of the U.S. delegation on this matter and also their opinion on whether the U.S. is considering instituting less onerous procedures.

11. **Payments into Escrow account on *Bidi* (tobacco) exports:** The U.S. requires tobacco product manufacturers and importers who are non-participating in the Master Settlement Agreement (MSA) to pay a specified amount into a qualified Escrow account for products sold in the U.S. The amount to be paid on this account works out to nearly four times the cost of manufacturing one bidi. This has acted as a severe barrier for bidi exporters from India and consequently, there have been no bidi exports from India to the U.S. during this year. We would like to have a clarification from the U.S. authorities on the reasoning behind the requirement to pay specified amounts into an Escrow account and the basis for calculation of such amounts? Given the severe market access problem faced by India on this account, we are interested in knowing whether there is any move to dispense with the above requirement to remedy this problem?

12. **Levies and charges:** The fees being levied in the U.S. as charges for customs, harbour and other arrival facilities place foreign products at an unfair disadvantage vis-à-vis domestic companies. The most significant of the customs user fees is the Merchandise Processing Fee (MPF) that is being levied on all imported merchandise except for products from LDCs and other eligible countries under different agreements. The MPF adversely affects small exporters of low value items usually exporting small consignments. The U.S. Customs also collects the 'Harbour Maintenance Tax' (HMT) in all U.S. ports on waterborne imports at an *ad valorem* rate of 0.125%. U.S. authorities have stopped collecting HMT on exports while it is still being collected on imports. We would request the U.S. authorities to clarify the reasons for such a differential treatment of exports and imports and consider removing these impediments to trade.

#### **E. NTBs – IMPORT PROHIBITIONS**

13. **Local procurement by foreign ships at port:** There is a requirement that all provisions for daily use may be procured from local market by all foreign ships calling at U.S. ports. Please provide the U.S. view on this point.

14. **Prohibition on imports of uncooked meat products:** Uncooked meat products such as sausage, ham and bacon have been subject to a long-standing prohibition on imports despite the fact that meat products may come from disease free regions and that the processing involved should render any risk negligible. Would the U.S. authorities clarify the reasons for continuing with this prohibition and whether there is any move to review this prohibition.

#### **F. NTBs – TBTs**

15. **Marking Requirements:** There are extensive product description requirements for textiles, clothing & footwear. There are particular rules for marking and labelling of retail packages to clarify the country of origin, the ultimate purchaser in the U.S. and the name of the country in which the article was manufactured or produced. Could the U.S. authorities clarify why such burdensome marking requirements are maintained for certain selected product categories?



## **G. NTBs – SPS MEASURES**

16. **Shrimp exports:** Exports of shrimps to the U.S. are embargoed unless exporting nations can provide evidence that their shrimp trawlers match U.S. efforts to protect sea turtles. In 1996, U.S. banned the import of marine products from India on the ground that Indian fishermen were not using turtle excluder devices while harvesting shrimp and other marine products. By the DSB ruling of December, 1999, the Appellate Body agreed that the measure as applied by the U.S. constitutes an arbitrary and unjustifiable discrimination between members of the WTO and recommended that the U.S. authorities should bring this measure into conformity with the obligations under WTO. In view of the ruling given by the DSB, the U.S. delegation is requested for information on whether action has been initiated to amend Section 609 of Public Law 101-162 which has been found to be WTO inconsistent.

17. **Imports of milk and milk products:** Under the U.S. Import Milk Act, the import of milk protein into the U.S. is generally permitted. However the yoghurt industry is not allowed to use imported proteins, unless they originate in industries that are 'Grade A' approved by the U.S. authorities. FDA regulations make it almost impossible for Indian dairies to get 'Grade A' approval. The import of fresh dairy products such as yoghurt is thus effectively prohibited through the application of the U.S. Import Milk Act. We would like to have a clarification from the U.S. authorities on the reasoning behind this provision and seek a relaxation in the certification procedure so that industries in developing countries could get Grade "A" certification for the purpose of export of dairy products.

18. **SPS certification in agriculture and fisheries:** In agriculture and fisheries, U.S. standards and regulations governing the entry of certain products seem arbitrary and unscientific in nature. For the export of certain fruit items, the U.S. asks for pre-clearance inspection to ensure that goods are free from certain specified pests and "other insect pests that do not exist in the U.S. or that are not widespread in the U.S." Regulations on the basis of such an open ended list of unspecified pests do not appear to be scientific and lead to lack of transparency and hence hinder market access. We would request the U.S. authorities to address the problem and review the legislation to make it more definitive and less open ended. We would also request the U.S. authorities to indicate as to whether the list of specific pests refers to the pests that exist in USA and also whether this list of specific pests is reviewed by the authorities.

19. **SPS measures on egg products:** Import of egg products into the U.S. is allowed only under a regime requiring continuous inspection of the production process whereas a system of periodic inspection of the production process could also be acceptable from the point of view of safety of human health. Continuous inspection is expensive, and thus has a negative effect on prices and competitiveness. Please provide the U.S. view on this point. Is there a possibility of review of the existing system?

20. **SPS measures introduced by the Bio-terrorism Act, 2002:** Under the Bio-terrorism Act of June 2002, a series of additional SPS measures have been introduced. These include new authority for the U.S. FDA to take action to protect the nation's food supply against the threat of intentional or accidental contamination and other food related public health emergencies. Under Section 305 of the Act, domestic and foreign food facilities that manufacture, process, pack, or hold food for human or animal consumption in the U.S. are required to register with the USFDA by December 12, 2003. The information required in the registration includes details of the facility, owner and the products being manufactured. Under Section 306, USFDA is authorized to access and copy records of food industry relating to an article of food when it has reasonable belief that the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. Section 307 requires prior notice to be given to USFDA by noon of the calendar day before the day the imported food will arrive at the U.S. port to allow FDA to target inspections more effectively.

Would the U.S. authorities clarify as to how these new regulations meet the requirements laid down under GATT Article VIII: 1 (C) and of the WTO SPS Agreement, particularly the 'necessity test' and 'least trade restriction test'? These questions are raised particularly in the context of the U.S. FDA already requiring exporters to furnish detailed information for export of food products to the U.S. which can be utilized to achieve the desired objectives of the Act.

Further, not all food products could be used to cause threat or death to human or animal like or health. The Bioterrorism Act does not distinguish between types of food products and requires the same information from exporters of all food products. We would like to hear the response of the U.S. delegation on how these measures can be made less trade restrictive.

## **H. NTBs – TRADE REMEDIES**

21. **Dumping margin rule of U.S. trade Law:** The WTO agreement provides for guidelines and procedures to be followed while imposing anti-dumping duties. The lesser duty principle (the lesser of dumping margin and injury margin) is widely adopted in most countries while determining the anti-dumping duty. However, the U.S. follows the dumping margin rule. This results in imposition of unnecessarily higher dumping duties. We would like to have a clarification from the U.S. authorities on the reasoning behind following this methodology.

22. **Anti-dumping action and high rates of anti-dumping duty on Steel:** The U.S. has imposed anti-dumping duties on SAIL, India on HR Coil products. In this case, USA had imposed AD duties and CVD at such a high rate that trade which has a potential of 1 to 1.5 million tonnes annually has been totally disrupted. The system of Annual Review is extremely cumbersome, unpredictable and expensive for a developing country like India. We would like to hear the response of the U.S. delegation on this matter and the solutions proposed for resumption of trade.

## **I. NTBs – SUBSIDIES**

23. **Subsidies on agricultural products:** The U.S. operates a range of programmes which appear to be designed to subsidize and/or promote export of U.S. agricultural products. Some such programmes are (i) the Export Enhancement Program which allows U.S. exporters to apply for a cash subsidy designed to make U.S. products competitive with subsidised exports from other countries; (ii) the Market Access Program which offers a share of costs for promotion campaigns for agricultural products; and, (iii) the Export Credit Guarantee Program which offers U.S. Government guarantees targeted at countries which need guarantees to secure financing but show a reasonable ability to repay (The program includes a specific list of commodities per country allocation. It has recently become the main export policy tool of USDA, with annual allocations exceeding US\$5 billion and declared annual subsidy levels of over US\$400 million. The program has a default rate of over 10% historically, and is reported to be characterised by uncertainty and lack of transparency with respect to the implicit subsidy component stemming from rescheduling of payments.) Would the U.S. delegation comment upon consistency of these schemes with various WTO Agreements including on Subsidies and Agriculture. The U.S. delegation is requested for information on whether they propose to review these subsidy programmes.

24. **Subsidies to sugar:** Producer support to sugar in the U.S. amounted to well over US\$1.3 billion per year during 1999-2001. The sugar programme supports in the USA depend on a tariff rate quota (TRQ) based on domestic output. Production increases have reduced import quota volume. This decline and price erosion have adversely affected market access to the U.S. sugar market. Please provide the U.S. view on this point.

25. **Cotton subsidies:** U.S. domestic support to cotton farmers is leading to higher production of cotton even when it is non-competitive and consequently, to higher exports which depress global prices. As a result, producers and exporters in developing countries, including India, face restricted export markets. We would like to hear the response of the U.S. delegation on this matter and whether there is any action proposed to remove this distortion.

26. **State level subsidies:** Extensive subsidies are provided in the U.S. at the state level for both export promotion and industrial development. These are often not even mentioned as subsidies and not reported to the WTO under Article 25 of the Agreement on Subsidies and Countervailing Measures. To name a few, these programmes include the Business Finance Programme of the states of Maryland and Pennsylvania, business assistance programmes of the states of North Carolina and Washington and the loan guarantee programme of the state of Indiana. Could the United States provide details of subsidy programmes in existence at the sub-federal level (viz, state level and below) and on their WTO compatibility.

#### **J. NTBs – RULES OF ORIGIN**

27. **Rules of Origin:** Unilateral changes in Rules of Origin by USA have affected trade in textiles and clothing. As part of its legislation implementing the results of Uruguay Round, the U.S. substantially altered its rules for determining the origin of textiles and clothing products. The modified rules, put into effect July 1996, have resulted in changes disadvantageous to developing countries. As the process of harmonisation of Rules of Origin is in progress, India requests that no unilateral changes are made in the Rules of Origin to the detriment of developing countries. Could the U.S. delegation offer its response to this?

#### **K. NTBs – TEXTILES**

28. **The Integration Programme for Stage 3:** The U.S. integration programme for stage 3, being implemented from 1 January 2002, continues the trend witnessed in stages 1 and 2. Thus, although it would result in integration of the minimum of 18% required under the ATC, it has contributed little to liberalization of quota restrictions. The process of integration of items has been very reluctant and tardy. In effect, commercially meaningful integration has not been done. Canada and Norway, on the other hand, who are also operating quotas under the ATC have significantly reduced the restraints under the phase-out programme during the first two stages. On the contrary, the U.S. appears to have adhered to the strictly 'legal' requirements of the integration process, without taking into account commercial considerations. We would like to have a clarification from the U.S. authorities on the rationale behind the items selected for integration and whether the U.S. authorities are planning to take steps to make the phase-out programme commercially more meaningful to textile exporting developing countries.

29. **Adverse Conversion Factor for Export of Yarn:** The U.S. quota for yarn is indicated in Square Meter Equivalent (SME) whereas yarn is exported in kilogrammes. U.S. authorities use a standard conversion factor from kgs to SME for yarn which is reportedly without any scientific basis. This creates an artificial barrier as quota utilisation is shown to be higher than it should be in such cases. Can the U.S. delegation indicate how this anomaly is to be addressed.

#### **L. SERVICES**

30. **Customs Clearance Service:** There is a restriction that only U.S. citizens may operate as customs brokers in the U.S. This effectively keeps out all foreign service providers in this area. The U.S.

Government may please elaborate upon the reasons for this policy and whether there is any likelihood of reviewing this policy.

31. **Compensation to retrenched longshoremen:** There is a requirement of paying compensation of US\$1 million as severance compensation to longshoremen in the event of termination of a liner service due to lack of cargo or any other reason. This appears to be excessively stringent. We would like to have a clarification from the U.S. authorities on the reasoning behind such a stringent requirement.

32. **Bonding charges for Maritime Freight Forwarding Services:** Insofar as Maritime Freight Forwarding Services are concerned, discriminatory charges are levied for Foreign (non-resident) NVOCC or Freight Forwarding company in respect of "Individual Bonding" to the Maritime Commission in which such company has to pay US\$150,000 as compared to a company which has a Joint Venture or branch presence in USA which has to pay only US\$75,000. There is a requirement to work through a U.S. Resident Agent in case the place of business is not in USA. Such a requirement does not appear to be reasonable. Please provide the U.S. view on this point and the reason for such discrimination. Will the U.S. delegation clarify whether there is any proposal to review this requirement.

33. **Cap on H1-B Visa:** It has been reported that the U.S. government has decided to lower the cap on H1-B Visa from 1,95,000 to 65,000 per annum. In the context of the recent growth in the U.S. economy, there will be a rising demand for IT professionals and computer hardware engineers. We are interested in knowing the details of the cap on the issuance of H1-B visas and any plans to raise this cap?

#### **M. MISCELLANEOUS**

34. **Difficulty in getting U.S. VISA for attending Exhibitions/Trade Fairs:** It has been noticed that businessmen and exporters wanting to participate in jewellery exhibitions and trade fairs are facing problems in getting a U.S. Visa. Even recommendation letters of national export promotion council such as the Gem & Jewellery Export Promotion Council of India (GJEPC) are not given any weightage and Council officials have also not got a visa when they are selected to represent GJEPC at these exhibitions. This operates as a market access barrier. We would request the U.S. authorities to address the problem and ensure that bonafide business visits are not hindered.

#### **Pension Benefit Guarantee Corporation**

1. Could the U.S. provide details of the total amount of under-funded pension obligations taken over by PBGC for the following years 1999-2000, 2000-01, 2001-02, 2002-03;

2. Could the U.S. further indicate how much of the under-funded pension liabilities taken over by PBGC during the period 1999-2003 related to the automobile industry, steel industry and airlines industry? Year-wise details may be provided separately in respect of each of these three industries; and

3. Out of the total disbursements from the PBGC could U.S. indicate year-wise total disbursements during the period 1999-2003 of pension benefits from PBGC and the corresponding annual details for the automobile industry, steel industry and airline industry?

#### **Annexure**

**Qs.1.** We welcome the U.S. assertion in the Government's Report that the U.S. remains firmly committed to the WTO-based multilateral trading system, and that consistent with the objectives agreed in Doha, the U.S. shares a common purpose with WTO partners towards expanding economic

opportunities to the world's citizens by reducing trade barriers. We also note that as a part of its broader efforts to liberalize trade, the U.S. states that it is pursuant several regional and bilateral initiatives for free trade areas, in respect of some of which the U.S. exports exceed its exports to "Russia, India and Indonesia combined" [paragraph 47]. It is our hope and expectation that the U.S. regional initiatives will be consistent with the WTO rules, and will be nurtured in a manner that promotes the complementarity of regional and bilateral initiatives with the multilateral Doha Development Agenda. In paragraphs 110 through 113 of the Government Report, the U.S. has drawn attention to its domestic support to farmers as well as export subsidies, including credits, envisaged in the 2002 Farm Bill. The U.S. asserts that it has been making very limited use of export subsidies, and that the trends in outlays, as well the nature of new programmes, suggest that the U.S. will continue to meet its Agreement on Agriculture domestic support obligations. We note with concern that the 2002 Farm Bill has a provision by which the AMS ceiling can be exceeded.

Moreover, we note from paragraph 6 of the Secretariat Report that the U.S. has not fulfilled its notification obligations with respect to various agriculture notifications including on domestic support and special safeguards applied in agriculture. The U.S. is well aware of the apprehensions of the bulk of the WTO membership as regards the provisions in the 2002 Farm Bill in furthering distortions in agricultural trade. It would be highly desirable therefore for the U.S. to make its notifications expeditiously so that there is greater clarity and certainty as regards various proposals, including the U.S. proposals, on the modalities for negotiations on agriculture under the DDA. We support the apprehensions expressed, in paragraph 22 of the Secretariat Report on domestic support, regarding monitoring of the domestic support levels under the 2002 Farm Bill and would like to know what steps are proposed to be taken in this regard.

**Qs.2.** In its Government Report, paragraphs 123 through 126, the U.S. *inter alia* outlines that the U.S. will continue to work within the Doha Agenda to reduce poverty and raise the living standards across the globe and that "an ambitious result in market access will be the greatest legacy of our work in the DDA". As the U.S. is aware, expanding market access in agricultural products alone will not serve to reduce poverty and raise living standards. Economists and agriculture experts have widely documented that the largest welfare gains for the poor residing in the developing countries will stem from elimination of all forms of distorting subsidies, both domestic and on exports. It is our hope that the U.S. will be able to factor in this harsh reality into its approach towards the successful conclusion of the Doha Round.

**Qs.3.** Paragraphs 1 and 11 of the Secretariat Report draw attention to the barriers to market access in the U.S., applied *inter alia* through non-*ad valorem* duties, prohibitive TRQs, tariff protection in the range of 50-350% and tariff escalation across a number of agricultural products. We would like to understand how the U.S. reconciles these barriers, which deny market access opportunities to developing country exports in particular, with its call for trade liberalization under the Doha Development Agenda and the spirit and objectives of the Agreement on Agriculture?

**Qs.4.** (Para 45) It is observed that non-*ad-valorem* tariffs still cover 12.2% of the tariff lines and that these result in higher protection on low cost exports from developing countries. It is also observed that specific and compound duties accounted for 77 of the 100 highest rates in 2002. Most of these tariff rates are applicable in the case of agricultural products, footwear etc. What is the rationale for maintaining such a complex tariff structure when the same purpose can also be served by applying *ad-valorem* duties?

**Qs.5.** It is observed from the Part IV Para 10 of the Report by the Secretariat the total direct payment have increased to US\$19.6 billion in 2003 from US\$11 billion in 2002. Can the U.S. explain the reasons for this sudden increase in the direct payments to farmers?

**Qs.6.** It is observed that direct government payments constitutes a major part of the direct payments and these payments accounts for more than 33% of the net farm income. This type of production-distorting support artificially depresses prices in the international market thereby effectively restricts market access opportunities for the developing countries exports not only into the U.S. market but also many other countries. Will the U.S. consider reducing such type of support in view of its adverse impact on the international prices?

**Qs.7.** Para 26: While supporting the observation made in the Secretariat Report we would like to know what steps are being taken by U.S. to ensure that subsidized output is not sold in the world market?

## **CHINA**

### **Secretariat Report WT/TPR/S/126**

#### **Summary Observations**

#### **General Questions**

(p.viii, paras.7 and 9, p.x, para.19) According to the Report, the Trade Promotion Authority (TPA) Act of 2002 states that “the expansion of international trade is vital to the national security of the United States”. However, it is well known that the means of national security protection provided in the Public Health Security and Bio Terrorism Preparedness and Response Act promulgated by the U.S. in June 2003 were challenged by Members and their trade-restrictive effect raised serious concerns among Members.

1. Could the U.S. delegation explain how the U.S. will ensure that legislations with respect to national security are consistent with the principle of minimizing the effects on trade and safeguard the normal operation of international trade and investment to the greatest possible extent?

## **I. Recent Economic Developments**

#### **General Questions**

(p.1, para. 2) The Report notes that the counter-cyclical fiscal and monetary policies of the U.S. Government “were buttressed by imports which helped to keep U.S. prices down even as public expenditure and private consumption have risen”.

2. Could the U.S. please provide detailed statistics and information on imports that assist to control its domestic prices and to achieve the objectives of its macroeconomic policy?

(p.1, paras. 1 and 3, p. 14, paras. 42-43) The Report states that the "twin deficits", i.e. the fiscal deficits and the current account deficits, are of some concern. According to the forecasts made by the U.S. Government, IMF and OECD, the status of "twin deficits" in the U.S. will continue. Whereas the Report also points out that “... equally, it is as important for the United States as for other Members that trade not be unduly hindered by administrative and other barriers”.

3. How will the U.S. authorities ensure that trade will not be unduly hindered by administrative and other barriers when dealing with the “twin deficits” issue in the future?

## **Merchandise Trade**

(p.10, paras. 27-29) The Report points out that, after the previous review, the U.S. merchandise imports and exports declined by varied margins. In contrast to the U.S. declining exports to its other major partners, including the NAFTA partners during the 2001-02 period, U.S. exports to China increased.

4. How does the U.S. comment on the fact that Sino-U.S. imports and exports simultaneously increased in recent years against the adverse trend suffered by U.S. merchandise trade with other major partners?

## **II. Developments in Trade and Investment Policy**

### **Impacts of FTAs**

(p.15, para. 4, p.32, para.5 of Chapter III.) As one of the most important countries in trade, the U.S. is also one of the most active members in signing free-trade agreements (FTAs) in recent years.

5. What is the opinion of the United States about the impact of FTA arrangements on the multilateral trading system regarding the negotiating and administrative resources and the possible impacts incurred on trade by the multi-structure on implementation, inter alia the rules of origin, of various FTAs?

### **The implementation of Notification Obligation**

(p.19, para. 20 of the Report by the Secretariat and p.6, para. 7 of the Report by the U.S. government).

The Report by the U.S. government indicates that “the United States will continue to press for increased transparency in ... members’ trade policies”. Meanwhile, the Secretariat Report points out that the U.S. did not accomplish its notification obligations on domestic support to agriculture, special safeguards in agriculture, and import licensing over July 2001 to June 2003.

6. Could the U.S. Delegation please explain the reason why the notification obligations were not implemented? Please inform us of the plan on the earliest implementation of these obligations.

### **Generalized System of Preferences (GSP)**

(p.25, paras. 58-59) With the only exception of the United States, 28 out of the total of 29 major developed countries with GSP schemes to developing countries have granted GSP to China since 1980. With its accession to the WTO on 11 December 2001, China has met all the legal terms to be granted GSP by the U.S. However, China’s application for GSP of the year 2002 was rejected by the U.S.

7. Could the U.S. delegation explain the required qualifications of the applicants and the review procedures of the U.S. on granting GSP?

8. Please clarify the reason why China’s 2002 application was rejected.

9. Is it that the applicant country must have no current account surplus to the U.S. constitutes an extra restriction in considering granting the GSP?

### **The Resumption of OPIC's business activity in China**

(p.30, para78)The Chinese and the U.S. government have signed the bilateral Agreement on Insurance and Guarantees for Investments in 1980. As the investment interests of U.S. private capital in China have increased drastically in the past years, the earliest resumption of the U.S. Overseas Private Investment Corporations' (OPIC) business activity in China will benefit both China and the U.S.

10. When will the U.S. resume the OPIC's cooperation with China, which will comprehensively enforce the Sino-U.S. Agreement on Insurance and Guarantees for Investments?

### **III. Trade Policies and Practices by Measures**

#### **The Prohibited Export Subsidies**

(p.33, paras. 10, p.71, paras.176-179) The Report states that the WTO DSB has found that the U.S. tax exemption of certain "foreign trade" income of foreign sales corporations (FSCs) constituted a prohibited export subsidy under the Agreements on Subsidies and Countervailing Measures (SCM) and on Agriculture and later recommended that the United States withdrew the export subsidies. In January 2002, the Appellate Body issued its conclusions that the new Legislation, i.e. Foreign Sales Corporation Repeal and Extraterritorial Income Exclusion Act of 2000, was inconsistent with the GATT 1994 and the Agreements on Subsidies and Countervailing Measures and on Agriculture.

11. Would the U.S. Government expect that other Members will follow the practice of the U.S. thus harming the world environment of fair trade and the implementations of WTO Agreements?

12. Does the U.S. have any plan on repealing or amending the relevant legislation in consistence with the WTO Agreements?

#### **Tariff**

(p.41, paras. 47-49) There are 1309 non-*ad valorem* (NAV) tariff items in the United States, accounting for 12.47% of the total of 10493 items. The existence of large amount of NAV duties may incur the non-transparent tariff policies, and weaken the predictability of international trade. The actual NAV duties on certain products well exceeds the *ad valorem* duties of similar products and engenders a covert high tariff barrier, which greatly hinders the related Members' export interests to the U.S. Meanwhile, the existence of large amount of NAV duties is also one of the focuses of the on-going negotiations aiming to further cut down tariff among WTO Members. China urges the U.S. authorities to transform these NAV duties to the *ad valorem* duties as soon as possible.

13. When will the United States take specific steps and measures in this respect?

#### **Tariff Peaks**

(p.41, para. 50) The wide existence of tariff peaks is quite obvious in U.S. tariff schedule, with high level of dispersion. The evident tariff peaks can be found in the following areas:

According to the definition of National Peaks (Number of HS 6-digit duties at least three times higher than the Member's overall simple average, divided by the respective total number of HS subheadings), 323 U.S. tariff items of the agriculture products (excluding Fish) are national peaks, which occupy 30.82% of the total *ad valorem* tariff items. According to the definition of the International Peaks



(Number of HS 6-digit duties higher than 15 per cent, divided by the respective total number of HS subheadings), 110 tariff items of the agriculture products (excluding Fish) are international peaks, which occupy 10.50% of the total *ad valorem* tariff items.

For Textiles and Clothing products, 408 tariff items are national peaks, which occupy 29.21% of the total *ad valorem* tariff items. And 259 tariff items are international peaks, which occupy 18.54% of the total *ad valorem* tariff items.

For Leather, Rubber, Footwear and Travel Goods, 62 tariff items are national peaks, which occupy 14.59% of the total *ad valorem* tariff items. And 43 tariff items are international peaks, which occupy 10.12% of the total *ad valorem* tariff items.

All the above, mentioned products are of important export interests to the developing members. On the one hand, the U.S. government claims its support for the special and differential treatment for the developing members, on the other hand, these tariff peaks have seriously curtailed exports from the developing members to the U.S.

14. When will the U.S. take efficient measures to reduce tariff peaks and promote international trade effectively?

### **Tariff Escalation**

(p.41, para. 50) According to the analyses of 2002 USA tariff schedule, the existence of tariff escalation, which arises when tariffs increase with the degree of processing, is beyond any doubt. The Simple Average tariff rate for primary mineral products, precious stones and precious metals is 0.43%, the SA tariff rate for their semi-products is 1.17%, and the SA tariff rate for the finished products is 6.12%.

For the products of Textiles and Clothing, the SA tariff rate for primary products is 7.17%, the SA tariff rate for their semi-products is 9.21%, and the SA tariff rate for the finished products is 10.16%. The tariff rate of HS heading No.54074100 (Woven fabrics of synthetic filament yarn, unbleached or bleached, containing 85% or more by weight of filaments of nylon or other polyamides) is 13.6%. And the tariff rate of HS heading No.61099010 (T-shirts, singlet and other vests, knitted or crocheted, of silk or silk waste) is 32%.

The U.S. Government's protection of its domestic industries with these tariff escalations, have negatively affected the export of finished products from the developing members to the U.S.

15. Is there any plan or timetable for the U.S. Government to eliminate the tariff escalations?

### **Quantitative Restrictions and Controls**

(p.41, para 50) Importers and foreign exporters are not aware of the import volume of peanuts into U.S. each year, which is determined by the U.S. Government based on domestic output of peanuts of the year. On April 1 each year, the U.S. Government announces the volume of peanut import quotas and requires all importers store the peanuts that they have imported in its bonded warehouse. Only those that part subject to the quotas are permitted to be formally imported into the U.S., and the importer has to otherwise dispose of the rest. As a result, a large quantity of peanuts have to be shipped to third countries.

16. Could the U.S. explain the consistency of this measure with WTO principle of national treatment?
17. Does the U.S. intend to modify the regime for peanut imports and enhance its transparency in accordance with the WTO rules?

#### **Customs Fees and Other Charges Affecting Imports**

(p.46, para. 70)

18. What is the legal basis for the U.S. to levy merchandise processing fees upon importers?
19. Could the U.S. Delegation explain the practice's consistency with Article 8 of GATT 1994?

#### **Byrd Amendment**

(p.48, paras. 77 and 79) The Report indicates that the Byrd Amendment was found by the WTO Appellate Body to be inconsistent with provisions of the AD Agreement, the SCM Agreement, the GATT 1994, and the WTO Agreement.

20. As the "reasonable period of time" for implementation has expired, what detailed measures will the United States adopt to implement the WTO recommendation?
21. Is the U.S. prepared to notify the detailed programme and timetable to comprehensively repeal the Byrd Amendment?

#### **Anti-dumping**

##### **Status of the "Non-Market Economy"**

22. Could the U.S. please elaborate whether there are relevant provisions on the procedures for an industry or sector to apply for the market economy conditions pursuant to the criteria provided in the national anti-dumping legislations of the U.S. If not, please inform us of the plan and timetable to provide such procedures.

##### **1916 Anti-dumping Act**

(p.49, para. 80)

23. Could the U.S. Delegation provide some information about the progress of repealing 1916 Anti-dumping Act in the Congress?

(p.50, para. 86) China has noted that in relevant legislations of the U.S. there exist provisions of discriminations against China, and that many unfair practices are maintained in the relevant investigations conducted by the U.S. in terms of procedures and determinations. These problems mainly relate to:

##### **(1) Surrogate Countries**

According to Part 773, Chapter 7 of the amended Tariff Act of 1930 and Part 351 (B) of Antidumping and Countervailing Duties, DOC should select a market economy as the surrogate country which has a development level comparable to the non-market economy country. However, in the

administrative review case with respect to crawfish tail meat in April 2002, DOC chose Australia as the surrogate country. The level of development of China is apparently incomparable to that of Australia. Moreover, the cultivated crawfish of Australia and Chinese wild crawfish are of two different types of products. Therefore, the final anti-dumping duty rate determined for the Chinese product on the basis of Australian figures is extremely unreasonable.

24. In the context of this case, could the U.S. elaborate how it will deal, in a fairer manner with the difference of the levels of development of two countries and between the relevant products?

25. Could the U.S. please explain its criteria for selecting a surrogate country in this case?

26. While selecting surrogate countries, how does the U.S. avoid and rectify the problem with respect to insufficient relevance of surrogate countries?

## **(2) Calculation of Normal Value**

In the anti-dumping investigations, the U.S. has always regarded China as a “non-market economy country” on a discriminatory basis. The prices of third countries used to determine the normal value of the Chinese commodities are randomly selected, and the calculating methodologies and data used by the U.S. are arbitrary and unpredictable, especially in terms of:

### **(a) Profit Margin of Producers**

In the event that the surrogate country method is being applied and there exist several producers (including profitable producers and those at a loss) of the same kind of product, DOC will add up profit margins of all producers (for those at a loss, the profit margin is take as “0”) and then divide the sum by the number of all producers, the resulting value will be regarded as the profit margin of the surrogate country.

However, in the recent case with respect to the Chinese products (such as color TV), DOC abruptly changed the above method, omitting producers at a loss when calculating the profit margin of the surrogate country, which led to a prima facie increase of the profit margin of the surrogate country. Nevertheless, the data of the producers running at a loss was taken into account when computing indirect overhead cost as well as selling, administrative and other expenses of the producers in the surrogate country.

27. Could U.S. explain why it discarded the original method in calculating the profit margin of the surrogate country?

28. Please provide the justification for the inconsistency regarding to the data of the producers at a loss between the methods in calculating profit margin of the surrogate country and in calculating the cost and expenses of the producers in the surrogate country.

### **(b) Determination of the cost of the Chinese producers**

Determination of the cost of the Chinese producers is crucial in determining the existence of dumping and anti-dumping duty rate. However, in many U.S. anti-dumping cases, the method for calculating the cost of Chinese producers is arbitrary, and the choice of data often depends on subjective judgment. For instance, in the anti-dumping investigation on aspirin produced by China, DOC determined that due to the high level of integration in production, indirect overhead cost of the Chinese

producers should be lower than that of the producers of the surrogate country. Consequently, DOC multiplied the actual indirect overhead cost of Chinese producers by several times, thus having enhanced the production cost of the Chinese producers.

29. Could the U.S. elaborate on the criteria for determining the high level of production integration of the Chinese producers?

30. Please provide the legal basis for the U.S. to multiply the indirect overhead cost of the Chinese producers by several times.

31. If the U.S. considers this practice to be consistent with WTO Agreements, please clarify the consistency.

### **(3) Determination of Anti-dumping Duty Rate**

Due to inaccurate data input and flawed calculating methodologies, the anti-dumping duty rate on Chinese products determined by the U.S. authorities often exceeds their normal values. Take the concentrated apple juice case as an example, DOC imposed “0” anti-dumping rate on five enterprises in the re-determination. However, while calculating the duty rate on the Chinese enterprises subject to voluntary verification to which weighted-average duty rate should have been applied, DOC considered that “0” duty rate should not be included in the weighted average calculating. Given that all the six enterprises under mandatory verification were subject to “0” duty rate, DOC considered there was no basis for weighted-average duty rate, so it determined the average anti-dumping rate of enterprises other than those subject to mandatory verification as 28.33%. Upon a later appeal by the Chinese enterprises, the U.S. Court of International Trade held that the determination of DOC was not justifiable, therefore DOC readjusted its determination to an average anti-dumping rate as 3.83% after re-calculation.

32. Could the U.S. provide the legal basis for excluding “0” duty rate from weighted-average anti-dumping rate?

33. Please clarify the method adopted by the U.S. for calculating the average anti-dumping rate of enterprises subject to voluntary verification and the legal basis thereof.

In fact, in the previous U.S. anti-dumping investigations against Chinese products, DOC had more than once determined an average anti-dumping duty rate far beyond the normal values, just like the practice as in the above-mentioned case.

