

ORGANISATION MONDIALE DU COMMERCE

WT/TPR/M/88/Add.1
8 janvier 2002

(02-0085)

Organe d'examen des politiques commerciales
14 et 17 septembre 2001

EXAMEN DES POLITIQUES COMMERCIALES

ÉTATS-UNIS

Compte rendu de la réunion

Addendum

Président: S.E. M. Pekka Huhtaniemi (Finlande)

Le présent document contient les questions écrites communiquées à l'avance, et les réponses fournies par le gouvernement des États-Unis à ces questions et à d'autres questions soulevées pendant la réunion.¹

¹ En anglais seulement.

ADVANCE WRITTEN QUESTIONS BY THE WTO MEMBERS

BANGLADESH

Chapter II, Section (2)(ii) Trade in services

With the objective of enhancing the participation of developing countries in global trade in services, Article IV of GATS spells out specific commitments for developed Member states in three areas: (a) strengthening domestic services capacity of developing countries through providing access to technology; (b) improving access to distribution channels and information networks; and (c) liberalization of market access in sectors and modes of supply of export interest to developing countries. The above Article further lays down that special priority shall be given to LDC Members in the implementation of the above.

Could the US delegation please throw some light on the implementation status of Article IV of GATS by the US, particularly the provisions of movement of natural persons?

Section (3)(iii) Unilateral preferences

Under the TDA 2000, the U.S. has provided duty-free and quota-free market access for the products of 72 countries, of which 35 belong to the category of LDC. Among the 49 LDCs designated as such by the UN, 14 LDCs have been left out of the purview of this legislation.

Does the US have any plan of extending similar preferential treatment to the remaining 14 LDCs?

Chapter III, Section (1)(i)(d) Preferential tariff

The Secretariat Report notes that the United States grants unilateral preferential tariff treatment to a number of countries under the AGOA, ATPA, CBTPA and GSP, which are aimed at encouraging the exports from developing countries, particularly from least developed countries. Moreover, over the last two years the U.S. has committed more than US\$ 600 million towards strengthening the trade capacity of developing countries and economies in transition. We welcome the efforts of the U.S. towards the effective integration of developing countries in world trade. However, it is noted (Table III.3) that while average preferential tariff on imports from LDCs under GSP is nearly half of MFN tariff average, tariffs on imports of textiles and clothing; and footwear and headgear from LDCs are substantially high.

Imports from LDCs into the US comprise mainly the products such as mineral oils (Chapter-27 (44.26%)); woven ready-made garments (Ch-62 (28.25%)); knitwear (Ch- 61 (14.18%)); headgear and parts (Ch-65 (2.13%))¹. Although mineral oil from LDCs does enter duty free, MFN duties on mineral oils are negligible. However, other products of export interests of LDCs face high tariffs in the US and are not subject to preferential treatment.

Do the U.S. authorities not consider that all LDCs should be provided duty free access under GSP on products of their substantial interest? If so, do the U.S. authorities have any plan to grant preferential treatment to the products of specific interests of LDCs, particularly in textiles and clothing?

¹ Figures in the Parenthesis indicate the share of each category of products in total imports from LDCs into the U.S. in 2000 and are based on USITC Trade Dataweb online information.

Section (ii) Anti-dumping, countervailing and safeguard action

How many anti-dumping and safeguard actions have been initiated by the U.S. against textile and clothing exports from LDCs since 1 January, 1995? Given the special and differential treatment provisions of the ATC, can LDCs and small suppliers expect an exemption from anti-dumping and safeguard actions in the future?

Section (1)(v) Standards, Technical Regulations and Sanitary Requirement

Article 9 of the SPS Agreement contains the commitment to provide technical assistance to developing country Members, either bilaterally or through the appropriate international organizations, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies. Similarly, Article 11 of the TBT Agreement contains a provision for providing technical assistance to developing country Members on the preparation of technical regulations, establishment of national standardizing bodies, and participation in the international standardizing bodies.

Could the U.S. delegation please inform us about the implementation status of these commitments by the U.S.?

Section (3)(iii) Intellectual Property Rights

According to Article 66.2 of the TRIPS Agreement, developed Member countries are obliged to provide incentives under their legislation to enterprises and institutions for the purpose of promoting and encouraging the transfer of technology to LDCs.

Could the U.S. delegation please enlighten on the implementation status of this provision?

Chapter IV, Section (2) Textiles and Clothing

Decisions on measures in favour of Least-Developed Countries adopted at the Uruguay Round Trade Negotiations provide that the specific needs of the Least-Developed Countries will be taken into account facilitating the expansion of trading opportunities in favour of these countries. There is an apprehension that the final phasing out of the MFA after 31-12-2004 may adversely impact textile and apparel exports of the LDCs.

Does the U.S. have any programme to adopt positive measures in favour of LDCs in the above circumstances?

CANADA

WTO Secretariat Report (WT/TPR/S/88)

III. TRADE POLICIES AND PRACTISES BY MEASURE; (1) Measures Directly Affecting Imports; (ii) Anti-dumping, countervailing and safeguards actions; general question

There appears to be some overlap in product coverage between current safeguard investigations and goods covered by anti-dumping orders or anti-dumping investigations. *What is the opinion of the United States regarding the permissiveness of this so called stacking of measures?*

(Paragraph 27)

According to para. 27, a new provision, relevant to U.S. anti-dumping and countervailing legislation was enacted in October 2000: the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment. *Did Congress pass the Bill partly because it determined that dumping measures, as currently provided, may not be enough to provide appropriate relief to domestic producers? Please explain.*

As the number of new users of anti-dumping legislation continues to grow, is the United States not afraid that the so called Byrd Amendment could serve as an excuse for other WTO Members to put in place similar measures?

How much assistance has been distributed by the U.S. Government under the Continued Dumping and Subsidy Offset Act of 2000? Does it intend to notify these disbursements under the Agreement on Subsidies and Countervailing Measures?

III. TRADE POLICIES AND PRACTISES BY MEASURE; (1) Measures Directly Affecting Imports; (v) Standards, technical regulations and sanitary; paragraph 85

According to para. 85, a new strategy could increase the rate of transposition of ISO and IEC standards in the United States, which has been described as low by several trading partners. *Approximately what percentage of United States standards and technical regulations make use of international standards?*

In a May 24, 2001 press release of the American National Standards Institute (ANSI) regarding the National Standards Strategy ("NIST Grant Will Help Advance National Standards Strategy" @ http://www.ansi.org/public/news/2001may/nist_grant.html), it appears that the primary focus of the strategy will be the objective of promoting U.S. technology, standards and standards-development processes internationally rather than on the goal of increased adoption and use of existing international standards by U.S. standardising bodies and agencies, including those developed by the ISO and IEC. *Please explain how the National Standards Strategy will effectively address the latter goal.*

Please explain the relationship between the National Standards Strategy and policies and procedures of regulatory agencies with respect to the use of international standards as a basis for their technical regulations.

(Paragraph 86)

According to para. 86, the Department of Agriculture has proposed new national standards for organic products, as well as rules for the labelling ("grading") of imported meat. With respect to the issue of the labelling of imported meat, as an example, *please explain the approach and criteria the United States uses to ensure that a labelling requirement represents the least trade restrictive action.*

(Paragraph 88)

According to para. 88, no notifications of proposed U.S. sub-national measures have been received by the WTO related to the Technical Barriers to Trade (TBT) Agreement. *When does the United States expect there to be a system in place to meet its obligations under the TBT Agreement with respect to the notification of technical regulations?*

Please explain how the U.S. Government intends to notify technical regulations prepared or adopted by local government bodies, in particular the level directly below the national level.

(Paragraph 89)

According to para 89, the United States supports reliance on the supplier's declaration of conformity (with or without accreditation) and considers that national treatment could be achieved through cooperative arrangements between national conformity assessment bodies, instead of focussing on mutual recognition agreements (MRAs). *Please provide examples of cooperative arrangements between national conformity assessment bodies, other than mutual recognition agreements or similar arrangements, which would prevent and/or resolve technical trade barriers.*

According to para. 91, the FDA has primary responsibility for the safety of foods, with the exception of meat, poultry, and certain egg products, which FSIS regulates. *Please explain how the FDA is attempting to facilitate trade in these products. Does the FDA intend to expand these activities that help facilitate in the near or medium term?*

(General question)

In regard to the adoption of international standards, the United States stated in its submission under its 2000 APEC Individual Action Plan on Standards and Conformance that its government's policy "is to adopt international standards whenever possible and appropriate". Further, in WT/TPR/M/56/Add.1, in response to Question 10.1, the United States stated that "as a matter of practice and law, U.S. standardizing bodies and agencies review existing standards and consider whether international standards (if relevant ones exist) are appropriate and effective for meeting domestic needs". *What review mechanisms exist for the United States to determine that its standardising bodies and agencies are meeting its policy and legal requirements?*

IV. DEVELOPMENTS IN SELECTED SECTORS; (5) Maritime Transport and Related Services; (i) International shipping services; paragraph 40

Para. 40 notes that international cargo under the preference system accounts for 29% of international cargoes carried by U.S. flag vessels in FY 1997. Cargo preference is made up of agricultural, military, and exports of Alaskan crude oil. *Please provide a breakdown of the 29% between agricultural, military, and crude oil. Also, if possible, please provide more recent figures. Are agricultural and military cargoes diminishing in recent years?*

(Paragraph 42)

According to para. 42, subsidy outlays for the Maritime Security Program (MSP) were US\$38 million in 1997, while funding in 1999 was US\$94. *Please explain the rationale for this sharp increase from 1997 to 1999.*

Para. 42 also states that funding of up to US\$100 million is authorized through 2005 for MSP. *Does this mean US\$100 million will be provided on an annual basis until 2005; or does this mean a total of US\$100 million is being provided over the six year period (from 2000-2005 inclusive)? If it is the latter, what is reason for the decrease in subsidy outlays?*

IV. DEVELOPMENTS IN SELECTED SECTORS; (7) Financial Services; (i) The Gramm-Leach-Bliley Act (GLB); paragraph 70

Paragraph 70 in the Secretariat Report states that although broad banking is permitted by the GLB Act introduced in 1999, U.S. banks continue to have little freedom to own and be owned by non-financial companies. *Does the United States foresee more liberalization of the banking sector to permit banks to be owned and to own non-financial companies?*

Has the structure of the financial services industry changed since the introduction of the GLB Act? If yes, please explain how. What, if any, additional changes are expected over the next few years?