34. Could the U.S. please elaborate how it will avoid such practices in future anti-dumping investigations?

### **(4) Determination of Injuries to Domestic Industries**

According to Article 4 of WTO Agreement on Anti-dumping Measures, petitioners of anti-dumping investigations must be able to represent the entire industry; accusation against imported products and determination of injuries to the domestic industry should not be based on the situation of one or two companies only. However, in the recent anti-dumping investigation against color TV sets imported from China, DOC initiated the case only in response to complaints from one enterprise and 2 trade unions. But this one enterprise is as a matter of fact not a real color TV sets producer. Without supports from real producers, the petition itself lacked justification.

35. Please explain the consistency of the qualification of petitioners in this case with Article 4 of WTO Agreement on Anti-dumping Measures.

According to Article 3 and 4 of WTO Agreement on Anti-dumping Measures, a determination of injury to U.S. domestic industries shall be based on “positive evidence” and “objective examination”, and also take into account of “domestic producers as a whole”. Nevertheless, USITC failed to abide by the above rules in making the preliminary determination in the color TV case. Sound profit level and performance of the U.S. color TV sector during the investigation period seemed to be contrary to the conclusion of being “injured” made by USITC in the determination. Furthermore, USITC failed to take into full account the detailed data submitted by the Chinese enterprises and a great deal of objective facts.

36. Please explain the consistency of the affirmative determination made by DOC of an injury to the U.S. domestic industry by the color TV sets imported from China with Article 3 of WTO Agreement on Anti-dumping.

#### **(5) New Shipper Review**

Participating in the new shipper review is a basic right provided by the Agreement on Anti-dumping Measures and other relevant WTO rules. The U.S. have an obligation to interpret and apply these provisions strictly in accordance with the WTO rules and its domestic legislations.

However, three out of the five Chinese enterprises requesting for new shipper review in 2003 were denied by the DOC of the new shipper qualifications based on unjustified causes, including:

##### **(a) Refusing the petition based on erroneous customs record**

Based on a false record of the U.S. Customs, DOC refused to grant one Chinese enterprise with qualification of the “new shipper of honey”. Upon the investigation by the attorney at law, the U.S. Customs admitted its mistake and made written clarification on the matter to DOC, but DOC refused to change its decision.

37. Please provide justifications for DOC’s refusal to change its wrong decision.

##### **(b) Cause for refusal conflicts with laws and precedent cases**

With regard to the application of another Chinese enterprise to be a new shipper, ITA noted that although the supplier of the enterprise had not exported products to the U.S. during the period of investigation, it had supplied goods to an exporter which had exported goods to the U.S. in such period, so ITA denied the enterprise’s application.

38. Please provide the legal justification for denying this application.

39. Please explain the reason for the inconsistency of this practice with 19 USC § 1675(a)(2)(B)(i) and 19 C.F.R. § 351.214(b)(2)(ii)(A), § 351.214(b)(2)(ii)(B), § 351.214(b)(2)(iii)(A), and § 351.214(b)(2)(iii)(B), as well as precedents made by U.S. DOC in the case of Glycine from China and in the case of Crawfish from China.

(c) Restrictive requirements on “sales to the U.S.”

Yet another Chinese enterprise’s application for new shipper review was refused under the excuse that its contractor located in Europe rather than in the U.S., therefore their exports were not regarded as “eligible sales to U.S.”. However, as a matter of fact, documents submitted by this enterprise could prove that its products were shipped directly from China to the U.S., with a destination port of the U.S.

40. From the practice of the U.S. in the above case, it seems that the definition of “sales to the U.S.” consists of an extra restriction that the contractor of the product should also be within the territory of the U.S. If this understanding is correct, please provide the legal basis for such restriction on “sales to the U.S.” defined in the U.S. anti-dumping legislation.

**Countervailing Measures**

(p.52, para. 90) In light of a consensus reached between the U.S. and the EU pursuant to the decision and recommendation of the DSB, the calculating methodology of “changing ownership” used in countervailing measure investigations and determinations by the U.S. is inconsistent with the WTO Agreement on Subsidies and Countervailing Measures.

41. Prior to November 8, 2003, had the U.S. DOC already rectified the calculating methodology? If not, please explain why.

**Technical Regulations and Inspection and Quarantine Measures**

(p.60, para. 122) The burdensome SPS requirements of the U.S. have always been a focus of complaints and concerns of Members. During previous review, the U.S. Government indicated that the Federal Register was in the process of soliciting public comments and seeking measures to improve the SPS requirements that had impeded normal trade.

42. Please provide information on what measures the U.S. has taken in this respect since then.

(p.63, para. 134 and p.64, para. 139) 92.7% of the 117 routine notifications under SPS made by U.S. in 2002 provided a comment period of less than 60 days, China feels disappointed for the inconsistency of the general comment period provided by U.S. with the recommendations of TBT and SPS Committees—no less than 60 days.

In order to promote WTO Members implement action of the 60-day comment period recommendation, China proposed that the “60-day comment period” for SPS notifications should be calculated from the date of the WTO Secretariat distribution (G/SPS/W/131). This was opposed by the U.S. Delegation on the excuse of not complying with the American domestic legislation.

43. What domestic legislation prevents the U.S. from doing so? We would appreciate it if the U.S. could provide us the full text of the relevant legislation.

44. How would the U.S. justify the situation of a high percentage of inconsistency in terms of comment period provided by the U.S. for the SPS notifications, for example 57.3% of the U.S. SPS notifications were less than or equal to 30 days, 92.3% less than 60 days for the year 2002?

45. What measures will the U.S. take in order to abide by the recommendations of the SPS Committee and the TBT Committee on the no less than 60 day comment period?

(p.63, para. 135) Products such as beef are required to be labeled with the country of origin.

46. Is it the consideration of the U.S. behind this legislation that consumers would more likely choose products originating in the U.S. when they are labeled with the country of origin? If not, what is the consideration behind the measure?

47. Since imported meat products have already undergone relevant inspection and quarantine, how does the U.S. consider the impact of this practice on equitable competition between foreign and U.S. products?

(p.64, para. 139) Some Chinese fruits are competitive in the U.S market. However, the U.S. Government has held off the market access of Chinese fruits, such as Asian Pears and apples, on the basis of causes in relation to inspection and quarantine of plants, keeping them out of the U.S. market to date. However, the prohibition of our Asian Pears and apples from entering the U.S. market for the reason of plant inspection and quarantine is unjustified, given that Asian Pears and apples produced in China are in full conformity with international quarantine standards. With regard to bergamot pears, China raised the application for bergamot pear export to the U.S. in 1992, but the U.S. refused to conduct the pest risk analysis on account of 9 epidemic diseases contained in the pears. As a matter of fact, the alleged diseases have never occurred in Xinjiang region of China when the bergamot pears are produced.

48. What are the inspection and quarantine standards adopted by the U.S. for Asian Pears and apples from China? Are such standards different from international quarantine standards?

49. Is there a time limit for inspection and quarantine of imported goods in the U.S.? Has such time limit been respected in the inspections of Asian Pears and apples from China?

50. Could the U.S. please clarify the scientific justification in terms of SPS for refusing the importation of Chinese bergamot pears?

51. Why did the U.S. refuse to conduct the pest risk analysis?

(p.64, para. 142) The U.S. denies any inspection results provided by exporters of peanuts, including the inspection conducted by international commodity inspection organs (such as SGS), which was counter to the WTO Agreement on Preshipment Inspection. While conducting inspection on imported peanuts, the U.S. has expanded the scope of inspection, protracted the inspection time, increased inspection charges thus creating difficulties of the inspection at its own discretion. For example, while asserting samples from one container among eight, the U.S. authorities actually require every container to be opened.

52. Could the U.S. explain the necessity of these practices and their consistency with the rule of harmonization and the principle of least trade restrictiveness contained in WTO Agreements on TBT and SPS?

(p.65, para. 145) According to the understanding of China, Chinese herbal medicines are sold in the U.S. as "an supplement to diet". The U.S. Federal laws require the content of heavy metals such as arsenic, Hg and lead to be measured, which can not exceed the standards adopted by FDA. However, California applies the standards for drinking water to herbal medicines, which is an unreasonable practice. No.65 Bill of California requires the herbal medicines be labeled, which would have unfavorable effect on the choice of consumers.

53. Could the U.S. provide the applicable scope of California No. 65 Bill and indicate whether there are measures in place to prevent unnecessary and unreasonable impact on normal trade?

“Public Health Security and Bioterrorism Preparedness and Response Act of 2002” and its correlative system rules.

(p.65, para. 146) On June 12, 2002, the U.S. released “Public Health Security and Bioterrorism Preparedness and Response Act of 2002”. According to chapter 3 of the Act, FDA worked out and notified successively to WTO in 2003: “Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002” (G/SPS/N/USA/691), “Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002” (G/SPS/N/USA/690), “Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002” (G/SPS/N/USA/703) and “Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Draft)” (G/SPS/N/USA/704). On October 10, 2003, “Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002” and “Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002” were formally released as temporary final rules and entered into force on December 12, 2003.

With regard to the Registration of Food Facilities, the U.S. officials clearly expressed that they would not extend the comments period and all comments should be proposed before April 4, 2003. The provision of article 26 of para. E on Handling of Comments on Notifications of the “Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7)” (G/SPS/7/Rev.2) of WTO/SPS committee provides “Members should grant requests for extension of the comment period wherever practicable, in particular with regard to notifications relating to products of particular interest to developing country Members, where there have been delays in receiving and translating the relevant documents or where there is a need for further clarification of the measure notified. A 30-day extension should normally be provided”.

54. Please elaborate how the U.S. implements this provision.

There are only less than 2 months between the formal adoption of the temporary final rules of Registration of Food Facility on October 10, 2003 by FDA and its entry into force (Dec. 12, 2003). Para. 2 of Annex B of the SPS Agreement and the decision made at the Fourth Ministerial Conference, provides that “a reasonable interval between the publication of a SPS regulation and its entry into force in order to allow time for producers in exporting Members ... to adapt their products and methods of production to the requirements of the importing Member.”

55. Please elaborate how the U.S. implements this requirement?

Both Article 2.12 of TBT Agreement and article 10.2 of SPS Agreement provided that the developing country member should be given “longer time-frames” from the adoption and entry into force of a regulation.

56. Have the specific interests and difficulties of the developing country members been seriously considered by the U.S. in this regard and what specific measures have been taken to fulfill these obligations?



57. Could the U.S. indicate whether the above-mentioned WTO rules and provisions have been followed when the Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is implemented?

58. Has the U.S. conducted the risk assessments before the adoption of the above-mentioned legislation and regulations, according to Article 5.1 of the SPS agreement? If so, could the U.S. provide the details of the assessments?

59. What measures has the U.S. taken to ensure that the enforcement of the legislation will not increase the cost of food export and prolong the time of the exportation?

60. How will Article 5.4 of the SPS agreement be followed by the U.S. to ensure that the efforts in anti-terrorism will not constitute new trade barriers and restrict normal trade?

(p.65, paras. 146-149) Registration of Food Facilities and Prior Notice of Imported Food under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 has taken effect. Up to now there have been uncertainties which will influence the transportation of these cargoes.

61. As to the food that is imported or offered for import into the U.S., after the facilities are registered and prior notice on the importation is given to the FDA, what kind of documentation should accompany with the carrier when the vessel arrives at a U.S. port?

62. The food is subject to refusal and detention for lack of registration or without prior notice. If all the food in one container is refused, how will the container be treated?

63. The Public Health Security and Bioterrorism Preparedness and Response Act (for short as the Bioterrorism Act below) is not clear under what circumstances the carrier shall provide the prior notice to the FDA. What information must be included in a prior notice?

64. Most of the food and drug that are imported or offered for importing into the U.S. by water are carried in containers. Under what circumstances are the containers subject to registration?

If an ocean carrier cancels the Canadian port by reason of weather or other reasons and arrives at a U.S. port directly and if the prior notice submitter or transmitter does not know the temporary change and miss the proper time to provide the prior notice, the Bioterrorism Act does not provide what to do with this case, which will bring inconvenience to the food, drug exporters and the carrier.

65. Is there any regulation in the U.S. to deal with such circumstances? If not, does the U.S. intend to make any arrangement in this regard?

66. How would the U.S. deal with the food which should arrive at Canada but for some reasons finally arrives at a U.S. port and needs to be transported to Canada from the U.S. by rail or by road? Does the carrier need to give prior notice to the FDA?

(p.65, para. 147) According to the Registration of Food Facilities, foreign establishments should apply for registration through U.S. agencies, and have to pay thousands of U.S. dollars to the U.S. agencies. In the mean time, in order to meet the requirements set in the Establishment and Maintenance of Records, foreign food and feedstuff processing establishments and transportation and trade-related establishments should establish and maintain relevant records. Some of the small and medium enterprises are considering to abandon the U.S. market due to these requirements. Hence, FDA's requirements are do

not comply with the WTO Principle of least trade restriction and create trade barriers to the exportation of Chinese products.

67. Is FDA seeking other alternative measures which will minimize the impact on trade while preventing bioterrorism and tracing terrorists?

68. What kind of measures will the U.S. take to ensure that the implementation of Bioterrorism Act will not increase the export cost of food trade and prolong the time of exportation?

(p.65, para. 149) The Chinese government made comments in a serious manner on the “Registration of Food Facilities” (G/SPS/N/USA/691), “Prior Notice of Imported Food”(G/SPS/N/USA/690), the “Establishment and Maintenance of Records”(G/SPS/N/USA/703) and the “Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Draft)” (G/SPS/N/USA/704) notified by FDA, provided with the U.S. the comments before the final date and requested the U.S. to provide answers in written form and clarify some related questions. However, so far China has not received any formal reply, clarification and explanation from the U.S.

69. Does the U.S. plan to respond to the comments made by China? If so, when?

70. How will the U.S. implement the provisions contained in Article 25 of para. E on Handling of Comments on Notifications of the “Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement(Article 7)”(G/SPS/7/Rev.2)?

(p.65, para. 149) For food and feedstuff establishments, the relevant record is made based on the General Food Sanitation of 1997 and HACCP system and Application Rules of 1997 developed by CAC, a standardization body which is recognized by TBT/SPS Agreement, and the food establishments which have exported food to the U.S. have also met the requirements set out in FDA 21 CFR PART 110, FDA 21 CFR PART 120. These records should have met the requirements set out in the Establishment and maintenance of Records, and there is no need to repeat them anyway.

71. Please explain whether the requirements set out in the “Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002” are based on “CAC General requirements for Food Sanitation” of 1997, “CAC HACCP System and Application Rules” of 1997, and its relationship with the requirements set out in FDA 21 CFR PART 110, FDA 21 CFR PART 120.

(p. 80, paras. 211-221)

72. Will the U.S. kindly indicate how much subsidies and assistance in average terms it grants annually to its services and service providers?

### **Trade Adjustment and Aid Programs**

(p.82, para. 222)

73. Please list actual outlays to date, including actual payments obtained by various sectors, such as agriculture, textiles and apparels.

(p.86, para. 242)

74. Please indicate the specific legislations applicable to government procurement in services sector.

### **Intellectual Property Rights**

(p.92, para. 270) The U.S. is the only country in the world that adopts the “first invent” system in judging the novelty of patents. The “first invent” system prima facie conforms to National Treatment and MFN rule, however it has caused many inconveniences to nationals of WTO Members. For example, Article 102 of the Patent Act of the U.S. states that criteria of novelty for inventions created in the U.S. are different from those for inventions completed out of the U.S. Comparing with the U.S. applicants, the above provision is obviously unfavorable to foreign applicants filing applications for patents in the U.S.

75. Please elaborate what actions the U.S. intends to take to make foreign applicants in an equal position with the U.S. applicants.

(p.94, para. 277) Section 1498 of the U.S. Code states that when products manufactured and used by the U.S. Government or manufactured or used upon a request by the U.S. Government involve a patent, the patentee has no right to prevent the manufacturing and use of the products by the U.S. Government. This situation is akin to compulsory licensing system without the permission of the patentees as stipulated in Article 31 of TRIPS, but protections to the patentees provided in relevant act of the U.S. is much weaker than those provided in Article 31 of TRIPS.

76. Please explain the consistency of this act with Article 31 of TRIPS.

(p.95, para. 281)

77. Please provide information on the implementation of the obligation to protect well-known trademark under the TRIPS Agreement in the U.S. domestic legislation and judicial practices.

(p.97, para. 293) The exceptions to copyright protection (Limitations on exclusive rights: Exemption of certain performances and displays) as specified in Article 110.5 of U.S. Copyright Act is inconsistent with Article 13 of TRIPS.

78. Is the U.S. going to make any amendment to such provision so as to make it consistent with the TRIPS Agreement?

79. Does the U.S. Government have any plan for such amendment? If yes, please provide the detailed information.

#### **IV. Trade Policies by Sector**

##### **Agriculture**

(p. 102, para. 12) On May 13, 2002, the U.S. President formally signed 2002 Farm Bill, according to which the subsidies provided to agriculture in the U.S. will reach USD190 billion in the following ten years. The feature of the new Farm Bill is that the support to agriculture is to a large extent and has a large coverage of products, which is seldom seen in the U.S. history. Except for the increase of subsidies provided to wheat, soybean and cotton which have received subsidies from the Government all the time, the new Farm Bill also provides subsidies by specific agricultural products including vegetables and fruits.

The U.S. new Farm Bill mainly focuses on and enhances “Amber Box” subsidies, which was counter to the requirement of “substantial reduction of trade-distorted domestic support” raised in the Doha Ministerial Declaration, and further harms the confidence of most WTO Members, especially the developing countries.

80. Why has the U.S. not yet notified WTO of this 2002 Farm Bill?

81. What is the annual average amount of direct payment and counter-cyclical payment provided according to the new Farm Bill?

82. Please clarify the impact of such Bill on the prospect of the on-going multilateral agricultural trade negotiation.

83. Is such a bill contradictory to the stated attitude of the U.S. on the agricultural negotiations in the “Doha Round” as appeared in the Report by the U.S. Government?

84. The increase of subsidies to agriculture by the U.S. is contrary to the negotiation objective of “reductions of, with a view to phasing out, all forms of export subsidies” as set out in Para. 13 of the Doha Ministerial Declaration. What is the U.S. opinion on this issue?

85. Does the U.S. plan to make an amendment to this Bill so as to reduce the subsidies to agriculture substantially?

(p. 106, para. 21) Domestic support to agricultural products, 2002 Farm Bill.

86. When will the U.S. notify its domestic support data since 2000, including data of “Amber Box” and the de minimis?

(p.108, Para. 26)

87. What is the U.S. intention to expand offset loan price for its agricultural products and include more products under its loan coverage? Is the increase of loan by U.S. contrary to its initiative of reducing trade-distorting domestic support to agricultural products at the multilateral level, since such loan falls into the Amber Box?

(p. 109, para. 31)

88. How does the U.S. determine the target price of counter-cyclical subsidy?

#### **Textile**

(p. 121, para. 77) According to the statistics, the average tariff for textiles and clothing in 2002 in the U.S. is 10.36%, which is 6.3 times as much as the average applied tariff rate of the U.S. (information from USITC).

89. Does the U.S. have any schedule to lower its tariff on textiles and clothing?

(p.125, para. 97) In April 2003 having given thorough consideration to the reasons presented by the U.S. for its inability to conform with the TMB's recommendation contained in G/TMB/R/95 to apply the 25% growth factor in full to China and make the necessary adjustments to its methodology accordingly, the TMB concluded that these reasons did not lead it to change its previous recommendation and therefore recommended again that the United States implement its minimum obligations under the ATC with respect to China (see G/TMB/R/98).

So far the United States has not yet made such adjustments in compliance with TMB's recommendation. Such a failure on the U.S. side has adversely affected the market access available to China and upset the balance of rights and obligations between China and the United States under the ATC.

90. China would like to know what steps the U.S. will take to comply with the TMB recommendation.

#### **Safeguard Measures against Textiles**

(p. 122, para. 83) Given its importance in creating jobs and poverty alleviation, not only the Chinese textile industry, but the whole nation is seriously concerned with the recent the U.S. decision to restrict the import of on some Chinese textile. The Chinese textile industry has expressed, among others, the following concern and we would appreciate it if the United States could explain:

91. How does ensure that interested parties will be informed of the petition promptly?
92. How does it ensure that interested parties will get sufficient information?
93. How does it ensure that interested parties will have enough time to defend themselves?

#### **Trade in Services**

##### **General Questions**

We note that in the Article II (MFN) Exemptions list of the U.S. services schedule, treatment of foreign services or service providers in many sectors is based on reciprocity.

94. We wonder if such large scale reciprocity treatment contributes to the multilateral trading system which is based on the MFN Principle.

We welcome that the U.S. has deleted the MFN exemption based on reciprocity in the telecommunication sector in its initial services offer.

95. China would like to know if there will be any further such undertakings by the U.S. in line with the principle of MFN.

96. How does the United States ensure that licensing requirements and procedures, qualification requirements and procedures and standards do not become unnecessary barriers to trade in services?

Despite its relatively small share in international trade in services, mode 4 is considered to be of great importance for China and many other developing Members. The United States is one of the major markets for mode 4 services. However, lack of regulatory transparency, in particular with respect to obtaining, extending, renewing and denying visas and work permits, has created significant obstacles to the development of mode 4.

97. Will the United States kindly indicate whether and how it plans to improve transparency in this area to facilitate services trade under mode 4?

98. What concrete measures has the U.S. taken to implement Article 4 of GATS to increase the participation of developing countries in world trade in financial services?

#### Sector-Specific Questions

#### **Maritime Transport**

(p.128, para. 107) Para 30 of the Summary observation states that “Domestic cargo restrictions under the Jones Act remain in place but a legislation to facilitate the granting of waivers to the Act was passed in 2002”.

99. Please explain to what extent it facilitates the granting of waivers to the Jones Act as well as its impact on foreign services providers.

(p.131, para. 125)

100. Will the United States kindly explain how the measures it has taken could effectively serve the objectives of its waiver under paragraph 3 of the GATT 1994?

(p.127, para. 102; p.128, para.108)

101. The U.S. has not made any commitment in the maritime transport sector. Please explain the reasons for not undertaking commitments in this sector, since this sector plays a significant role in facilitating and expanding international trade among WTO Members.

(p.127, para. 103) As demonstrated at the CTS special session by the joint statement from over 50 members of this organization, liberalization of maritime transport services has been given considerable attention in the current round of GATS negotiations.

102. Does the United States have any plan to undertake commitments in this sector during the current round of negotiations?

(p.130, paras. 120 and 121) According to the Shipping Act of 1984, the Federal Maritime Commission established a category of so-called “controlled carriers” which was defined as “an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government”. Compared with other carriers, these carriers are not granted fair treatment, e.g. their freight rates only take effect 30 days after being submitted to the FMC.

103. Please specify the criteria and procedures for the determination of “controlled carriers”?

104. Do carriers which are determined as controlled carriers have the opportunity to appeal?

### **Telecommunication Services**

(p.138, para 160) In the Reference Paper attached to the U.S. Services Schedule, note 29 to Article 2.2 provided that “Rural local exchange carriers may be exempted by a state regulatory authority for a limited period of time from the obligations of section 2.2. with regard to interconnection with competing local exchange carriers. Rural telephone companies do not have to provide interconnection to competing local exchange carriers in the manner specified in Section 2.2 until ordered to do so by a state regulatory authority.”

105. What is the reason for retaining this kind of measures and how does it fulfill its purpose and objective?

106. Under which circumstances will the state regulatory authority order interconnection to be provided by rural telephone companies?

107. Has the U.S. considered alternative approaches to address its policy concerns?

### **Financial Services**

(p.145, para.190; p. 146, para.193)

108. How many licensing applications have been approved to foreign bankers and insurers since the previous U.S. trade policy review?

109. Have there been any applications rejected by the licensing authorities in the United States during the same period? If so, how many and why? How many licensing applications are pending for approval?

110. Please provide the number and total turnover of foreign insurers in operation in the U.S. and their respective share in relation to the whole insurance sector in the U.S.?

(p.154, para.225)

111. Will the United States kindly confirm whether a foreign insurance company’s branch present in one of the U.S. cities (say Los Angeles) can set up a sub-branch in another U.S. city (say New York)?

(p.149, paras. 203, 204 and 205) Various market access restrictions exist in the U.S. banking sector, in particular on the establishment of branches by foreign commercial banks. Complicated approval procedures and prolonged pending period are two common concerns of foreign banks. Up till

now, all the applications by Chinese banks to establish branches or representative offices have been pending for a long time with the only exception of Bank of China's New York branch. For example, the application by Bank of China to set up a branch in San Francisco was filed 10 years ago but the approval is still pending by now. The reasons given by the U.S. competent authorities are not convincing since Bank of China has been approved to set up branches in several other countries in addition to the branch already existed in New York City of the U.S.

112. Please specify the criteria for approving the establishment of branches of foreign banks.

#### **U.S. government report (WT/TPR/G/126)**

(paras. 1 and 2 in the Report by the U.S. Government): The Report indicates the role of leadership of the U.S. in the Doha Round negotiations.

1. How does the U.S. Delegation explain the difference of its positions with regard to the negotiations on agriculture as reflected in the EU-U.S. joint proposal, which is considered by most WTO Members as a big step backward and discontinuation of leadership in comparison with its original position as contained in its own proposal submitted in the middle of 2002?

(para. 116 in the Report by the U.S. Government)

2. Does the United States provide prior public commenting period in drafting all legislation and regulations affecting trade in services, including those affecting mode 4?

#### **HONG KONG, CHINA**

Technical Regulations  
(WT/TPR/S/126, P. 63, Para. 138)

1. We note that apart from mutual recognition agreements which accept foreign conformity assessments on a bilateral product-specific basis, the U.S. has also accredited selected foreign testing agencies on a case-by-case basis. We are interested in getting more details on the accreditation arrangements for foreign testing agencies, noting the trade facilitation effects that might be brought about by accreditation arrangements.

Textiles and Clothing (T&C) and Other Products  
(WT/TPR/S/126, P. 119-120, Paras. 76-77 and 80)

2. We note that for various product groups, the average tariff rate under the U.S.' preference schemes are much lower than the average MFN rates. Economies which are not parties to the U.S.' preferential tariff schemes would thus be disadvantaged by the relatively high import duties. The impact would be particularly significant for products such as T&C which are subject to a relatively high tariff rate (MFN import duties can reach 33%, with an average of 10.8% for clothing in 2002, and 9.3% for textiles) or jewellery wares which have high raw material costs.<sup>2</sup> Would the U.S. Government consider reducing tariffs in the sectors concerned in the DDA negotiations so as to provide better market access

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<sup>2</sup> Jewellery items made of precious stones and/or precious metals comprise a high proportion of material costs and hence the tariffs payable reflect largely the raw material costs. This would put exporting economies which do not produce precious metals and/or precious stones and do not enjoy the U.S.' preferential programmes in a disadvantaged position.



opportunities to all Members alike?

3. We are pleased to find that the U.S. has eliminated the visa requirement for T&C products integrated under Stages 2 and 3 of the Agreement on Textiles and Clothing. We believe that the same should apply to all the remaining products to be integrated in 2005 but would nevertheless wish to have the confirmation of the U.S. Administration in this respect. We are also interested in knowing whether additional documentation requirements would be imposed for import of T&C products in the quota-free environment.

4. We note that effective liberalization of most sensitive T&C products particularly clothing have been deferred until the very end of the ten-year transition period. Such back-loading will only exacerbate the adjustment shock of the U.S. industry upon full liberalization of the T&C sector in 2005, sparking domestic pressure for recourse to alternate forms of protection. We therefore would like to know what specific measures have been undertaken by the U.S. authorities to facilitate the integration of its T&C sector into GATT 1994 on 1 January 2005, in particular, those relating to continuous autonomous industrial adjustment and increased competition in the U.S. market as provided in Article 1.5 of the ATC.

Audiovisual Services  
(WT/TPR/S/126, P. 144, Para. 186)

5. We are pleased to note that during the biennial review in 2001 of the existing six regulations restricting ownership of TV and radio stations, some changes have been proposed to relax certain limits and eliminate certain cross-ownership bans. Yet, it is stated that the new ownership rules were stayed by an appellate court before they could become effective. We would like to know when these changes would be effective and whether the U.S. would consider reflecting such improvements in its next offer?

Banking Services  
(WT/TPR/S/126, P. 149, Para. 204)

6. We note with appreciation that interstate expansion by a foreign bank through the establishment of branches by merger with a bank located outside the "home state" of a foreign bank is granted national treatment. Citizenship requirements are however still maintained in U.S.' GATS initial offer and so are the residency requirements (without specification of exact requirements and state coverage) for directors, incorporators, organisers, or executive committee members of depository financial institutions.<sup>3</sup> We would appreciate it if the U.S. could share with us some more details of the exact requirements and the states included.

(WT/TPR/S/126, P. 149, Para. 206)

7. We note that the U.S. has inscribed registration requirements for foreign banks in the provision of securities advisory and investment management services in its GATS schedule. Apart from the registration requirement, we understand that some other discriminatory requirements also exist in U.S. laws, such as citizenship/residency requirement for the majority of the directors and officers, maintenance of assets in the U.S. with a U.S. bank, having a U.S. entity as a principal underwriter, and having a U.S. auditor for the company. We would appreciate it if the U.S. could advise us on the compatibility of these restrictions with the U.S.' GATS commitments.

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<sup>3</sup> P. 84, TN/S/O/USA, dated 9 April 2003.

## CANADA

### Report by the Secretariat (WT/TPR/S/126)

#### III. Trade Policies and Practices by Measure: (1) Introduction; Paragraph 10:

- The Secretariat Report refers to the current status of the *Foreign Sales Corporation Repeal and Extraterritorial Income Exclusion Acts* provisions. Please indicate when the U.S. proposes to rescind its WTO-inconsistent corporate tax provisions with a view to ending its illegal export subsidies.

#### III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (v) Anti-dumping, countervailing, and safeguard actions:

- With respect to administrative reviews, please indicate the average time required in 2000-02 for conducting administrative reviews. Please specify the average time between the importation of a product subject to an AD or CVD order and the final liquidation of the duties in cases where an administrative review is conducted.
- We understand that, out of the 361 sunset reviews of AD and CVD orders completed between July 1998 and July 2003, the question of whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping or of subsidization has been examined by the Department of Commerce in 269 cases. Out of these 269 cases, we understand that the Department of Commerce has made negative determinations in only 3 sunset reviews. Please briefly describe the factors examined in making such determinations and explain why the proportion of negative determinations is so low.

#### III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (v) Anti-dumping, countervailing, and safeguard actions; Paragraphs 77-78:

- Canada would like to point out that the *Continued Dumping and Subsidy Offset Act of 2000* (the CDSOA, also known as the Byrd Amendment) was successfully challenged at the WTO and found to be inconsistent with the United States' obligations under the Anti-Dumping and Subsidies Agreements. In June of 2003, an Arbitrator gave the U.S. 11 months from the Appellate Body Report to bring its measure into compliance with its WTO obligations. Why has the U.S. ignored the reasonable period of time established by the Arbitrator (until December 27, 2003) and not complied with the Appellate Body ruling? When can Canada expect the U.S. to repeal this measure that has been found to be WTO inconsistent?

#### III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (v) Anti-dumping, countervailing, and safeguard actions; Paragraph 80:

- The Report refers to the non-conformity of the *Anti-Dumping Act of 1916* with multilateral rules and recent bills introduced to address the issue. Will the Administration convey to Congress the urgency of enacting a measure that repeals the Act and terminates pending cases (e.g., S 1080)?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (v) Anti-dumping, countervailing, and safeguard actions; Paragraph 82:**

The Report refers to NAFTA Article 19 challenges of U.S. anti-dumping or countervailing duty findings.

**Comment:** NAFTA Panels have recently been established to review the U.S. Department of Commerce final determination of subsidy with respect to Canadian wheat, and the U.S. International Trade Commission affirmative finding of injury with respect to Canadian hard red spring wheat imported into the U.S.

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures:**

- Neither the Secretariat Report nor the Government Report mentions the mandatory *Country-of-Origin Labeling* (COOL) requirements mandated under the 2002 *Farm Security and Rural Investment Act* (Farm Act) for beef, lamb, pork, fish, perishable agricultural commodities, and peanuts. The Department of Agriculture has now published proposed final rules for mandatory COOL, which state that the intent of the law is to provide consumers with additional information on which to base their purchasing decisions.

However, only certain foods are covered and not all retail outlets that sell food are covered. The only retailers who must label are those who sell fruits and vegetables with an annual value of more than \$230,000. Those who do not sell fruit or vegetables, or who sell less than that dollar value, are exempt. The effective logic of the law is that only consumers that shop at supermarkets, warehouse clubs, and superstores would want to know where each production stage of the beef, pork, lamb, fish, and vegetables occurred. By contrast, consumers that shop at butcher shops, fish markets, or smaller retail stores would apparently not be interested in this same information, nor would consumers that eat these same foods at food service establishments; consumers that purchase chicken in any form would also apparently not be interested in country-of-origin information. Furthermore, for remotely-purchased products, COOL information need only be provided at time the product is delivered to the customer, that is, after the consumer's purchasing decision has been made.

These contradictions and inconsistencies seriously undermine the stated objective of the initiative. Please clarify why a mandatory measure, as outlined in the proposed final rules, is necessary, given that voluntary labeling systems are available and could achieve the stated objective.

- Canada notes that the FY 2004 Consolidated Appropriations bill (H.R. 2673), recently passed by the House of Representatives and still before the Senate, delays funding for the implementation of mandatory COOL until 2006 for all products, except fish and seafood (for which implementation is still slated to occur in 2004). Canada welcomes the implementation delay as it will allow the U.S. Government and stakeholders alike more time to study effective alternatives to mandatory COOL. However, could the U.S. clarify why fish and seafood products are being singled out for separate treatment and are not included in the implementation delay?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measure; (d) Sanitary and phytosanitary measures; Paragraphs 146-149:**

These Paragraphs refer to the passage and implementation of the *BioTerrorism Act* (BTA).

On February 3, 2003, the U.S. Food and Drug Administration (FDA) proposed regulations to implement the requirements of prior notice of food shipments and registration of domestic and foreign food facilities under the *Public Health and Security and Bioterrorism Preparedness and Response Act*. The Canadian Government has made many representations on the Act since it was first introduced in Congress in late 2001 and passed in June 2002.

Canada's particular concerns have been with respect to the prior notice requirement. The Canadian Government submitted formal comments on these proposed regulations in April 2003. On October 10, 2003, the FDA issued interim final Rules, effective December 12, 2003, which addressed many of Canada's comments. In particular, the FDA established prior notification timelines, which reflect the different modes of transportation, such as truck, rail, air, and ship.

The FDA provided an opportunity to comment on the interim final Rules by December 24, 2003. Canada submitted further comments, which expressed some continuing concerns about the provisions, as well as how a number of provisions will be implemented. There are still many areas where the current interpretation of the interim final Rules is causing confusion and imposing questionable costs on Canadian firms and individuals. Specifically, concerning the Prior Notice Rule, Canada continues to recommend that timelines for imports by road and rail be amended to reflect those of the U.S. Bureau of Customs and Border Protection, that the Rule should differentiate sufficiently between high risk and low risk products/sources, and that it should take into consideration the cost of implementation by individuals sending manufactured food products to the United States for non-commercial use. In addition, Canada recommends that the FDA eliminate the requirement for prior notice of transshipments due to the fact that this information will be collected by the U.S. Bureau of Customs and Border Protection. This will avoid costly duplication, unnecessary disruptions to trade, and reduce inconsistencies relating to the application of this Rule. Canada requests assurances that its comments will be taken into consideration.

**III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Exports; (i) Export finance, insurance and guarantees; Paragraphs 162-168:**

These Paragraphs refer to U.S. export finance, insurance, and guarantee programs, but only focus on Ex-Im Bank programs. (Section 5 refers to CCC export credit programs, but describes them as market promotion).

**Comment:** The U.S. also operates export credit programs through the Commodity Credit Corporation (CCC), an arm of the U.S. Department of Agriculture.

**III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Exports; (ii) Other export assistance; Paragraphs 174-175:**

- Reference is made to U.S. duty drawback systems, but it should be noted that at least one important such system has been established to encourage the refining of foreign sugar in the U.S., as well as the manufacture of sugar-containing products destined for export, based on the importation of foreign sugar. Please explain how the U.S. sugar drawback system affects the export of sugar and sugar-containing products refined or produced in the U.S. from foreign sugar.

**III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Exports; (iii) Section 301 and related actions; Paragraph 183:**

This Paragraph refers to the Section 301 investigation of imports of Canadian wheat.

**Comment:** Paragraph 183 should be elaborated and completed by noting that, during the Section 301 investigation, the U.S. Trade Representative also requested the U.S. International Trade Commission to conduct a “fact-finding” investigation. The combination of the Section 301 and Section 332 investigations was the source of concern about the nature of the process followed by the U.S. government. As a result of the investigation, not only did the U.S. government initiate a WTO Panel request; it also actively worked with its industry to encourage the latter to bring countervail and anti-dumping complaints against the Canadian Wheat Board. With respect to durum wheat, Canadian exports were found not to be injurious to U.S. production. Several key findings of the investigations of hard red spring wheat are currently under appeal.

**III. Trade Policies and Practices by Measure; (4) Other Measures Affecting Production and Trade; (ii) Government subsidies and other assistance; Paragraphs 222-224:**

- These paragraphs refer to Trade Adjustment Assistance (TAA), but fail to note that a new TAA program for agricultural producers was introduced when the TAA was amended in 2002. Please supplement the Secretariat’s description of the TAA with an elaboration of how TAA is being implemented in support of agricultural producers. Please include in your response how much money is allocated to TAA for agriculture, and whether it is expected that all of the funds appropriated for 2003 will be spent.

**III. Trade Policies and Practices by Measure; (4) Other Measures Affecting Production and Trade; (iii) Government procurement; Paragraph 242:**

- The Report notes the exceptions to the *Buy American Act*, specifically, “if it is determined that domestic preference is inconsistent with the public interest; in case of U.S. non-availability of a supply or material; or for reasonableness of cost.” What percentage of federal procurement contracts, for which the *Buy America Act* applies, is affected by one of the three exemptions noted above?

**IV. Trade Policies by Sector; (2) Agriculture; (I) Introduction; Paragraph 10:**

This paragraph states that “The other main reason for the decrease in support was the absence of emergency payments that year”. This statement is not accurate because there are emergency payments in calendar year 2002 (See Chart IV.1). In addition, the signing of the Crop Disaster Program, which is authorized by the Agricultural Assistance Act of 2003, for either the 2001 or 2002 crop years, only ends in January 2004.

**Comment:** The statement should be amended to read: “The other main reason for the decrease in support was a reduction in emergency payments that year”.

**IV. Trade Policies by Sector; (2) Agriculture; (iii) Domestic support; Paragraph 22:**

Paragraph 22 refers to the delays in the U.S. notifications to the Agriculture Committee of the level of its domestic support for the years following 1999.

**Comment:** Canada is concerned that the extensive delay in U.S. notifications of “new” or modified domestic support programs for agriculture, enacted in May 2002 and in effect since then, mean that the WTO notification and surveillance provisions related to domestic support are not being respected.

**IV. Trade Policies by Sector; (2) Agriculture; (iii) Domestic support; (a) Direct payments; Paragraph 25:**

This paragraph notes that “like PFCs, Direct Payments (DPs) are based on historical yields and acreage” and concludes, therefore, that “DPs are not affected by current production or by current market prices”. However, paragraph 25 fails to mention that the main difference between the DP program and the PFC program is that the DP program gives producers the option to update the base acreage used for calculations of DP payments.

**Comment:** Paragraph 25 must highlight that the DP program gives producers the option to update the base acreage used for calculation of DP payments. As a result, these payments are not decoupled from production.

**IV. Trade Policies by Sector; (2) Agriculture; (iii) Domestic support; (a) Direct payments; Paragraphs 24-25:**

These paragraphs provide a summary, but flattering description of the U.S. direct payments, and imply that these payments would necessarily fall in the WTO “green” category.

**Comment:** Until the U.S. notifies support measures as “green” and WTO members have an opportunity to examine whether this is justified, it will not be clear whether (a) any of these payments would qualify for the “green” category, and (b) the U.S. has acted consistently with its WTO domestic support commitments.

**IV. Trade Policies by Sector; (2) Agriculture; (iii) Domestic support; (b) Loan, counter-cyclical and minimum price programmes; Paragraph 26:**

This paragraph notes that the loan programs provide a fixed revenue floor per unit of production for producers of eligible crops.

**Comment:** In fact, the availability of loan deficiency payments at the producer’s option means that producers have the capacity to make somewhat more than the minimum prices implied by the loan rates - i.e., when a producer claims a loan deficiency payment before market prices rise, and then sells at a higher price.

**IV. Trade Policies by Sector; (2) Agriculture; (iii) Domestic support; (b) Loan, counter-cyclical and minimum price programmes; Paragraph 31:**

According to Paragraph 31, the potential trade and production distortions arising from the counter-cyclical payments are limited because the quantity base for the payments is set historically.

**Comment:** Canada notes that while the quantity that serves as a base for the pay-outs under the counter-cyclical program is fixed, the program still can produce significant production and trade distortions by masking the price signals that come with increased production.

**IV. Trade Policies by Sector; (5) Air Transport Services; (ii) Regulatory Framework; Paragraph 137:**

- The *Fly America Act* requires U.S. government-financed transportation and cargo to be on U.S. – flag air carriers. What percentage of U.S. government funding is required for *Fly America* provisions to kick in (10%, >50%)? The act allows for the U.S. to negotiate agreements with other countries providing an exchange of *Fly America* type rights. Has the U.S. negotiated any such rights?

**IV. Trade Policies by Sector, (6) Telecommunications Services, Paragraph 164:**

- Canada understands that when considering a license application, the Commission defers to the Executive Branch on other considerations such as national security, law enforcement, foreign policy, or trade concerns.

To what extent does the regulator have discretion in deciding on license applications that raise such concerns? Is the FCC, for example, obliged to follow the recommendations of the executive agencies in this respect, or does the FCC simply required take their consideration into account?

Though the GATS allows countries to take measures that are essential to protect security interests, there is no explicit exception for foreign policy or trade concerns. Please comment on whether the denial of licences on these grounds would fit within: (i) the GATS exceptions; and (ii) the U.S. GATS commitments?

**IV. Trade Policies by Sector; (8) Financial Services; (ii) Legislative and regulatory framework; Paragraph 195:**

- Under the *Gramm-Leach-Bliley (GLB) Act* introduced in 1999, U.S. banks continue to have little freedom to own and be owned by non-financial companies. The issue of whether banks would be permitted to own non-bank companies as merchant banking investments may be reviewed five years after the enactment of the GLB Act (2004). Does the U.S. foresee more liberalization of the banking sector to permit banks to be owned and to own non-financial companies?

**Report by the Government (WT/TPR/G/126)**

**I. The U.S. in the Multilateral System; Paragraph 6:**

- This paragraph refers to legislative changes in Trade Adjustment Assistance (TAA) and argues that TAA is an essential component to maintaining support for trade liberalization in the U.S. However, it fails to note that TAA is now available to the agricultural sector. Please comment on how much money has been allocated to agricultural TAA, and how much it expects will be spent and on which commodities. Please also comment on the extent to which, so far, TAA has lessened protectionist pressures in U.S. agriculture.

**III. Trade Policy Developments, 2001-2003: Paragraphs 111 and 113:**

- Paragraph 111 describes a number of key agricultural support programs, and indicates how the U.S. considers these programs should be classified under the provisions of the WTO's Agreement on Agriculture for purposes of evaluating domestic support. Please indicate when the U.S.

proposes to notify the new programs that it considers to fall in the “green box”, particularly as these programs have been implemented for more than a year.

- Paragraph 113 states that, “These net direct payments are notified as a mix of blue and green box measures.” In the absence of any notification to the Committee on Agriculture of the U.S.’s new programs, please indicate which aspects of these payments are production-limiting, and thus qualify for the “blue box”?

When would the U.S. propose to follow through on its apparent intent to notify those programs that would allegedly fall in the WTO “green” and “blue” categories?

**A Comment:** Major changes in legislatively and administratively-mandated procedures for the processing of imports into the U.S. of food products and ingredients, as well as in border clearance processes have been taken in order to protect the U.S. national security interests. The U.S. Administration should be commended for working with its trading partners to attempt to minimize any potential trade disruptions while meeting its essential security needs. **[Note: this is not mentioned in the U.S. national paper, but is referred to in the Secretariat paper.]**

The 2002 Farm Bill enacted restrictive mandatory country-of-origin labelling provisions that would - when implemented in September 2004 - create major disruptions in trade patterns, particularly in the fish and red meats sectors. Although Congress is considering delaying the entry into force of mandatory country-of-origin labelling for red meats, there remain considerable concerns as to the impact of the legislation on Canadian exporters and their U.S. customers and consumers.

#### **Report by the Secretariat (WT/TPR/S/126)**

#### **III. Trade Policy and Practices by Measure; (2) Measures Directly Affecting Imports; (ii) Rules of Origin; paragraph 33:**

- Paragraph 33 in the Secretariat Report indicates that country of origin marking is mandatory for most imported manufactured products and that the determination of origin relies on self-certification. What is the basis for determining the country of origin for marking purposes of products imported into the U.S.?

#### **III. Trade Policy and Practices by Measure; (2) Measures Directly Affecting Imports; (ii) Rules of Origin; paragraph 34:**

- Paragraph 34 indicates that the U.S. maintains several sets of preferential rules under free-trade agreements but goes on to provide details only on the NAFTA rules of origin in the subsequent paragraphs. Can the U.S. provide further details on the rules of origin negotiated under their FTA with Singapore and under their FTA with Chile? How do the rules of origin negotiated under these two FTAs compare with the NAFTA rules of origin?

#### **III. Trade Policy and Practices by Measure; (2) Measures Directly Affecting Imports; (ii) Rules of Origin; paragraph 37:**

- Paragraph 37 indicates that on 1 January 2003, following requests from industry, the United States together with Canada and Mexico implemented measures to liberalize the NAFTA



rules of origin applicable to alcoholic beverages, crude petroleum, esters of glycerol, pearl jewellery, headphones with microphones, chassis fitted with engines, and photocopiers.

This is not quite correct. On 1 January 2003, Canada and the United States implemented measures to liberalize the rules of origin specified above. Canada extends those benefits to importations from both the United States and Mexico; the United States extends the benefits to importations from Canada only. Mexico has yet to implement measures to liberalize these rules of origin. In October 2003, the liberalizing proposals were presented to the Mexican Senate for approval; however, they have been held over to the spring 2004 session of the Senate.

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; sub-sections a, b, and c:**

**General Comment:** The TBT section provides little information to assist Members in understanding how the U.S. is meeting its international trade obligations in this area. The heading for the section does not give any recognition to "standards". For example, the equivalent section in Canada's 2003 Trade Policy Review was entitled "Standards, Technical Regulations and Phytosanitary Measures". Reports on other Members have similar headings. This leads one to question if the U.S. implicitly does not recognize the role of standardization in its trade policy regime.

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (a) Introduction and regulatory framework; Paragraph 124:**

- Reference is made to The Office of Management and Budget's (OMB) role to "oversee and coordinate agency activity concerning technical and SPS regulations" within the federal U.S. framework. The OMB issued a draft Bulletin on August 29, 2003 proposing to regulate scientific information in federal agencies using a more uniform standard of peer review. We understand that the proposed peer review process would be used by certain federal agencies, which develop technical regulations whose underpinnings may include science as a basis for their contents. Issues have arisen since the Bulletin's release, such as: questioning the need for an overarching peer review policy; its value to the regulatory process; improved access apparently afforded industry to influence the outcome; and, the role the OMB appears to be taking as the arbiter of science and information quality [OMB Watcher; <http://www.ombwatch.org/article/articleview/1941/1/198>].

Further, seven members of the U.S. House of Representatives, in a letter dated December 15, 2003 to The Honorable Joshua Bolten of the OMB, describe the peer review process being proposed as follows: "it actually erects new roadblocks to the use of high-quality science in agency decision-making." (<http://www.house.gov/reform/min/recent.htm>, page 1, para. 3). The requirements of the Bulletin were to apply to information disseminated on or after January 1, 2004. Has the United States proceeded with the Bulletin and are any elements of the Bulletin's requirements changed?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (a) Introduction and regulatory framework; Paragraph 126:**

- Please provide an elaboration of the extent to which the U.S. is meeting its obligation under Article 2.4 of the WTO Technical Barriers to Trade (TBT) Agreement to use international

standards as a basis for its technical regulations, given the operation of Title IV of the *Trade Agreements Act of 1979* as noted in this paragraph.

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (a) Introduction and regulatory framework; Paragraph 128:**

- Reference is made to "most" U.S. states having enacted statutes containing transparency procedures in order to meet the Constitutional requirements of due process. Which states have not enacted such procedures? How do these states meet their transparency obligations under Article 3 of the TBT Agreement?

Reference is also made to the "majority" of U.S. states having enacted statutes that provide for public access to information and judicial procedures. Which states have not yet done so? How is a member of the public guaranteed access both to information and to judicial procedures in these states?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (a) Introduction and regulatory framework; Paragraph 130:**

- Canada would appreciate if the United States could elaborate on its model of "public/private partnerships in standardization" as mandated under the *National Technology Transfer and Advancement Act (NTAAA) of 1995*, in particular areas or sectors where government players are involved in the development of voluntary standards.
- Canada asks the United States to provide information to Members on the requirement under the NTAAA for federal agencies to publish an annual report on the adoption of voluntary consensus standards, both domestic and international, in lieu of technical regulations and to identify location(s) where this information can be found.

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (b) Conformity assessment; Paragraph 131:**

- Further to Section 12 of the NTAAA and OMB circular A-119, final policy guidance was issued by the National Institute of Standards and Technology (NIST) in August 2000 (15 CFR Part 287) entitled "Guidance on Federal Conformity Assessment Activities". The guideline was intended to assist federal agencies in evaluating the efficacy and efficiency of their conformity assessment activities, including to "make more productive use" of resources and "to reduce unnecessary duplication". Has an evaluation been conducted on the extent to which unnecessary duplication exists and to what degree it has been reduced since the Act and subsequent guidance has been in place?
- This paragraph also states that conformity assessment is satisfied mainly by supplier's self-declaration. How are mandatory requirements for conformity assessment met at the federal, state, and local government levels? To what extent does government conformity assessment rely upon private sector testing and certification organizations to fulfil regulatory requirements? Has the United States assessed the degree to which it has met its obligations related to "local government

bodies" contained in Articles 7.2, 7.4 and 7.5 of the TBT Agreement? If so, are the results publicly available and, if not, is it intending to conduct such a review and when? Finally, can the United States explain how coordination occurs between the various federal agencies responsible for conformity assessment?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (c) International cooperation on technical regulations; Paragraph 134:**

- Given the fact that no notifications of proposed U.S. sub-national measures have been received by the WTO related to the TBT Agreement, how does the United States intend to meet its obligations under this Agreement with respect to the notifications of technical regulations prepared or adopted by local government bodies, in particular the level immediately below the federal level?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (c) International cooperation on technical regulations; Paragraph 136:**

- Please explain why the specific provision of NAFTA Article 908.2 is highlighted in this paragraph. How is identification of this provision relevant to fulfilment by the United States of its obligations under the WTO TBT Agreement? Also, who are "the authorities" referred to in this paragraph?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (c) International cooperation on technical regulations; Paragraph 137:**

- Canada is aware that the FTA between the United States and Chile, in force as of January 2004, contains provisions which appear to extend certain obligations beyond those found in the WTO TBT Agreement, e.g., Article 7.3 of the FTA. What is the United States' view of the extent of this Article's consistency with WTO TBT Agreement Article 2.4?

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (c) International cooperation on technical regulations; Paragraph 138:**

- Please clarify the last sentence since this appears to refer to duplication of accreditation/verification of foreign conformity assessment bodies, which is not permitted under the MRAs notified to the WTO.

**III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (vii) Technical regulations and sanitary and phytosanitary measures; (e) Environmental regulations related to trade [with reference to U.S. Marine Mammal Protection Act (MMPA)]:**

- Canada continues to have concerns regarding the consistency of the U.S. *Marine Mammal Protection Act (MMPA)* with U.S. WTO obligations. In past WTO reviews of U.S. trade policy, the U.S. delegation has cited in defence of the *MMPA*, that a waiver is available, subject to certain conditions, to allow imports of marine mammal products. However, in response to the last TPR

- questions, the U.S. delegation stated that since 1975, no application for an import waiver had been received.
  - On what objective basis would the U.S. Secretary of Commerce grant a waiver for the commercial import and retail of marine mammal products?
  - If the conditions for a waiver were met, how would such a waiver be implemented for the commercial import and retail of marine mammal products?
  - How can the waiver process be justified as relief from the import ban considering WTO obligations?
- In addition to a waiver, Canada understands that permits would be required to import and sell marine mammal products in the U.S. However, the MMPA and its regulations do not provide for commercial imports or sales in the United States.
  - How do permits allow for the commercial importation and retail of marine mammal products?
  - How can that be justified considering WTO obligations?
- If the waiver provisions of the *MMPA* do provide relief from the trade ban with respect to marine mammal products, then the Presidential order that consideration be withheld "...of any Canadian requests for waivers to the existing moratorium on the importation of seals and/or seal products into the United States" removes any possible relief from the trade ban for Canada.
  - How is this defensible under WTO obligations?

**III. Trade Policies and Practices by Measure; (4) Other Measures affecting Production and Trade; (v) Intellectual Property Rights; Section 337 investigations; Paragraph 297:**

- In 1989, a GATT panel found that Section 337 of the United States Tariff Act of 1930 violated GATT obligations and yet, as noted in paragraph 297, 47 new Section 337 investigations involving unfair practices related to intellectual property rights were initiated against foreign companies. What steps are being taken by the United States to ensure that non-American companies do not face additional procedural burdens in defending against allegations of intellectual property infringement, contrary to international trade obligations?

**IV. Trade Policies by Sector; (8) Financial Services; (ii) Legislative and regulatory framework; Paragraph 203:**

- While the United States has undertaken national treatment commitments, some restrictions remain in the banking and insurance sub-sectors (e.g., registration requirements for foreign banks, certain federal excise taxes on life and non-life insurance premiums). In addition, at the state level, market access restrictions remain in the banking and insurance sub-sectors (e.g., establishment, acquisition, licensing). Does the U.S. contemplate a relaxation of these restrictions by state-level governments?

## CUBA

El gobierno de Estados Unidos de América mantiene unilateralmente un sistema de férreas y abarcadoras sanciones económicas, financieras y comerciales contra Cuba, las cuales durante más de cuatro décadas han ocasionado afectaciones significativas al comercio y economía cubanos, con una incidencia directa en su población. Se trata literalmente de una guerra económica.

Por su naturaleza extraterritorial, estas medidas o sanciones han ocasionado preocupación y afectaciones a otros países miembros de la OMC, que se han analizado y establecido procedimientos en este mismo foro.

Estas sanciones, como se ha expresado en anteriores ejercicios para examinar la política comercial de los Estados Unidos de América, responden claramente a objetivos políticos y en ningún modo se corresponden con los principios y normas que deben regir el comercio internacional y que esta Organización propugna.

Uno de los principios fundamentales que propugna la OMC es el del trato de nación más favorecida y que se consagra en la parte I, Artículo I del Acuerdo General sobre Aranceles Aduaneros y Comercio (GATT 94), que implica que no debe haber discriminación comercial entre los países Miembros. La violación de este principio es evidente pues se le impone a Cuba, unilateralmente, un tratamiento distinto y discriminatorio al del resto de los Miembros.

Dichas sanciones ignoran los principios y objetivos recogidos en las normas del GATT 94 (Parte IV) relativas al comercio y al desarrollo, las que instan a los países desarrollados a la adopción de medidas que tiendan a la elevación de los niveles de vida y al desarrollo de las economías de los países subdesarrollados y reconocen que el comercio internacional debe regirse por reglas y procedimientos que sean compatibles con los principios antes señalados.

Son violatorias además de los principios del Acuerdo Sobre Medidas en materia de Inversiones relacionadas con el Comercio, que están orientados a promover y facilitar las inversiones a través de las fronteras internacionales para fomentar el crecimiento económico de todos los interlocutores comerciales, en particular de los países subdesarrollados.

Tradicionalmente los Estados Unidos de América han justificado su política hacia Cuba alegando que este país amenaza su seguridad nacional, amparándose en el artículo XXI, b, iii, del GATT 94, argumento insólito, que nunca ha tenido sustentación y mucho menos en estos momentos. Al respecto, deberá tenerse en cuenta el informe del Departamento de Defensa de los Estados Unidos de América de 1998 que refería que Cuba no significaba una amenaza seria para la seguridad nacional de los Estados Unidos de América.

Si bien es cierto que desde noviembre del año 2001, y en virtud de la Ley para la Reforma de las Sanciones Comerciales y el Mejoramiento de las Exportaciones de los Estados Unidos de América aprobada en octubre del 2000, se han logrado realizar compras por parte de Cuba en los Estados Unidos de América en el sector de los alimentos y los productos agrícolas, esto no significa que las medidas del bloqueo se hayan flexibilizado las que por el contrario se han recrudecido.

Estas transacciones han servido para comprobar con creces, en la práctica, las innumerables restricciones que aún persisten y que limitan las estrechas posibilidades abiertas al sector agrícola, así como corroborar las cuantiosas afectaciones que durante años ha debido afrontar Cuba al no tener acceso a ese mercado.

Las principales restricciones que limitan y obstaculizan las posibilidades de comprar alimentos y productos agrícolas por parte de Cuba en los Estados Unidos de América están dadas por:

- el requisito impuesto a los exportadores estadounidenses de estos productos que consiste en solicitar tanto licencias para viajar a Cuba como para exportar sus productos.
- la prohibición de utilizar créditos públicos y privados para las ventas a Cuba. Los pagos además, deben realizarse al contado y por adelantado.
- al no existir relaciones directas entre los bancos cubanos y estadounidenses, los pagos deben ser realizados a través de bancos en terceros países, con el consiguiente recargo en las transacciones.
- la prohibición a los barcos que participan en los embarques de estos productos desde los Estados Unidos de América a tomar cargas en Cuba hacia otros destinos, lo que consiguientemente encarece la transportación de estos productos. En los embarques no pueden participar barcos cubanos.

En detrimento del poder de compra de Cuba por la vía de impedir importantes fuentes de ingresos, continua la prohibición total de exportaciones cubanas de bienes y servicios al mercado de los Estados Unidos de América. Muy vinculado al tema de los servicios, y reforzando estas prohibiciones se encuentra la codificación de las restricciones sobre los viajes de los ciudadanos de Estados Unidos de América a Cuba como parte de la misma ley aprobada en octubre del 2000, al amparo de la cual se permitieron las ventas de alimentos.

Sobre este último aspecto no es ocioso apuntar el hecho de que la Administración de los Estados Unidos de América hace caso omiso a los reclamos del Congreso para levantar estas restricciones. En votación reciente en ambas Cámaras se aprobó (Senado, por primera vez y Cámara de Representantes por cuarto año consecutivo) por mayoría de votos un proyecto de ley dirigido a eliminar los fondos para la aplicación de las restricciones a los viajes a Cuba. Tal proyecto fue abortado por la oposición manifiesta a su aprobación por parte del liderazgo republicano del Congreso y de forma explícita y pública por el Presidente Bush.

También cabe resaltar la negligente actitud de los Estados Unidos de América en el plano multilateral donde, incongruente con su proyección de líder de la liberalización del comercio de servicios en la OMC, dio la llamada por respuesta a las peticiones que Cuba le presentara en mayo de 2003, para que eliminaran las restricciones que el bloqueo económico, comercial y financiero impone a la isla, las que afectan a todos los sectores de servicios y son contrarias a los principios y objetivos del Acuerdo General sobre Comercio de Servicios, así como a las Directrices y Procedimientos acordadas por los Miembros para estas negociaciones en marzo de 2001.

Se mantienen vigentes las restricciones de la Ley Torricelli (Título XVII de la Ley de Asignaciones para la Defensa de 1992, y conocido como Ley para la Democracia Cubana de 1992), para las ventas de medicinas y productos médicos, la transportación marítima y el comercio con las subsidiarias de los Estados Unidos de América establecidas en terceros países; así como, la Ley Helms-Burton (mal llamada Ley para la Libertad y la Solidaridad Democrática Cubanas de 1996), cuya naturaleza extraterritorial, más allá del insulto que significa a la condición de Cuba de nación soberana, ha generado cuestionamientos en el seno de esta Organización.

Asimismo, hemos sido testigos de la falta de disposición del gobierno de los Estados Unidos de América para ajustarse de forma efectiva al Informe del Órgano de Apelación de la OMC sobre el diferendo entre los Estados Unidos de América y la Unión Europea relativo a la Sección 211 de la Ley Ómnibus de Asignaciones Presupuestarias aprobada en octubre de 1998.

La Sección 211, como extensión de la política de bloqueo del gobierno de los Estados Unidos de América contra Cuba al campo de la propiedad intelectual, viola los principios de Trato de Nación Más Favorecida, y de Trato Nacional, dos de los pilares fundamentales de la OMC. Por tanto, instamos una vez más a los Estados Unidos de América a resolver de forma efectiva esta violación de las normas establecidas.

Por último, recordar que la Asamblea General de las Naciones Unidas por duodécimo año consecutivo ha votado abrumadoramente a favor de poner fin a la política de sanciones económicas, comerciales y financieras del gobierno de los Estados Unidos de América contra Cuba.

En este nuevo Examen de la Política Comercial de los Estados Unidos de América, se solicita a dicho país que responda a la siguiente pregunta:

- ¿Cuándo los Estados Unidos de América piensan cumplir con las 12 Resoluciones de la Asamblea General de las Naciones Unidas, que han condenado desde 1992 por una mayoría abrumadora el Bloqueo contra Cuba, que constituye un sistema de sanciones económicas financieras y comerciales, el cual es violatorio de los principios y distintas disposiciones que deben regir el comercio internacional y que han sido refrendados por la OMC, las Naciones Unidas y distintos organismos internacionales?
- ¿Cuándo y cómo los Estados Unidos de América cumplirán con la decisión del Órgano de Apelación de la OMC relativo a la Sección 211 de la Ley Ómnibus de Asignaciones Presupuestarias de 1998?

## **JAPAN**

### **Report by the Government (WT/TPR/G/126)**

### **III. TRADE POLICY DEVELOPMENTS, 2001-2003**

#### **(7) ENVIRONMENTAL ISSUES**

(p.25, para. 104)

Are there any examples of domestic environmental policy which the U.S. amends in order to enhance coordination between trade policy and environmental protection during the process for accelerating trade liberalization?

(p.25, para. 108)

According to paragraph 108, the U.S. has established “an effective system of environmental reviews of trade negotiations”. Specifically, how has the system been implemented? What kind of outcome has the U.S. obtained so far from these reviews? How does the U.S. utilize the outcome in terms of trade negotiations?

**Report by the Secretariat (WT/TPR/S/126)**

**II. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY**

**(2) INSTITUTIONAL AND POLICY FRAMEWORK**

**(iii) Policy objectives**

(p.18, paras. 15-18)

Does the U.S. consider that all the FTAs, which the U.S. has concluded after the passing of the TPA legislation by the Congress, achieve all the 17 “principal negotiating objectives” stipulated in the TPA legislation? Do the FTAs, which the U.S. will negotiate in the future, need to be consistent with all the 17 “principal negotiating objectives” without exception? (Japan will ask detailed questions concerning the U.S. FTA policies in the following section.)

**(4) PREFERENTIAL AND OTHER ARRANGEMENTS**

**FTA**

(pp. 20-25, paras. 29-57)

Please explain the U.S. position on the relationship between the WTO-based multilateral trading system and the bilateral and regional FTAs. Does the U.S. pursue different roles for respective FTAs? If so, does the U.S. consider that it is preferable to have as many FTAs as possible?

The negotiation of the U.S.-Central American Free Trade Agreement (CAFTA) was concluded in December 2003, between the U.S. and four Central American countries except Costa Rica. Will the Congress start its discussions on the CAFTA only after conclusion of the negotiations with Costa Rica? If the U.S. does not reach an agreement with Costa Rica, does the U.S. intend to conclude the CAFTA only with the four Central American countries excluding Costa Rica? What is the relationship between CAFTA and FTAA?

The negotiations of the U.S.-Australia FTA and the U.S.-Morocco FTA were not concluded within 2003. What is the prospect of concluding these negotiations? In particular, what is the prospect for the negotiations on market access for agricultural products in the U.S.-Australia FTA? Does the U.S. intend to have both FTAs deliberated upon in the U.S. Congress this year?

The U.S. announced the start of FTA negotiations with Thailand last October. Which ASEAN countries will be the U.S. priority for FTA negotiations? Japan would like to know how the U.S. basically sets its priorities among the ASEAN countries.

As for the U.S.-Middle East Free Trade Initiative, we understand that the U.S. intends to start FTA negotiations with those countries committed to a higher level of trade liberalization. At the same time, Japan understands that this Initiative is more prominent in its security strategy aspect than the other FTAs that the U.S. pursues. Japan would thus like to know the future process that the U.S. will pursue for the Initiative from the perspective of promoting both free trade and security policy.



## **Trade issue in softwood lumber between the U.S. and Canada**

(p.22, para. 38 and p.23, para. 42 etc.)

The U.S. has been imposing anti-dumping and countervailing duties on certain lumber products from Canada under the Department of Commerce's final determination. Concerning these duties, three related panels based on the DSU of WTO were set up in response to requests by the Canadian Government. The panel regarding countervailing duty reported on August 29, 2003, that the U.S.'s final determination was inconsistent with the WTO agreement. The U.S. appealed to the Appellate Body on October 21, while bilateral negotiations have, Japan understands, been held continually. Could the U.S. explain the latest developments in the bilateral negotiations with Canada?

We are aware that the Softwood Lumber Agreement of September 1996 between the U.S. and Canada, which tackles the exports of Canadian softwood lumber to the U.S., expired on March 31, 2001. We consider this agreement as an "export moderation" as mentioned in para. 1(b) of Article 11 of the Agreement on Safeguards, and request that any measure of this kind not be reintroduced.

## **(5) FOREIGN INVESTMENT REGIME**

### **(i) Reporting and review requirements**

#### **The Exon-Florio provision**

(pp.27-29, paras. 69-74)

The transparency and predictability of government regulations are key elements in the determination of business investment. They are also prerequisites for competitive businesses to be able to conduct business under fair conditions. Japan is thus concerned about the Exon-Florio provision from the following viewpoints:

- (a) the lack of predictability, due to the ambiguous definition of "national security";
- (b) the lack of legal stability due to the possible investigation of completed transactions in the future; and
- (c) the lack of due process, illustrated by the fact that even the parties concerned are not notified of the reasons for the commencement of investigation, nor of the final decisions taken by the President.