(Paragraph 71)

According to para. 71, a U.S. bank wishing to affiliate with insurance or other financial services companies must first set up a bank holding company under the Bank Holding Company Act; foreign banks are not required to set up holding companies. *Please explain the differences between the requirements imposed on U.S. and foreign banks, and explain how the treatment accorded foreign banks is equivalent to that accorded to U.S. banks.*

IV. DEVELOPMENTS IN SELECTED SECTORS; (7) Financial Services; (ii) Banking Services; paragraph 80

According to para. 80, although financial services are highly liberalized, there are still a few restrictions to foreign market access and national treatment in the financial sector. For example, a majority of directors of national banks must be U.S. citizens; and approximately one half of the States require all or the majority of the board of directors of depository financial institutions to be U.S. citizens. *Are there intentions to remove these restrictions at either the national or state level?*

(Paragraph 82)

Para. 82 states that a domestic bank subsidiary of a foreign firm is provided national treatment based on its "home" State of incorporation. It is our understanding that states remain free to discriminate on the basis of state incorporation and therefore foreign institutions can encounter discrimination based on their home state of incorporation. *Is this understanding correct? If not, please explain.*

IV. DEVELOPMENTS IN SELECTED SECTORS; (8) Telecommunication Services; (i) Licensing and Competition; paragraph 110 and 118

What effect does Federal Communications Commission (FCC) deference to the Executive Branch on matters of national security and law enforcement (paragraph 110) have on U.S. commitments to allow foreign satellite operators to provide satellite services to points in the U.S. from gateways outside the U.S. (paragraph 118)?

(Paragraph 112)

In para 112, the U.S. provides examples to show that WTO Members are in practice able to invest in the U.S. telecom services market despite the fact that existing legislation prohibits investments greater than 20%. *Does the U.S. intend to legislate to reflect in law the "practical" removal of barriers to investment by WTO Members, thus providing the full security of law to foreign firms of WTO Member-countries?*

IV. DEVELOPMENTS IN SELECTED SECTORS; (9) Selected Professional Services; (i) Accounting services regulation; paragraph 133

According to para. 133, a set of joint recommendations by the NASBA and the AICPA, sought to reduce some of the most significant barriers linked with the sector's decentralized regulatory system. The two bodies recommended, in particular, that licensed CPAs in public practice be authorized to operate across State lines, in person or electronically, to service clients outside their State of licensure. This is just one example of measures that could be taken to increase inter-state

mobility to eliminate the necessity of licencing in every state in many professions. *Have federal and state governments announced their intention to implement these recommendations? If so, how many state governments have announced their intention to enact legislation to implement the recommendations? Has the federal government drafted, or tabled a new Uniform Accountancy Act? If no, when does the federal government anticipate drafting and tabling this legislation?*

Does the U.S. Government plan to play a role in state regulatory reform not only in the accounting profession but in other professions as well?

(Paragraph 134)

According to para. 134, the Securities and Exchange Commission (SEC) launched an enquiry in 1999 regarding the possible acceptance of financial statements of foreign private issuers that are prepared using the standards promulgated by the International Accounting Standards Committee ("IASC"). We understand that the SEC issued a concept release entitled "International Accounting Standards" on 16 February 2000. This release sought comments on the conditions under which the SEC should accept financial statements of foreign private issuers that are prepared using the IASC standards. *Has the SEC issued a further release or proposed rules on this issue? If no, do they intend to?*

IV. DEVELOPMENTS IN SELECTED SECTORS; (9) Selected Professional Services; (ii) Developments regarding legal services; paragraph 143

Para. 143 states that foreign law firms can establish subsidiaries in the United States. *Are these law firms restricted to only providing advice on foreign and international legal issues or, if these law firms hire U.S. qualified lawyers, can these law firms also advise on U.S. law issues? Please explain.*

ADDITIONAL QUESTIONS - NO REFERENCE TO SECRETARIAT REPORT

Is the U.S. giving consideration to the removal of requirements that imported industrial alcohol pass through U.S. registered distilled spirits plants to be eligible for an excise tax exemption? What steps is the U.S. taking to address this non-tariff barrier?

Canada understands that the U.S. Congress is proposing to extend the imposition of the Merchandise Processing Fee (MPF) to 2011. Of particular concern to us is that the current legislative proposal would divert fee revenues away from customs clearance operations and would channel the same to offset any shortfalls to the US Social Security Trust Fund. *What are the U.S. government's views in regard to the consistency of this proposal with U.S. international trade obligations?*

SUPPLEMENTAL QUESTIONS & COMMENTS

WTO Secretariat Report (WT/TPR/S/88)

QUESTIONS

III. TRADE POLICIES AND PRACTICES BY MEASURE; (1) Measures Directly Affecting Imports; (iv) Government Procurement; paragraph 65

According to para 65, no statistical information has been provided by the United States to the WTO under Article XIX:5 of the GPA. The GPA went into effect five years ago, and many members have submitted at least some annual statistical reports. *When does the United States plan to submit its statistics?*

Please indicate the total value of GPA-covered procurement at the federal level and the total value of procurement set-aside under the small and minority business set-aside programs that would otherwise have been covered by the AGP? Also, please indicate the same information for GPA-covered procurement at the State level.

(Paragraph 66)

United States legislation and regulations require the provision of subcontracting plans for United States small business in GPA-covered contracts. *Please explain how these provisions are consistent with Article III of the GATT and with Article III (Non-discrimination) and Article XVI (Offsets) of the WTO Agreement on Government Procurement. Please address this issue both with respect to: 1) foreign suppliers who are providing goods and services that are not of United States origin; and 2) foreign suppliers providing goods and services that are partially of United States origin.*

According to para 66, there is legislation at the State level for the implementation of the GPA in 37 States in the United States. *Does the United States Federal Government monitor the adherence and implementation of the GPA by these 37 States that are covered?*

(Paragraph 68)

Para. 68 notes, "In some cases, where procurement is funded by federal money, States must comply with certain federal statutory requirements." *Please list these federal statutory requirements. During FY 2000, what was the total value of procurements at the State level that were funded by federal money?*

(Paragraphs 74 to 80)

Paras. 74 through 80 provide information on the Buy America Act and set-aside schemes. Set-aside provisions may have a significant impact on the scope and predictability of coverage under the GPA. During the 1996 TPR of the United States, Canada suggested that the United States give further consideration to the elimination and circumscription of these exclusions and exemptions. *What progress has the United States made in eliminating or circumscribing exclusions to the GPA, such as the small and minority set-aside programs?*

(Paragraph 74)

Para. 74 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?*

(Paragraph 78)

According to para 78, for FY 2000, the value of contracts awarded through set-aside programmes was 8% of total federal procurement awards. It is also noted that the proportion has been declining in recent years. *Has the proportion of contracts that have been set aside but would otherwise have been covered by the GPA also declined? What is the proportion and value of such contracts in comparison with total GPA-covered procurement?*

(Paragraph 80)

According to para. 80, the Small Business Competitiveness Demonstration Program, under the Small Business Demonstration Program Act of 1988 has implemented a pilot programme to evaluate the effect of removing set-asides for the procurement of goods included in ten Targeted

Industry Categories. *What are the ten targeted industries that form the basis for this pilot program? What is the forecasted timeline for completion of the pilot program and evaluation of results?*

III. TRADE POLICIES AND PRACTICES BY MEASURE; (1) Measures Directly Affecting Imports; (v) Standards, technical regulations and sanitary requirements; Paragraph 88

Para. 88 refers to the lack of WTO notifications about proposed State technical regulations. The para does not mention, however, that estimates of domestic support for agriculture try to include State programs, but the data are based on a survey of States that was conducted in 1993. *Does the U.S. propose to update the basis on which it notifies State support to agriculture? Would it plan to conduct an annual survey of the State departments of agriculture?*

Will the United States notify to the WTO the federal grants to the states of \$159 million in support of agriculture promotion and "specialty agriculture" as part of the "emergency" support voted by Congress earlier this year? Please provide information on the actual amounts and activities that these funds are supporting.

III. TRADE POLICIES AND PRACTICES BY MEASURE; (2) Export Measures; (iv) Section 301 and Related Actions; Paragraph 127

According to para. 127, "since the [Section 301] provision first entered U.S. trade law in 1974, the USTR has initiated 119 such investigations; since January 1999, however, only four Section 301 investigations have been initiated." There were seven U.S.-initiated investigations addressing Canadian wheat trade between 1990 and 1998. While none of these seven investigations has shown any evidence to indicate that wheat is traded unfairly, wheat was the subject of one of the four Section 301 investigations initiated since 1999. *Please explain how the U.S. ensures that any trade action that might be undertaken pursuant to a Section 301 investigation fully respects U.S. WTO obligations.*

III. TRADE POLICIES AND PRACTICES BY MEASURE; (3) Other Measures Affecting Production and Trade; (i) Government Support to Business; Chart III.5

Chart III.5 shows the value of agricultural support rising in every year since 1995, even without the "emergency payments" being factored in. *Please indicate what the proportion of market returns was relative to FAIR Act payments and to total farm payments for the years since 1995.*

Chart III.5 shows that a significant portion of farm support is in programs that fall in the WTO's "amber" category. *Given this trend, and considering the testimony by a wide variety of U.S. agricultural groups to the House of Representatives Agriculture Committee in the first half of 2001 requesting additional spending beyond current levels, how does the U.S. assess the prospects for spending in future years?*

Does the U.S. Government anticipate that the nature of the programs in support of U.S. agriculture will continue to move away from "green" towards "amber" programs?