Especially, the U.S. has been strengthened its antiterrorism measures after the multiple terrorist attacks, Japan concerns that this provision is applied rather strictly. Therefore, Japan requests the U.S., in the operation of the Exon-Florio provision, not only to comply with WTO rules, but also to take the necessary measures to ensure transparency and fairness, to the maximum extent possible, during the process starting from the notification to the Committee on Foreign Investment in the U.S. up until the final decision by the President. Japan would like to have the U.S. view on this request.

**(iii) International investment arrangements**  
**Bilateral investment treaties**

(pp.30-31, paras. 80-84)

What kind of criteria does the United States use when choosing those countries with which it wishes to negotiate and conclude a bilateral investment treaty or trade and investment framework agreement (TIFA)?

**III. TRADE POLICIES AND PRACTICES BY MEASURE**  
**(1) INTRODUCTION**

(pp.32-33, para.1-13)

**Lowering high judicial costs**

Japan requests the reform of laws concerning product liability, such as punitive compensation and the class action system. The tort reform acts, which are being deliberated in the Congress are significant steps, but Japan looks forward to seeing further constructive measures.

**Metric system**

Considering the world trend and the impact of the U.S. market on world trade, Japan strongly requests that the metric system (the SI Unit), which is a global standard, be adopted to its full extent by the U.S. and American businesses. Japan would like to know of any specific action that the U.S. intends to take for promoting the metric system in the country.

**(2) MEASURES DIRECTLY AFFECTING IMPORTS**  
**(i) Customs procedures**

(p.34, paras. 19-20)

What is the specific time-table for implementing the Automated Commercial Environment (ACE)? The Report says that the “ACS (Automated Commercial System) and ACE will initially operate in parallel.” What kind of “operation” is specifically expected? As soon as the ACE gets into full swing, will the U.S. review the 24-hour rule and the requirement to present cargo information in advance, for which the final rule was recently announced?

**Measures regarding anti-terrorism efforts for strengthening transport security**

(p.36, paras. 30-32)

Japan understands and basically supports the importance of implementing measures regarding anti-terrorism in order to strengthen transport security, which the U.S. has been promoting. However, Japan would ask the U.S. to pay considerable attention to fair and free trade by ensuring that these measures will not hinder a swift, harmonious and effective distribution. Japan also would like to request the U.S. to aim these measures at becoming compatible with those efforts of other international organizations and that the U.S.’ efforts will contribute to making, building and implementing and building a world-wide, common, and integrated system.

When the U.S. Customs announced the C-TPAT, it promised that C-TPAT participants would enjoy benefits, such as swifter customs clearance and a reduction in the number of inspections. C-TPAT participants, however, have not in fact received such benefits, due to the reinforcement of transport security, including the 24-hour rule. Japan requests that such promised merits be realized, and, in addition, would like to have the U.S. view.

**(ii) Rules of origin**

**Labeling Requirements of Origin for Clocks and Watches**

(p.38, paras. 33-38)

In June 1999, the U.S. amended the Harmonized Tariff Schedule of the U.S. (HTSUS) to permit an indelible ink marking, in addition to a dye-stamping, on the surface of movements and cases as a measure for meeting the labeling requirement of origin for clocks and watches. The amendment, however, does not sufficiently respond to Japan's request, which is to limit labeling requirements of origin to the finished products of clocks and watches only, and to leave the choice of the labeling methods up to the discretion of manufactures. Japan, therefore, continues to request the U.S. to simplify its labeling requirements of origin for clocks and watches. Japan would appreciate receiving the U.S. views on our comment.

**Automobiles labeling act**

Automobiles weighing less than 8,500 pounds, which are sold in the U.S., are obliged to label elements, such as the percentage of U.S. or Canadian parts, the final assembling ratio, the final place of assembly and the place of manufacture of the engine and transmission. This is aimed at stimulating the U.S. consumers' spirit of "buy American", while placing much burden on the auto manufactures by creating various kinds of labels based on its dates and types. In addition, the real state of the procurement rate is not properly calculated for example, the procurement ratio does not reflect the labor cost of the assembly lines.

**CAFE**

The Energy Policy and Conservation Act of 1975 requires automanufacturers to calculate the corporate average fuel economy (CAFE), which should clear certain thresholds for the purpose of environmental protection. When calculating CAFE figures, it is necessary to compute the rate of domestic manufacturing for each line, and to obtain the standards of fuel consumption for domestic and imported automobiles respectively. However, as automobiles obtain standards in their own category, the division between domestic and imported vehicles sometimes brings out negative effects on the improvement of fuel efficiency itself, which was the initial goal. Companies specializing in imported and fuel inefficient large-sized cars and sports-type cars experience disadvantages.

**(iii) Tariffs**

**Tariff rates of trucks (motor vehicles for the transport of goods)**

(p.39, paras. 39-41)

The U.S. imposes high tariff rates, for example 25 %, on most trucks (HS 8704). Compared with Japan, which sets its rates at 0 % on the same items, the U.S. figure remains considerably high. Japan would also like to know why the U.S. imposes tariff rates on trucks 10 times higher than those on

passenger vehicles (the bound rate being at 2.5 %). According to the Minutes of the 2001 Trade Policy Review, the U.S. stated its willingness to engage the matter in comprehensive market access negotiations on goods based on the WTO's built-in-agenda. Japan thus requests the earliest possible elimination of the peak tariff.

**(v) Anti-dumping, countervailing, and safeguards actions**  
**Byrd Amendment**

(p.48, paras. 77-79)

In January 2003, the DSB adopted the Appellate Body report and Panel report, which had found that the Byrd Amendment i.e. the CDSOA, was inconsistent with the WTO Agreement, and recommended the U.S. to bring the Byrd Amendment into conformity with its obligations under the WTO Agreement. Although the reasonable period of time for the U.S. to implement the recommendations and rulings expired on 27th December 2003, the U.S. Congress closed 2003 session without adopting a bill to repeal the Byrd Amendment.

Under the Byrd Amendment, the U.S. administration distributes AD/CVD duties collected from foreign products to its domestic producers, which totalled to US\$230 million in FY 2001 and US\$330 million in FY 2002. As the preliminary amounts of disbursement for FY 2003 total US\$280 million (according to the Secretariat Report), the U.S. is continuing to disburse offset payments until the U.S. Congress repeals the Byrd Amendment. Japan urges the U.S. to repeal the Byrd Amendment without delay.

**Certain hot-rolled steel products**

(p.48, para. 79)

Japan brought a claim against the U.S. before the WTO Dispute Settlement Body that the anti-dumping investigations conducted by the U.S. authorities on certain hot-rolled steel products from Japan are inconsistent with the WTO agreements. The report by the Appellate Body concluded that the methodology employed by the Department of Commerce for calculating the anti-dumping margin, as well as the USITC's methodology for determining injury is not consistent with the WTO agreements; the DSB adopted the report in August 2001. The U.S., however, has not yet amended its law concerning the methodology for calculating the anti-dumping margin. During the DSB session held in December 2003, the U.S. stated that they intended to renew their efforts to complete the implementation of the DSB's rulings and recommendations when the Congress resumes its activities in January 2004. Please explain the present status of discussions in the Congress.

**Anti-Dumping Act of 1916**

(p.49, para. 80)

Three years have passed since the Reports of the Panel and the Appellate Body affirmed that the Anti-Dumping Act of 1916 was inconsistent with WTO Agreement. Even after the extended "reasonable period of time", the Act is yet to be repealed. What is the U.S. view on the implementation of the DSB's recommendations?

As stated in the Secretariat Report, although some legislation repealing the 1916 Act have been introduced in the U.S. Congress, there has been no examination of the new bill up until now. At the State

District Court in Iowa, a Japanese company has lost a case according to the 1916 Act, which is nonetheless inconsistent with the relevant WTO provisions, and has been charged a large amount of compensation for damages. Please provide the U.S. view on this. Japan believes that the U.S. should look into the judicial administration of the case and/or make up for the loss suffered by the Japanese company in the same way that the U.S. made a lump-sum payment regarding Section 110(5) of the U.S. Copyright Act consultations with the E.U. Japan would like to hear the U.S. explanation on the matter.

#### **Sunset Reviews of the anti-dumping measures**

(p.54, paras. 97-101)

Japan claimed, in the WTO dispute settlement system, the WTO inconsistency of the sunset review by the U.S. of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan. The report of the Appellate Body supports Japan's arguments that the Sunset Policy Bulletin of the Department of Commerce, which regulates the rule of the sunset review determinations themselves, is "challengeable" as such under the WTO Agreement, and that a sunset review determination, based on the anti-dumping margin calculated with a WTO-inconsistent "zeroing" methodology, is inconsistent with the WTO agreements. In Japan's view, the U.S. must amend the Sunset Policy Bulletin, and all sunset review determinations which are based on the U.S. methodology of calculating the dumping margin, if they are found to be WTO-inconsistent in subsequent dispute settlement cases. Please explain the U.S. position on the matter.

#### **Safeguard measures on certain steel products**

(p.57, para. 107 etc.)

With regard to paragraph 115 of the Report by the Secretariat concerning the U.S. safeguard measures on the imports of certain steel products, in the WTO dispute settlement proceedings, the Panel, as well as the Appellate Body, concluded that these measures were inconsistent with the Agreement on Safeguards and GATT 1994. Japan requests the U.S. to clarify whether it has the intention to review the ways and means of the U.S. safeguard investigation, as well as the criteria it applies in the investigation as a result of the rulings by these WTO dispute settlement bodies. For example, in the USITC Report concerning the safeguard measures, the USITC used the "substantial cause" as criteria in conducting causation analysis. According to our understanding, under Section 201 of the U.S. Trade Act of 1974, more weight is given to increased imports when investigating the causal link between the increased imports of the product concerned and the serious injury or threat thereof. That is to say, the existence of a causal link is believed to be proved as long as the increased import is the cause, which is important and no less than any other cause. On the other hand, under Article 4.2 of the Agreement on Safeguards, non-attribution requirements are called for when a detailed analysis is required, in order to demonstrate that factors other than increased imports are not attributed to the injury caused in the domestic industry. Thus, Japan believes that the issue of the compatibility of the U.S. domestic safeguards legislations with the WTO Agreement needs to be addressed and carefully looked into by the U.S. What are the U.S. views on this matter?

While the U.S. lifted the safeguard measures on the imports of certain steel products, it continues to retain the monitoring program and steel import licensing until March 2005, through which it can closely monitor the status of steel imports into the U.S. On December 4, 2003, the U.S. President said in his statement on the lifting of safeguard measures that "an integral part of our commitment to free trade is our commitment to enforcing our trade laws". In view of such statement, we cannot but address our concern over the possibility that a trade-controlling measure, such as the above program, may lead to

protective measures, should such measure not be properly used. Therefore, Japan would like to seek the confirmation of, and commitment by, the U.S. that the above program shall be strictly used in conformity with the WTO Agreement.

**(vii) Technical regulations and sanitary and phytosanitary measures  
The Bioterrorism Act**

(pp.65-66, paras. 146-149)

The Public Health Security and Bioterrorism Preparedness and Response Act, which was signed by President Bush in June 2003 and comes into effect as of December 12, 2003, sets out the following measures; registration of food manufacturing and handling facilities; (b) prior notice of all food consignments intended for import into the U.S.; (c) maintenance of certain records pertaining to the receipt and distribution of foods; and (d) administrative detention of any illegal food found. Although recognizing the importance of taking necessary measures for combating terrorism, Japan asks the U.S. to implement these measures in consistency with the WTO agreements and not to hinder a smooth distribution more than it is necessary.

When implementing measures, the SPS Agreement requires that “these measures only be developed within necessary scope based on sufficient scientific findings”. With regard to the Bioterrorism Act, please explain what scientific findings for implementing the measure were used, and whether this was a necessary measure for achieving its objective.

The TBT Agreement requires that technical regulations shall not be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create. Japan would like to have an explanation as to what kind of evaluations the U.S. took account of these risks?

**GMO**

(p.66, para. 150-152)

What measures has the U.S. taken to prevent the exportation of GMOs which are unauthorized by the relevant regulations in importing countries? What measures does the U.S. intend to take if unapproved GMOs are found in agricultural products exported from the U.S. to importing countries?

Does the U.S. become a party to the Cartagena Protocol? If not, please explain why.

Is the U.S. ready to provide the necessary information for detecting GMOs, unapproved in importing countries, which are released into the environment in the U.S. and/or which have the possibility of being exported?

**Environmental regulations related to trade**

(p.68, para.161)

Japan’s research program on whales under special permit is not only based on the legitimate right of a contracting government to the International Convention on the Regulation of Whales (Article 8), of which the U.S. is also a member, but is also carefully designed so as not to undermine the health of the

targeted species of the research. Therefore, it is regrettable that the U.S. certified the research under the Pelly Amendment in 2000. Please provide the U.S. position on the matter.

### **(3) MEASURES DIRECTLY AFFECTING EXPORTS**

#### **(iv) Export restrictions and controls**

##### **Re-export control**

(p.73, paras. 184-185)

The U.S. requires export licenses on the re-export of U.S.-origin items, even if they have already received export licenses from the exporting countries. Such a regulation could be recognized as an extraterritorial application of U.S. domestic law, which is impermissible under general international law. The U.S. re-export control should, therefore be abolished. Especially, countries such as Japan, control their exports most effectively by, for instance, taking part in all export control regimes and introducing the Catch-all system for weapons of mass destruction and their delivery means. Thus, Japan is convinced that there is little reason to control re-export items from these countries.

Besides, the scope of the U.S. re-export control also covers export items which are incorporated in U.S.-origin items or software, etc. It is thus difficult for foreign exporters to judge whether or not an export item falls under the U.S. regulation. Therefore, the U.S. re-export control is a barrier for the re-export U.S.-origin items or the items which are incorporated in U.S.-origin items. Therefore, Japan requests the U.S. to at least enable exporters to judge whether or not the item falls under re-export control in order to enhance the transparency of the contents and the implementation of the re-export control. Please provide the U.S. position on the matter. In this regard, as a transitional measure until the U.S. re-export control is abolished, the U.S. should oblige its exporters to provide their customers with enough information on the product to be re-exported, including the Export Control Classification Number (ECCN), so that they can judge whether or not the imported item falls under re-export control. Please provide the U.S. position on this matter.

##### **Export restrictions and controls**

(p.73, para. 187)

Japan understands that exports of unprocessed timber originating from federal and state-owned forests, which are located on the west-hand side of the 100° West Longitude in the continental U.S., are prohibited. Is this understanding correct?

The U.S. provided Japan with an explanation that this export prohibition measure aims to protect spotted owls. Japan, however, regards this measure as a quantitative export restriction for protecting domestic saw millers because, first of all, the protection of spotted owls must be done by regulating log-cuts and not through export bans. Secondly, only export restrictions have been introduced, while no regulations have been established for the domestic transactions of logs. Japan would, therefore, like to request the U.S., once again, to amend this measure in accordance with the WTO Agreement as requested at the last Trade Policy Review of the U.S.

## **Sanctions measures**

(p.75, para. 193 and p.59, para. 119)

The sanctions measures taken by the U.S. based on related acts (the Iran and Libya Sanctions Act, the Cuban Liberty and Democratic Solidarity Act, the *Burmese* Freedom and Democracy Act as well as and local and municipal sanctions acts) discourage, significantly and unreasonably, investment into, and the establishment of economic relations with, the countries targeted by those laws, which affects not only U.S. private enterprises, but also those world-wide. In legal terms, they constitute an extraterritorial application of domestic laws, which is not permissible under general international law and may cause a problem of inconsistency with the WTO agreements. Moreover, fairness, transparency and predictability have not been observed in their applications. Particularly regarding the Iran and Libya Sanctions Act, Japan has taken every opportunity, including those available under the Japan-U.S. Regulatory Reform and Competition Policy Initiative, to urge the U.S. not to apply the Act in a manner that may constitute a double standard.

Japan, therefore, strongly requests the U.S. to ensure the consistency of these acts with international laws, and to implement them prudently. The application of these acts to enterprises of third countries is especially discouraged. What is the U.S. view on these points?

## **(4) OTHER MEASURE AFFECTING PRODUCTION AND TRADE**

### **(i) Competition policies**

#### **Immunity from antitrust laws**

(p.76, para. 198)

The U.S. gives the immunity from antitrust laws regarding the agriculture sector (certain activities under the Capper-Volstead Agricultural Producers' Association Act). Japan is in a view that the immunity from antitrust laws has to be minimum in order to ensure fair trade. Does the U.S. have any plans to review immunity from antitrust laws regarding the agricultural sector? If not, please explain the necessity of maintaining the immunity.

#### **Regulatory authorities**

(p.77, para. 203)

Japan understands that in sectors which contain exemptions from the application of antitrust laws, there are regulatory authorities and, for some sectors, independent organizations (e.g. FMC). The laws which allow immunity from antitrust laws are implemented by the above-mentioned organizations, and thus the authorities competent for providing immunity from antitrust laws are sectionalized. In order to continue systematically lessening the scope of exemption from the application of antitrust laws, does there exist any leading administrative organization to coordinate the progress? How are the FTC and the Antitrust Division of the Department of Justice able to cooperate with the regulatory authorities and/or independent organizations?



**(v) Intellectual property rights**  
**Importation rights**

(p.90, para. 265)

Please explain how many cases have been judged as having infringing importation (right to control the imports of copyright products) under Article 602 of the Copyright Act? Are there any other cases of having infringing importation, except for the musical CDs? Please provide some statistics on these infringing importation cases. In addition, please explain the relation between controlling the imports of a copyright product and the anti-trust law.

**Bilateral intellectual property agreements**

(p. 91, para. 266, p. 92, para. 270 and p. 93, para. 272)

Japan has faithfully implemented the "Japanese Actions to be taken by the Patent Office", confirmed by the Japan Patent Office (JPO) and the United States Patent and Trademark Office (USPTO) during the 1994 intellectual property rights working group of the Framework Talks. However, the U.S. has never entirely implemented the introduction of an early publication system without exceptions, nor the improvement of re-examination. Japan strongly requests the U.S. to implement these items in accordance with the agreed actions promptly.

In particular, in order to tackle the following issues, Japan requests the U.S. to promptly implement these items in accordance with the agreed actions of the Framework Agreement in order to abolish the early publication systems with exceptions, and to disclose all applications, excluding those non-pending and those under secret order, within 18 months after the first filing date of the patent application.

- (a) The early publication system in the U.S., which was introduced in November 2000, provides exceptions whereby patent applications filed in the U.S., but not filed overseas, or matters included in a patent application filed in the U.S., but not included in the corresponding application filed overseas, cannot be laid open at the request of the applicant. It might be, therefore, possible that a patent will be granted after a long undisclosed period ("Submarine Patent"). Without knowing whether or not another application is already on file for the same invention, it is unavoidable to invest in R&D in duplication; thus, we are concerned that this system causes serious social and economic loss.
- (b) Furthermore, USPTO provides that patent protection may be extended to compensate for any amount of processing delays and USPTO-caused delays. Japan would like to point out that there is a possibility of deliberate delays being caused, and that under the current U.S. system of not having an adequate early publication system, there would be other opportunities to create a submarine patent through the extension of patent terms.

In addition, any pending applications, already filed with the USPTO at the time of the amendment of the law (before June 8, 1995), continue to benefit from the former patent terms (i.e. a 17-year patent term from the date of the patent grant); the amended patent law not being applicable. There is still, therefore, the possibility that additional submarine patents occur.

## **Plant Variety Protection**

(pp.91-94, paras. 268-279)

Regarding the Plant Breeder's Right, Japan understand that the U.S. is a member of the 1991 Act of the UPOV Convention and that it protects new plant varieties through the Plant Variety Protection (PVP) law and the patent law.

- (a) Please explain the acts that will cause loss of "novelty" under both the PVP law and the patent law as a plant patent.
- (i) Do the acts of publication, such as the publication of catalogues, the publication of the application in other countries, or the publication of papers on a certain variety, cause a loss of "novelty" of the variety in question?
- (ii) According to the UPOV Act, "the variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed to others, by or with the consent of the breeder, for purposes of exploitation of the variety". However, the cases described above are acts of publication of the variety, and no act relating to sale or otherwise disposed to others for propagating material or for harvested material are involved. If the cases described above suffer a loss of "novelty" for a variety in the U.S., please explain why. In addition, please provide the U.S.'s interpretation of Article 6 of the 1991 Act of the UPOV Convention.
- (iii) The 1991 Act of the UPOV Convention states that there are certain grace periods for novelty: one year for that taking place within the territory of the Contracting Party and four years (six years for trees and vines) for that outside the territory. Please provide information on the relevant provisions of the grace periods in the U.S., both under the PVP law and the patent law.
- (b) Is there any plan to change the provisions for "novelty" in the U.S. laws in the future? If so, please indicate the details of the changes and the timetable.

## **"First-to-Invent" system**

(p.92, para. 270)

The U.S. is the only country to use a "first-to-invent" system, which, with regard to the patent system, makes the U.S. rather unique. Moreover, this system lacks certainty and predictability in the sense that a patentee's status can be overturned by the appearance of a subsequent prior inventor. This involves additional burden to inventors, who are thus required to prepare and keep documentary evidence to prove the date of invention. Many countries, including Japan, have pointed out that this issue creates a barrier for foreign companies when trying to penetrate the U.S. business community. Although the practice of maintaining the first-to-invent system is not necessarily against the TRIPS Agreement, Japan again requests the U.S. to adopt the first-to-file system. This is due to the necessity to maintain a transparent and stable system, as well as to reduce the burdens borne by users through the differing systems.

### **Priority in the Paris Convention (In re Hilmer)**

(p.93, para. 271)

The "Hilmer" doctrine, which exists in the U.S., is an application which has a prior art effect only up to the date of the application in the U.S. Foreign applicants usually file applications, first in their own country and then in the U.S., thereby claiming priority under the Paris Convention. Due to the "Hilmer" doctrine, such foreign applicants cannot prevent the patent grant from conflicting with applications filed before the actual filing date of any subsequent applications in the U.S., even during the priority period, and therefore may suffer a disadvantage.

This might be against Article 4B of the Paris Convention, which stresses that acts by a third-party in the priority period "cannot give rise to any third-party right or any right of personal possession" and Article 2.1 of the TRIPS Agreement, which requires compliance with Article 4 of the Paris Convention. Japan therefore requests the U.S. to revise its system.

### **Unity of invention**

(p.94, para. 275)

Japan understands that the USPTO implemented a public comment procedure, and is trying to harmonize its patent system with the international system of Patent Law. However, with regard to the unity of invention, under the current U.S. patent system, the scope of inventions that can be included in a single application is, according to what we have been requested so far, narrower than that under the systems of the JPO and the European Patent Office (EPO). Thus, a patentee is obliged to submit multiple applications, thereby increasing the burden. Japan repeats its request to the U.S. to adopt the same criterion for its unity of invention as that of Japan and Europe.

### **Copyright Act of 1998**

(p.97, para. 289)

The Secretariat's Report describes that the Digital Millennium Copyright Act of 1998 implemented the WCT and the WPPT. However, Japan is of the view that the U.S. Copyright Law does not fully protect the moral rights stipulated in Article 6 (2) of the Berne Convention applied to the WCT, the moral rights of performers stated in Article 5 of the WPPT, the right of making available expressed in Article 8 of the WCT and in Articles 10 and 14 of the WPPT, and the economic rights of performers in their unfixed performances mentioned in Article 6 of the WPPT. Please explain, with the specific provisions of legislation, how these rights are protected in the U.S.

### **Article 203 and 304 of the Copyright Law**

(p.97, para. 292)

Regarding Articles 203 and 304 of the Copyright Act, which enables the right holders to terminate transfers and licenses, Japan wishes to have concrete explanations on the following points: (a) the purpose of this system; (b) the basis of the termination period, which is effective for 5 years after expiration of the 35-year period from the date of execution of the grant; and (c) in the case where someone doing business by using the transferred right notices the termination of a grant by the author, how is the safety of the business assured?

### **U.S. Copyright Act amended by the Fairness in Music Licensing Act**

(p.97, para. 293)

As the U.S. was unable to implement the recommendations of the WTO panel on the U.S. Copyright Act, in a reasonable period of the time, which is in violation of TRIPS obligations, the U.S. made a lump-sum payment of US\$3.3 million to the EU over a three-year period ending in December 2004 US\$1.1 million per year as compensation for the EU's loss of benefit. Japan would like to ask the U.S. for an explanation on the legal process of this matter in the U.S.

### **Special 301**

(p.98, paras. 294-295)

Since the Special 301 provisions may cause concern as to their compatibility with the WTO agreements, Japan requests the U.S. to implement them in a proper and prudent manner. Please provide the U.S. view on Japan's comment.

## **IV. TRADE POLICIES BY SECTOR**

### **(2) AGRICULTURE**

#### **Agricultural Policy**

(p.101, para. 8)

After abolishing its deficiency payments under the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act), the U.S. has been providing emergency assistance since 1998 as an additional protection measure under production flexibility contract payments, which was introduced instead, and has introduced Counter Cyclical Payments under the Farm Security and Rural Investment Act (FSRI) of 2002. Please explain why the U.S. has established these payment systems and the background (including why the production limitation is no longer a requisite for deficiency payments under the 2002 Act, while it was a requisite under the 1990 Act). Measures and programs introduced under the Farm Security and Rural Investment Act (FSRI) have already entered into the phase of implementation. Does the U.S. intend to notify some of those measures or programs as new or modified domestic support measures exempt from the reduction commitment? If so, the U.S. should submit a notification as soon as possible in order to ensure transparency and to expand the discussions by Members on the U.S. relevant support measures.

The U.S. is proposing a drastic reduction in or even the elimination of, trade distorting measures in the agriculture negotiations, while increasing its direct government payments (Report by the Secretariat, p.102, Chart.1). These two points are incompatible with each other. In particular, it is rational to understand that the U.S. price-related direct government payments and emergency assistance for certain products, such as wheat, rice, soybean and cotton, have export enhancing effects since a sizeable amount of those products is exported. According to the Report by the Secretariat (p.101), the share of exports in terms of value of production was 48% for wheat, 42% for rice, 37% for soybeans, and 39% for cotton. Under the FSRI, the U.S. has institutionalized export enhancing payments by introducing counter cyclical payments for such products and has increased actual payments since 2002. Can the U.S. explain how this policy, and the increase of such payments, are consistent with the U.S. position in the agriculture negotiations, i.e. to phase-out export subsidies?

**Direct government payments and Section 1601(e) of the FSRI (the so-called “the circuit breaker provision”)**

(p.101, para. 8)

Why did the U.S. increase its direct government payments and emergency assistance in 2003 compared with 2002?

Does the U.S. AMS in 2003 exceed its commitment level?

If the increase in direct government payments and emergency assistance in 2003 results from lower market prices, it is thus possible that the increase in government payments cannot be controlled and that the AMS level exceeds its commitment level when the market price falls ever further. The U.S. commented that no decision had been made as to whether regulations are needed to implement Section 1601(e) of the FSRI (Report by the Secretariat, p.107). With what kind of measures can the U.S. properly monitor the increase in direct payments and ensure that its AMS level does not exceed its commitment level?

**(4) MARITIME TRANSPORT**

(p.127, para. 102)

The Federal Maritime Commission (FMC) is authorized by Section 19 (1) (b) of the Merchant Marine Act of 1920 (the Jones Act) to make rules and regulations affecting shipping in foreign trade. The FMC imposed a unilateral sanction against Japanese carriers in September 1997. Although the sanction was removed in May 1999, the FMC still requires carriers to report to it on the situation of the ports in Japan. The rule (repealed in May 1999), which provided grounds for unilateral sanctions, was a violation of the Treaty of Friendship, Commerce and Navigation between Japan and the United States, which provides each other's ships with national treatment and most-favored-nation treatment. Japan, therefore, requests the U.S. to work more closely with the FMC to ensure that such unilateral measures will no longer be taken. Japan is concerned about the impact of the Jones Act and any other related legislation on shipping trade, and submitted a list of questions (WT/GC/W/520) at the Review of the General Council last December. Japan would appreciate if the U.S. could provide information about the current situation regarding the responses to the questions.

Since the repeal of the above-mentioned rule, the FMC requires Japanese and U.S. carriers to report to it on the progress of port situations in Japan. Efforts have been made and signs of progress have been seen in various aspects. The “prior consultation system” has improved significantly (and the improved system has been implemented steadily); the Port Transportation Business Law was revised to abolish the supply-demand adjustment restriction and thus has realized new entries into port transport business; progress has also been made toward the introduction of port terminal service operation on the 24-hour/364-day basis. Japan strongly urges the FMC to fully understand these positive developments. Despite significant improvement in the port situation of Japan, the FMC introduced in August 2001 a new order, which not only increased the number of items to be reported, but also expanded the scope of the carriers subject to the reporting requirements. The order includes requirements which go beyond the extent deemed appropriate to impose upon carriers, such as directly requiring Japanese carriers to submit translated copies of the Japanese laws and instructions concerned. Thus, the order has been causing unfair and excessive burdens on carriers. Should it be the case that the FMC decided to expand the range of the reporting requirements in order to judge whether or not it should impose unilateral sanctions, this would violate the Treaty of Friendship, Commerce and Navigation between the United States and Japan,

and Japan would recognize it as a regrettable and serious abuse of the FMC's mandate. Japan, therefore, strongly requests the U.S. to withdraw the order.

#### **Initial offer in Maritime Transport Services sector**

(p.127, para. 103)

Please explain the reason why the U.S. has not submitted its initial offer in the Maritime Transport Services sector and the Maritime Auxiliary Services sector during the on-going round of negotiations. Japan is of the view that submitting MFN exemption list at the last phase of negotiation is against the rules of negotiation. Please provide the U.S. view on this point.

#### **Ocean Shipping Reform Act of 1998**

(p.128, para. 108)

The Ocean Shipping Reform Act of 1998 includes a provision allowing the discriminatory treatment of Japanese and other foreign shipping firms, by making it possible to impose unilateral regulations on pricing and other practices. As the pricing practice is the foundation of a free shipping activity on a commercial basis, unilateral regulations by the FMC on the pricing practice obviously intervenes in such free shipping activity, thereby, discriminating foreign firms. Furthermore, an amendment to the Act in 1998 explicitly stipulates the right of the Federal Government to make this intervention. Japan requests the U.S. to confirm that in the future the FMC shall not impose unilateral regulations on shipping activities on a commercial basis, conducted by Japanese and other foreign shipping firms, which do not reflect the reality of the market.

#### **Marine Security Program**

(p.128, para. 109)

Japan requests the U.S. to abolish the Maritime Security Program, under which as much as 100 million dollars of maritime subsidy is provided annually over a ten-year period. It is obvious that a provision of such an enormous amount of subsidy distorts conditions for free and fair competition in the international maritime market.

#### **Cargo Preference Measures**

(p.130, para. 116)

Japan requests the U.S. to abolish the Cargo Preference Measures, such as the requirement to use the U.S. vessels for the export of Alaskan oil, which is nevertheless commercial cargo. These protectionist measures are inconsistent with the principle of national treatment, and are also against the Ministerial Decision on the Negotiations on Maritime Transport Services of the WTO, which prescribes that participants should not apply any protectionist measures during the negotiations.

### **Shipbuilding and ship repairs**

(p.132, para. 127)

The Capital Construction Fund (CCF) program includes fishing fleets of the U.S. Please provide the amount allocated to the fishing fleets through the Fund, as well as the amount of tax-deferral benefits for fishing fleets, over recent years.

### **(6) TELECOMMUNICATIONS SERVICES**

#### **Dispute Adjudication of telecommunication service**

(p.138, para. 160)

According to the Report by the Secretariat, the FCC has authority to adjudicate disputes. Please explain what kinds of disputes the FCC adjudicates, in what way and through which procedures they are adjudicated, and how many disputes a year are treated by the FCC?

How long does it usually take the FCC to resolve a dispute?

How does the FCC ensure the transparency of its procedures including information disclosure?

Is there situation where the FCC's individual dispute resolution is fed back to the rule-making or policy-making process? If so, in what way?

What is the legal effect of a judgment by the FCC regarding dispute resolution? What procedures can the parties to the dispute take if they are dissatisfied with the judgment of the FCC?

How is the responsibility regarding dispute resolution divided between the FCC and the State Public Utility Commissions?

#### **Access Charges**

(p.138, paras. 160)

There are three different kinds of access charges in the U.S. reciprocal compensation, intra-state access charges and inter-state access charges, which are imposed, for instance, depending on the type of accessing carrier. Japan requests that the FCC eliminate, or at least reduce, the disparity and inconsistencies among the access charges. What is the U.S. view on these points?

#### **Restriction on Foreign Investment in the Licensing of a Radio Station**

(p.139, para. 162 and p.140, para. 168)

Japan abolished the restriction of foreign investment on the licensing of radio stations for the purpose of conducting telecommunications activities, and has further, been requesting the U.S. to take the same action regarding the restriction of foreign investment, as stipulated in Section 310 of the Communications Act 1934. In addition, the "Second Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative" states that, "the Government of the United States will continue a dialogue with the Government of Japan on restrictions on direct investment in the U.S. wireless

market". On the other hand, the Report by the Ssecretariat relates that, "the restrictions on direct investment are statutory requirements that the FCC cannot waive". Please explain the position of the U.S. on these restrictions. In particular, please explain the grounds for maintaining the restriction on direct investment, despite the fact that indirect investment has been fully liberalized.