IV. DEVELOPMENTS IN SELECTED SECTORS; (9) Selected Professional Services; paragraph 129

The horizontal commitments on mode 4 are only part of the existing temporary entry picture. *Please elaborate briefly on the existing U.S. measures in immigration laws, regulations, procedures or programs, not bound in the GATS schedule, that facilitate the temporary entry and stay for certain types of foreign workers.*

In para. 129, reference is made only to the category of intra-corporate transferees, including

specialists, some of who could be licensed professionals. *Please describe the other horizontal commitment and any existing measures not in the GATS on specialty occupations, which could also include certain professionals.*

The commitment on specialty occupations is limited by a quota of 65,000 persons annually; however, several years ago, Congress authorized annual increases over several years. *Please provide details on that, and if possible, recent statistics on the number and type of entrants under the specialty occupation category.*

According to para 129, "in practice, foreign professional service suppliers may only enter the United States to perform a professional service if employed by a company that is either established in the United States or affiliated to one such company." It appears that this statement refers only to intra-corporate transferees. *Please confirm that certain professionals under the specialty occupations category (i.e. professionals who are independent or on contract) may also qualify for entry to the U.S. to perform a professional service, subject to meeting other immigration requirements.*

Comments on WTO Secretariat Report (WT/TPR/S/88)

I. RECENT ECONOMIC DEVELOPMENTS; (1) Output, Employment and Prices; paragraph 5

The GDP figures have been updated recently; and therefore those figures cited in paragraph 5 and in Table I.1, are no longer accurate. For example, real GDP growth in 2000 should be 4.1%, down from the previous figure of 5.0%. *The U.S. may wish to follow-up with the WTO Secretariat to ensure that the Secretariat report includes the most updated figures.*

I. RECENT ECONOMIC DEVELOPMENTS; (5) Outlook; paragraph 35

The U.S. Administration forecast GDP growth of 2.4% in 2001 and 3.4% in 2002 seems to be overly optimistic. On August 16, the Administration's forecast was reduced to 1.7% this year and 3.2% next year. *The U.S. may wish to follow-up with the WTO Secretariat to ensure that the Secretariat report includes the most updated figures.*

II. ECONOMIC ENVIRONMENT; (5) Preferential and other Arrangements; (i) Relations with Canada and Mexico; paragraph 31

According to para. 31, two-way trade between the United States and Canada is about US\$1.1 billion daily. This is the 1999 figure. The updated 2000 figure from the U.S. Survey of Current Business is US\$1.23 billion. Using a Canadian source, the corresponding figure is even higher, at US\$1.3 billion daily. *The U.S. may wish to follow-up with the WTO Secretariat to ensure that the Secretariat report includes the most updated figures.*

IV. DEVELOPMENTS IN SELECTED SECTORS; (1) Agri-Food Activities; paragraph 4

According to para. 4, imports of softwood lumber from Canada, have been restrained by a system similar to a tariff quota. This section does not mention that imports of Canadian softwood lumber into the United States have been affected by a 19.31% preliminary countervailing duty determination from the U.S. Department of Commerce as of August 10, and further affected by a positive preliminary critical circumstances determination made on the same date. The Atlantic provinces have been excluded from the investigation. Canada is currently requesting WTO consultations on these two determinations. *The U.S. should follow-up with the WTO Secretariat to ensure that the Secretariat report includes, and accurately describes, these actions by the U.S.*

U.S. Government Report (WT/TPR/G/88)

III. TRADE POLICY DEVELOPMENTS, 1999-2001; (2) Regional Initiatives; African Growth and Opportunity Act (AGOA); Paragraphs 52-58

What are the expected benefits to sub-Saharan African countries of the various market access provisions in AGOA? Does USTR anticipate substantial increases in exports from these countries not least because many of the provisions are subject to the use of U.S.- produced raw materials? What are the anticipated impacts on employment and poverty reduction in sub-Saharan Africa?

ADDITIONAL QUESTIONS - NO REFERENCE TO SECRETARIAT REPORT

U.S. Marine Mammal Protection Act (MMPA)

Canada continues to agree with the 1999 U.S. Congressional Research Service report which found that the Marine Mammal Protection Act (MMPA) appears to be inconsistent with the U.S.' WTO obligations. On the occasion of the last WTO Review of U.S. Trade Policy, the U.S. delegation, in a written response, cited in defense of the MMPA the fact that a waiver is available, subject to certain conditions, to allow imports of marine mammal products. However, due to the U.S. certification of Canada under the Pelly Amendment in 1996, U.S. officials since that time have not been allowed to consider any MMPA waiver request from Canada. *(1) Is this certification still in effect? (2) Please provide details of such waivers currently in effect under the MMPA allowing the import of seal products, including:*

- *supplier countries holding the waivers;*
- *specific products covered by the waivers, by tariff item and by country;*
- *values and volumes of such products imported in the past three years;*
- *names of all countries which U.S. Government Departments are currently barred from considering for the granting of a waiver under the MMPA; and*
- *reasons for which those countries are barred from such consideration.*

Agriculture

Since the last TPR of the United States, there has been an increasing trend by State governments to propose or initiate measures, primarily in the agriculture sector, which are inconsistent with U.S. international trade obligations, and have significant impacts on Canada's exports to the United States (e.g. measures proposed in North Dakota and Montana). *Please explain what measures the U.S. is taking to ensure compliance with its WTO obligations.*

While it is not mentioned in the Secretariat Report, the U.S. Department of Agriculture is developing proposals for the labelling of domestically-produced beef. *Will the criteria for the use of any U.S.-produced beef be consistent with U.S. international trade obligations, including with respect to rules of origin?*

The U.S. Department of Agriculture announced in July 2000 that it would propose to discontinue grading of imported meat. *Please indicate the status of this proposal. How would the proposal be consistent with U.S. WTO obligations?*

In the current Farm Bill debate in the United States, the House of Representatives Agriculture Committee has proposed replacing the current high levels of support for peanut production with counter-cyclical payments and marketing loans / loan deficiency payments. *If these proposals were to be accepted, please explain how they would alter your trade regime with respect to the import and export of peanuts. Does the United States envisage any similar reform of its support applicable to sugar? Would such a reform also affect the intense import restrictions and export incentives on sugar and sugar-containing products?*

The U.S. Administration is pursuing tariff reclassification of certain sugar syrups from an unrestricted item into a tariff item with a highly restrictive tariff rate quota. *What are the anticipated consequences of this tariff reclassification on trade? When will the United States be notifying WTO members about the reclassification of sugar syrups?*

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 trade opened that are a feature of the U.S. Government report (G/I, paras. 1, 3 and 4). Table III.1 of the Secretariat report (S/III, page 25) also demonstrates that while a simple average applied tariff rate on non-agricultural products fell from 5.7 percent in 1996 to 4.5 percent in 2000, on agricultural products it actually rose slightly from 10 percent in 1996 to 10.4 percent in 2000 (with a peak of 10.7 percent in 1999).

The Secretariat notes that “sizeable tariff barriers” tend to be concentrated in a few “sensitive” sectors, including agriculture, and that tariff escalation was particularly noticeable in food industries where out-of-quota tariffs range to 350% and may act as import prohibitors (S/III, pages 22-26). These barriers of course have a negative impact on higher-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 and food products?

What programme does the US have for the reduction and eventual elimination of such tariffs?

When does the US intend to reduce or eliminate tariff peaks?

Import Licensing

The Secretariat report notes that “Most products other than meat and poultry do not require a prior determination of equivalence or an export certificate to enter the United States.” (S/III, para. 82, page 47). We would note, however that the U.S. has an explicit prohibition on the entry of plants, plant products and honey bees from all countries except for 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 application. 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 as a final rule. These facts give rise to a number of questions:

What is the United States doing to address the backlog of applications for pest risk assessments?

Can the United States explain why it is necessary to maintain measures more restrictive than identified by their risk assessments for extended periods after such risk assessments have been consulted upon and finalised?

How does the United States justify the longstanding delay in resolving New Zealand’s request for access to the United States for live honey bee and honey bee semen, when, in view of

New Zealand's superior honey bee health status, there is no scientific basis for denying such access on SPS grounds?

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

Export Credits

Despite the fact that the value of the sales supported by agricultural export credits fell between 1998 and 2000 (Secretariat Report paras. 107-108) 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 that "open, competitive markets - both internationally and at the border - have contributed to our economic efficiency and prosperity" (G/II, para. 25, p. 8). However, certain U.S. industries, such as dairy, with its complex systems of import licensing and quota administration regulating dairy imports, dairy compacts, exports subsidies, price supports and milk marketing orders, appear not to be so open and competitive.

How does the United States reconcile maintaining a highly protected dairy sector with its commitment to "the maintenance of 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 already depressed global commodity market, and which are contradictory to the U.S.' declared objective of the elimination of export subsidies in a new round of agriculture negotiations?

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

Current draft legislation before the House seeks to place tariff rate quotas (TRQs) on milk protein concentrate and casein (including caseinate) at severely restrictive levels is of concern to New Zealand as it would contravene the bound rates and product descriptions in the United States' WTO schedules. The House Agriculture Committee's new Farm Bill does nothing to reduce the U.S. Government's subsidies for agriculture production. The Bill, in fact, includes many worrying aspects, such as increased spending on conservation programmes, 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 2011. Section 146 of the draft Farm Bill would also expand the dairy "check off" levy to include all imported dairy product.

While these pieces of legislation are not yet law, they appear to contradict the United States' statements in support of open markets and the direction of U.S. domestic agriculture policy.

How does the United States reconcile the draft legislation mentioned above with its commitment to "the maintenance of an open, competitive market at home" (G/I, para. 3, p. 5)?

Food Aid

The Secretariat report notes the ongoing high level of US food aid and the negative correlation between world cereal prices and volumes of US donations (S/III paras. 111 and 112, page 54). While the report also notes U.S. attempts to donate food aid in a way that limits disruption of commercial sales in markets, we would question the ongoing high volumes of U.S. food aid, given the rationale would appear to be disposal of surplus production which is caused by domestic support in the United States, for example donations of Skim Milk Powder.

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

Which markets are likely to be targeted?

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

Domestic Support

The Secretariat Report notes that “direct government assistance to the agri-food sector nearly tripled during 1997 and 2000 and currently amounts to over one half of net farm income.” (S/III, para. 148, page 64). In dollar terms, direct government payments to U.S. farmers increased from around US\$7.5 billion in fiscal year 1997 to a record US\$28 billion in fiscal year 2000. One of the main causes of this increase is the so-called “emergency assistance” programmes. This would appear to be in contradiction to US statements in support of “the maintenance of an open, competitive market at home” (G/I, para. 3, p. 5) or its proposals to the mandated agriculture negotiations which have the objective to “substantially reduce high levels of protection and trade-distorting support that disadvantage competitive farmers, ranchers and processors and that distort international markets” (G/III, para. 30, p. 9).

How will the United States address its dramatic increase in domestic support levels (much of which is classified as Amber box) at a time when it is proposing that domestic support levels should be cut?

How does the United States justify domestic support of historic magnitude (US\$28 billion direct and US\$60 billion total), particularly as it is the United States itself that, in many cases, accounts for a significant share of world agriculture output and has a direct effect on the volatility of world markets and prices?

What measures are the United States taking to reduce direct government assistance to the agri-food sector?

Government Procurement

The Secretariat Report states that “the policy of the United States in respect to government procurement is to grant national treatment to any country willing to grant reciprocal treatment” (S/III, para. 73, page 45). To our understanding New Zealand gives the United States national treatment rights with respect to government procurement but does not receive the same treatment in return.

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

Sanitary and Phytosanitary Measures

The concepts of equivalence, transparency and international harmonisation are three of the foundations of the WTO SPS agreement (discussed at S/III, paras. 90-94, pages 42 and 43). Can the US provide specific comment on efforts being made by its Food and Drug Agency (FDA) to ensure

that both the statutes which it administers, as well as the associated regulations, policies and guides explicitly reflect the international commitment the US government has made in this regard.

Specific comments would be especially appreciated with respect to:

The consistency of the equivalence concept with the Federal Food Drug and Cosmetics Act, noting that the FDA is yet to finalise and publish guidance in this area.

The consistency of both the amending process and standards contained within the Pasteurized Milk Ordinance (PMO) and the National Shellfish Sanitation Program (NSSP) standards with the above.

The assessment of risk and determination of the appropriate level of sanitary or phytosanitary protection (ALOP) is another key concept of the WTO SPS agreement. Can the U.S. specifically comment on:

How both risk assessment and the objective of minimising negative trade effects have been mutually and consistently applied in the development and amendment of the PMO.

Why the measures mandated for products covered by the PMO are more trade restrictive than those for similar products which can contain the same hazard profiles and which are either directly consumed or made into products consumed by the same population.

THAILAND

Secretariat Report (WT/TPR/S/88)

II. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY; (1) Recent Legislative Activity: page 13, paragraph 4

Please describe the preferences under the Trade and Development Act (TDA) of 2000 which offers to Sub-Saharan African and Caribbean countries including the process of certifying beneficiary countries.

(2) Participation in the WTO; (V) Competition Policy: page 17, paragraph 21

In the U.S. remarks delivered by Deputy U.S. Trade Representative Peter Allgeier at the WTO General Council Meeting on 30 July 2001, it was stated that “With respect to competition policy, the U.S. sees merit in a modest negotiating agenda of core competition principles of transparency, non-discrimination, and procedural fairness. We also can support consultative and capacity-building efforts to help countries develop modern competition policies that promote efficient and dynamic markets ...”

Does this mean that the U.S. views now that the WTO was the appropriate institution in which to initiate the development or rules on competition in a multilateral context?

Is there any type of anti-competitive practices which is exempted from the U.S. Antitrust Legislation?

(4) Investment Policies; (i) Foreign direct investment

On page 22, paragraph 46 Second sentence: What are the “... other conditions to national treatment ...”?

Third sentence: What is the meaning of "... primary dealers in financial services"?

Last sentence: Can one readily find the complete list of the selected services sectors which are restricted and the related provisions/regulations? If so, please specify.

On page 22, paragraph 47 Please explain the President's decision-making process to determine the need for a national security investigation. Is the steps in the procedure transparent?

On page 22, paragraph 49 Do U.S. BITs also cover rights of host country and restrictive business practices?

III. TRADE POLICIES AND PRACTICES BY MEASURE; (1) Measures Directly Affecting Imports

Page 25-27, paragraph 8-10

The U.S.'s fill rate of imported tobacco under the TRQ is only 48.8% and the out of quota tariff rate is very high at the level of 350%.

Considering that global quota allocation could enhance the competition among suppliers and thus improve the fill rate under TRQ, does U.S. have any plan to improve the fill rate of tobacco TRQ through a change of the present allocation method?

Page 49, paragraph 92

Please explain the process of an equivalent determination for poultry products and how a country could be granted an equivalent status.

(2) Export Measures

(a) Export Subsidies: Page 52, paragraph 105

Please specify the markets to which the U.S. exports the products under the Export Enhancement Program (EEP).

(c) Food aid: Page 54, paragraph 111

Please specify the countries to which the U.S. exports rice as food aid in the past five years.

NORWAY

II. DEVELOPMENT IN TRADE AND INVESTMENT POLICY

(2) Participation in the WTO; (iii) Electronic commerce

On the subject of electronic commerce, paragraph 14 gives a short presentation of what seems to be an array of different taxation systems in different states within the United States. We will not raise the issue of international harmonization of taxation of trade, which does not belong to this forum, but would like to express interest for our U.S. colleagues to share with us their experience with the apparently wildly different systems within their own boundaries. This could shed some interesting light on the issue of when harmonization is needed and when different systems can coexist without creating distortions. "

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures directly affecting imports; (ii) Anti-dumping, countervailing and safeguards actions

With regard to anti-dumping and countervailing duties, Norway is concerned with the continued prevalence of these in U.S. Trade policies. The passage of the "Continued Dumping and Subsidy Offset Act" ("Byrd Amendment") as part of the Agriculture Appropriations bill for 2001 is particularly discouraging in that it opens for the possibility for financial gain from bringing anti-dumping and countervailing duty cases.

Given the fact that the Byrd Amendment did not have the support of a majority in Congress on its own merit, Norway would like to ask the U.S. delegation what the chances are of a new bill being promulgated that would repeal the Byrd Amendment, and whether the administration will push for such a repeal or not?

(iv) Government procurement

According to the GPA-agreement, Article XIII 4b), the contracting authority entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which is determined to be the most advantageous.

As far as the Norwegian Government understands, the Federal Acquisition Streamlining Act of 1994 requires public authorities to use "past performance" as the second most important criteria, after price.

Can the U.S. explain how "past performance" is evaluated? How do public authorities ensure that the use of this criteria in practice does not lead to discrimination of foreign tenders?

IV. DEVELOPMENTS IN SELECTED SECTORS

(5) Maritime transport and related services

According to available information, the U.S. controls the fourth largest fleet in the world (01.01.2001: 855 vessels, 41.6 mill. dwt). It would be of interest to have more information on the size of the maritime sector in the US and the economic activity which this fleet create in terms of turn over and employment on board and ashore.

In paragraph 37 it is stated that "virtually all U.S. international ocean-borne trade is carried by foreign flag vessels". Does this imply that the impact of the US cargo preference schemes as described in paragraph 40, and the subsidy scheme (amounting to USD 94 mill in 1999) as described in paragraph 42 is negligible? Would it be possible to give figures on the share of U.S. international ocean-borne trade, which is carried by U.S. owned vessels under foreign flags?

As regards the Ocean Shipping Reform Act (OSRA 1998) described in paragraph 38, the Federal Maritime Commission (FMC) is about to finish an "Impact Study Report" covering the two first years of this act. Finalization and presentation of the findings of the study has, however, been delayed, and will probably take place at a later stage. Could the U.S. give an overview of the most significant findings of the report, and indicate whether any adjustments of the U.S. regulatory regime covering the container liner industry can be expected?

With reference to paragraph 40, Norway and other countries have previously addressed the reservation of exports of Alaskan crude oil to U.S. flagged vessels in the WTO context. We maintain the position that this reservation is not in the conformity with the standstill clause contained in

paragraph 7 in the Decision on negotiations on maritime transport services annexed to the GATS agreement. We would be interested to have figures on the volumes of this trade in terms of annual export volume and number of shipments.

To the description of the Jones Act can be commented that a maritime bill is proceeding in Congress that would, if enacted, enhance U.S. cabotage laws relating to cable laying and vessel escort and towing operations. Extending the scope of the Jones Act would be regrettable as seen from a Norwegian point of view, both as a matter of principle and because this particular bill can hurt Norwegian interests in the US. We would be happy to be informed on the position of the administration on these proposals which we by the way question whether are in accordance with the standstill commitment contained in the Decision regarding maritime transport services made by the Council for Trade in Services on 28 June 1996.

We would also be pleased to receive information on the revision of the Harbor Maintenance Tax system, which is an issue that also has been dealt with in the WTO context.

(8) Telecommunication services; (iii) Satellite services

Under Telecommunication Services, paragraphs 119-123 describe the opening of the U.S. market to direct access to the INTELSAT satellite system, including access to INMARSAT services. Norway welcomes this development which was overdue. The former U.S. restrictions have impeded on the development of INTELSAT and INMARSAT. This has slowed down the worldwide dissemination of the safety improvements in the transport sector that the system provides. Paragraph 123 relates that some procedures are still pending before the liberalization can be applied to INMARSAT. We would therefore like to ask the American delegation to provide us with any further information as to the "initial public offering" which apparently is the last remaining stumbling block.

CHILE

Anti-dumping

From the point of view of economic theory, within a free trade area dumping is not possible due to the fact that both countries become like different states in a same country; i.e. if goods are really "dumped" or sold below cost, they could be shipped back and be sold at the higher price of the country of origin. Therefore, antidumping measures are redundant in a free trade zone. Taking into consideration that the United States is an active part of the negotiation of the Free Trade Area of the Americas (FTAA) and is negotiating a Free Trade Agreement with Chile, will the United States consider the elimination of antidumping mechanisms once the free trade areas are established?

Check-Off Programs

For the last years, the United States has been enacting and implementing several Information, Research and Promotion acts regarding some agricultural products by which it has imposed the collection of mandatory assessments (internal taxes) to locally promote those products, leaving the total control over the spending of the assessments to the domestic producers and creating some considerable advantages in the internal treatment they receive as compared with producers from abroad.

How would the United States explain its Check-Off Programs in terms of their consistency concerning its international obligations under the WTO and its applicable agreements?

How would the United States justify the legitimacy of its Check-Off Programs under U.S. Law considering the recent U.S. Supreme Court ruling on the subject? Specifically, How would the United

States explain the constitutionality of the mandatory assessments these programs impose for promotion purposes?

Taking into consideration that the U.S. Supreme Court ruling is a mandatory rule of law for every executive agency, among them the USDA, is the executive branch adopting and implementing any measure to put the Check-Off Programs in conformity with this ruling? And if so, what sort of measures is the U.S. Government adopting and implementing and what are the Check-Off Programs and subject matters within them that are being modified?

How can the United States explain the difference between promotion, information and research under the U.S. Constitutional concept of Freedom of Speech so as to exclude the last two areas from the imposition of voluntary assessments?

The Hass Avocado Promotion Research and Information Act (HAPRI)

Considering the US Supreme Court ruling in the Mushroom Check-Off Program case is a mandatory law for the USDA and that the Implementing Order is not yet in force, is this Agency going to limit the mandatory assessments only for information and research activities leaving promotion assessments as voluntary?

The HAPRI and the Proposed Order, through the assessment collection method, establishes a difference between the timing and conditions of collection. While the domestic producers would be allowed to pay the assessment within 30 days after the end of the month in which the sale or non-sale transfer has been made, the importers, whether their avocados are sold or not, have to unconditionally pay the assessment at the time of importation into the United States. What is the reason behind this?

Another aspect is the assessment refund system. While the state associations, in fact, the California Avocado Commission (C.A.C.), will receive 85% of the funds generated by all the assessments attributable to California's total production of avocados, the importers associations will only receive 85% of the funds generated by assessments paid by the members of these associations without regard of the fact that almost 90% of the importers are Californian producers and that there is no clear mechanism to compel any importer to join an importer association. What is the reason behind this?