#### **Regulations on "dominant carriers"**

(p.139, para. 163)

A foreign carrier providing international telecommunications services, which has "market power" in its own market, is regulated more strictly than other carriers, being imposed additional rules. Such regulations have no rationale and may result in unjustified discriminatory treatment against foreign carriers. These regulations may also have the effect of unfairly restricting foreign direct investment. What is the U.S. view on our comments?

Japan further requests the U.S. to make clear the guidelines, which are applied when the dominant carrier regulation in Section 63, Title 47 of the Code of Federal Regulations (47CFR63), is implemented to those carriers providing international communications services.

#### **Certification and Licensing Criteria for Foreign Carriers' Entry into the U.S. Telecommunications Market**

(p.139, para. 164)

Sections 214 and 310(b)(4) of the 1934 Act provide several certification and licensing criteria for a foreign carrier's entry into the U.S. telecommunications market. Among them, the criteria of "trade concerns" and "foreign policy" could be applied to refuse the issuance of a certification or licenses by using reasons that are irrelevant to telecommunications policy. The existence of such criteria is regarded by foreign carriers, including those from Japan, as a de facto barrier to entry. There are actually cases where certificates to subsidiaries of Japanese companies have been delayed, a situation causing long-term concern. Japan, therefore, requests the U S to abolish the criteria.

Japan also requests the U.S. to clarify and publish the guidelines according to which the criteria of "very high risk to competition" will be applied.

#### **Implementation of Section 1377 of the Omnibus Trade and Competitiveness Act of 1988**

(p.140, para. 165)

The U.S. should refrain from examining the regulatory policies and market trends of other member countries in the field of telecommunications, solely from a U.S. own point of view, by using the threat of countervailing measures under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Such an approach gives rise to problems: (a) for easily raising individual issues around an intergovernmental table without using formal procedures, such as dispute resolution procedure and submission of opinions established by respective member countries, and (b) discouraging, possibly and unreasonably, foreign telecommunications carriers from expanding business operations. What would be the U.S. view on the abolition of this approach?



## **State-Level Regulations**

(p.140, para. 166)

In the U.S., telecommunication service carriers are obliged to file reports on business information, including their earnings, to all individual states where they are providing services. As there is no standard filing form common among all states, excessive burden has been placed on carriers for reporting purposes. Japan, therefore, requests the U.S. to abolish them. What is the U.S. view on this point?

On August 21, 2003, the FCC published the "Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (ILECs)" (Triennial review). This order grants states the authority to determine whether an ILEC has an unbundling duty regarding a certain network element, and to define the geographical scope of the market in which the same duty is applied. Japan is concerned that the authority given to states will delay the implementation of the connecting rule and, by fragmenting the market, will impose undue burdens and inefficiency on related companies. Therefore, Japan requests the FCC to ensure uniformity, efficiency and promptness in the state-level application of federal rules. What is the U.S. view on the matter?

## **Procedures for Processing Export Licenses and TAA Approval of Commercial Satellites**

(pp.140-142, paras. 167 to 175)

The criteria for export licensing and the transfer of related technical information concerning commercial satellites are not clear. Moreover, exporters are not provided with essential information, such as the documents on test procedures or the reports on non-performance during the manufacturing process. As a result, satellite communications companies of Japan have been suffering long-term concerns regarding their business activities. Japan, therefore, requests the U.S. to clarify the standards required for obtaining permission for the export of commercial satellites and for the transfer of technical information, and to limit the types of undisclosed information to a minimum. What is the U.S. view on this matter?

The U.S. restricts disclosure of certain types of information in satellite trade. By consequence, when a U.S. satellite purchaser puts out a tender, Japanese satellite makers can only obtain the related documents after the U.S. makers. Japan is concerned that Japanese manufactures are at a disadvantage regarding competition, and thus requests the U.S. to ensure fair competition for satellite communications businesses in the procurement of U.S. satellites. What is the U.S. view on this point?

## **Benchmark Rules**

(p.142, para. 177)

Japan requests the U.S. to abolish its benchmark rules as there exist certain problems regarding, for example, the followings:

- (a) These could be a de facto barrier to entry into the U.S. market;
- (b) These allow the U.S. Government to set down one-sided settlement rates in connection with its policy of regulation on new entry, whereas the settlement rate should be determined commercially; and
- (c) there is doubt about their consistency with the various principles of the WTO Agreement, such as the MFN treatment.

Please explain the view of the U.S. on these points.

**(8) FINANCIAL SERVICES**

**Discriminatory measures against foreign banks in obtaining the status of financial holding companies**

(p. 147, para. 197)

In order for banks to enter a securities business through an affiliates, it is necessary for them to obtain the status of Financial Holding Companies (FHCs), based on the Gramm-Leach-Bliley-Act enacted in November 1999. The Act provides that foreign banks are required to meet well-capitalized and well-managed standards, comparable to those applied to U.S. banks. Japan requests the United States to clarify the criteria of FRB's judgment regarding these standards.

**Discriminatory measures against foreign banks for raising funds within the United States**

(p. 149, para. 203)

When a foreign bank raises funds within the United States, it is necessary to deposit a certain amount of collateral with the authorities as a guarantee. Under the New York State Banking Law, for instance, the authorities demand bonds of high liquidity as eligible collateral, mainly CDs and CPs. complying with the requirement causes a substantial opportunity cost, since a much higher return could be expected if invested in other assets. There are also other problems, such as the heavy burden related to administrative procedures and price fluctuation risk of the collateral bonds. Furthermore, according to a research conducted by the Institute of International Bankers (IIB), United States and Canada are the only countries among over 40 countries surveyed, that oblige 'fund collateral posting by foreign banks' as business guarantee. Therefore, Japan requests that such action be abolished. Should this not be possible, the qualifications for eligible collateral should be expanded to include, for example, standard loan assets in order to provide flexibility for foreign banks. Japan notes that the OCC has been reviewing this issue. What is the current situation surrounding this review?

**Regulations under the Investment Company Act of 1940**

(p. 150, para. 209)

According to the Investment Company Act of 1940, an 'investment company', which is defined as a company that holds more than 40% of its assets in the form of investment securities and engages primarily in securities investment, is subject to regulations, such as the registration and disclosure requirement under the supervision of the SEC. In this context, it should be noted that there are many cases where Japanese companies, that have a large amount of cross-holding stocks through their business practices, are recognized as 'investment companies' under the Act and, therefore, are required to comply with the relevant regulations. Although there are exemption clauses in the Act, Article 3(b)2 stipulates that companies applying for such exemption should be declared by the SEC to be primarily engaged in other businesses, which gives a room for discretion by the SEC. Japan, therefore, requests the United States to clarify and relax the criteria of the SEC decisions under Article 3 (b) 2, by introducing objective criteria, such as the composition of their sales or profit dependency ratio based on financial statements. What are the U.S. views on this point?

### **Different insurance regulatory regimes in States**

(pp. 153-55, paras. 220-23, 227-230)

Since regimes of insurance supervision and regulation differ from one State to another, insurance companies wishing to engage in inter-state business, need to apply for a license in each State and also to comply with the supervisory regulations set down by each State's authorities. While Japan notes the NAIC's efforts toward achieving uniformity among the States' regulatory regimes, it requests further deregulation regarding inter-state insurance businesses. What are the U.S. views on this point?

### **Discriminatory measures against foreign insurers**

(p.153, para. 220)

Japan requests the elimination of discriminatory regulations as mentioned below.

- (a) Requirements for foreign insurers to participate in trust funds or to submit a letter of credit issued by a primary insurer in the reinsurance business.

When a foreign insurer without a branch in the United States underwrites reinsurance products in the United States, it is required, either to have a trust account, or to submit a L/C from the original underwriter. Japan requests the elimination of this system, since it discriminates against foreign insurers.

- (b) Compulsory trust of assets for foreign insurers

Branches of foreign insurance companies are required to trust a larger amount of assets than their liabilities in American banks or trust companies. Since this system prevents foreign insurance companies from making investments with flexibility, thereby missing investment opportunities, Japan requests the elimination of this system, since it discriminates against foreign insurers.

- (c) Citizenship requirement for foreign insurance companies

Many States' regulatory authorities impose on foreign insurance companies the requirement that all or part of their board members should be U.S. citizens. Japan requests the elimination of this system, since it discriminates against foreign insurance companies.

What are the U.S. views on these points?

### **Disclosure requirement in the issuance of new stocks as the reorganization**

If the U.S. investors own 10 % or more of an equity of a Japanese company, the company must file a registration form to SEC for the reclassification of securities, mergers, consolidations and the acquisitions of assets, in accordance with Article 145 of the General Rules and Regulations promulgated under the Securities Act of 1933. As foreign investors increasingly own Japanese stocks, the above-mentioned requirement is unreasonably burdensome to Japanese companies, which are forced to disclose relevant information by U.S. standards. Japan requests to increase a 10% threshold by about 30%.

### **Regulations regarding foreign mutual funds sold in the U.S.**

(p.151. para.213)

While approximately 20 U.S. mutual funds are publicly offered in Japan, no Japanese funds have been offered in the U.S. This imbalance results, in part, from the SEC Rule 7d-1. Whereby the requirements prevent Japanese mutual funds from being offered in the U.S. markets. Japan, therefore, requests the U.S. to relax these requirements.

### **Free participation of U.S. investors in foreign ETF markets**

(p.151, para.213)

It is unclear how the ETFs publicly available in foreign markets are regulated under U.S. law. ETFs are treated in Japan similarly to stocks, but because the exemption clauses applicable to stocks in the U.S. do not apply to ETFs, U.S. investors face difficulty in investing in Japanese ETFs. Japan, therefore, requests the U.S. to exempt ETFs from the process of the filing of registration forms and prospectuses.

### **Securities services**

(p152, para.218)

Corporate governance takes place in a variety of forms based on regulatory and other differences. Indeed, it seems that, there is no one-size-fit-all standard for corporate governance, as proclaimed in the OECD Principle of Corporate Governance, which was agreed by the OECD members including the U.S. While recognizing the necessity of avoiding conflicts with foreign legal systems, the Sarbanes-Oxley Act nonetheless requires that the foreign companies listed in the U.S. markets comply with the corporate governance standards. For example, while the Act allows the exemption of a board of corporate statutory auditor system, there exists no similar exemption of the committee system. The Act also puts a burden on foreign companies through such requirements as having to report and evaluate internal control. The U.S. should refrain from applying its corporate governance to foreign companies. It risks inhibiting access unduly to its securities markets by foreign companies. It is not enough to avoid conflicts of various legal systems. Japan would like to seek the U.S. views on this matter.

### **Accounting services**

(p158, para.246)

The Sarbanes-Oxley Act requires registration with the PCAOB, not only by U.S. accounting firms, but also by foreign public accounting firms, in order to prepare a financial statement for those foreign companies listed in the U.S. markets or for those that have a material role in such preparation. Auditing foreign public accounting firms should be conducted according to the local law, by the local authority and under the sovereignty of the country where such firm is located. Accordingly, cooperation between the relevant authorities and the PCAOB should be conducted. Thus, as a matter of sovereignty, the U.S. authority should not exercise its supervisory function over foreign companies. The PCAOB should, therefore, exempt the auditing of foreign public accounting firms from the Sarbanes-Oxley Act. Specifically, by not allowing the registration of foreign public accounting firms that the PCAOB has not over-sighted and by not allowing foreign companies audited by foreign public accounting firms that have

not registered in the U.S. to be listed in the U.S. markets, this constitutes an impediment to business activities, and such restrictions should be lifted. What are the U.S. views on this?

## **(8) SELECTED PROFESSIONAL SERVICES**

(pp.156-62, paras. 233-262)

As the Secretariat report points out in the following quotation, the different regulations on professional services in each state have proven to be obstacles to trade in professional services.

“The regulation of professional services is mainly under the responsibility of the individual States. Foreign market access in some States is affected by local presence, domicile, nationality, or legal form of entry requirements. The lack of a uniform regulatory regime at the national level also complicates market access.” (paragraph 33 of page xii, Secretariat report).

According to GATS Article VI, WTO Members are obliged to ensure that measures relating to qualification requirements and procedures, as well as licensing requirements and procedures, do not constitute unnecessary barriers to trade in services. In the case of measures taken by each State, the federal government shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments. (GATS Article I. 3(a))

Because the following concrete problems are identified in legal, accounting, architectural and engineering services, Japan seeks clarification as to what measures are taken by the federal government in order to ensure the obligations by the state governments.

### **Accounting services**

(p.158, para. 243)

It is identified that U.S. citizenship is required for CPA (Certified Public Accountant) licensing only in North Carolina. This requirement should be eliminated in common with all other States, because it constitutes a discriminatory measure to the foreign citizens.

### **Legal Services**

(pp.159-60, paras. 249-53)

Japan seeks information as to what measures are taken by the federal government in order to encourage all States to accord market access and national treatment for foreign legal consultancy services. In addition to the 16 States which have already made commitments under the GATS for accepting FLCs (foreign legal consultants), 8 other States, according to our information, have also introduced the FLC system. Are there any other further initiatives to liberalize foreign legal consultancy in other States?

Japan also seeks clarification as to whether the experience requirements for FLCs have been abolished in the District of Columbia.

Japan, among others, reiterates its request that FLC activities should be allowed in all States and Districts.

### **Architectural services**

(p.161, para. 255)

It has been identified that there is a commercial presence limitation for architectural services in Michigan, whereby two-thirds of the officers, partners and/or directors of an architectural firm must be licensed in the State as architects, professional engineers and/or land surveyors. This limitation should be removed, because it is discriminatory to the foreign service suppliers.

### **Engineering and integrated engineering services**

(p.162, para. 259)

It has been identified that the United States makes reservations as an exception to the GATS commitments on the citizenship requirements for licensing of professional engineers in the District of Columbia and on in-state residency requirements in 12 States. These requirements should be eliminated, because they constitute discriminatory measures for foreign service suppliers.

### **Consular related issues**

(pp.156-162, paras. 233-262)

#### **(a) Reinforcement of the U.S. immigration control**

The U.S. is in the process of implementing the following measures regarding immigration control for foreign nationals. Although it is a common task for all countries to take steps to act against terrorism, we urge the U.S. to ensure that these measures do not hinder the movement of persons, that there are no negative effects on economic activities such as trade and investment, and that consistency is maintained with WTO agreements without nullifying or impairing other members' benefits accrued through the U.S. commitments under the GATS. When introducing these new systems, especially those specified below, we request that the U.S. be both efficient and realistic in their implementation, and that it enhances transparency through publicizing information on the rules and actual situation of their implementation.

- (i) Obligatory personal appearance for the applicants of U.S. visas.
- (ii) Suspension of non-visa transit programs (Transit Without Visa (TWOV) Program and International-ti-International Transit (ITI) Program).
- (iii) Suspension of the Visa Waiver Program (VWP) to the holders of non-machine-readable passports.
- (iv) Collection of biometric information from visa applicants.
- (v) Non-application of the VWP to the nationals of the countries which have failed to certify to the U.S. by October 26, 2004 that the said country has a program to issue passports with biometric identifiers.
- (vi) Collection of biometric information at the ports of entry from visa-holding foreign nationals (introducing new immigration control and record system under the U.S.-VISIT program).

#### **(b) Other consular related issues**

Although they do not necessarily connect directly to reinforcing counter-terrorism measures, the following measures have the possibility of negatively affecting the movement of persons, as well as certain economic activities, such as trade and investment.

- (i) Reduction of the annual quota of H-1b visas  
Since October 1st, 2003, the annual quota for H-1b visas, which is issued to those who will engage for a short period of time in jobs requiring expertise, was reduced from 195 thousand to 65 thousand (the former number was effective only for years 2001 to 2003). Japan requests the U.S. to expand the quota again to avoid the movement of persons being hindered.
- (ii) Social security numbers  
A SSN is virtually the sole means of identification in the U.S. (it is required in daily life, such as for opening a bank account, signing a lease contract for housing, etc.). Therefore, Japan requests the U.S. Social Security Administration to issue SSN for all legal foreign residents, or to instruct all relevant authorities not to oblige foreign nationals to present a SSN for purposes that do not concern social security or retirement.

In March 2003, the U.S. Social Security Administration announced a change in regulations to restrict the issuing requirements of a SSN for foreign residents with non-employment visas and to stop the issuing of a SSN when only applied for the purpose of identification for obtaining a drivers license. Due to this rule, Japanese and other foreign residents have been facing unreasonable restrictions when acquiring a driver's license in States like Illinois, which requires applicants of a driver's license to present a SSN with no alternative measure for identification being accepted.

## SWITZERLAND

Questions referring to recent economic developments

1. How do the United States intend to correct the twin deficits? How sustainable are they in the medium-term? What could be the impact of a continuing depreciating dollar on the key elements of the current account of the balance of payments?
2. What will be the relationship between NAFTA and the other free-trade agreements concluded by the United States in the Americas thus far and the FTAA?
3. What synergies do the United States see between the Doha round of negotiations and the new free-trade agreements negotiations including the FTAA?

Question referring to international investment arrangements

The USA has concluded a number of treaties relating to trade and investment, namely bilateral investment treaties containing pre-establishment elements (BIT), recently concluded free trade agreements (e.g. Singapore, Chile, FTAs), the NAFTA and trade and investment framework agreements, in addition to its membership to WTO and OECD (Code of Liberalization and National Treatment Instrument).

Do the U.S. foresee to continue to follow a multi-layered approach to international investment arrangements, and if so, which will be its guiding principles?

Questions referring to trade policies and practices by measure

1. The new U.S. visa regime causes serious difficulties for travels to the United States. Taking into account the impact of these new measures on business, would the United States be ready to consider to introduce flexibility in the procedures to obtain the visa in particular for the business community?

2. § 26 –29 (*The 24-hour Advance Vessel Manifest Rule*) outlines some measures on providing mandatory informational elements before the cargo is loaded in a foreign port and that the data be provided in electronic form.

How do the U.S. ensure that these measures do not become an unduly administrative burden or even a new non tariff barrier?

3. Having regard to Part 103 of Title 19 of the Code of Federal Regulations (published on Monday, August 11, 2003 in the Federal Register Vol. 68) about the availability of information, how does the U.S. ensure the confidentiality of the information provided and why are the U.S. of the opinion that making data available is needed for reasons of national security?

4. According to § 139 some U.S. import restrictions are taken as a response to risks posed by FMD and BSE. In this context meat products are allowed to be directly imported into the U.S. from a non-FMD-free country if certain measures (as described in the Code of Federal Regulations Title 9 Part 94.4) are taken in the exporting country. However if these measures on products originating in a non-FMD country have taken place in a third country, the products are banned to be imported to the U.S.

What is the scientifically-based justification, including an assessment of the public health risk, of these additional U.S. import restrictions?

5. According to §142 APHIS has regulatory responsibility to safeguard U.S. animal resources from exotic pests and diseases. According to §143 FSIS has specific responsibility for the safety of meat, poultry and certain egg products.

How does the U.S. government ensure the cooperation of these two agencies, in order that various regulations and different control systems by these two agencies do not become an unduly administrative burden?

6. Will the web-based portal for government acquisitions (III, § 235) cover all entities under the GPA at the federal level for tender notices? Will it include also award notices and notices referring to lists of qualified suppliers? When will it be fully operational?

7. What potential do the United States see in improving market access and eliminating discriminatory provisions in the current negotiations under the GPA?

8. What flexibility could the United States envisage in terms of rules and market access in order to make the GPA more accessible to the developing countries who have taken commitments to join it in their WTO accession protocol and to other developing and the least developed countries?

Questions referring to trade policies by sector

1. As mentioned in para. 12, page 102, the six-year Farm Act (2002-07) increases reliance on price-dependent support. Such type of measures are known as production-distorting. Could you explain the



reasons for the re-orientation (compared with the FAIR Act of 1996 reducing production-distorting support in favour of income supplements) of the package of U.S. support measures in favour of production-distorting measures?

2. The new programme of counter-cyclical payments (CCPs) uses a target price as a reference. As it appears in the Table IV.3 on page 109, this target price is set rather higher than the average prices recorded during 1999-02. Could you explain the mechanism allowing to set the target price at the level established for the period 2004-07? What is the basis for the calculation and which kind of prevision model allows to determine this target price?

3. As mentioned in § 33 on page 110, federal milk marketing orders establish minimum prices for milk depending on its use by processors. Could you please describe the types of use and how the priorities are set to support one or the other type? Is it possible that some type of milk supported by these measures is purchased by a processing plant at a lower price and therefore represents a form of processing plant support?

4. According to § 40. on page 111, the largest U.S. agricultural export promotion programmes are the Export Credit Guarantee Programme (GSM-102) and the Intermediate Export Guarantee Programme (GSM-103). What is the share of these two programmes in the U.S. total annual export volume and value, and, for which kind of commodities are they allocated?

5. According to table IV.2 (p. 104) some products covered by tariff quotas have reserved access for distinct suppliers. Some of these quotas show fill rates below two third like low fat cheese or even 0% for low- fat chocolate crumb. How do the United States intend to reallocate unused quotas?

6. § 57 ff. outlines the safeguards in the steel sector. On December 4, 2003, the U.S. announced the full and immediate termination of its steel safeguards. The decision had been taken by President George W. Bush because the measures, introduced in March 2002, had achieved their purpose by helping U.S. producers consolidate and regain competitiveness. Nevertheless, the Steel Import Licensing System, introduced on February 1, 2003 is still in place. The system was put in place to provide timely statistical data on steel imports to monitor significant changes in steel imports. What are the reasons to keep this system in place? When or under what conditions will it be terminated? What measures have been taken that this system does not become an unduly administrative burden?

Questions referring to environmental issues (Part III, § 154 of the Secretariat report)

1. Switzerland has taken note that the U.S. has not yet ratified neither the PIC, the POPs nor the Basel Convention although the U.S. is one of the main financial contributors to these conventions.

What are the U.S. intentions referring to the ratification of these chemical and waste conventions?

2. In addition, we would like to refer to another global multilateral environmental agreement, the Convention on Biological Diversity and its Protocol on Biosafety (the Cartagena Protocol). This Protocol contains very important trade-related provisions. In its Preamble, Ministers recognize that trade and environment should be mutually supportive with a view to achieving sustainable development.

Could the U.S. elaborate on their intentions to ratify the Convention and the Cartagena Protocol?

## **CHINESE TAIPEI**

### **I. TRADE AND INVESTMENT POLICY**

#### **Preferential and Other Arrangements**

##### Unilateral preference

(Secretariat Report; p. 25, paras. 58-64). We have noted the current system of unilateral preference programmes in the United States to provide duty-free treatment to certain developing country exports.

In the interests of assisting LDCs and certain developing countries in meeting their development goals through WTO-consistent programmes, we would be interested in learning more about the administration of the United States' preference programmes. In particular, we would like to know how the United States determines country and product eligibility, whether or not the waiver of these programmes (such as CBTPA) is sought under the WTO. Furthermore, could these programmes serve as precursors to regional trade arrangements?

#### **Foreign Investment Regime**

##### Reporting and review requirements

(Secretariat Report; p. 27, para. 69). We recognize and endorse the United States' strong interest in safeguarding its national security. However, we are concerned that the so-called "national security" in the Exon Florio Amendment might provide wide discretionary powers to relevant authorities, which may have an adverse effect on the transparency and stability of the U.S. business environment.

Bearing in mind the close investment relationship between the U.S. and Taiwan, it would be appreciated if the U.S. could elaborate further on what factors are considered in determining the effects on national security of, for example, a foreign acquisition.

### **II. TRADE POLICIES AND PRACTICES BY MEASURE**

#### **Measures Directly Affecting Imports**

##### Customs procedures

We are sympathetic to the fact that, following the 9/11 attacks in 2001, security considerations have become an essential component of U.S. trade and investment policy. While we support the need to extend border measures for security purposes, we trust that these measures will not place too many extra burdens on foreign exporters.

In this respect, it would be appreciated if the U.S. could please provide us with further clarification on the following:

- a. (Secretariat Report; p. 36-, paras. 30-32). Regarding the *Customs Trade Partnership Against Terrorism* scheme (C-TPAT), we note that the Bureau of Customs and Border Protection (CBP) is now in the process of expanding the scheme to foreign companies in Europe and Asia. We trust that the scheme will be operated in a manner consistent with the principle of non-

discrimination and we would appreciate it if the U.S. could advise us of the criteria, if any, to be used in the selection of foreign companies.

- b. (Secretariat Report; P. 36-, para. 26-29). The *24-hour Advance Vessel Manifest Rule* requires that the vessel's cargo declaration must be notified, in electronic form, to the CBP 24 hours before the cargo is loaded in a foreign port. We wonder whether the U.S. might consider conducting a review of the effectiveness of this practice within the Rule, with a view to determining whether it should be maintained.
- c. (Secretariat Report; P. 65, para. 146-149). The *Bioterrorism Act* of 2002 requires in particular the registration of most food manufacturing and handling facilities, and prior notice to be given to the Food and Drug Administration (FDA) of all food shipments destined for the U.S. Given the time difference between the United States and other areas, it may be difficult to contact the manufacturer and receive the necessary records/documents within the given timeframe. With this in mind, we would ask that the deadline for prior notification to the FDA be extended, preferably to 24 hours, in order to avoid creating an unnecessary burden on trade.

#### Anti-dumping

(Secretariat Report; p.223, paras. 181-183). Despite the principle agreed in the Uruguay Round that anti-dumping and countervailing measures should be terminated after 5 years of implementation, the Report points out that the majority of sunset reviews conducted by the U.S. Department of Commerce (on dumping) and the International Trade Commission (on injury) since 2000 have resulted in continuation of the measures. It would seem to us that if the U.S. puts the main burden of proof on exporters in sunset reviews, this reduces the probability of the measures being revoked. In order for the real purpose of the sunset review to be faithfully adhered to, it is our understanding that Articles 2 and 3 of the Anti-Dumping Agreement should be taken into account. That is to say, it is the authorities or petitioners that have the principal burden to prove and determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

In view of the fact that at least 6% of the anti-dumping measures currently enforced in the U.S. involve Taiwanese exporters, we would be particularly interested in knowing whether the U.S. has any plan to improve its investigation procedures regarding sunset reviews, in recognition of the principle of terminating anti-dumping and countervailing measures after 5 years of implementation.

#### Safeguards

(Secretariat Report; p.197, para. 227). One particularly noteworthy remark in the Secretariat Report states that "All the cases in which safeguard measures were applied by the United States since 1998 have been challenged in the WTO." In addition, there were striking similarities between the bases of complaints made by other WTO Members, which were later accepted by the panels and the appellate body. It appears, for example, that imports from NAFTA countries were excluded from the application of safeguard measures, but included when it came to consideration of an "import surge".

Bearing in mind the precedent established by repeated DSB rulings, we would ask the U.S. to advise us of any improvements it makes in future investigation procedures in order to ensure more WTO-acceptable results.

## **Other Measures Affecting Production and Trade**

Intellectual property rights

(p. 241-242, paras.264-267; p. 259, para.348; p. 267, paras.378-379).

In 2003, the USTR identified 11 trading partners on the Priority Watch List for intellectual property protection. We have taken due note of the panel report (WT/DS152/R) finding that the use of Section 301 is not inconsistent with U.S. obligations under the WTO. However, my delegation is of the view that identification on the Special 301 List has implications for the international image of the countries concerned. Care should be taken in determining the existence of “unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce”, as stated in Section 301, in order to ensure impartiality. In our view, a country’s efforts in achieving TRIPS minimum standards, in deploying sufficient resources to crackdown on piracy and to establish effective enforcement - assuming it also enters with sincerity into the spirit of cooperation - should all be recognized.

We would therefore like to see the above-mentioned factors (i.e. the economic development status, and the policy-making and enforcement efforts of each country concerned) being taken into account by the U.S. in its Special 301 review.

## **III. TRADE POLICIES BY SECTOR**

### **Financial Services**

Banking services

1. In addition to corporate income tax, foreign bank branches in the U.S. are required to pay a 30% “Branch Profit Tax” if the earnings of the foreign bank are not reinvested in the U.S. Furthermore, the rates of the Branch Profit Tax vary, according to whether or not the home country of the foreign bank has signed a tax treaty with the U.S. My delegation is of the view that this measure does not conform to the principle of non-discrimination and has placed an excessive burden on Taiwanese banks operating in the U.S. We would therefore like to see the U.S. review this measure in due course.

2. Secretariat Report; p.149, para. 205). As indicated, a foreign bank is required to establish an insured banking subsidiary in order to accept or maintain domestic retail deposits of less than US\$100,000. These restrictions, effective since 1991, have placed foreign banks operating in the form of branches in a disadvantageous position, which seriously hampers their funding capability.

We recommend that the U.S. affords the same treatment to foreign bank subsidiaries as it does to branches whose parent banking institutions are properly insured in their domestic jurisdiction.

## **CHILE**

### **PROPIEDAD INTELECTUAL**

1. Por favor describa cuál es el plazo de protección para las obras e interpretaciones creadas o publicadas por primera vez en el extranjero con anterioridad al año 1978.

2. Por favor describa a qué categorías de obras se aplica la excepción contemplada en el subpárrafo (A) de la sección 110 (5) de la Copyright Act? Se le aplica por igual tanto a las obras musicales dramáticas como a las no dramáticas?
3. Por favor, describa las reformas a la Copyright Act, que se están tramitando o serán tramitadas para modificar el subpárrafo (B) de la Sección 110 (5) para otorgar una completa protección a los titulares de derechos de obras musicales no dramáticas que son perjudicados por la excepción contenida en dicha párrafo. ¿Cuándo entrarán esas reformas al subpárrafo B sección 110 (5) en vigencia?
4. ¿En qué casos los artistas, intérpretes o ejecutantes de obras, tienen derechos exclusivos o de remuneración por la comunicación al público y la radiodifusión de sus interpretaciones fijadas en fonogramas y en cuáles casos para sus interpretaciones o ejecuciones fijadas en medios audiovisuales, como vídeos, DVD?
5. ¿En qué disposición de la legislación estadounidense se reconoce el derecho de radiodifusión para los artistas, intérpretes o ejecutantes respecto de su interpretación o ejecución no fijadas?
6. Por favor explique si las copias temporales que son indispensables técnicamente para visualizar una imagen en la pantalla de un computador, o escuchar una obra que ha sido transmitida en Internet, requieren de una autorización expresa del titular del derecho de reproducción de dicha obra? ¿Si no es así, bajo qué norma de la Ley de Derecho de Autor quedan exceptuadas?
7. Por favor explique si quienes transmiten al público obras y fonogramas protegidos por derecho de autor por Internet (webcasters) bajo una licencia de comunicación al público, requieren además contar con una licencia por las reproducciones temporales que son indispensables técnicamente para el proceso de transmisión. Por favor describa bajo qué norma del sistema jurídico norteamericano se exceptúan dichas reproducciones.
8. Por favor indique cuáles son las disposiciones legales o administrativas que regulan activamente la adquisición y administración de programas computacionales para uso gubernamental por parte de los organismos federales o centrales del Gobierno de Estados Unidos.
9. Mientras que en materia de derechos de autor y de patentes el tema del agotamiento de derechos parece ser claro, no lo es tanto en materia de marcas de fábrica o de comercio. ¿Podría explicar cuál es el régimen de agotamiento de derechos en materia de marcas de fábrica o de comercio y qué normas o jurisprudencia se aplica? ¿Se aplican las mismas disposiciones a las indicaciones geográficas?  
  
¿Existe jurisprudencia de los últimos años en relación al Título 28 USC 1498? ¿Podría indicar en qué casos se han emitido?
10. Una vez que un medicamento es registrado en el Libro Naranja, el titular de una patente puede impedir la entrada al mercado de un competidor genérico entablando una demanda (lawsuit). Con esta acción se suspende (stay) la entrada del producto genérico al mercado por un período de 30 meses o hasta que el juicio concluya. ¿Contempla la ley estadounidense la posibilidad de que el medicamento genérico entre al mercado si es que la patente expira durante los 30 meses o antes de que termine el juicio? ¿Existen estadísticas sobre cuánto se demoran los juicios relativos a estas materias?

## **ANTIDUMPING**

Párrafo 81: En el contexto del Grupo de Negociación sobre Reglas de la OMC, Estados Unidos ha señalado que considera los Instrumentos de Defensa Comercial como una parte integral del sistema multilateral de comercio, sugiriendo a través de diversos documentos que hay aspectos de los Acuerdos sobre Antidumping y Medidas Compensatorias que deben ser aclarados y mejorados como parte de la negociación.

1. Dado el importante aumento de las medidas antidumping aplicadas durante los últimos años y su impacto negativo sobre el comercio, además de la opinión de varios Miembros de la OMC acerca de la falta de justificación de muchas investigaciones y medidas que se adoptan, ¿estima Estados Unidos que es posible disminuir la discrecionalidad y el aumento sustancial del número de investigaciones y medidas adoptadas sólo a través de mejoras en los procedimientos que no afectan la sustancia de los acuerdos AD y SCM?

2. ¿Estima Estados Unidos que es necesario resolver las ambigüedades y lagunas existentes en el Acuerdo Antidumping que permita evitar la proliferación de investigaciones excesivamente gravosas, de aplicaciones arbitrarias y el uso indebido de medidas antidumping? Si es así, ¿considera mejorar las normas y disciplinas de dichos Acuerdos para lograr dichos objetivos?