Why does the HAPRI not involve other domestically produced avocados such as Fuerte, Zutano, Bacon, Pinckerton, etc., that are "like" Hass avocados and, in any case, are directly competitive or substitutable products of the latter, and therefore affords protection to domestic producers and discriminates exporters?

Sub-Federal Measures

According to the Uruguay Round Agreements Implementing Act, Section 102, letter (b), number (2), no State law, or the application of such a State law, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for the purpose of declaring such law or application invalid.

The foregoing rule recognizes the Federal Law "Preemption Doctrine" regarding State law but does not implement an automatic preemption mechanism. Therefore, if another WTO member or one of its constituents estimates a sub-federal measure to be in violation of a U.S. international trade obligation, the national denies it any cause of action before a Federal Court. The implementing law only entitles the Government of the United States with such an action.

Furthermore, a report of a dispute settlement panel or the Appellate Body convened under the DSU regarding the State law, or the law of any political subdivision thereof, is not considered as binding under U.S. national law.

This preemption system, in practice, does not secure to WTO Members that the concessions granted internationally will be effectively applied at the State level.

How does the United States intend to address this preemption mechanism so as to afford other WTO Members the opportunity to effectively challenge the consistency of sub-federal measures? Would the United States consider the possibility of addressing this issue by granting such an opportunity, for example, if a report adopted under the DSU declares a sub-federal measure inconsistent?

Merchandise Processing Fee

Could the United States explain the WTO consistency of levying a so-called Merchandise Processing Fee to pay for the cost of the newly enacted Patients Protection Act?

Would the United States Consider this fee as tariff considering that it is paid at the border, and if so how would this compromise the tariffs consolidated by the U.S before the WTO.

Would the United States agree that the proposed users fee, given the existing users fees, could change the established market conditions and give greater protection to domestic producers?

Subsidies

Considering the latest supplemental subsidies to US domestic agriculture recently signed into law. In the opinion of the U.S., what is the level of consistency with the WTO of this law, and does the U.S. intend to notify the WTO?

How can the United States explain the consistency of the fact that part of the above mentioned supplemental subsidies maybe be directed towards financing cases against trade partners including accusations of subsidizing?

On various occasions the United States has proposed to lowering subsidies in all sectors and has urged the European Community to do so itself. How can the United States justify the fact that year after year it increments its subsidies towards its domestic industry, concentrating a great part in the agricultural sector?

Tariffs

The application of specific duties affords greater protection to lower-value products, thereby making it possible to stabilize domestic prices against fluctuations in the international prices of those products. If a country intensively exports agricultural products and their price falls, that country, instead of being able to benefit from its greater competitiveness, finds that its exports to the United States have become more expensive, since it has to pay a specific duty whose ad valorem equivalent varies from approximately 40 to 232%, thus becoming an effective barrier to trade. Does the United States intend to stop applying specific duties within the near future?

JAPAN

(Report by the Government)

1. Liberalization of agricultural products (p. 5, para. 4, p. 6, para. 8 and p. 10, para. 31)

Food security should be achieved by adequately combining domestic production, import and stock holding in accordance with agricultural situations of each country, and we think there is a problem in the U.S.' idea that only liberalization of agricultural products can ensure food security. As the U.S. President Bush said, "Can you image a country that was unable to grow enough food to feed the people?" (excerpt from the transcript of the remarks by the President to future farmers of America on July 27th 2001 in Washinton D.C.), the U.S. recognises the importance of domestic production. Moreover, although the Report says, "trade liberalization supports the protection of the environment", agriculture has a multifunctionality including protection of the environment and this cannot be achieved only through trade liberalization.

2. Fisheries matters (p. 20, para. 85)

- (1) *The elimination of subsidies that contribute to over-fishing is shown as one of three important areas where trade liberalization holds particular promise. Could the United States inform us of fisheries subsidies which contribute to over-fishing within any situation regardless of its fisheries management?*
- (2) *Although this is not mentioned in the Report, the United States recently prohibited the landing of shark fins by foreign fishing boats, while commercial vessels are not prohibited to land shark fins. What is the reason for prohibiting the landing of shark fins by foreign fishing boats and treating them differently from other commercial vessels?*

(Report by the Secretariat)

1. RECENT ECONOMIC DEVELOPMENTS (p. 1, para. 1)

Economic growth in the United States decelerated as of the third quarter of 2000, and it is predicted that the deceleration of growth will reach as low as 1.5% for the whole of 2001. Negative indicators, such as the fall in stock prices, are also more apparent. *How does the Government of the United States view this situation? What kind of policy measures does the Government of the United States think should be adopted for supporting sustainable growth? How does the Government of the United States assess the economic impact of the tax reductions and expansionary monetary policy promoted by the Bush Administration?*

2. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY

(1) Trade promotion authority (p. 13, para. 2)

What, in the view of the Government of the United States, is the prospect of Trade Promotion Authority being approved by Congress? What kind of efforts have been made for achieving this goal?

(2) Electronic commerce (p. 15, para. 13)

What is the United States view on the imposition of customs duties on digital products delivered through the Internet?

(3) Agri-food trade negotiations

(a) New technologies (p. 14, para. 10)

What kinds of technologies are included in "new technologies" other than genetic modification as indicated in the first sentence of the same paragraph?

(b) Biotechnology-related food (pp. 14-15, para. 10)

Last year, the export of a genetically modified (GM) corn "Starlink", whose safety as food has not been approved in the United States, gave rise to public fear in many importing countries including Japan. The Government of the United States should take necessary measures for preventing exports of not only GM foods whose safety has not been approved in the United States, but also of GM foods/feeds for livestock which have not passed the safety assessment processes in importing countries.

(c) Cartagena Protocol (p. 15, paras. 10-11)

(i) Since the United States is the largest producer and exporter of GMOs in the world, its influence on international trade is quite significant, given the fact that it has not ratified the Cartagena Protocol. *Does the United States consider ratifying the Convention on Biological Diversity (CBD) and the Cartagena Protocol in the future? If not, why?*

(ii) In case the Cartagena Protocol does take effect without ratification of the United States, *how will the United States cope with the following issues concerning Article 24 on non-Parties?*

- *To conform with the advance informed agreement procedures (AIA) by the importing Parties based on the Protocol;*
- *To conclude bilateral or multilateral agreements with individual Parties; and*
- *To contribute appropriate information to the Biosafety Clearing-House (BCH) on living modified organisms released in, or moved into or out of, areas within the United States.*

(4) Trade measures and MEAs (p. 16, para. 16)

It is stated in the Report that the Government of the United States considers that WTO provisions are sufficient to accommodate trade restrictive measures contained in multilateral environmental agreements (MEAs). *What conditions does the Government of the United States consider necessary for trade restrictive measures contained in MEAs to be consistent with the WTO provisions? Please provide concrete examples of trade restrictive measures contained in MEAs that are considered to be consistent with the WTO provisions. Does the Government of the United States consider that relevant U.S. domestic laws fulfill such conditions?*

(5) Competition in the WTO (p. 17, para. 21)

It is our understanding that the United States has recently become more open towards the negotiations on competition policy. However, it is stated in the paragraph 21 of the Report that the United States "has also questioned whether the WTO was the appropriate institution in which to

initiate the development of rules on competition in a multilateral context at this time". *We would appreciate having the U.S. current position on the matter.*

(6) Labour standards and trade (pp. 17-18, paras. 22-25)

The California State Law (SB1888), which was amended in September 2000, prohibits the purchase of any foreign goods and services produced by using such labour as forced labour, or from the benefits of such labour as forced labour. These provisions target only foreign goods and services, and therefore are considered as constituting violation to Article 3 of the WTO Government Procurement Agreement (i.e. National Treatment clause). The Government of Japan requests that the Government of the United States takes appropriate measures in order to bring these provisions into consistency with the WTO Agreement.

The Law also obliges contractors to verify that foreign-made products furnished to the State are not produced with the use of such labour as forced labour. While the Smoot-Hawley Act of 1930 prohibits the import of products produced with the use of such labour as forced labour under penal sanctions, contractors are additionally obliged by the State law to verify after customs clearance that such labour has not been used. Such dual obligation has caused an excessive burden to foreign suppliers. *We would appreciate if the Government of the United States would explain the reason for this matter.*

(7) Softwood lumber dispute between the United States and Canada (p. 19, paras. 32, p. 35, para. 38 and p. 43, para. 63)

- (a) The United States. is continuing anti-dumping and countervailing duty investigation with respect to certain lumber products from Canada since April 2001. We have heard that the Canadian government requested a WTO consultation with the U.S. Department of Commerce regarding its preliminary decision of 19.31% countervailing duty against Canadian softwood lumber. *What are the consequences like?*
- (b) We are aware that the agreement between the United States and Canada whereby the Canadian government agreed to restrict the export of softwood lumbers to the United States expired last March. We regard this agreement as "export moderation" mentioned in Article 11.1(b) of the Agreement on Safeguards and request that any measures of this kind will not be reintroduced. *We would appreciate having the U.S. comment on this request.*

(8) Bilateral free trade agreements (p. 19, para. 32 and p. 35, para. 38)

- (a) *Please explain the U.S. position on the relationship between the multilateral trading system established by the WTO agreements and bilateral free trade agreements.*
- (b) *When does the Government of the United States expect the Congress to ratify the U.S.-Jordan FTA?*
- (c) *If the U.S.-Chile FTA is concluded, does it mean expansion of the NAFTA, seeing as there already exists a Canada-Chile FTA and a Mexico-Chile FTA? Please explain the U.S. position on the relationship between the U.S.-Chile FTA and the FTAA.*
- (d) According to Article 24 of the GATT, "a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories". Japan considers that, in the free trade agreements, the provisions on trade restrictive measures, such as safeguards and anti-dumping measures, should be applied without discrimination to the parties and the non-parties. *In this regard, please explain the*

U.S. view on how the provisions on the safeguards and anti-dumping measures, as parts of trade restrictive measures, should be treated in the free trade agreements?

(9) Investment

(a) "Exon-Florio" provision (p. 22, para. 47)

Transparency and predictability in government regulations are important factors for enterprises when making decisions on their investment. These factors are also pre-requisites in order for competitive enterprises to do their business in a fair environment. The Government of Japan has concern over the "Exon-Florio" Provision in terms of the legal stability of completed transactions as well as in terms of ensuring the due process. In the application of the "Exon-Florio" Provision, the Government of Japan requests the Government of the United States to refrain from expanding excessively the concept of "national security", and to ensure the maximum transparency and fairness in the entire process, i.e. from the notice to the CFIUS (Committee on Foreign Investment in the United States) up to the final decision by the President. We would appreciate the U.S. view on our comment.

(b) International investment policy (p. 22, para. 48)

Improvement of the climate for foreign direct investment should be promoted multilaterally as well as bilaterally. In this connection, it is important to include the negotiations on multilateral investment rules in the new round. It is our understanding that the United States has recently become open to the idea of multilateral investment rules. Please explain the current position of the United States.

(c) Bilateral investment agreement (p. 22, para. 49)

With regard to the 4 reports mentioned in Table II.1, including the U.S.-Japan Joint Report on Investment and the Joint Status Report on U.S.-Japan initiative on Deregulation and Competition Policy, these are simply compilations of voluntary measures taken respectively by the Governments of the United States and Japan and are not "agreements" as stated therein. Despite that the Government of Japan pointed out this same mistake in the previous U.S. Trade Policy Review meeting, it is regrettable that this year's Report continues to repeat the erroneous description. Japan's voluntary measures are applied on the basis of non-discriminatory treatment to competitive foreign goods and services and are completely different from the measures contained in the so-called bilateral investment agreements. The Government of Japan requests the USTR to rectify the description of its annual review reports as appropriate.

(10) Tariff

(a) Tariff rates of trucks (motor vehicles for the transport of goods) (p. 24, para. 1)

The United States imposes high tariff rates, such as 25%, on most trucks (HS 8704). In comparison with Japan, which sets its tariff rates at 0% on the same items, the U.S. figure remains considerably high. Japan would also like to know why the United States imposes tariff rates on trucks 10 times higher than on passenger vehicles (of which the bound rate is at 2.5%). According to the Minutes of the 1999 Trade Policy Review, the United States stated that it had initiated the necessary domestic procedures in its reply to a similar question. Japan would like to know the current situation of the above case, and further would like to request elimination of this tariff peak. Please provide the U.S. view on the matter.

(b) (p. 25, para. 5)

The Report says, “Sizeable tariff barriers tend to be concentrated mainly in agricultural, food, and tobacco products; tariffs reach ad-valorem or ad-valorem equivalent rates of 350% for tobacco, 164% for peanuts, and 132% for peanut butter (out-of-quota tariff rates).” *Could the United States provide the reason for maintaining such a high tariff on these products and does the United States have future plans to improve this?*

(c) (p. 25, para. 7)

The authorities of the United States stated that the current applied and bound rates are identical. It would, therefore, appear that the United States is in no hurry to complete the modification process of its Schedule for the purpose of introducing the HS96 changes. *What is the situation of negotiations with countries having made reservations on U.S. Schedule changes?*

(11) Tariff quotas (p. 26, paras. 8-12)

(a)

We hear that the United States is examining a bill to amend tariff lines and apply tariff quotas, in order to control the rapidly increased import of Milk Protein Concentrates (MPC) into the United States. We don't think this is coherent with the U.S. proposal, which insists on developing disciplines for importing countries in order not to administrate their TRQs for the purpose of hampering trade. *What does the United States think of this matter?*

(b) (para. 9)

The Report says, “In general, access to tariff quotas is provided on a first-come first-served basis. Exceptions include certain dairy products and sugar. Certain dairy products require import licences and for sugar, export certificates are issued.” *What is the reason for the exceptions provide regarding certain dairy products and sugar? Could the United States provide more concrete ways by which the TRQ is administrated for these products?*

(c) (para. 10)

It is pointed out that some quotas including beef, dairy product and peanuts were allocated to selected countries. *What are the standards for selecting these countries? Also, what is the past record as to the imports of these products?*

(d) (para. 12)

The Report says, “tariff quotas for products such as olives, dried cream, certain cotton articles, low-fat chocolate crumb, and mixed condiments and seasoning were not used at all or filled at very low levels.” *Is there any reason for this null or very low fill rate besides supply- demand conditions?*

(e)

What is a reason to maintain tariff quotas that were not used at all or filled with at very low levels, for example, olives, dried cream, certain cotton articles?

3. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Anti-dumping

(a) Anti-dumping measures (p. 32, paras. 24-26)

Anti-dumping measures, if abused, would harm sound international trade, and likely to increase protectionism in the world, including potential countermeasures by targeted exporting countries. The United States is one of the major users of anti-dumping measures. It has taken 243 anti-dumping measures, such as anti-dumping duties and price undertakings, as of the end of December 2000. There have been a number of cases brought against the United States concerning its anti-dumping measures or regulations under the WTO dispute settlement system. One of those is “Certain Hot-Rolled Steel Products from Japan”, and the other is “Anti-Dumping Act of 1916” which involved the U.S. anti-dumping law itself. In both cases, the United States measures or a law were found to be inconsistent with the WTO Agreements. Many other U.S. measures are also alleged to be in violation of WTO agreements and subject to review before the WTO. The Government of Japan requests that the United States implement immediately the recommendations and rulings of the DSB, and take anti-dumping measures fairly and consistently with its obligations under the WTO agreements. We would like to have reply from the United States to the above.

(b) Anti-Dumping Act of 1916 (p. 32, para. 24)

Japan and the EC claimed the Anti-Dumping Act of 1916 to be inconsistent with the WTO agreements, and the Reports of the Panel and the Appellate Body affirmed the position of Japan and the EC. Following the adoption of the reports by the DSB in September 2000, the Government of the United States requested Japan and the EC to extend “a reasonable period of time” for implementation, and, after consultations, both Japan and the EC accepted its extension under certain conditions. However, there still remain a number of lawsuits under the Act pending before the U.S. domestic courts, for which the defending companies are confronted with heavy legal costs. The Government of Japan requests, therefore, that the Government of the United States comply with the DSB recommendations immediately. Please explain the U.S. prospect of the implementation.

(c) Section 129(c)(i) of the Uruguay Round Agreement Act (p. 33, para. 26)

Japan currently participates as a third-party in the panel proceedings that examines the consistency of Section 129(c)(i) with the WTO Agreement, and would like to request the United States to clarify on the following points:

- (i) The wording of Section 129(c)(i) obliges the administering authority to apply the determinations concerning title VII of the Tariff Act of 1930 only on or after the dates specified under Section 129(c)(i) (A) and (B). *Has this obligation been followed by the administering authority without any exception?*
- (ii) *Is there any way that the administering authority can deviate from this obligation provided in this provision?*

(d) Byrd Amendment (p. 33, paras. 27-30)

Japan, together with the EC and seven other countries, has requested the establishment of a panel to examine the so-called Byrd Amendment. The Panel was established on August 23rd. Canada and Mexico have also requested establishment of a Panel, and was established on September 10th. Japan notes that even in the United States itself, government officials, including the former President of the United States and the former Trade Representative, have expressed concerns over the

adverse influence of this legislation. Japan believes that the Byrd Amendment should be repealed as soon as possible. Please explain the U.S. views on the Japan's comment.

(e) Certain hot-rolled steel products (p. 35, para. 37)

Japan brought a claim against the United States before the WTO dispute settlement system stating 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 of the Appellate Body generally supports Japan's arguments and concludes that DOC's methodology for calculating the anti-dumping margin, as well as USITC's methodology for determining injury are not in accordance with the WTO agreements. The Report was adopted by the DSB on August 23, 2001. The Government of Japan requests, therefore, the Government of the United States to comply promptly with the DSB recommendations, by amending the regulations concerned, as well as by immediately improving the methodologies used by the DOC and the USITC. *What is the U.S. position on the matter?*

(2) Countervailing duty (p. 38, para. 45)

According to the Report, in cases under countervailing duty investigation, suspension agreements are sometimes negotiated with the exporters of the exporting country and some of them take the form of voluntary limits on exports by those exporters. It is Japan's view that Article 18.1(b) of the Agreement on Subsidies and Countervailing Measures does not permit such voluntary limits for exports by Members. Please explain the U.S. view on this.

(3) Safeguards (p. 42, para. 60)

(a) Application among FTA members (pp. 40-42, paras. 53-60)

In past disputes concerning safeguard measures, including those cases where the United States has been a party, panels and the Appellate Body alike have found the non-application of safeguard measures among FTA members to be inconsistent with the WTO rules (e.g. the U.S. - Wheat Gluten case, or the Argentina – Footwear case). Bearing this in mind:

- (i) *does the United States intend to continue to include the non-application element in future FTAs as the United States has been actively pursuing the conclusion of FTAs on regional and bilateral basis? If so, how will it ensure WTO consistency of these non-application provisions?;*
- (ii) *para. 53 of the Report describes the criteria as to when the NAFTA countries are excluded from safeguard measures. In light of the Wheat-Gluten case, which found the discriminatory application of the U.S. safeguard measure as WTO-inconsistent, has the United States changed its safeguard investigation method or non-application criteria?*

(b) Injury determinations (pp. 40-42, paras. 53-60)

With regard to the causation requirement, the Appellate Body pointed out in the U.S. Lamb Meat case the necessity to separate and distinguish the injurious effects of the dumped imports from the injurious effects of other factors. This approach was reaffirmed by the Appellate Body in the U.S. – Anti-Dumping Measures on certain Hot-Rolled Steel Products case. Japan would expect that the United States takes into full account these WTO rulings in its future 201 cases, including the upcoming steel products' cases. Please explain the U.S. view on this point.

(c) Steel products (p. 42, para. 60)

In addition to the anti-dumping and countervailing duty measures, the USTR requested in June 2001 an investigation under Section 201 of the Trade Act of 1974 on a wide-range of steel products. Given the fact that 4 previous measures under Section 201 have been brought to the Dispute Settlement Body by WTO Members, extra care should be taken to ensure the WTO consistency of this investigation. Please explain the U.S. view on this. Furthermore, *how does the United States foresee treating products already subject to antidumping or countervailing duty measures?*

(4) Quantitative restrictions on imports (p. 42, para. 61)

It is said that the United States is maintaining bans on imports from certain countries for foreign policy purposes. *Could the United States provide the details of the bans (e.g. banned products and countries)?*

(5) Government procurement

(a) WTO Agreement on Government Procurement (GPA) (p. 43, para. 66)

The GPA is applied to only 37 States. *Is there a substantial difference between the 37 States and other states in their government procurement policies/practices?*

(b) Construction Industry Payment Protection Act (p. 44, para. 69)

Has the large amount of bond required by the Construction Industry Payment Protection Act increased the burden of main contractors? Considering that, in general, procuring entity's payment to main contractor is made on a monthly basis based on the progress of the work, in which case would the penal sum that is as high as 100 % of the contract price be necessary to protect sub-contractors and suppliers?