3. Estados Unidos señaló en una comunicación al Grupo de Negociación sobre Normas (documento TN/RL/W/27) la importancia que le asignaba a la necesidad de identificar las disciplinas sobre prácticas que distorsionan el comercio, con el fin de mejorar la previsibilidad del comercio a nivel mundial y reducir la necesidad de recurrir a medidas correctivas comerciales. ¿Estima Estados Unidos que mientras se fortalecen o crean disciplinas que eviten prácticas que distorsionen el comercio, no debe limitarse y reglamentarse en mayor medida las medidas correctivas comerciales, con el fin de evitar su indebida proliferación y uso discrecional?

4. En relación a los procedimientos de investigación antidumping, particularmente el tratamiento de la Sección 201 y de Derechos Compensatorios, Chile tiene información de que Estados Unidos procedería a modificar la manera en que el DOC calcula el margen de dumping de manera de poder deducir los derechos aplicados bajo la Sección 201 del Acta de Comercio de 1974 así como los derechos compensatorios bajo el Acta Arancelaria de 1930 del precio de exportación y precio de exportación reconstruidos en el cálculo de dicho margen. ¿Cuándo espera el Gobierno de Estados Unidos que esta modificación entre en vigor? ¿Prevé el Gobierno de los Estados Unidos alguna incompatibilidad de esta modificación con interpretaciones anteriores del DOC o bien con los acuerdos de la OMC, en especial el relativo a la aplicación del artículo VI del GATT o el ASMC?

## **SALVAGUARDIAS**

1. Párrafo 103: ¿Cuáles son los elementos de juicio que determinan la aplicación de una sobretasa arancelaria, de restricciones cuantitativas o de un arancel – cuota en las salvaguardias aplicadas por Estados Unidos? ¿Cuáles son los fundamentos y la mecánica de aplicación de licencias de importación y "las otras medidas" a que se refiere la sección 203 del Trade Act de 1974? ¿Se aplican de forma complementaria o sustitutiva de las medidas antes mencionadas?

2. Párrafo 104: Según el Acuerdo NAFTA se deben excluir de la aplicación de la medida definitiva aquellas importaciones del producto provenientes de otro país miembro del NAFTA cuando no representan una parte sustancial. En dicho caso, ¿considera Estados Unidos las importaciones no sujetas a salvaguardia a los efectos de evaluar el daño e imponer la medida?

3. Párrafo 105: ¿Cómo entiende EE.UU. la afirmación de la Secretaría de la OMC relativa a que "si bien el número de investigaciones ha sido limitado, su ámbito ha sido amplio en los últimos años, especialmente el caso del acero ..."? ¿Es esto cierto al considerar el número de productos, el tipo y categoría de productos involucrados o la falta de precisión en la partida arancelaria?

## **POLÍTICA DE COMPETENCIA**

1. ¿Estima Estados Unidos que las acciones de empresas o conglomerados que exportan a otros países miembros de la OMC deben estar sujetas a las leyes y reglamentos sobre competencia del país de origen, de la misma forma que las empresas que venden en el mercado interno?

## **AGRICULTURA**

1. Párrafo 12 indica que el "Farm Act" no incorpora un techo presupuestario aun cuando existen límites de sus gastos a través de varios mecanismos. Uno de estos mecanismos es la cláusula "circuit breaker" que permite que las ayudas domésticas no excedan los límites notificados en la OMC. Al respecto, ¿cómo son examinadas las ayudas conforme a esta cláusula? ¿Ha sido necesario invocarla durante ese período?

2. Respecto a las notificaciones en materia agrícola que se deben efectuar a la OMC: ¿Cuál es la razón por la que no se han notificado los programas de ayudas desde el período 1999-2000? ¿El hecho de no haber notificado afecta el sistema de monitoreo de la cláusula "circuit breaker"?

## **SERVICIOS**

1. En la página 11 de los compromisos horizontales (oferta servicios/AGCS) de EE.UU., se excluyen los "subsidios". Al respecto, sería interesante saber qué entiende EE.UU., por subsidios en servicios.

2. Asimismo, Chile quiere saber si EE.UU. va a intercambiar información sobre todas las subvenciones relacionadas con el comercio de servicio (o al menos, las listadas en sus compromisos horizontales) que otorguen a proveedores nacionales de servicios, tal como lo indica el artículo XV del AGCS?

3. Según nuestro sector privado, EE.UU. mantiene, a nivel subfederal, un trato menos favorable que el concedido, en circunstancias similares, a sus propios prestadores de servicios, en algunos de los siguientes sectores de interés para nuestros exportados de servicios:

- (a) Construcción  
Georgia, Kentucky, Minnesota, Montana, North Dakota, Texas
- (b) Distribución al por menor  
Alabama, Alaska, Arizona, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Texas, Virginia, West Virginia, Wyoming
- (c) Servicios relacionados con la minería  
Alabama, Alaska, Arizona, Maryland, Montana, Nevada, New York
- (d) Servicios relacionados con la ingeniería

Alabama, Arkansas, Connecticut, Distrito de Columbia, Georgia, Illinois, Iowa, Minnesota, Mississippi, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas

Al respecto, Chile quisiera saber si a nivel de esos Estados subfederales existe algún tipo de moción legislativa para otorgar un mejor trato a los proveedores de servicios extranjeros.

5. Según la Export Administration Act f 1979, 50 U.S.C. app. 2401-2420, la International Emergency Economic Powers Act, 50 U.S.C. 1701-1706 y la Export Administration Regulation 15 C.F.R. (730 a 774) la exportación y re-exportación de programas computacionales requiere de una solicitud de licencia ante el Bureau of Industry and Security (BIS). Chile quisiera saber cuáles son los criterios para otorgar esa licencia.

## **NORWAY**

Foreign reinsurers that do not hold a U.S. license must place in the trust fund 100 per cent of the gross outstanding liabilities as collateral, as opposed to U.S. licensed companies. Please explain the background for this requirement for foreign reinsurers.

In the Secretariat report, paragraph 98, it is stated that the U.S. recorded a deficit of US\$10,2 billion in freight and port services. We would like to know if the incomes from vessels registered under foreign flag and owned by U.S. shipping companies have been included when calculating these figures.

In the Secretariat report, paragraph 104, it is stated that the Jones Act does not prevent foreign companies from establishing shipping companies in the U.S. as long as they meet the requirements with respect to U.S. employees. Does this imply that foreign owned shipping companies established in the U.S. may own and register vessels under U.S. flag operating in U.S. cabotage trades?

In the Secretariat report, paragraph 108, it is stated that the U.S. international maritime transport market is generally open to foreign participation, and para 114-116 describes the exemptions. We would like to know if this implies that no cargo sharing agreements/requirements exist with foreign countries or if such clauses are merely dormant.

In the Secretariat report, paragraph 116, it is explained that the last Alaskan crude oil was exported in April 2000. Since then all Alaskan crude oil production has moved to the United States. The existing requirement of Alaska crude oil exports to be carried by U.S.-flagged vessels seems therefore to have become obsolete. Is the United States considering to remove the requirement that Alaska crude oil exports shall be carried by U.S.-flagged vessels?

Norway continues to be concerned with the United States' active use of trade remedies. At the last TPR of the United States we voiced our concern with the Continued Dumping and Subsidy Offset Act of 2000 (The Byrd Amendment). The CDSOA has since been challenged by Members under the DSU. The rulings of both the Panel and the Appellate Body confirmed that the CDSOA is inconsistent with certain provisions of the AD Agreement, SCM Agreement, the GATT 1994 and the WTO Agreement. In its report by the Government, paragraph 28, the United States informs that Congress has introduced legislation to repeal The Continued Dumping and Subsidy Offset Act of 2000. Can the U.S. delegation update the Members on the status of this repeal legislation, and when the Administration envisages it being passed by Congress?



The United States is pursuing negotiations on a number of regional, sub-regional and bilateral agreements. Norway hopes and believes that these negotiations do not lessen the U.S. willingness to move forward on the Doha Development Agenda. Does the U.S. believe that progress in the regional, sub-regional and bilateral negotiations the U.S. is currently pursuing will influence the progress on the DDA, and vice versa, and if so, how?

## **EUROPEAN UNION**

### **Trade in Goods**

What are the reasons for the continuing lack of U.S. recognition of the principle of regionalisation, as incorporated in the WTO SPS Agreement, in cases of the outbreak of an animal disease?

Cumbersome inspection and approval procedures for goods entering the U.S. often lead to perishable goods being damaged with resulting commercial losses for exporters. What measures might be taken to improve U.S. Customs sampling and inspection procedures in this respect?

### **U.S. restrictions based on National Security Concerns**

While higher levels of security in the face of the current global threat from terrorism are clearly necessary, new security measures should be as little trade restrictive possible for meeting the security needs.

What procedures does the U.S. have in place to ensure that the principle of proportionality/least trade restrictiveness and non-discrimination have been adequately observed in the development of new proposals and new measures to increase security against future terrorist attacks? Have there been any risk analyses undertaken or studies into the likely impact on trade flows of specific measures?

How does the U.S. intend to ensure that adequate resources are assigned to effectively implement the provisions of new legislative security measures, in particular where these have a direct or indirect impact on overseas economic operators?

Regarding the Bio-terrorism Act of 2002; why did the FDA not carry out a specific risk assessment during the development of the proposed set of four far-reaching rules to implement the food-related provisions of this Act? What efforts are being made by the FDA to reduce the impact of these new measures on trade? Will there be a review mechanism of the parent legislation from the date of implementation of the new measures, and if not, why not? More specifically regarding the new record-keeping measures, what efforts are being made to improve the manifest lack of communication between U.S. agencies such as the FDA, Tax and Trade Bureau, and U.S. Customs?

### **Agriculture**

The EC notes with concern a growing discrepancy between the pro-market access stance the U.S. takes in multilateral fora and the use of far-reaching safeguard measures in recent bilateral agreements, such as the FTA with Chile. Is the U.S. moving the substance of trade agreements -including safeguards - into bilateral or regional agreements, while only supporting multilateral trade liberalisation in as far as it benefits U.S. exports?

The EC notes that U.S. continues to use food aid and export credits to reduce government stocks of agricultural commodities. Is the U.S. ready to consider helping the DDA-process move forward by accepting to classify as export subsidies all measures used for subsidising exports?

The main agriculture and industry lobbies in the U.S. have been arguing for some years that the strength of the dollar was hurting their export competitiveness. At the same time, the position of the agriculture groups towards Congress and the U.S. government has been to "max out" the trade distorting agriculture support allowed to the U.S. under the WTO. Now that the U.S. government and Federal Reserve are no longer pursuing a strong dollar, can the world look forward to a substantial reduction in U.S. domestic subsidies as well?

### **Government Procurement**

In the report of the WTO Secretariat (WT/TPR/S/126, paragraph 229), it is written that U.S. commitments at sub-central level under the GPA are limited to 37 States. When does the U.S. administration expect to extend the coverage at sub-central level both in terms of inclusion of all States and improved substantial coverage?

Is the single web-based portal for government acquisitions, resulting from the E-Government Act of 2002 (paragraph 235), operational by now?

In the report of the WTO Secretariat it is mentioned (paragraph 239) that the U.S. maintains a number of 'buy American' restrictions for procurement not covered by the Agreement on Government Procurement, NAFTA, the WTO plurilateral agreement on Trade in Civil Aircraft and bilateral procurement agreements. What is the extent of these restrictions and what is the reason for continuing this restriction?

### **Trade in Services**

The WTO Secretariat report (WT/TPR/S/126, paragraph 164) describes the terms in which export transactions in the U.S. can be eligible for Ex-Im Bank financing grant. How is the term 'export' defined and how is the local content being assessed for services when the Ex-Im Bank grants support to an export transaction?

What kinds of services have been granted support for exports? Are these mainly transportation services as illustrated in the report (paragraph 168) or are there other kinds of services?

The report (paragraph 4) states that "the United States presented a draft offer on services that largely reflects changes since the end of the Uruguay Round in U.S. laws and regulations". Can the U.S. explain why the draft offer merely points at "potential" other commitments on market access for higher education services and cross-border banking and securities services, as well as regulatory commitments in financial, express delivery and some professional services: does this statement mean that the U.S. will formalise shortly these improvements? Also, as explained in para 7, "The U.S. regulatory framework for professional services has also been subject to a number of reforms, notably affecting accounting and legal services": why hasn't this been reflected in the offer?

Can the U.S. explain why the draft offer merely points at "potential" other commitments on market access for higher education services and cross-border banking and securities services, as well as regulatory commitments in financial, express delivery and some professional services: does this statement mean that the U.S. will formalise shortly these improvements?

Since some of these changes imply backtracking, does the U.S. intend to launch a GATS article XXI procedure or will it correct the draft offer accordingly?

Finally, as explained (paragraph 7 of the report), “The U.S. regulatory framework for professional services has also been subject to a number of reforms, notably affecting accounting and legal services”: why has this been reflected in the offer?

### **Maritime Transport**

The report of the Secretariat (Paragraphs 99 and 100) states that total international water-borne trade (in volume) was 1.137 million tonnes in 2002 and that domestic water-borne trade was around 946 million tonnes. Can the U.S. indicate the share of domestic water-borne trade that relates to pre-onward carriage of international cargo (“feeder transport”) between U.S. seaports? Can the U.S. indicate the share of domestic water-borne trade that relates to inland waterway transport?

The report of the Secretariat (paragraph 2) focuses on initiatives to upgrade and develop maritime transport services in the U.S. The U.S. restrictions on domestic water-borne transport (paragraphs 104-107) and the restrictions and nationality requirements in U.S. ports (paragraphs 117-119) limits the choice available to operators in terms of optimising the transportation services they can offer to their customers (e.g. by having to rely more on road transport instead of coastal shipping). Does the U.S. have any estimation on the additional transportation cost that results from these restrictions? Does the U.S. have an assessment of the environmental implications of using more road transport rather than coastal shipping (by a rough estimation, trucks pollutes 3-4 times more than ships, causes congestions etc.)?

The report of the WTO Secretariat describes the ‘Merchant Marine Act’ (Jones Act) and its implications.

1. How many ships have been produced in the last years under the ruling of the Jones Act, kindly specify type of ship, purchasing-price and the tonnage of the ships?

The report of the Secretariat (paragraphs 133 and 145) relates to aspects of services in airports. With regard to security services, the Aviation and Transportation Security Act nationalised certain activities (such as passenger screening). After a period of nationalised operation of the sector, the Aviation and Transportation Security Act permits private companies to undertake security screening at airports on the condition that “the private screening company is owned and controlled by a citizen of the United States.

Under its commitment to opening world markets in the General Agreement on Trade in Services (GATS) the United States has signed up to full market access in the field of security services (with specific exceptions for the states of Maine and New York). If applied this legislation appears to conflict with the commitments taken by the U.S. under the auspices of the WTO. Can the U.S. indicate if there are currently any plans to re-privatise airport security services and related activities?

### **Telecommunications services**

The report of the Secretariat (paragraph 161), describes the finance of the U.S. universal telecommunications service, whereas companies must pay a percentage of their interstate end-user revenues to the Universal Service Fund. What are those services to which access must be granted under the Universal service provisions? What does “reasonable and affordable rates throughout the country” mean? How is the Universal Service fund money granted to operators?

The Secretariats report (paragraphs 162, 177 and 178) describe the FCC's Benchmark Order in the U.S. How does the U.S. justify the maintenance of a benchmark system in its International Settlements Policy? How is this system compatible with the obligations of non-discrimination of the GATS and the commitments of market access made by the United States in 1997?

The report points out (paragraph 164) that the FCC considers various factors when considering a licence application from a foreign operator. What kind of "trade policy concerns" can affect a licence application from a foreign operator? What are the criteria's for assessing "security concerns" for a licence application from a foreign operator?

The report (paragraph 173) says that the ORBIT act imposes criteria on entry into the U.S. market of Inmarsat and New Skies, in particular statutory privatisation criteria which the FCC must apply in order to determine whether to grant market access to these entities. However, since these criteria apply to no other competitor, foreign or domestic and could lead the FCC to limit these entities' access to the U.S. market (thus preventing an increase in the number of players in the market), could the U.S. explain how this conforms with the intent of the Act to promote competition? Also, one criterion for allowing market entry by these entities conditions market access on the place of registration of the company<sup>4</sup> even for WTO members' territories: can the U.S. explain how this complies with its WTO obligations on market access, Most Favoured Nation (MFN) and National Treatment?

As pointed out in the report by the Secretariat (paragraph 175), EU-based Inmarsat Ventures plc was indeed granted access to the U.S. market, but this grant is subject to further review after Inmarsat conducts an IPO, or revocation of its authorization to provide non-core services to the U.S. if it fails to conduct an IPO, or if substantial dilution of the aggregate ownership of the company by its former Signatories is not achieved through an IPO. Can the U.S. explain why such conditions are imposed on Inmarsat (i.e. why the ORBIT act requires such conditions) given that the U.S. has granted market access to any satellite operator based in a WTO member under the GATS?

The EU takes good note that "the FCC endeavours to follow technology-neutral policies" (paragraph 179 of the Secretariats report). However, for digital terrestrial television, the U.S. has mandated an exclusive transmission standard in the U.S. (the ATSC developed in the U.S.), which prevents a technology (DVB-T) developed in Europe and adopted in several countries around the world from entering into the U.S. market. Could the U.S. explain why it does not "follow a technology-neutral policy" in this case?

### **Audiovisual services**

The U.S. has made commitments in 1994 for "2.D.b Motion Pictures Projection Services". The EC would like to know whether the U.S. is implementing in full these commitments, or whether it has been facing difficulties to implement them, notably as regards non-profit and publicly funded entities.

The U.S. has made commitments in 1994 for "2.D.a Motion Pictures Production and Distribution Services", which include film dubbing, film title printing, editing, cutting, etc. The U.S. has made

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<sup>4</sup> "Any successor entity or separated entity shall be subject to the jurisdiction of a nation or nations that-

- `(A) have effective laws and regulations that secure competition in telecommunications services;
- `(B) are signatories of the World Trade Organization Basic Telecommunications Services Agreement; and
- `(C) have a schedule of commitments in such Agreement that includes non-discriminatory market access to their satellite markets."

commitments in 1994 for "2.D.c Radio and Television Services". In addition, the U.S. has made commitments in 1994 for "2.D.f Other Audiovisual Services". The EC would like the U.S. to indicate the specific services that it considers as being covered by its commitments under "2.D.f Other Audiovisual Services".

### **Financial services**

Could the U.S. specify which are the 18 States allowing inter-state branching by de novo establishment, and whether more States contemplate to allow such a possibility? (Reference is made to paragraph 201 of the Secretariats report)

Under U.S. law foreign banks branches may not be required to commit organisational capital omits that they may be required to pledge a certain amount of their assets, computed as a percentage of their third-party liabilities. Could the U.S. explain the current state-of-play of the asset pledge requirements, and possible improvements contemplated, especially in the State of New York? (Reference is made to paragraph 205 of the Secretariats report).

### **Professional services**

According to the Secretariat report (Pages 156 to 162), the Federal Government has the power to negotiate framework agreements with trading partners with respect to professional and business services under which mutual recognition arrangements (MRAs) are negotiated, but the MRAs are negotiated by representatives of the professions and other competent authorities (members of state licensing boards, national associations of state boards or other such organizations). The report mentions a number of arrangements that have already been concluded or that are being discussed.

Could the USA indicate whether, in the negotiation of such MRAs, these representatives of the professions and other competent authorities do exercise powers delegated to them by central, regional or local governments or authorities within the meaning of article I.3.(a)(ii) of the GATS, so that the arrangements can be considered as mutual recognition agreements concluded by the USA as a member of the WTO?

If the answer to the preceding question is negative, could the USA indicate whether, once it notifies those arrangements under Article VII of the GATS, the USA, by way of such notification, become, as a WTO member, bound by those arrangements under international law?

If the answer to the two preceding questions is negative, taking into account that the USA are able, as a WTO member, to undertake commitments in respect of professional and business services and in developing disciplines on domestic regulation under article VI of the GATS, could the USA indicate which are the reasons that prevent them from negotiating, as a WTO member, MRAs in respect of professional and business services under article VII of the GATS?

As reflected in the report by the Secretariat (pages 157 to 162), as part of the ongoing negotiations in services, the USA offered to consider undertaking the implementation of the GATS Disciplines in Regulation of the Accountancy Sector, adopted in 1998, and similar ones for other professional services, if others did the same. Taking into account that, by decision of the Committee on Trade in Services (CTS) taken in December 1998, the Disciplines on Domestic Regulation in the Accountancy Sector contained in document S/WPPS/W/21 will be integrated into the GATS no later than the conclusion of the present round of services negotiations and are to be applicable to Members who

have entered specific commitments on accountancy in their schedules, why do the USA consider necessary the undertaking of an additional commitment to implement those disciplines?

### **Postal services**

The EC is surprised that the report does not include any section on Postal services, given that this has been the case for a number of other WTO members.

What is the regime of trade in postal and courier services in the U.S? In particular, what is the current status (reserved to the Postal Office, licensing requirement, restriction on the number of operators) in the following fields of activity:

1. Handling of addressed written communications on any kind of physical medium, including: Hybrid mail services and direct mail
2. Handling of addressed parcels and packages
3. Handling of addressed press products
4. Handling of items referred to in (1) to (3) above as registered or insured mail
5. Express delivery services
6. Handling of non-addressed items
7. Document exchange
8. Other services not elsewhere specified

Is it possible to have statistics on the level of opening of the U.S. postal-courier market to foreign operators (in percentage of turnover, for instance)?

Does the Postal Office also operate in fields outside its monopoly (in particular, express delivery services)? If so, do its competitors get a similar treatment in these fields of activity? How is this ensured?

### **Temporary movement of natural persons providing services**

Many multinational companies operate graduate training programmes, whereby university graduates are posted to an overseas branch of that company for a period of time (usually between one and two years) to gain experience in management techniques or in other areas. How would a company go about transferring one of its employees on such a scheme to one of its affiliates in the U.S? For example:

1. Does the U.S. have a special regime to cover persons entering the U.S. to carry out remunerated training within a company?
2. What sort of permits (if any) does this sort of intra-corporate transferee require.
3. Are there any conditions attached to this sort of transfer – e.g. age limitation, minimum educational requirements?
4. What are the procedures for applying for the permit(s) (who applies? Supporting documentation required to be sent with the application form?)
5. What is the average length of time taken to process applications?
6. What is the maximum length of the initial period of stay? Is renewal possible?

Over the last years, security considerations have led several Members to review their procedures on the access of foreigners to their territory (notably visa procedures). Taking into account the provisions of the Annex of the Movement of Natural persons providing services and in particular the requirement that measures should not be applied in such a manner as to nullify or impair benefits accruing under the

terms of a specific commitment, how does the U.S. combine these considerations with the respect of WTO obligations on mode 4?

The U.S. has recently signed two agreements with Chile and Singapore providing for specific H-1B quotas to be allocated for national of these countries on the total number of H1-B visas granted by the U.S. How does the U.S. intend to implement these provisions while remaining in conformity with its WTO obligations, which provide for a 65,000 H1-B quota granted on an MFN basis?

### **Trade Related Intellectual Property Rights**

U.S. law stipulates that the U.S. Government can allow use of the subject matter of a patent without the authorization of the right holder. Does U.S. law provide that the right holder will be notified of such decision as soon as reasonably possible, and does it foresee the payment of adequate remuneration to the right holder?

### **U.S. trade strategy**

Bilateral, regional and global trade liberalisation is vital for promoting prosperity, growth and development to the benefits of the world at large. The EC considers that the WTO and multilateral liberalisation is the most certain way for promoting global interests for industrialised countries and developing countries at large. How does U.S. judge the relative importance and weight of bilateral/FTA policies and further development of the WTO system in terms of its own trade and development needs? And to what extent has the U.S. analysed and compared the efficiency and level of economic benefits delivered by bilateral trade agreements by comparison with multilaterally agreed liberalisation?

Since the last trade policy review the U.S. has become increasingly focused on satisfying the specific interests of certain sectors of the U.S. economy. This trend has led to the adoption of certain policy measures which have negatively affected the interests of third country suppliers to the U.S. market and U.S. consumers at large. How does the U.S. assess this trend in relation to its ability to assist with creating momentum for multilateral negotiations? And what tools does the U.S. have at its disposal to ensure that measures taken to satisfy the short term interests of specific sectors – particularly measures of trade protection or restrictions – are balanced out against the need to maintain an open market, respond to consumer interests and the legitimate interests of third countries?

### **CAFTA**

Available information at this stage regarding CAFTA underscores that some agricultural sectors (such as sugar) would be permanently excluded from total trade liberalization. Could the U.S. specify the list of the agricultural products covered by such provisions? In addition, could the U.S. give some details as to the length of the transition periods? (Reference is made to the Secretariat report, paragraph 54).

Could the U.S. elaborate on the CAFTA provisions regarding investment both concerning the definition of investment and the rights granted to third parties in case of disputes (*amicus curiae*, transparency). In addition, some information hints that investment definition would cover IPR and that therefore compulsory licenses might be considered as equivalent to expropriation. Is this information accurate? What are the details of the agreement on this point?

According to U.S. government information, CAFTA would include a provision regarding trade marks and geographical indications based on a "first in time, first in right" principle. Could the U.S. elaborate about these provisions?

## **Trade and social issues**

How does the U.S. see the relationship between the promotion of social policy and the conduct of trade policy both at bilateral and multilateral level?

The EC notes that in line with the TPA, the U.S. includes provisions on the respect of core labour standards in many of its bilateral agreements. Could further information be provided on the follow-up to these provisions?

The World Commission on the Social Dimension of Globalisation will issue its final report in February 2004. How does the U.S. see the role of the World Commission and what actions does the U.S. foresee following the final report as far as trade policy is concerned?

If this is the case to what extent is Fair Trade (which takes account of sustainability) being promoted by the national trade policy.

## **AGOA**

The U.S. announced recently its intentions to prolong the AGOA legislation, which grants preferences to certain African countries. How can this proposal and the overall the existence of trade preferences for the least developed countries be made compatible with the zero tariff initiative that U.S. put forward in the WTO?

In relation to paragraph 62 of the report: the new provisions of AGOA, amended in 2002, improve upon existing rules on textiles. Thirty-eight countries met the Act's requirements for 2003, up from 36 previously.<sup>5</sup> The United States has not yet requested a WTO waiver for the AGOA programme. The AGOA programme is comparable to the EU's EBA initiative, but does not apply to all least developed countries. The eligibility to AGOA is, however, not only dependent on objective criteria related to the development status of individual countries. What political and non-objective criteria are used to determine AGOA benefits and how do these square with the applicable WTO rules governing such arrangements?

## **Compliance**

Article 21.1 of the WTO Understanding on Dispute Settlement (DSU) states that prompt compliance with recommendations and rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of WTO Members. Moreover, Article 3 of the DSU affirms that "the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system". Notwithstanding these provisions, the U.S. has a patchy record with regard to compliance with recommendations and rulings formulated by the DSB on the basis of Panels' and the Appellate Body's reports. What measures are being taken by the U.S. to comply, and when is full compliance expected, with WTO Dispute Settlement Rulings in the following cases: the Foreign Sales Corporations legislation (concerning the FSC Repeal and Extraterritorial Income Exclusion Act (ETI));

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<sup>5</sup> Countries eligible under the AGOA are Benin; Botswana; Cameroon; Cape Verde; Central African Republic; Chad; Republic of Congo; Côte d'Ivoire; Democratic Republic of Congo; Djibouti; Eritrea; Ethiopia; Gabon; The Gambia; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Madagascar; Malawi; Mali; Mauritania; Mauritius; Mozambique; Namibia; Niger; Nigeria; Rwanda; Sao Tome and Principe; Senegal; Seychelles; Sierra Leone; South Africa; Swaziland; Tanzania; Uganda; and Zambia.



the 1916 Anti-dumping measures; Section 110(5) of the U.S. Copyright Act; the Continued Dumping and Subsidy Offset Act (the so-called "Byrd Amendment")?

How does the U.S. judge the relevant importance of prompt compliance with WTO rulings, and hence the upholding of the rules-based international trading system, and the setting of a good example for the rest of the world, vis-à-vis its own domestic goals and interests in terms of U.S. economic and commercial development?

What explanation can be given for the longstanding trend whereby the U.S. has not implemented the necessary measures to comply with WTO rulings within the designated timeframe?

## **COLOMBIA**

### **I. Medidas que afectan las importaciones**

#### **A) Régimen Aduanero**

1. El documento de la Secretaría describe los cambios ocurridos en el Régimen Aduanero de los Estados Unidos desde el anterior examen. Encontramos muy valiosa la información referida a los nuevos esquemas de importación, a saber, el Sistema Automatizado Comercial (ACS) y el Entorno Comercial Automatizado (ACE).

- a) Al respecto, nos gustaría conocer los resultados de la nueva política aduanera basado en el principio de la "observancia informada", frente al objetivo de utilización eficiente de los limitados recursos aduaneros y la posibilidad de prestar atención prioritaria a los sectores de mayor riesgo.
- b) De ser posible, apreciaríamos se nos suministre información sobre los procedimientos utilizados para articular los distintos agentes que intervienen en el proceso de internación de las mercancías y los métodos de seguimiento y control.
- c) Entendemos que el ACE se aplicará en la primavera del 2004 a la importación de cargamentos de mercancías. En qué consiste este nuevo método y en que se diferencia del ACS?

2. En relación con la Norma de manifiesto de buque con 24 horas de antelación, existen lineamientos dentro de los cuales se debe ejercer la facultad otorgada a los puertos marítimos para imponer sanciones pecuniarias por carga extranjera que no se ajuste a la citada Norma?

#### **B) Otros gravámenes que afectan las importaciones**

Según el informe de la Secretaría, la Ley de Comercio Exterior de 2002 asigna al Contralor General el mandato de llevar a cabo un estudio para determinar si la cuantía de las distintas tasas aplicadas a los usuarios de aduanas guarda proporción con el nivel de los servicios prestados. También se comenta que existen propuestas para reestructurar el impuesto de mantenimiento de puertos por una tasa a los propietarios y operadores de buques, buscando asegurar que la misma corresponde más fielmente a la utilización de los servicios e instalaciones portuarios.

Es posible conocer las conclusiones del estudio realizado por el Contralor General sobre las tasas aplicadas a los usuarios de las aduanas? Existe algún cronograma para el ajuste del impuesto de mantenimiento al costo de los servicios prestados?

**C) Reglamentos técnicos y medidas sanitarias y fitosanitarias**

1. Se comenta en el informe de la Secretaría (párrafo 128) que con el objeto de cumplir las prescripciones constitucionales de debido proceso, la mayoría de los Estados han aprobado leyes que contienen procedimientos en materia de transparencia. Por ejemplo, la mayoría de los Estados han aprobado leyes de procedimiento administrativo similares a los de la APA federal. Asimismo, la mayoría de los Estados han aprobado leyes que estipulan el acceso público a la información y a los procedimientos judiciales.

En materia de Reglamentos Técnicos aplicados a productos, qué avance ha habido en la unificación de requisitos de los estados y del nivel federal?

2. En los requerimientos de Estados Unidos en materia de normas técnicas parece usual el no recurrir a estándares internacionales y proliferan las normas en cada estado. Esto puede restar competitividad a las empresas exportadoras. Hay algunos sectores que en Colombia han señalado esa problemática, en productos como puertas y ventanas, calzado de seguridad, manufacturas de cueros, autopartes.

Están los Estados Unidos notificando ante la OMC los proyectos de medidas subfederales?

3. Para aquellos productos respecto de los cuales USA solicita certificación de evaluación de conformidad de tercera parte, es decir de un certificador acreditado y reconocido bajo algún mecanismo por parte del organismo que verifica cumplimiento en frontera, y teniendo en cuenta que el Gobierno de Estados Unidos puede reconocer oficialmente a un organismo de prueba independiente mediante la acreditación o medidas similares, qué mecanismos hay diseñados para facilitar acuerdos de reconocimiento mutuo (ARM) con el fin de facilitar el acceso de este tipo de productos de países en desarrollo,? (párrafo 132).

4. Estamos interesados en conocer los resultados y la experiencia obtenida en la aplicación de Acuerdos de Reconocimiento Mutuo en los que se aceptan comprobaciones extranjeras de la conformidad a los reglamentos de Estados Unidos.

Cuáles son las autoridades que decidiendo caso por caso han acreditado a determinados organismos extranjeros de prueba? A cuáles organismos se ha acreditado? (párrafo 138).

5. El párrafo 142 del informe establece que corresponde a la APHIS la regulación de la seguridad de los animales y de las plantas. En el caso de los análisis de riesgo específicamente, donde se presentan demoras para su aprobación, se ha previsto alguna medida para descongestionar este proceso?

6. Existe la posibilidad de obtener de las autoridades encargadas de aplicar las disposiciones medioambientales en la utilización de los recursos marinos, el levantamiento **automático** del embargo que impide exportar atún a los países que pescan en la porción oriental del Océano Pacífico, si dichos países hacen parte del Acuerdo sobre el Programa Internacional de Conservación de los Delfines (AIDCP)?

## **II. Otras medidas que afectan la producción y el comercio**

### **A) Derecho de Autor**

Hemos tenido conocimiento de la expedición de la “Ley sobre la lealtad en la concesión de licencias sobre obras musicales de 1998” por parte del Congreso de los Estados Unidos, en virtud de la cual se enmendó el artículo 110 (5) relativo a las limitaciones de los derechos exclusivos. Entendemos que dicha ley permite ciertas utilidades sin el previo y expreso consentimiento del titular del derecho ni el pago de una remuneración. Esta situación afecta a los autores colombianos, por cuanto entendemos que permite la utilización en las condiciones arriba descritas, de un vasto catálogo de obras e interpretaciones del repertorio musical colombiano, con altos márgenes de audiencia en el territorio de los Estados Unidos.