(c) The Buy American Act (p. 45, paras. 74-75)

(i) From the viewpoint of fully applying the principle of non-discriminatory treatment in government procurement, the Government of Japan requests the Government of the United States to abolish Buy American Act, which accords a favourable treatment to U.S. products, for the Federal Government procurement not covered by the GPA, in order to ensure equal business opportunities for both the United States and foreign enterprises. As for local government procurement, the Government of Japan requests the Government of the United States to take necessary measures as the Federal Government to ensure the principle of non-discriminatory treatment and equal business opportunities for both the U.S. and foreign enterprises.

The Government of Japan also requests the Government of the United States to abolish the provisions which require the use of U.S. products as a condition for receiving a grant from the Federal Government in such projects as mass transit and highway construction. The U.S. view on this matter would be appreciated.

(ii) *Does the Federal Government have a list showing all the Buy-In-State regulations enforced in some States? If so, has it been published? (p. xiv, para. 24)*

(6) Standards and technical regulations

(a) Meat and poultry (p. 47, para. 82)

The Report says, "Most products other than meat and poultry do not require determination of equivalence or an export certificate to enter the U.S." *Could the United States explain the reason why these measures are applied only for meat and poultry?*

(b) Standards required by private insurance companies (p. 47, para. 83)

Japan would like to know what kinds of standards are required by private insurance companies to qualify for product liability and health insurance, as well as to what kind of goods such standards apply? We would also like to know upon which laws, etc., these requirements are based.

(c) New National Standards Strategy (p. 47, para. 85)

Please explain the effects of the new National Standards Strategy, which started in September 2000, including that on the rate of the transposition of international standards into domestic standards.

(d) Organic products (p. 48, para. 86)

The Report says, "The Department of Agriculture has proposed new national standards for organic products, as well as rules for the labeling ("grading") of imported meat." *Could the United States explain the outline for these new standards and rules?*

(e) Sub-federal technical regulations (p. 48, para. 88)

As for sub-federal technical regulations, the Government of Japan requests the Government of the United States to take appropriate action, in accordance with Article 3 of the TBT Agreement, including notification of such regulations to the WTO.

(7) Sanitary and phytosanitary (SPS) measures (p. 49, para. 93)

Japan has regained FMD free status since 26th of September, 2000 by OIE.

We have already provided the report on the eradication of FMD and the on-site investigation conducted by USDA officers have been concluded, nevertheless we have not received the permission to re-export meat and meat products derived from cloven-hoofed animal to the United States. *Therefore, we would like to know when the ban for the export of the said items will be lifted.*

(8) Pelly Amendment (p. 51, para. 101)

Under the Pelly Amendment, the Government of the United States shall certify the fact that nationals of a foreign country are conducting fishing operations, which diminish the effectiveness of the international fishery conservation program, or are engaging in trade or takings, which diminish the effectiveness of any international program for endangered or threatened species. The Amendment, followed by the certification, allows the Government to use trade sanctions (import prohibition) against that foreign country to the extent that such prohibition is sanctioned by the GATT.

Last September, the Government of the United States certified against Japan's Whale Research Program. Although the Government of the United States announced last December that

they would not take any immediate trade sanctions at that time, they are still continuing to suggest the possibility of imposing of trade sanctions on Japan.

The Government of Japan considers that it is clearly against the principles of the WTO for one country to use such unilateral trade sanctions against another nation in order to achieve its own special objectives. The Government of Japan, therefore, requests the Government of the United States to restrain itself and to act in a careful manner with regard to this issue.

The Government of Japan also considers it inappropriate to certify against Japan's Whale Research Program under the Pelly Amendment seeing as this our program is based on Article VIII of the IWC and a scientific necessity.

(9) Export subsidies (p. 52, para. 104-106)

Although the funding level of export subsidies based on the Export Enhancement Programme (EEP) is decreasing, the Dairy Export Incentive Program (DEIP) is utilized actively as was previously. The United States says, "the stated purpose of the program is to enable the U.S. exporters to meet prices that are being subsidized by other governments into the world markets". *Does the United States consider that the program would act as a negative influence on the prices of agricultural products worldwide, since the government can grant export subsidies freely when exporting to specific countries?*

(10) Export credit guarantee (p. 53, paras. 107-110)

Japan is continuously concerned with this program's trade distorting effect, because it tends to make U.S. agricultural products advantageous while competing with other exporting countries. The Commodity Credit Corporation (CCC) collects claims in case of default. *Does the United States consider that this program comprises a characteristic similarly to the circumvention of export subsidies? It is also a serious problem when the program makes it possible to export specific agricultural products to selected markets, where financing resources are provided by the CCC, and also when enhancing a strategic export promotion.*

(11) Section 301 of the Trade Act of 1974 (p. 59, paras. 127-128)

(a) Although the Super 301 will expire at end of this year, Section 301 of the Trade Act of 1974 will, itself, remain in effect. Japan requests the United States to apply Section 301 in an appropriate manner in order to abide by its obligations set out in the WTO agreements, as per the findings of the Panel Report regarding the same matter. *What is the U.S. opinion?*

(b) Japan is concerned about the consistency of the so-called "Carousel" amendment with the WTO agreements, since it requires the Government of the United States to periodically revise the list of products subject to the suspension of WTO concessions, thereby affecting the stability and the predictability of trade. The amendment is a subject of the consultations between the U.S. and the EC, and Japan is carefully monitoring the development of these consultations. Please explain the U.S. view on this.

(12) 1995 measures by the Government of Japan and the Government of the United States regarding autos and auto parts (p. 60, para. 130)

The "Measures" mentioned herein are taken not only by the Japanese Government, but by each government respectively and are not international agreements. This fact should be accurately reflected in the Report.

The Japanese Government did not only remark that the “Measures” adopted in 1995 had outlived its significance, but also proposed last year an idea of establishing a new bilateral dialogue mechanism designed to better respond to today’s rapid advance of globalization and the development of information technology. When the discussion between Japan and the United States on the auto and auto parts issues is mentioned, the proposal made by the Japanese side should be described accurately.

(13) Export restrictions and controls (p. 60, paras. 131-133)

(a) As an example of export restrictions, the Report says “For example, exports of unprocessed timber originating from non-federal public lands in the western continental United States are prohibited.” It should be corrected to “For example, 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 United States are prohibited.”

Japan thinks that this measure is rather an export quantitative restriction for protecting domestic sawmillers as, first of all, protection of spotted owls must be done through regulating logging and not by export bans. Secondly, only export restrictions have been introduced, whereas no regulations have been established for the domestic transactions of logs. Moreover, the United States strongly requests its exports of timber products to Japan, therefore, Japan would like to request the United States to remedy this measure in accordance with the WTO Agreement once again as we requested at the last Trade Policy Review of the United States.

(b) The Report says "The U.S. maintains export restrictions and controls for (i) national security, (ii) and foreign policy reasons, (iii) or to prevent situations of short supply." Although we hear that agricultural products are not included in the “Control List” of restricted and controlled products, will the possibility of including these agricultural products in the “Control List” arise, if export restrictions and controls for (ii) or (iii) are undertaken?

For the trading of commodities such as agricultural products, international prices depend significantly on the actions taken by the exporting countries. If the agricultural products are subject to export restrictions and controls, the exporting countries are free to impose export restrictions and controls. This system raises not only a trade distorting effect, but also difficulty on food security, which impedes stable food supply to the importing countries.

(14) Sanctions Acts (pp. 62-63, paras. 134-138)

Sanction measures based on the Iran and Libya Sanctions Act of 1996 (ILSA) and the Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act) could constitute an extraterritorial application of domestic laws, which is not permissible under general international law, and may thus be considered as problematic in relation to the WTO Agreement. The Government of Japan requests the Government of the United States to be prudent when implementing these Acts in order to ensure consistency with international law. In particular, the Government of the United States should refrain from applying sanctions to companies from third countries.

Despite repeated appeals from many WTO members, including Japan, it is regrettable that the ILSA was renewed in August with such problems remaining unresolved. We strongly urge the Government of the United States to implement the Act with due prudence while, at the same time, maintaining consistency with international law. *What is the U.S. opinion on the above?*

(15) Domestic support of agricultural products

- (a) Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act) and its successor legislation (para. 147, p. 64)

In the debate of the successor legislation, resurrection of the Deficiency Payment System abolished by the FAIR Act is proposed by the Parliament. *How does the United States evaluate the "abolishment of the Deficiency Payment System" by the FAIR Act, which caused invocation of Emergency Farm Relief?*

- (b) Emergency farm relief policy (p. 67, para. 152)

The United States has implemented a farm relief policy four times. *What is the political background as well as the direction aimed by this emergency farm relief policy.*

- (c) Emergency market loss payments (p. 67, para. 153)

In the U.S. notification to the WTO on domestic support measures for the period of October 1998-September 1999, the Emergency Market Loss Payments (ELPs) is notified as a non-product-specific AMS. *Could the United States explain the meaning of non-product-specificity?*

- (d) Domestic support measures of dairy products (p. 68, para. 157)

The United States proposes in the comprehensive proposal (G/AG/NG/W/15) that domestic supports should be non-exemptive, if they have none or least distortive effects on trade or production. On the other hand, the United States took a measure to increase the purchasing price of butter last May. *How does the United States consider the coherence between this measure and the U.S. proposal on domestic support?*

- (e) Two-tier price support program of peanuts (p. 69, para. 158)

Since this program provides a high support rate on peanuts for domestic food use and a much lower rate for peanuts grown for export or for crushing, we consider it similar to the special milk system in Canada, which was ruled adversely by the WTO Panel and Appellate Body. *Could the United States show us where it stands in this issue?*

(16) Competition policies

- (a) Competition laws (pp. 70-71, paras. 165-168)

Japan has already abolished or limited the scope of numerous exemptions from the application of its Anti-monopoly Act. Likewise, Japan would like to urge the United States to reduce the number of exemptions applied under the U.S. Anti-trust laws, both at federal and state levels. Please explain the rationale of the exemptions applied in the area of agriculture, referred to in para. 166.