Ha contemplado Estados Unidos la posibilidad de modificar el artículo 110 (5) (A), en razón al perjuicio que se causa a los titulares de derecho de autor de otros países con esta limitación?

### **B) Propiedad Industrial**

1. En el párrafo 270 del Informe se plantea que en caso de demoras en el otorgamiento de patentes por la USPTO, hay períodos de prórroga que se calculan mediante una fórmula. Podrían explicar como opera la formula y ejemplos de su aplicación?

2. Existe un período de prórroga similar, por demora en la aprobación de la comercialización de productos sometidos a permisos de entidades regulatorias, como la FDA o la EPA?

## **III. Políticas Comerciales por Sectores**

### **A) Agricultura**

1. Ha definido Estados Unidos algún tipo de parámetros dentro de los cuales se deberían realizar avances dentro de su política agrícola, tanto en acceso y ayuda interna como en subsidios a la exportación?

2. Qué se tiene previsto respecto a los contingentes arancelarios respecto de varios tipos de productos, como por ejemplo las escobas de sorgo (SA 9603.10), el atún y otros productos agropecuarios. Los elevados derechos arancelarios aplicados fuera de contingente a los productos agropecuarios no permiten la exportación en sectores importantes para los países en desarrollo, como el azúcar.

### **B) Servicios profesionales seleccionados**

1. El párrafo 234 del Informe de la Secretaría hace una breve descripción sobre la regulación de Estados Unidos en materia de servicios profesionales, mencionando que cada estado tiene potestad independiente para regular los servicios profesionales. Dicho párrafo, reconoce la ausencia de regulación unificada a nivel nacional y la diferenciación que existe en cada estado frente a las condiciones de acceso a los mercados elemento que dificulta el ingreso de proveedores de servicios profesionales en el mercado americano.

El artículo VI:6 del AGCS establece que “En los sectores en los que se contraigan compromisos específicos respecto de los servicios profesionales, cada Miembro establecerá procedimientos adecuados para verificar la competencia de los profesionales de otros Miembros”.

En consecuencia de lo anterior, Colombia quisiera conocer qué tipo de procedimientos ha adoptado Estados Unidos que permitan verificar la competencia de profesionales extranjeros en aquellos servicios profesionales en donde se han adquirido compromisos específicos para cumplir con los requerimientos de dicho artículo.

2. Cómo se concilia la facultad del USTR para establecer los marcos bajos los cuales deben negociarse los acuerdos de reconocimiento mutuo (ARM) y la discrecionalidad que tiene cada estado en materia de regulación de servicios profesionales? (párrafos 235 y 236).

## **REPUBLIC OF KOREA**

### **II. DEVELOPMENT IN TRADE AND INVESTMENT POLICY**

(page 16, para. 9)

Korea fully appreciates the U.S. government's heightened security concerns and the rationale for the new U.S. visa policy. At the same time, we hope that the U.S. government will balance not only security concerns but also economic and trade interests in designing and implementing the visa policy, avoiding the possible negative impacts on trade and exchanges of people.

Does the U.S. government have any future plans to minimize the possible negative impacts of its new visa policy?

(page 28, para. 73)

Paragraph 73 indicates that, in the wake of the September 11 attacks, issues relating to terrorism are given heightened consideration in the review of submissions under the Exon-Florio provisions. Korea has concerns that the predictable and transparent business environment of the United States might be undermined by heightened national security concerns.

Please provide us with further information on how terrorism-related issues are taken into account in the review process, from the notice to the CFIUS up to the final decision by the President.

(Page 29, para. 76)

Paragraph 76 describes restrictive measures on fishing operations and direct investment by foreigners.

Could the U.S. government provide us with information with respect to the reasons for placing restrictions on fishing operations and direct investment by foreigners?

### **III. TRADE POLICIES AND PRACTICES BY MEASURE**

(page 41, para. 51)

Compared with the average U.S. tariff rate of 2.4% on fisheries products, the 35% tariff rate on tuna in oil in airtight containers seems to be excessive.

Is there any special reason for maintaining this high tariff rate?

(page 47, para. 74~76)

The U.S. Department of Commerce is reportedly considering deducting Section 201 and CVD duties from the constructed export price in dumping margin calculations. Under the new calculation method, dumping margins could be created where none would have been found otherwise, and the existing margins could be inflated, leading to a violation of the WTO Antidumping Agreement. In addition, the proposed change would result in a 'double imposition' of trade remedy measures on identical products, which could be inconsistent with the relevant WTO agreements. As far as we know, there has been no change of circumstances that would warrant the proposed change in the dumping margin calculation methodology the U.S. government has used for the past 20 years. We are concerned that such a move would dampen the on-going efforts in the DDA negotiations to improve the Antidumping Agreement in a more fair and reasonable direction.

What is the U.S. government's position on this matter?

(page 48, para. 77~79)

The U.S. government failed to implement the WTO ruling against the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment Act, within an agreed reasonable time period that elapsed on December 27, 2003.

Can the United States provide any detailed plan to implement the ruling of the WTO/DSB?

(page 65, para. 146~149)

Korea fully understands the context in which the Bioterrorism Act was enacted and implemented in the United States. Nonetheless, we are concerned about the trade-restrictive nature of the Act in respect to requirements for facility registration and prior notice. Korea has already conveyed such concerns to the United States on several occasions.

Does the U.S. government have any intention to streamline such burdensome procedural requirements?

(page 68, para. 161)

The Pelly Amendment to the Fisherman's Protective Act of 1967 authorizes the U.S. Secretary of Commerce to certify a country for activities that diminish the effectiveness of an international fishery conservation programme.

Does the U.S. have a clear set of criteria for determining what activities diminish the effectiveness of an international fishery conservation program? If so, is there any possibility that the above criteria would act as a non-tariff barrier?

#### **IV. TRADE POLICIES BY SECTOR**

(page 130, para. 118)

According to para. 118, the United States maintains an MFN exemption covering restrictions on performance of longshore work when making U.S. port calls by crews of foreign vessels owned and flagged in countries that similarly restrict U.S. crews on U.S.-flag vessels from longshore work.

Please provide us with information about which countries are subject to such reciprocity exceptions from the United States and whether or not the conditions that had created the need for the MFN exemptions still prevail.

(page 140, para. 169)

According to para. 169, in applying Section 310 to foreign indirect investment on common carrier radio licenses, the FCC presumes that foreign investment in the U.S. market by entities from WTO member countries is consistent with the public interest in line with the principles set forth in the 1997 Foreign Participation Order.

Is it correct to understand that entities from WTO member countries are exempt from the public interest review? In other words, is it correct to understand that entities from WTO member countries are allowed to make investments of up to 100% of indirect ownership in relation to a common carrier radio license without any limitations, i.e. without a public interest review?

(page 141, para. 172)

Para. 172 indicates that the United States excluded one-way satellite transmissions of DTH and DBS services and of digital audio services in the 1997 commitments in telecommunications. Our understanding is that the United States now classifies those services as telecommunication services.

Given the prevalent practice among most WTO member countries of classifying the above services under the category of 'broadcasting services', please provide us with information explaining the reasons for the U.S. classification of those services as 'telecommunications services'.

(page 143, para. 179)

According to para. 179, the United States cited the following reasons to explain the relatively low rate of mobile penetration compared with countries adopting a single standard: 1) the historically higher wireline penetration in the United States compared with other industrialized countries; and 2) the U.S. policy requiring the receiving party to pay for mobile phone calls.

Does the U.S. government feel that adopting a single standard would not help enhance the mobile penetration rate in the United States?

While the two reasons stated above may explain the relatively low rate of mobile penetration, multiple standards could result in accelerated market fragmentation in the United States, ultimately becoming a serious obstacle in achieving greater mobile penetration. We would like to hear the U.S. views on this matter.

Under the "Additional Commitments" column of the initial U.S. offer in telecommunications for the DDA negotiations, the following was included: "Permit licensed suppliers of basic telecommunications services choice of technology used in the supply of services, subject to requirements necessary to fulfill legitimate public policy objectives."

How does the U.S. government interpret the concept and scope of "legitimate public policy objectives in telecommunications services"? For instance, does it include what is listed in Article 5-(e) of the Telecom Annex, such as the expansion of universal services and interoperability of telecommunications services?

(page 148~149, para. 205, 207)

Paragraph 205 indicates that foreign branches and agencies are involved primarily in wholesale banking and seldom in retail banking and this is partly because a foreign bank is required to establish an insured banking subsidiary in order to accept or maintain domestic retail deposits of less than US\$100,000.

With regard to paragraph 205, please give us specific examples where a branch or an agency can accept domestic retail deposits of less than US\$100,000. And please provide us with detailed information on "insured deposits".

According to paragraph 207, the United States maintains commercial presence limitations on market access and national treatment for foreign banks at the state level, with respect to the type of business establishment, coverage of business (i.e. restriction on retail deposits) and requirements of citizenship or residence.

Does the U.S. government have any plan to address these restrictions at the federal level? What is the difference between "branch" and "agency" in terms of the conditions of establishment, boundary of business and prudential regulation?

(page 150, para.210)

According to paragraph 210, "foreign investment advisers registered with the SEC are not required to have a U.S. place of business or set up a U.S. subsidiary or branch."

Please clarify whether or not this means that cross-border supply (mode 1) and consumption abroad (mode 2) are permitted by the foreign investment advisers registered with the SEC.

If so, since the United States has already adopted the Understanding on Commitments in Financial Services whose paragraph B.3(c) includes investment advisory services, is it correct to understand that the United States has made such a commitment?

With regard to this issue, could the U.S. government explain the meaning of the following statement in the note on financial services as included in the initial U.S. offer: "the United States will consider, depending on other Members' willingness to do likewise, adopting additional mode 1 commitments for certain other activities where the consumer is deemed sufficiently sophisticated to manage any attendant risk, such as allowing mutual funds located in the United States to obtain certain investment advice and portfolio management services from financial services suppliers located outside its territory."

(page 159~160, para. 250, 253)

According to paragraphs 250 and 253, the United States has made commitments to accord market access and national treatment for the provision of foreign legal consultancy services in only 16 jurisdictions. Our understanding is that at the present foreign legal consultants (FLCs) are allowed to enter in partnership with U.S. lawyers in 24 jurisdictions.

Please provide us with the reasons why the United States has made specific commitments with regard to foreign legal consultancy services for only 15 states and the District of Columbia, while FLCs are permitted in 24 jurisdictions.

## **I. VENEZUELA**

1. Qué medidas tiene previsto tomar Estados Unidos para que sus políticas en materia de seguridad no menoscaben el comercio de servicios, y por ende la progresiva participación de los Miembros de la OMC en éste, en particular en lo referente a las medidas adoptadas que afectan el comercio de servicios bajo los modos de suministro 3 y 4?

2. Podría comentar cómo los acuerdos bilaterales de comercio suscritos por Estados Unidos en años recientes aseguran la transparencia y la homogeneidad de normas de importación para las Terceras Partes: qué esfuerzos han sido hechos a fin de asegurar que todas las partes involucradas en la importación estén en conocimiento del régimen de importación aplicable?

3. Podría Estados Unidos ofrecer una explicación detallada de cómo el FDA aplicará los procedimientos consagrados en la Ley contra el Bioterrorismo de manera transparente y no discriminatoria?

4. En relación con las excepciones en la Ley contra el Bioterrorismo, podría Estados Unidos ofrecer más detalles acerca de las instalaciones que no estarían obligadas a cumplir con el requisito de registro? Esta información permitiría evitar confusiones que puedan obstaculizar el intercambio comercial

5. Desde la década de los noventa, el acceso al mercado norteamericano para ciertas exportaciones venezolanas del sector pesquero y/o acuícola para (atún aleta amarilla y productos elaborados a partir de ese atún) se ha visto imposibilitado como resultado de un embargo impuesto por el Gobierno de Estados Unidos por no cumplir las exportaciones venezolanas con normas internas que guardan relación con un esquema de etiquetado ecológico, vinculado al cumplimiento de normas internacionales en materia de pesca (Acuerdo sobre el Programa Internacional para la Conservación de los Delfines).

Venezuela ha realizado, desde entonces, una serie de esfuerzos (a nivel oficial y privado) con elevados costos financieros, para poder cumplir con la normas prevista en la legislación estadounidense y poder así levantar el embargo. Gracias a éstos, Venezuela ha logrado dar cumplimiento a las disposiciones del Acuerdo sobre el Programa Internacional para la Conservación de los Delfines, sin embargo la restricción aún persiste. Ello podría sugerir que tal medida se estaría utilizando como un obstáculo no arancelario de carácter técnico y financiero. Podría Estados Unidos suministrar una explicación respecto de porqué se mantiene esta medida?

6. En relación con el tema de etiquetado, podría Estados Unidos ofrecer información sobre las regulaciones existentes en su norma respecto a los productos modificados genéticamente?

7. Podría Estados Unidos suministrar información sobre (1) cuáles son los límites máximos permitidos para aditivos, contaminantes y residuos de plaguicidas? (2) Cuáles son las regulaciones previstas por Estados Unidos para los alimentos de uso veterinario, así como el análisis de riesgo?

## **INDONESIA**

### **1. TARIFF BARRIERS**

It should be commended that the U.S. has significantly reduced and eliminated much of the tariffs in line with its commitment in the Uruguay Round. As stated in the Secretariat Report, in 2002, the average MFN tariff was just over 5% and certain products received tariff protection in the 50-350% range notably tobacco, peanuts, certain dairy products, sugar, and certain footwear. In this context, Indonesia is



concerned that the U.S. continues to apply high tariffs, tariff peaks and tariff escalation in a number of sectors of export interest to developing countries, including Indonesia. Some of these products are designated as GSP-eligible products and included in Indonesia's GSP product coverage. The following are those products which are of great interest to Indonesia and need further explanation and clarification from the U.S.

### **Cocoa**

Indonesia is a major cocoa producing countries in the world. The export value of Indonesia's cocoa and cocoa products to the U.S. averages \$175 million annually. However, Indonesia's export of cocoa to the U.S. comprises mainly of non-defatted cocoa bean and cocoa butter, fat and oil, which are duty free. Apparently, there is little incentive for Indonesia's cocoa producers to move to the next layer of products by processing further the cocoa beans, butter, fat and oil for export to the U.S. since the applied *ad valorem* tariffs and specific tariffs escalate as the product transformation increases. The *ad valorem* tariffs top at 10% while the highest specific tariff is 52.8¢/kg. However, there are also tariff combinations, such as 52.8¢/kg. + 4.3% (for HS 1806.20.28.00) and 30.5¢/kg. + 8.5% (for HS 1806.20.73.00), which make it even more difficult for cocoa exporting countries to compete on the higher end products in the U.S. which is a net cocoa importing country.

### **Jewelry**

Indonesia's export of jewelry to the U.S. is valued at \$64.95 million in 2002, the main products being articles of jewelry and parts thereof made of silver and gold. However, Indonesian exporters of jewelry, who mostly comprise of micro, small and medium enterprises, should face a tariff wall before entering the U.S. market. The U.S. jewelry industry is protected by an average tariff of 6% with the highest tariff being 13.5%. The relatively high protection is noticeable for jewelry of goldsmiths' and silversmiths' wares. It should be noted that due to the high cost of the raw material in this sector, even modest tariff rates can substantially limit the access of Indonesian jewelry to the U.S. market.

### **Ceramic and Glass**

Indonesia has a great potential to produce ceramics and glass products. Indonesia's export of ceramics to the U.S. in 2002 is valued at \$81.5 million, an increase of 3.91% from the figure for 2001, while export of glass and glassware is \$31 million in 2002 or increased by 23.39%. However, efforts to increase Indonesia's export of these products to the U.S. are constrained by the fact that the U.S. imposes high tariffs that have been in place since the conclusion of the Uruguay Round. U.S. tariffs on ceramics of particular interest to Indonesia range between 9.6% and 28.7%. Tariffs on glassware, especially those of a kind used for table, kitchen, toilet, office, or indoor decoration (other than those that fall under headings 7010 and 7018), are particularly high, ranging from 6.6% to 38%.

## **2. NON-TARIFF BARRIERS**

### **Registration, Documentation, and Customs Procedures**

While recognizing that it is the right of every country to govern the entry of imported products based on health, security, environmental and other important considerations, procedures and requirements for exporting certain products to the U.S. tend to be excessive, and in some instances far exceed normal practices. Some of these procedures and requirements are burdensome and costly and therefore can constitute a barrier to entry for new exporters and particularly for micro, small and medium enterprises.

Indonesia wishes to have further justification on these policies in relation to the U.S. obligations under WTO Agreements.

### **Bioterrorism Act 2002**

In response to terrorist threats to the food chain, the U.S. has proposed a set of regulations to implement the Bioterrorism Act of 2002 that relates to the safety and security of food supplies. All food facilities—domestic or foreign—are required to register their facilities with the FDA if food manufactured/processed, packed or held at such facilities is to enter the U.S. market for human or animal consumption. One aspect of the registration that concerns Indonesia is the requirement for a food facility to have a U.S. agent in registering the facility. This requirement has obviously created a business opportunity in the U.S., but for Indonesian business it only represents an unnecessary additional cost. The cost of having a U.S. agent ranges between \$300.00 and \$700.00 a year, but as the services offered by the agent are only for the purpose of registration and providing a critical point of communication with the U.S. authorities in an emergency situation, Indonesia finds that this requirement is basically unnecessary and could have been accommodated in a more cost-effective way. Please comment.

### **Container Security Initiative (CSI) and the "24-Hour Rule"**

The U.S. has launched a program called the Container Security Initiative (CSI) to secure the flows of maritime containers entering the U.S. territory. The CSI consists of four basic components: security criteria of identifying high-risk containers; pre-screening containers before arrival at U.S. ports; use of high technology to pre-screen high-risk containers; and developing and using smart and secure containers. Ports participating in the CSI will have U.S. Custom officials being stationed in their ports, and use technology so that officers in charge can quickly inspect high-risk containers before they are shipped to the U.S. It should be underlined that while sharing the interest in securing the maritime containers system from terrorist threats, Indonesia is concerned that such an initiative will have discriminatory effects in Southeast Asia where major ports compete to provide better trade facilitation and efficiency on security measures. In the Indonesian case, the discriminatory effects of the initiative may only mean that Indonesian business will increasingly be dependent on foreign ports, thus raising the transportation-related cost of exporting goods to the U.S. Another concern to Indonesia is the interface between the CSI and the U.S. customs rule of Presentation of Vessel Cargo Declaration to Customs before Cargo is Loaden Abroad Vessel at Foreign Port for Transport to the U.S., known as the "24-hour rule." While neither the CSI nor the 24-hour rule has created a major disruption in maritime container transportation system, Indonesian businesses reported that the combined implementation of the CSI and the 24-hour rule has resulted in additional compliance costs.

### **Customs Formalities for Import of Textile and Garment**

The customs procedures for import of textile and garment to the U.S. require the presentation of detailed and voluminous information, leading to additional costs and in some instances include business confidential processing methods. Indonesia believes that much of this information is irrelevant for customs use or statistical purpose. It is also Indonesia's concern that as the phasing-out of the quota system draws near, the U.S. industry is pressing the Administration to put in place an even closer monitoring system that may require not only detailed information, but also additional information for the purpose of imposing a trade remedy as necessary.

### **Fees other than Import Duties, and Tax**

One of the most significant customs user fees is the Merchandise Processing Fee or MPF. All imported merchandise is subject to the MPF except those originating from the least-developed countries, beneficiary countries of the Caribbean Basin Recovery Act and the Andean Trade Preference Act, and from U.S. offshore possession. The MPF is levied at 0.21% *ad valorem* with a maximum of \$485 on each and every formal entry of imported merchandise, regardless of the duty rate applied to the imported merchandise. The MPF was to expire on September 30, 2003 but it was then set to last until March 31 2004.

### **Harbour Maintenance Tax**

After fully funding the maintenance of federal navigation channels for more than 100 years, U.S. Congress instituted in 1986 a "user fee" known as the Harbor Maintenance Tax (HMT). Originally, the HMT was levied as an *ad valorem* fee on cargoes and passengers using U.S. ports. Following a 1998 U.S. Supreme Court decision finding that the HMT was a tax, not a user fee, and collecting it on exports was unconstitutional, the U.S. authorities have stopped collecting HMT on exports, but continue collecting on imports. Please explain.

## **3. IMPORT PROHIBITION**

### **Preservation of Endangered Sea Turtle**

In 1989 the U.S. Congress passed a law to complement the Endangered Species Act. The new law, Section 609 of Public Law 101-162, authorizes the U.S. Department of States to annually certify whether a country is allowed to export sea-harvested shrimp to the U.S. The certification process involves an on-site inspection to find whether the host country has adopted and effectively implemented a shrimp-harvesting program that prevents the accidental drowning of endangered sea turtles. At the heart of this program is the requirement to install a Turtle Excluder Device (TED) on a shrimp trawl with a precise design, operability and use as set forth by the U.S. In 2001 Indonesia failed to have the certification on the ground that seven shrimp fishing vessels being inspected at two separate local ports could not satisfy the requirements for proper design, installation and use of TEDs. In 2002, another inspection was conducted involving 45 shrimp fishing vessels at several local ports but Indonesia once again failed the verification. The inspection team concluded that not only did the inspected vessels fail to meet the TED requirements, but also there was a lack of comprehensive sea turtle protection program that is comparable in effectiveness to that of the U.S. Indonesia is of the view that the inspection were made in a very arbitrary manner since the inspections were done without prior notice and allowing reasonable time for preparation. Indonesia wishes to have a clear explanation on this situation.

## **4. Technical Regulations and Standards**

It is apparent that in the U.S. products are increasingly being subject to a growing number of regulations regarding consumer and environmental protection. While it may legally be non-discriminatory in nature, the intricacy of U.S. regulatory system tends to become a major impediment to market access. There is also a lack of clear distinction in the U.S. between what is essentially required for safety, security, health and environmental reasons on the one hand, and what is basically optional requirement for quality, on the other hand. The situation is even worse since in the fact that there are more than 2,700 State and municipal authorities in the U.S. that call for specific requirements for products to be sold or installed in their jurisdictions. These requirements are not necessarily consistent with each

other, or even in line with requirements provided for at the federal level. Could the U.S. provide a justification in relation to the U.S. obligation under the TBT and SPS Agreements?

#### **5. Electrical Machinery & Electronics**

Electrical machinery and electronics represent the second most important Indonesia's export products to the U.S. In 2002, Indonesia's export to the U.S. of electrical machinery and equipment and parts thereof, sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles that all together are classified under the HS Number 85 was valued at \$1.61 billion, amounted to 16.69% of total Indonesia's export to the U.S. However, marketing these products in the U.S. market is not at all an easy task for Indonesian companies. The U.S. market for these products is split up by different federal, state, and sectoral technical regulations, procurements specifications and standard requirements. Complying with federal regulations and being cleared by U.S. Customs is not sufficient to market electrical machinery and electronic products in the U.S. How this situation be justified under the TBT Agreement?

#### **6. Government Procurement Buy America: State Restrictions**

Authorities at the state level apply some restrictions that make the BAA even more discriminatory against foreign products. In New Jersey, for instance, State legislation stipulates that for the construction of public work projects funded by the State, the materials used must be of domestic origin. In the States of Connecticut, Louisiana, Maine, Michigan, Illinois, Maryland, New York, Pennsylvania, Rhode Island and West Virginia there are legislations that, in effect, require the use of locally produced steel for public works and other government procurement contracts involving steel and steel products. Legislation in West Virginia and Ohio makes it even more clear of the discriminatory nature of the BAA at the state level by introducing procurement restrictions on steel imports. These restrictions have clearly affect the interests of many countries including Indonesia. Therefore, Indonesia would like to have further clarification on this policy.

#### **7. Contingency measures**

On the issue of trade remedy, the Secretariat Report stated that contingency measure remain a key form of protection against imports. The large presentation of the antidumping actions has involved steel related products. As Indonesia is one of the affected countries on the antidumping actions against imported steels, Indonesia is of the view that antidumping actions taken by the U.S. Authority are directed to provide protection for steel sector rather than remedies. Please explain.

#### **8. Textiles and Clothing**

Paragraph 80 of the Secretariat Report notes that the 48.7% of import quotas would be integrated in January 2005. Indonesia would be interested to know the U.S. policy on the possibility to provide flexibility in the form of carry forward quota for 2004.

## MEXICO

### III. MEDIDAS QUE AFECTAN DIRECTAMENTE LAS EXPORTACIONES

#### (i) Procedimientos Aduaneros

a) En el Informe de la Secretaría (IS) contenido en el documento WT/TPR/S/126, se hace referencia al examen de productos bajo el sistema “24 horas”. Al respecto, México desea solicitar que los EE.UU. proporcionen información sobre el porcentaje de productos importados sujetos a dicho examen;

b) El IS establece que solamente el 75% de los 20 mayores puertos extranjeros participantes en la denominada “*Container Security Initiative (CSI)*”. En este sentido, México desearía que los EE.UU. explicaran cuáles fueron los principales obstáculos que impidieron la participación del resto de los puertos en la *CSI*;

c) En lo referente al *CSI*, el IS señala que esa iniciativa podría causar distorsiones en el comercio entre los puertos que han adoptado ese programa y los que no lo han hecho. Sobre el particular, México desearía que los EE.UU. indicaran qué acciones adicionales implementarán para evitar la posibilidad de distorsiones al comercio respecto de los puertos que no han adoptado el programa *CSI* y facilitar los flujos comerciales que tienen lugar en ellos;

d) Los EE.UU. han modificado los procedimientos correspondientes a la importación de mercancías con motivo de los trágicos atentados terroristas del 11 de septiembre, solicitando que se notifique por anticipado el arribo de mercancías a su territorio. En este contexto, México solicita que los EE.UU. expliquen:

- d.1 ¿De qué manera las autoridades aduaneras han asegurado que la información solicitada por adelantado no duplique procedimientos exigidos previamente por otras agencias?;
- d.2 ¿Qué trato se otorga a las notificaciones que no son entregadas de modo electrónico?;
- d.3 ¿Qué resultados ha tenido hasta estos momentos en la aplicación de estos programas?;
- d.4 ¿Con qué procedimientos cuentan para garantizar que la información que se solicita a las empresas sea protegida contra terceros?;
- d.5 ¿Por qué razón los tiempos solicitados en el aviso previo en la denominada Ley de Terrorismo Biológico no coinciden con los que se manejan en las demás iniciativas?

e) El párrafo 30 del IS menciona que las autoridades de los EE.UU. han exhortado a los actores involucrados en la exportación de mercancías a unirse al “*Customs-Trade Partnership Against Terrorism (CTPAT)*”. México desea saber en qué medida el participar en este programa ayudará a los exportadores que consolidan varios productos, puesto que la denominada Ley de Terrorismo Biológico no contempla excepciones para los productores que sean miembros del *CTPAT*.

f) Finalmente, México desea conocer las acciones en materia de capacitación y difusión que EE.UU. ha realizado para el cumplimiento cabal de las disposiciones derivadas de la denominada Ley de Terrorismo Biológico.

**(ii) Reglas de Origen**

a) De acuerdo con el IS, el “*Customs and Border Protection (CBP)*” y el Departamento de Comercio pueden aplicar diferentes criterios para determinar el origen de los bienes. Considerando lo anterior, México apreciaría que los EE.UU. explicaran:

- a.1 ¿Qué criterio prevalecería en los casos en que el CBP y el Departamento de Comercio consideraran que un producto es originario de diferentes países?, y
- a.2 ¿Cuáles serían los costos que, en esos casos, tendrían que ser sufragados por los importadores como resultado de la necesidad de cumplir con diferentes requisitos?

b) El IS señala que el marcado de país de origen es obligatorio para la mayoría de los productos manufacturados de importación así como para muchos productos agrícolas. Al respecto, México desearía que los EE.UU. informaran detalladamente cuáles serían los criterios aplicables para exentar determinados productos del requisito de marcado de país de origen.

**(v) Antidumping, circunvención y acciones de salvaguarda.**

a) México desea saber ¿Cuál es el porcentaje de peticiones de “no iniciación” cuya base es el hecho de que las solicitudes no contienen suficiente información para soportar los alegatos (mismas que están relacionadas con la determinación de ITC)?, y

b) ¿La denominada “*Byrd Amendment*” se encuentra considerada en el Presupuesto del Gobierno de los EE.UU. para el 2004? Si la respuesta es afirmativa, ¿podrían los EE.UU. explicar de qué manera ello da cumplimiento a la resolución adoptada por el órgano de Apelación de la OMC o, en su caso, qué procedimiento seguirán los EE.UU. para dar cumplimiento a dicha resolución?

**(vii) Reglamentos Técnicos y Medidas Sanitarias y Fitosanitarias.**

a) Respecto de lo indicado en el párrafo 122 del IS, ¿podrían los EE.UU. confirmar que las reglas de la *Administrative Procedure Act* son aplicables a los reglamentos técnicos relacionados con los servicios?;

b) Asimismo, con relación a lo señalado en la tercera frase del párrafo 122, ¿podrían los EE.UU. explicar qué ordenamientos rigen la expedición de reglamentos técnicos y medidas sanitarias y fitosanitarias por parte del Congreso de los EE.UU.? De igual manera, ¿podrían confirmar los EE.UU. sí, en su opinión, el Congreso se encuentra obligado a cumplir con las disposiciones del AOTC y del AMSF en caso de que decida expedir un reglamento técnico o una medida sanitaria y fitosanitaria, respectivamente?;

c) Asimismo, México desea saber, en este contexto, si a pesar de los análisis de impacto regulatorio que se hacen y de los compromisos internacionales adquiridos por los EE.UU., el Congreso se encuentra en posibilidades de emitir reglamentos técnicos tales como los correspondientes a “etiquetado de origen”, previstos en el denominado *Farm Bill*, ya que los mismos han sido reiteradamente calificados como excesivos y difíciles de cumplir tanto por los productores de EE.UU. como por los exportadores.

d) De acuerdo con lo indicado en el párrafo 123, conforme a la *Congresional Review Act* el Congreso revisa los reglamentos técnicos y medidas sanitarias y fitosanitarias expedidas por las diversas agencias del Gobierno. Podrían los EE.UU. informar sí, con base en tal revisión, puede el Congreso modificar las disposiciones de dichos reglamentos y medidas;

- e) Respecto de lo señalado en la parte final del párrafo 124, ¿podrían los EE.UU. confirmar si la expedición de un reglamento técnico o medida sanitaria y fitosanitaria por parte del Congreso implica la elaboración de un análisis de impacto regulatorio, como requisito previo y, en caso de ser así, si el mismo puede ser consultado por nacionales de los Miembros de la OMC?;
- f) Con relación a lo señalado en el párrafo 126, ¿podrían los EE.UU. explicar qué consideran como una norma internacional? Asimismo, ¿podrían los EE.UU. indicar el porcentaje de reglamentos técnicos vigentes que son equivalentes a normas internacionales?
- g) El párrafo 127 del IS señala que el National Institute of Standards and Technology mantiene una colección de reglamentos técnicos, especificaciones, métodos de prueba, códigos y prácticas recomendadas. En este sentido ¿podrían los EE.UU. explicar el contenido y proporcionar la definición y marco legal de las especificaciones, métodos de prueba, códigos y prácticas recomendadas?;
- h) Respecto de lo señalado por el párrafo 128 del IS, México desea que los EE.UU. expliquen las razones por las cuales algunos Estados aún no han expedido Leyes que regulen el procedimiento de expedición de normas y reglamentos técnicos. Asimismo, México solicita que los EE.UU. explique que medidas han tomado para asegurar que las instituciones públicas locales e instituciones no gubernamentales den cumplimiento a las obligaciones previstas por los artículos 3, 4, 7 y 8 del AOTC.
- i) México desea obtener mayor información de los EE.UU. respecto de las denominadas “*marketing orders*”. A este respecto, México solicita que los EE.UU.,
- i.1 proporcionen el marco legal que rige la adopción de “*marketing orders*”;
  - i.2 expliquen los efectos legales que implica la adopción de “*marketing orders*”;
  - i.3 confirmen que la expedición de “*marketing orders*” se encuentra regulada y permitida por el AOTC y el AMSF o, de lo contrario, expliquen las razones por las cuales no lo están;
  - i.4 indiquen de qué manera se puede participar en la elaboración de “*marketing orders*”, y
  - i.5 expliquen la forma en que se evalúa la conformidad de los productos con las correspondientes “*marketing orders*”.
- j) ¿Pueden los EE.UU. indicar cuál es el plazo normal de entrada en vigor de un reglamento o medida sanitaria y fitosanitaria y cuales son las excepciones a esa regla, así como los supuestos en las que aplican?;
- k) Respecto de lo señalado en el párrafo 130, ¿podrían los EE.UU. explicar en qué consisten las normas voluntarias de consenso? Asimismo, ¿podrían los EE.UU. confirmar que este tipo de normas únicamente pueden ser elaboradas por los organismos de normalización que pertenezcan a ANSI (y, por lo tanto, por organismos que han aceptado el Código de Buena Conducta anexo al AOTC)?
- l) ¿Pueden los EE.UU. indicar cuál es el procedimiento para que reconozcan una norma extranjera o procedimiento de evaluación de la conformidad extranjero como equivalente y, en su caso, cuántas normas o procedimientos de evaluación de la conformidad han reconocido como tales?;

m) Respecto de lo indicado en el párrafo 132, ¿podrían los EE.UU. indicar cuántos procedimientos de evaluación de la conformidad están vigentes en su territorio, cuántos productos abarcan y en qué ordenamiento (s) legales están establecidos? Por otra parte, ¿pueden los EE.UU. indicar en qué casos la evaluación de la conformidad con los reglamentos técnicos puede ser llevada a cabo por organismos privados?;

n) El párrafo 134 señala que los EE.UU. no han notificado ningún reglamento técnico o medida sanitaria o fitosanitaria a la OMC. Al respecto, México desea conocer las razones que han considerado los EE.UU. para no realizar dichas notificaciones y en su caso, sí se piensan realizar en un futuro;

o) Respecto de las medidas sanitarias y fitosanitarias, México desea formular las siguientes preguntas:

- o.1 ¿Pueden los EE.UU. indicar el porcentaje del total de medidas sanitarias y fitosanitarias que se encuentran armonizadas con las guías y recomendaciones internacionales?;
- o.2 ¿Pueden los EE.UU. explicar en qué consisten sus procedimientos de control, inspección y aprobación y confirmar si organismos privados de evaluación de la conformidad los pueden llevar a cabo?
- o.3 ¿Pueden los EE.UU. indicar de qué manera aseguran el cumplimiento de las obligaciones previstas por el artículo 13 del AMSF por las instituciones que no pertenecen a su gobierno central?

p) México ha expresado de manera bilateral y en reuniones multilaterales su posición respecto a la denominada Ley sobre Terrorismo Biológico. Asimismo, México participó de manera activa con comentarios durante el período de consulta pública de los reglamentos derivados de dicha legislación (párrafos 146 a 149 del IS). Sin embargo, México desea formular a EE.UU. las siguientes preguntas relacionadas con la citada Ley:

- p.1 ¿Cuántas empresas que se han registrado en el sistema?;
- p.2 ¿Cuáles han sido los resultados iniciales que ha tenido la aplicación de la Ley y de sus regulaciones?;
- p.3 ¿Cómo han resuelto las autoridades estadounidenses la sincronización de los sistemas electrónicos de la *Food and Drug Administration* y de las Aduanas?;
- p.4 ¿De qué manera en que se garantiza un mínimo de discrecionalidad para evitar la detención arbitraria de cargamentos?;
- p.5 ¿Existe la posibilidad de homologar los tiempos de entrega del aviso previo previsto en la denominada la Ley de Bioterrorismo con los otros programas existentes, en particular el *FAST*?, y
- p.6 ¿De qué manera en que se están manejando los registros que no se hacen de forma electrónica?

q) Finalmente, en cuanto a las regulaciones ambientales relacionadas con el comercio, ¿podrían los EE.UU. confirmar que, de acuerdo con lo expresado en el párrafo 159 del IS, cualquier país Miembro del



Acuerdo sobre el Programa Internacional de Conservación de los Delfines, puede exportar a los EE.UU. latas de atún con la certificación “*dolphin safe*”, aún cuando los delfines hayan sido cercados o capturados, siempre que no sufran ningún daño en el proceso de pesca? De lo contrario, ¿podrían los EE.UU. explicar por qué no?

## **THAILAND**

### **Report by the Secretariat (WT/TPR/S/126)**

## **III. TRADE POLICIES AND PRACTICES BY MEASURE**

### **(2) MEASURES DIRECTLY AFFECTING IMPORTS**

#### **(v) Anti-dumping, countervailing, and safeguards actions**

(a) Anti-dumping and countervailing measures  
Legislation and administration

**Pages 47-49**

**Paragraphs 76-80**

Regarding “the Continued Dumping and Subsidy Act of 2000 (CDSOA)” or also known as the Byrd Amendment, which the United States has stated its intention to implement the recommendations and rulings of the DSB, we, therefore, would like to urge the United States government to take action on this matter as soon as possible.

Moreover, we also would like to address our deep concern over the decision of Southern Shrimp Alliance to file an anti-dumping petition on imported shrimps from developing countries. We hope that the United States government will give careful consideration on this matter, since such action will only result in trade disruption and could end up hurting the interests of American consumers. Moreover, it could jeopardize our shrimp exports and eventually send negative repercussion to our low-income farmers.

#### **(vii) Technical regulations and sanitary and phytosanitary measure**

(d) Sanitary and phytosanitary measures  
The Bioterrorism Act

**Pages 65-66**

**Paragraphs 146-149**

Thailand understands the essence of public safety and national security of the United States. However, as our economy depends substantially on food exports, Thailand would like to express our concern over the negative effect of the Bioterrorism Act on the flow of our food exports to the United States. Since implementation of the act requires multiplayer of complex and costly procedures, adjustment towards its conformity would push our exporters as well as those in related sectors, which comprise mostly SMEs, into the state of perplexity and financial turbulence. Even though Thailand had once communicated our view on this matter to the United States Trade Representative in the first of October 2003, we would like to reiterate our concern on this matter. We also would like to take this opportunity to request the United States delegation at this meeting to convey our deep concerns to relevant agencies to help us gain immediate clarification and guidance regarding proper and effective

preparation, in particular, the 'Registration of Food Facilities and Maintenance and Inspection of Records' in relation to agent in the United States and defined recipe respectively.

#### **IV. TRADE POLICIES BY SECTOR**

##### **(6) TELECOMMUNICATION SERVICES**

**Pages 138-143**  
**Paragraphs 157-180**

It is understood that telecommunication networks, including data transmission networks, in the United States are very comprehensive and are expanding with a high growth rate. It is interesting to hear how the U.S. policy is conducted with a view to promoting expansions of data transmission networks in local areas.

How are private companies encouraged to invest in areas where operational cost is high and aggregate demand might not be adequate for the running of business?

Please describe state enterprises' roles, whether by federal, state, community or city agencies, in the development of transmission network in high cost areas. Please also describe whether foreign companies have played any significant role in the development of transmission networks in such areas.

##### **(7) AUDIOVISUAL SERVICES**

**Pages 143-145**  
**Paragraphs 181-187**

Please describe the U.S. policy, structure, and regulations, classified by each type of entertainment and every process of audiovisual services sector.

Please provide the details of government/non-government authorities in this service sector.

Please indicate the countries that the United States has included audiovisual services sector for engaging in bilateral agreements.

##### **(9) SELECTED PROFESSIONAL SERVICES**

###### **(iii) Architectural and engineering services**

###### **(a) Architectural services**

**Pages 161-162**  
**Paragraphs 254-258**

Please provide information on the NCARB's measures for accreditation of foreign architects.

Please provide data that may explain the degree of foreign participation in this sector. Please describe any bilateral or regional agreements to which the United States is a party for engaging in this sector.

**(b) Engineering and integrated engineering services**

**Page 162**  
**Paragraphs 259-262**

Please provide data that may explain the degree of foreign participation in these sectors. Please describe any bilateral or regional agreements to which the United States is a party for engaging in these sectors.

**BRAZIL**

**I. AGRICULTURE**

1. In document WT/TPR/S/126, Item III (*Trade Policies and Practices by Measure*), paragraph 46 states that "The simple average applied MFN tariff, including the ad valorem equivalents (AVEs) of specific and compound rates, was 5.1% in 2002, down from 5.4% in 2000. The average applied tariff for agriculture in 2002 was 9.8%, down from 10.4% in 2002; the average for non-agricultural products was 4.2% in 2002, down from 4.5% in 2000." In Paragraph 50, however, it is found that "In 2002, some 6.6% of all tariff lines bore tariffs exceeding 15%, in some cases estimated on AVE basis. These tariffs tend to be concentrated in a few 'sensitive' sectors, which are often also of particular interest to exporters from developing countries. For example, tariffs reach ad valorem or ad valorem equivalent rates of 350% for tobacco, 164% for peanuts...". Since the most protected products in the USA are agricultural, which constitute the major exports from developing countries, how does the U.S. expect to accomplish its stated goal of fostering development through trade?

2. Paragraph 12 of Item IV (*Trade Policies by Sector*), in WT/TPR/S/126, expresses that "The six-year Farm Act (2002-07) increases reliance on price-dependent support, thus departing from the objectives of gradually reducing production-distorting support in favor of income supplements established in the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act)." How does the USA intend to make compatible the increased reliance on price-dependent support with American liberalizing goals for the Doha Round?

3. The adoption of the Direct Payments (DP) — Paragraphs 24 and 25 of Item IV, WT/TPR/S/126 — in the Farm Bill of 2002, whose principle is similar to those of the 1996 Production Flexibility Contract Payments (PFC), was aimed to substitute internal support measures that distort trade by those that do not cause this effect. However, these Direct Payments were adopted with no reduction in the amber box measures. In this context, irrespective of the fact that "direct payments" are considered to be "decoupled from production", their final effect continues to be distorting. Why do the payments accomplished by the PFC, besides the Market Loan Programmes (MLP), were considered "non specific" if they were limited to a list of seven products in 1999 (wheat, maize, barley, cotton, oats, rice and sorghum)?

4. The calculation methodology of the Loan Deficiency Payments (LDP) for rice and cotton presents a difference in relation to the other products (Paragraph 29 of Item IV of WT/TPR/S/126). Besides that, it takes the principle of "Adjusted World Price (AWP)", which incorporates in the calculation of the LDP for these two products an alignment with the variation of their prices in the international market. What are the reasons for such a differentiation? Can this difference in methodology be construed as operating as indirect export subsidies?

5. The adoption of the counter-cyclical payments (CCP) by the Farm Bill of 2002 was meant to make permanent the so-called "emergency payments" made to U.S. farmers during the Asian crisis in 1998, which brought the fall in international prices of the major agricultural products. So, why were the

target prices set at so high values (Table IV.3, page 109, WT/TPR/S/126)? Can such payments be seen as reinforcing the effect of the LDPs, aiming to artificially guarantee income to the American producers, and thus isolating them even more from market signs?

6. In paragraph 33, page 109, WT/TPR/S/126, it is mentioned that "authorities have noted that the high levels of government outlays in recent years have been caused by the collapse in world prices". Once USA is the major cotton exporter and it exports about 40% of its production, how do the high levels of support granted by the American government to producers affect cotton world prices?

7. The Market Loss Payments (MLPs) can be regarded as one of the support programmes mentioned in paragraph 35, page 110, WT/TPR/S/126. In the notification G/AG/N/USA/43, it is stated that, in 1999, the producers that had received payments through Production Flexibility Contract (PFC) had also been benefited by payments through Market Loss Payments (MLPs) according to the sum received through PFC. Since the payments were made directly to the same producers and in the same ratio, even if through different internal support programmes, why was one classified as green box (PFC) and the other one as amber box (MLP)? Since the payments made through the MLP were limited to a list of only seven products in 1999 (wheat, maize, barley, cotton, oats, rice and sorghum), why was the total agricultural production considered in the calculation for the "de minimis"?

8. Paragraph 36, page 110, WT/TPR/S/126, mentions that "Export subsidies were scheduled by the United States under the WTO Agreement on Agriculture for 13 product groups comprising cereals, oilseeds, dairy products, and vegetables, and were made subject to distinct reduction commitments over 1995-00 period." Therefore, it is clear that cotton is not part of this list and, for this reason, cannot receive any kind of export subsidy. On the other hand, one of the benefits of the "Step 2 programme", which is specifically channeled to cotton, is conditioned to the export of the product. Is not such practice an indirect export subsidy? What is the understanding of the USA about it?

9. Paragraph 1.232 of the Interim Final Regulation for the implementation of Section 305 of the Bioterrorism Act of 2002 — Registration of Food Facilities —, as issued by the FDA and published in the Federal Register in October 2003, requires that all foreign facilities that manufacture/process, pack or hold food for consumption in the U.S. designate a single U.S. agent for that facility. This U.S., or "local" agent, is the liaison for all communication, of routine or emergency nature, between the FDA and the foreign facility. The agent has to be physically present in the U.S. and be available 7/7 days, 24/24 hours, in case there is an emergency. Foreign facilities may opt to indicate an "emergency contact" that is not their agent, but this does not preclude the need for the agent itself. Could you explain that?

10. Domestic facilities are not subject to the request of keeping a local agent in the U.S., although they do have to indicate an emergency contact, also available 7/7 and 24/24. This provision appears to be a clear discrimination against foreign facilities exporting food to the U.S. and, in this sense, a disguised restriction to trade (if there is an emergency and the foreign facility has indicated an emergency contact different from the U.S. agent, as allowed by the regulation, what is the agent's purpose?). If not, can the U.S. explain what sort of legitimate objective — in terms of protecting the U.S. food supply against bioterrorist menaces — is being accomplished by the local agent requirement?

11. Section 306 of the 2002 Bioterrorism Act authorizes the FDA to have access to certain records of food processors/manufacturers, packers, holders and importers when there is a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. Records to be kept — for two years, in most cases — are those identifying the previous sources and immediate subsequent recipients of food handled by each facility. The proposed

regulations issued by the FDA to implement Section 306 indicate that foreign facilities are also subject to the requirement. How do you expect to implement that?

12. Brazil understands that these traceability requirements may well fulfill a legitimate goal within the U.S., in that they would allow prompt action along the chain of production, distribution and commercialization of food should an emergency arise and a recall be necessary. In the case of foreign facilities, this same rationale does not apply. The U.S. could obviously not conduct a recall or hazard investigation in another country, because most records are kept in foreign languages, what would, in principle, be meaningless for the U.S. authorities. In this case, the legitimate objective (of protecting the health and life of the American population) purported by the measure in question is not being actually promoted. Does the U.S. consider that requiring record-keeping provisions from foreign facilities amounts to a trade-disruptive measure, possibly leading to the extraterritorial application of U.S. domestic regulations? Can the U.S. explain what legitimate goal is being promoted through this measure?

13. Section 10816 of the 2002 Farm Act established a mandatory requirement for "country-of-origin" labelling applicable to beef, lamb, pork, including ground, wild and farm-raised fish, perishable agricultural commodities and peanuts at the retail level, in force as of September 30, 2004. Even USDA is against the measure, deemed to be too costly and provide no visible benefit to consumers. This labelling requirement may lead to protectionist side effects such as encourage a "Buy American" sentiment through allegations that the domestic agricultural products are "better" in terms of intrinsic qualities and of sanitary and phyto-sanitary concerns. Such concerns are, obviously, unfounded, since any plant or animal, live or processed, that enters the U.S. does so only after being cleared in stringent risk-analysis procedures conducted by either USDA or FDA. Is the U.S. reconsidering this redundant provision?"

14. Country-of-origin labelling is obviously not an SPS issue. It is not related to the protection of human, animal or plant life or health. Assuming that it is a TBT issue, can the U.S. explain what is the legitimate goal the COOL is expected to promote?

## **II. CUSTOMS PROCEDURES**

Regarding the bilateral agreements with ports under the Container Security Initiative (CSI), it is stated that (paragraph 25, page 32, WT/TPR/S/126) "noting that such a bilateral approach may penalize smaller EU ports that have not signed bilateral agreements with the United States. The European Commission is seeking a U.S.-EU agreement to replace the eight bilateral agreements; the authorities noted that negotiations are under way between the CBP and the Commission." Does the U.S. consider the possibility of negotiating bilateral agreements with WTO Members under the CSI, instead of seeking agreements with individual ports? Can the terms of a U.S.-EU agreement set benchmarks for agreements with other Members?

## **III. TARIFFS AND PREFERENTIAL AGREEMENTS**

1. In paragraph 57, page 42, WT/TPR/S/126, it is stated that "Average tariffs under unilateral U.S. preference schemes are lower than the average MFN rate but still substantially higher than the average under the FTAs that are in force between the United States and Canada, Israel, Jordan, and Mexico; moreover they are, in general, conditional upon statutory criteria (...)" . If the U.S. grants lower tariffs to some developed countries under FTAs (such as Canada) than to developing countries under preferential agreements, does not this work against the WTO principle of special and differential treatment to developing countries? How is it compatible with the U.S. Foreign Policy goal of promoting development through trade?

2. The U.S. GSP programme provides (paragraph 64, page 45, WT/TPR/S/126) that "Products can be removed from GSP benefits when imported from a particular country if imports from that country exceed a given threshold (competitive need limitation). The country can be redesignated if the share decreases subsequently." Which are the criteria for setting this threshold? By the number of countries "redesignated" for preferences, how do the American authorities regard the effectiveness of this procedure to foster sustainable export competitiveness for developing countries? Otherwise, does it not work as a mean to "punish" countries that are becoming competitive?

3. In paragraph 175, page 71, WT/TPR/S/126, we can read that "In its FTAs, the United States seeks to restrict the use of duty drawback programmes, considering that they can distort investment decisions by creating an incentive for investors to locate in the FTA partner country in order to benefit from duty drawback when exporting processed goods for sale in the U.S. market(...) However, there are no restrictions on the use of drawback in the FTAs with Jordan or Israel." Is there any such provision on the initiatives of the Caribbean Basin or on the recently agreed CAFTA?

#### **IV. TECHNICAL STANDARDS**

Regarding GMOs and the Biotechnology Regulatory Services (BRS), it is stated (paragraph 151, page 66, WT/TPR/S/126) that "The new programme focuses on regulation of biotechnology, risk assessments, and the granting of permissions. Among other responsibilities, BRS works with foreign governments to harmonize biotechnology standards." With which countries had the BRS worked so far to harmonize biotechnology standards? What has been achieved in this work?

#### **V. SUBSIDIES**

In paragraph 217, page 81, WT/TPR/S/126, it is stated that "There is a considerable degree of transparency concerning assistance programmes although, like in other countries with federal systems, assistance is granted at several levels of government and may be difficult to document at sub-federal levels." How does the American federal government follow the initiatives of business assistance at local level and check their compatibility with the WTO rules? How are the U.S. commitments to the WTO complied at local levels since those initiatives are not notified to the federal Government?

#### **VI. GOVERNMENT PROCUREMENT**

In paragraph 239, page 85, WT/TPR/S/126, it is written that "The United States maintains a number of 'Buy American' restrictions for procurement not covered by the GPA, NAFTA, the WTO plurilateral Agreement on Trade in Civil Aircraft, and bilateral procurement agreements with Chile, Singapore, and Israel." What are those restrictions?

#### **VII. INTELLECTUAL PROPERTY**

The questions under this item refer to paragraphs 262 to 298, in pages 90 to 99 of the document WT/TPR/S/126.

1. In paragraph 266, it is stated that bilateral intellectual property agreements "are based, as a minimum, on the WTO TRIPS Agreement". Please explain if this statement also refers to IPR provisions in bilateral free trade agreements (FTAs).

2. Has the United States already evaluated the possible impact of the extension of the protection of geographical indications under article 23.4 of the TRIPS Agreement to products other than wines and

spirits? If so, please provide information on the methods used to assess such impact and on the results of such evaluation. Please also identify which American products could benefit from such extension.

3. Is there any geographical indication for U.S. products recognized and protected in other countries? Please provide examples. Has this protection caused any impact on the export performance of such products?

4. Is there any geographical indication registered for a U.S. product covering all the national territory, and not only a specific region? Please explain and provide examples.

5. Are PCT applications re-examined by the USPTO in cases where another International Authority under the PCT has issued a positive search and examination report? Please explain if it is possible to have patents granted in the United States based on the reports of other countries' intellectual property offices. Please provide examples.

6. Is the USPTO the only authority in the United States to examine patent applications and to grant patents? According to U.S. law on this matter, is it possible that other institutions examine such applications or, at least, assist the USPTO during the examination? If so, please provide details on the relevant legal provisions.

7. Please inform what measures have been taken recently, if any, to reduce the average pendency period for patent applications.

8. How is exhaustion of intellectual property rights ruled in the U.S. legislation? What is its impact on industrial policies in the United States?

9. How are genetic resources protected in the United States? Can you provide further information and statistics on the protection of inventions related to genetic resources? In paragraph 270, there are references only to patents of invention and design patents. Are patents of any kind available for plants? If so, how do they comply with the three conditions of patentability established in article 27.1 of the TRIPS Agreement?

10. How are traditional knowledge and folklore protected in the United States? Is there a specific category of protection for such subject matter or are they protected by any of the existing categories (e.g. patents, copyright etc.)? If so, are there specific requirements for the protection of such subject matter?

11. In paragraph 279, there is clear reference to the fact that the decision on the implementation of paragraph 6 of the Doha Declaration on TRIPS and Public Health would make it easier to import generic drugs, "made under compulsory licensing". In paragraph 277, however, it is stated that, although the U.S. Government can allow use of the subject matter of a patent without the authorization of the right holder — which is, in other words, compulsory license —, the relevant provisions on this matter have not been used for over 20 years. Please explain if there are provisions in the U.S. legislation that could allow compulsory licenses to be granted in the United States so as to enable drugs to be exported under the mechanism created for the implementation of paragraph 6 of the Doha Declaration on TRIPS and Public Health.

### **VIII. ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD MEASURES**

1. Regarding paragraph 75, page 47, WT/TPR/S/126, it is mentioned that the ITA formally initiates an investigation once the petition "contains sufficient information supporting the allegations". Article 5.3 of the WTO AD Agreement establishes that "the authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation". What kind of procedures do U.S. authorities adopt to comply with Art. 5.3 of the ADA?
2. With regard to paragraph 94, page 53, WT/TPR/S/126, could the U.S. specify for how long a suspension agreement may be in force?
3. With regard to paragraph 96, WT/TPR/S/126, could the U.S. indicate, in general terms, what kind of information interested parties must submit when requesting an administrative review?
4. We understand that in several cases foreign exporters have paid money to U.S. producers in connection with U.S. AD and CVD investigations and reviews. Most recently, Mexican producers reportedly paid U.S. shrimp producers to be excluded from their AD petition. Be it in investigations or reviews this practice by U.S. producers is condemnable/unacceptable. In practice, U.S. producers win twice with these petitions, frivolous or not, by dramatically reducing imports or keeping duties high, and also by making money through withdrawals of petitions and requests for review (a simple letter) for a price. It would be important to inform WTO Members of this condemnable practice and to disclose the amount that foreign exporters have paid to U.S. producers so far. Does the U.S. delegation have any comments on this practice of direct payments to producers?
5. In the WTO document WT/DS212/AB/R, of 9 December 2002, the Appellate Body recommended that the DSB request the United States to bring its measures and administrative practice with regard to the "same person" methodology into conformity with the SCM Agreement. The implementation period agreed upon on WTO document WT/DS212/12, 15 April 2003, expired 8 November 2003. However, countervailing duties continue to be charged on Brazilian exports of carbon steel hot-rolled and plate by the United States based on that same condemned practice. The report states that such CVD charges are in violation of the Appellate Body decision if such duties are not revoked or adjusted downward by the margin attributed to the alleged subsidy." Does the U.S. intend to comply with the Appellate Body recommendation also as regards the CVD illegally charged on imports from Brazil?

### **IX. SERVICES**

1. In document WT/TPR/S/126, Item IV (*Trade Policies by Sector*), Paragraph 164 mentions the deference of the Federal Communications Commission (FCC) to the Executive Branch on national security, law enforcement, foreign policy, or trade policy concerns that the Executive Branch may raise, before the granting of a license to foreign telecommunications carriers. Please provide further clarification on how the mechanism of granting new licenses to foreign telecom carriers wishing to operate in the U.S. works, pursuant to Sections 214 and 310 of the Communications Act of 1934, especially in cases when the FCC undertakes the Public Interest Analysis test through consultations with the Department of State, Department of Defense and the Federal Bureau of Investigation. As the Public Interest Analysis test was not mentioned in the U.S. initial services offer circulated in 2003, please also provide clarification on the compatibility of such test with Article XVII of the GATS (National Treatment), since U.S. telecommunications carriers are not subject to the test.



2. Document WT/TPR/G/126 states, in paragraph 76, that "Most other sectoral measures applied at the federal level that limit FDI (or allow FDI subject to reciprocity) relate to services subsectors, notably air and maritime transport services, communication services, and financial services." Paragraph 77 states that "under various federal government programmes providing benefits, the eligibility of foreign-owned companies operating in the United States for government funding of research and development is subject to conditions relating to the nature of their activities in the United States and to the treatment accorded to U.S.-owned companies by the country in which their parent firm is incorporated". Several paragraphs (77, 172, 227) point out specific cases of reciprocity requirements. The reciprocity requirements in services sectors, particularly relevant for Mode 3, do not appear to be always listed in the U.S. services schedules. At the same time, the compatibility of such requirements with MFN obligations under GATS is highly questionable. Could the U.S. clarify whether all reciprocity requirements applying to services sectors are conveniently listed in its schedules? Could the U.S. state whether and how does it consider such requirements compatible with MFN obligations under GATS?

3. Document WT/TPR/S/126 points out in paragraph 234 (page 157) that "under U.S. law, the power to regulate professions is reserved for the states" and that "the absence of a uniform regulatory regime at the national level, means that different market access conditions apply at the state level (...) this adds to the complexity of market entry for both domestic and foreign suppliers". Also the application of positive discrimination provisions in favor of local suppliers ("Buy America"), together with burdensome visa procedures, represent additional barriers to the access to U.S. markets. Could the U.S. indicate whether any measures are being taken in order to effectively improve market access conditions for professional services through better transparency, harmonization of state regulations, easing of circulation of suppliers among different states? Could the U.S. inform whether it considers that positive discrimination measures are conveniently listed in its schedules? Could it state its vision on whether visa requirements can in practice impair any measures to facilitate access to professional services markets?

4. Document WT/TPR/G/126, in paragraph 161 (page 139), describes the universal service provisions applying to telecommunications services providers, including the taxation of revenue in order to form the Universal Service Fund. Could the U.S. specify whether the taxes relating to the Universal Service Fund affect foreign consumers of telecommunications services through Modes 1 and 2? Can this be considered a mechanism whereby foreign consumers subsidize the universal service in the U.S.?

## **WT/TPR/S/126**

### **I. MARKET ACCESS IN GOODS AND RULES OF ORIGIN**

1. According to the Secretariat Report, in 2002, 12.2% of the tariff lines of the U.S. Tariff were non-*ad valorem*. Does the United States intend to convert these tariffs in *ad valorem* tariffs as part of the DDA?

2. Paragraph 34 (page 38) informs that the United States maintains both preferential and non-preferential rules of origin. In the case that a certificate of origin is required from importing countries, what authorities would be responsible for issuing the certificate of origin?

3. The United States extends tariff preferences to numerous countries. Many preferences granted on textile and clothing products, for instance, are subject to content requirements on regional produced inputs. Is there any clause in the U.S. tariff preferential schemes that allows to import the inputs, in case there are not enough regional inputs?

4. In paragraph 34 (page 38), it is mentioned that "In addition, the Department of Commerce may determine whether a particular product is produced in the country covered by a specific anti-dumping or countervailing duty order; its determinations may include different criteria than those used by the CBP. Country of origin marking and labelling regulations are also used to provide consumers with information regarding the origin of the product, and are mandatory for most imported manufactured products, and for many agricultural products (e.g. eggs, meat, and poultry, section (vii) below)." Is the legislation used by Customs & Border Protection for anti-dumping or countervailing duty the legislation established in 19 CFR 102.20? What are the different criteria used by the CBP (and legislation)?

5. The rules of origin used for origin marking are the same for non-preferential rules of origin applying for anti-dumping and countervailing measures?

6. Concerning the ATPDEA, preferential treatment is also extended to yarn or fabrics that cannot be supplied by the U.S. in commercial quantities in a timely manner. How is it controlled by the U.S authorities?

## **II. SERVICES**

1. In paragraph 28 (page xi), it is mentioned that "Aside from those described below in the services sectors, restrictions on foreign direct investment exist in energy, mining, and fisheries." Could the U.S. indicate what are the restrictions on FDI in energy?

2. In Paragraph 33 (page xi), it is mentioned that "The regulation of professional services is mainly under the responsibility of the individual States. Foreign market access in some States is affected by local presence, domicile, nationality, or legal form of entry requirements. The lack of a uniform regulatory regime at the national level also complicates market access. During the period under review, the regulatory framework has been subject to a number of reforms to strengthen governance, notably through the Sarbanes-Oxley Act of 2002 affecting accounting and legal services." How can information about restrictions in the States be obtained? Is there any central agency or department responsible for providing this kind of information?

3. Paragraph 234 (page 156) mentions that "(...) The absence of a uniform regulatory regime at the national level means that different market access conditions apply at the state level, with reciprocal treatment being widely used; (...). Most states apply special rules and thresholds for the procurement of professional services (Chapter III(4)(iii))" Which States apply special rules? What kind of special rules and thresholds are applied?

4. In paragraph 239 (page 157), it is stated that "(...) As part of the ongoing negotiations in services, the United States offered to consider undertaking the implementation of the GATS Disciplines in Regulation of the Accountancy Sector, adopted in 1998, if other Members did the same." Which criteria will the United States use to start considering the implementation of the GATS Disciplines in Regulation of the Accountancy Sector?

5. In paragraph 256 (page 161), it is mentioned that "(...) Architects with a degree from foreign or U.S. non-NCARB accredited institutions may request the NCARB to determine the equivalence of their degree". Are there other kinds of work restrictions for foreign professionals?

6. Paragraph 258 (page 161) informs that "(...) An Inter-Recognition Agreement was reached in June 1994 between the NCARB and the Committee of Canadian Architectural Councils (CCAC) (...)."

What criteria were applied to grant recognition to Canadian architects in the U.S.? Can these criteria be applied at the multilateral level or just under NAFTA?

7. Paragraph 261 (page 162) clarifies that "The National Council of Examiners of Engineering and Surveying (NCEES) is the umbrella organization of the sub-federal professional engineering and land surveying licensing authorities. The NCEES has developed a model law to promote uniform licensing laws and licensing procedures across U.S. jurisdictions; the model law was last revised in August 2002. Mobility between U.S. jurisdictions is often granted based on reciprocity." Is there any kind of restrictions or additional requirements, under the NCEES, directed at foreign professionals?

### **III. COMPETITION POLICY**

1. Antitrust review is mentioned in paragraph 209 of document WT/TPR/S/126. Could USA further explain its policy towards such practices? Which are the main issues taken into account under U.S. antitrust review mechanism?

2. Are there any other criteria other than public interest and accordance with American antitrust law that applicants must comply with in order to obtain an exclusive or partially exclusive licence under the Technology Transfer Commercialization Act of 2000? How is "substantially manufactured in the United States" defined under such law?

### **IV. TECHNICAL BARRIERS**

1. To what extent do the USA and the EU adopt international standards as a basis for their harmonized technical regulations under the Transatlantic Economic Partnership?

2. How does the United States Government intend to allocate the US\$150 million provided in fiscal year 2003 for trade-related capacity building initiatives? Is Latin America included in the U.S. plans? How much does the U.S. Government intend to allocate in building metrological and certification capacities?

## **TURKEY**

### **I-ECONOMIC DEVELOPMENT**

(4,5) Within the last two years, both U.S. budget and current account deficits have started to widen. How does the U.S. consider to tackle the issue of twin deficits?

### **II-DEVELOPMENTS IN TRADE AND INVESTMENT REGIME**

#### **Preferential and other Arrangements**

In line with an increasing trend in the preferential arrangements on global level, U.S. has also accelerated its efforts to deepen its initiatives in signing more FTA's since its last Review. In the Secretariat Report it is stated that "The expanding U.S. preferential network could serve to draw its partner more closely into the multilateral trading system, the acknowledged first-best"; however, care should be taken that negotiating and administrative resources are not distracted away from the multilateral system, that vested interests are not created that trade and regulatory structures attendant on preferential agreements do not hinder trade"(p.viii).

As the key supporter of the Multilateral trading system, how does U.S. balance its multilateral commitments and regional-preferential initiatives? Would U.S. also please explain the differences between its integration strategy with APEC and the other FTAs.

#### Institutional and policy Framework

(5) According to Secretariat Report, "the U.S. has generally liberal foreign investment regime with some sectoral exceptions...the OECD has recently observed that there has been almost no change in the U.S. concerning FDI policy, while most other countries have greatly liberalized access for foreign investors. As a result, the U.S. is at about the OECD mean in terms of overall restrictiveness to inward FDI".

*Could the Representatives of the U.S. make a comment on this issue?*

### III-TRADE POLICIES AND PRACTICES BY MEASURES

(iii) 1- U.S. bound all tariff lines except two lines covering crude oil. What is the rationale behind this?

(iii) 2- The 12 % of U.S. tariff lines are still non-*ad valorem* and these tariffs presumably result in higher protection than the *ad valorem rates*. Could U.S. representatives make a comment on converting non-*ad valorem* duties to *ad valorem* ones?

(vii) 3- Since the last TPR, the U.S. has introduced new procedures and rules regarding import regulations as such the Container Security Initiative, and "Operation Safe Commerce" Project. In addition, the new Bioterrorism Act of 2002 requires registration of food manufacturing and handling facilities, and prior notice to FDA of all food shipments destined to the U.S. Furthermore, the new import procedures for Solid Wood Packing Materials (SWPM) are expected to be in force in April-May 2004.

Would U.S. kindly inform us on the conformity of the new rules and procedures with the WTO system and the measures to be taken to assure the new system will not create any kind of technical barriers?

### IV-TRADE POLICIES BY SECTOR

(3) Manufacturing

(iii) Textile and clothing sector

ATC will come to an end at the end of this year. The U.S. is committed to abolishing all quantitative import restrictions in textile and clothing sector by the end of 2004. Regarding the role of textile and clothing in manufacturing sector, what kind of strategy does the U.S. have for the post-ATC period?

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