- (b) Enforcement of competition law (pp. 71-74, paras. 169-176)

It is the understanding of Japan that the policy of the U.S. Department of Justice applies U.S. Anti-trust laws to even those practices performed outside the United States. However, it is more than likely that the application, or any related enforcement activities, can be considered as an extra-territorial application of the U.S. Anti-trust laws, or even as infringement of the sovereignty, of a foreign country, both of which are not permitted according to international law. Japan hopes,

therefore, that the U.S. will enforce its Anti-trust laws with both deliberation and care. Japan is interested in knowing how successful the United States is in the collecting fines that are imposed on foreign companies or foreign nationals. *What is the percentage of the fines imposed that are actually collected? Does the United States have any intention of taking action to collect unpaid fines?*

(17) Intellectual property rights

(a) Bilateral and regional intellectual property agreements (p. 74, para. 179)

The Government of 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) in the Framework Talks. However, the United States has never entirely implemented the introduction of an early publication system without exceptions, nor the improvement of re-examination. Japan strongly requests the United States to implement these items completely and promptly. Please explain the U.S. view on this.

(b) "First-to-Invent" system (p. 75, para. 180)

The United States is the only country to use the "first-to-invent" system, which, with regard to the patent system, makes the United States rather unique. This system, however, lacks certainty and predictability in the sense that a patentee's status can be overturned by the appearance of the prior inventor afterwards. This will provide extra burden to inventors who are 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 United States to adopt the first-to-file system and also to improve all aspects of the patent systems that restrict trade in the United States. This is due to the necessity of maintaining a transparent and stable system, as well as reducing the burdens borne by users through the difference in systems. Please explain the U.S. view on this.

(c) "Submarine patents" (p. 75, para. 180)

The early publication system in the United States provides exceptions whereby patent applications filed in the United States, but not filed overseas, or matters included in a patent application filed in the United States, but not included in the corresponding application filed overseas, cannot be laid open at the request of the applicant. It is, therefore, possible for a patent application to become a "Submarine Patent". Without knowing whether or not another application is already on file for the same invention, this system creates serious social and economic loss due to investments in R&D.

Any pending applications, already filed with the USPTO at the time of the amendment of the law, continue to benefit from the former patent terms (i.e. a 17-year patent term from the date of the patent grant). There is, therefore, still the possibility that additional submarine patents occur.

Japan strongly requests the United States to implement fully and promptly what has already been confirmed under the Framework Talks: i.e. by abolishing the exceptions from the early U.S. publication system, and by publishing all applications except those not pending, or those not able to be laid open, after a period of 18 months from the earliest filing date. Please explain the U.S. view on this.

(d) Extension of the patent term (p. 75, paras. 180 and 182)

USPTO provides that patent protection may be extended to compensate for any amount of processing delays and USPTO-caused delays. This extended patent term is guaranteed for at least a 17-year patent term. The Government of Japan would like to point out that there is a possibility of deliberate delays being caused, and that under the U.S. current conditions of not having an adequate early publication system, there would be other opportunities of creating a submarine patent through the extension of patent terms. Please explain the U.S. view on this.

(e) Priority in the Paris Convention (In re Hilmer) (p. 75, para. 181)

The "Hilmer" doctrine exists in the United States. Foreign applicants usually file applications, first in their own country and subsequently in the United States, 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 United States, even during the priority period, and thereby may suffer disadvantage.

This is 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 of personal possession". This is also inconsistent with Article 2.1 of the TRIPS Agreement which requires compliance with Article 4 of the Paris Convention. Please explain the U.S. view on this.

(f) Unity of invention (p. 76, para. 185)

The Government of Japan understands that the USPTO has been implementing 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. The Government of Japan wishes to repeat its request to the Government of the United States to adopt the same criterion for its unity of invention as that of Japan and Europe. The U.S. view on the matter would be appreciated.

(g) Special 301 (p. 77, para. 189 and pp. 82-83, paras. 210-213)

There is serious concern over Special 301 provisions, regarding its compatibility with the WTO agreements, as pointed out previously in 3.(11). Please comment on this.

(h) Trademarks (Section 211 of the U.S. Omnibus Appropriations Act of 1988) (p. 79, para. 198)

The panel report [WT/DS/76/R] circulated in August this year points out that Section 211(a)(2) of the U.S. Omnibus Appropriations Act of 1988 is not consistent with Article 42 of the TRIPS Agreement. There is concern over this Section 211 of the U.S. Omnibus Appropriations Act of 1988, involving the registration, renewal or enforcement in the U.S. of a trade mark, trade names and commercial names associated with confiscated assets in Cuba, regarding its compatibility with the provisions of National Treatment and the Most Favored Nation of the TRIPS Agreement. Thus, the Government of Japan would like to ask the Government of the United States for prompt improvement and to provide its view on the matter. Please explain the U.S. view on this.

(i) Protection of the rights of authors, performers, etc (p.80, para.200)

(i) Japan requests the United States to take the necessary procedures in order to accede as soon as possible to the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961), which has already been ratified and acceded to by many developed countries, including Japan and the member states of the EC, in order to improve the protection of performers' rights, etc.

Japan would also like to request the United States to bring into conformity its protection of the moral rights of authors with the obligations set out under the Berne Convention for the Protection of Literary and Artistic Works, to which the United States became a party in 1989. Please explain the U.S. view on the matter.

(ii) The right of "making available" is independently stipulated in Art. 8 of WCT and Art. 10. and Art. 14 of WPPT. Even though the Government of the United States has ratified these two treaties, there is no independent provision for the right in the U.S. Copyright Act. *How does the Government of the United States protect "the right of making available" in the U.S. Copyright Act? Please identify the relevant provisions in the U.S. Copyright Act and explain why those provisions are sufficient enough to meet the obligations under WCT & WPPT.*

(iii) According to Art. 14 of the TRIPS Agreement and Art. 6 of WPPT, performers are accorded the exclusive right of authorization for their live performances. However, Art. 1101 of the U.S. Copyright Act does not provide any protection for live performances other than musical ones, whereas it might violate Art. 14 of the TRIPS Agreement and Art. 6 of WPPT. If the Government of the United States believe that the U.S. Copyright Act meets the obligations under the TRIPS Agreement and WPPT, please identify the relevant provisions in the U.S. Copyright Act and *explain why those provisions are sufficient enough.*

(iv) The moral rights of authors and performers are protected under Art. 6bis. of the Bern Convention and Art. 5 of WPPT. However, Art. 106 A of the U.S. Copyright Act does not provide any protection for the moral rights other than those of authors of a "work of visual art", which might violate Art. 6bis. of Berne Convention and Art. 5 of WPPT. If the Government of the United States believes that it satisfies the obligations under Berne Convention and WPPT, please identify the relevant provisions in the U.S. Copyright Act and other laws, if any, and explain why those provisions are sufficient enough.

(v) *How does the U.S. Copyright Act protect the rights of broadcasting organizations, since the Government of the United States has the obligation to ensure the protection of these rights according to Art. 14 of the TRIPS Agreement? Please identify the relevant provisions in the Copyright Act and other laws, if any, and explain why those provisions are sufficient enough to meet the obligation under Art. 14 of the TRIPS Agreement.*

(vi) *Does the U.S. Copyright Act provide the exclusive right of rental to the authors of "cinematographic works", since the Government of the United States has the obligation to ensure the protection of these rights according to Art. 11 of the TRIPS Agreement and Art. 7 of WCT? If the Government of the United States believes that "the widespread copying of the works materially impairing the exclusive right of reproduction" will not take place even without the right of rental, please explain why.*

(j) U.S. Copyright Act Section 110(5) (Implementation of DS160) (p. 81, para. 208)

Regarding the Panel of United States-Section 110(5) of the U.S. Copyright Act (DS160), the United States must implement the recommendations of the Dispute Settlement Body by the end of this year, or on the date when the current session of the U.S. Congress adjourns, whichever comes earlier. We note that the article in question has not yet been amended. As the U.S. accepted the recommendations, it should amend, as soon as possible, the related article of the Copyright Law in order to be in compliance with the obligations under the TRIPS Agreement. Please explain the planned schedule for revising the Copyright Law.

(k) Section 337 of the Tariff Act of 1930 (pp. 83-84, paras. 214-216)

Import restriction on goods which violate intellectual property rights may be justified under Article 20 (b) of the GATT with certain conditions. At the time of the GATT, however, a panel report was adopted (November, 1989) wherein it was mentioned that Section 337 of the Tariff Act of 1930 cannot be considered as an exception under the GATT. Following this adoption, there were some improvements on Section 337 due to the amendments implemented through the UR Agreement Act of 1994. However, today there still exists the possibility of unfair treatment on imported goods. As of January, 2000, the EC requested consultations on the matter in the WTO, and Japan and Canada joined as third parties. This dispute is still in the consultation phase and the Government of Japan will continue to closely monitor the process.

Please explain the recent practice regarding the period of time between the initiation by the USITC of an investigation and its completion. What is the U.S. view on this matter, taking into consideration its conformity with the WTO agreements, such as GATT Art. 3(4) and TRIPS Art. 41(2)?

4. DEVELOPMENTS IN SELECTED SECTORS

(1) Steel (pp. 91-92, paras. 27-30)

Protectionist bills in the steel sector have been introduced in the U.S. Congress which include a bill that aims to relax the criteria to impose safeguard measures and a bill that calls for import quotas programs. Also in June, 2001, Bush administration initiated investigation based on Section 201 at the request of the U.S. steel industry. Apparently, there is an increased tendency toward protectionism in the U.S. steel sector. The Government of Japan considers the multilateral initiative by President Bush aiming at reducing inefficient excessive capacities and market distorted subsidies in the steel industries to be useful. However, in light of the fact that the true issue lies in improving competitiveness of the U.S. steel industry, we are of the view that what is important is to proceed with structural reforms rather than depend on protectionist measures. We expect that U.S. authorities will understand this situation accurately and pursue their Section 201 investigation in a fair and impartial manner, without any political distortions and consistent with the WTO Agreement on Safeguards. We would appreciate the U.S. views on this matter.

(2) Maritime-transportation

(a) The Merchant Maritime Act of 1920 (pp. 93 and 96, paras. 31 and 43)

The Merchant Maritime Act of 1920 prescribes that ships for coastal shipping services are required to be built in the United States. Although this issue was dealt with in the review process pursuant to the paragraph 3.(b) of the GATT 1994, Japan regrets that sufficient explanation by the United States, on whether the conditions which created the need for the exemption still prevail, was

not provided, and would expect an appropriate review next time. Please provide the U.S. view on this point.

(b) Maritime transport and related service (p. 94, para. 36)

(i) Japan is of the view that before resuming the Negotiations on Maritime Transport, any retaliatory action taken by the FMC can become consistent with the DSU. Please provide the U.S. view on this point.

(ii) Regarding FMC's sanctions in 1997 that imposed fees against Japanese ocean carriers on the grounds of allegations with regard to Japan's port practices, Japan would like to stress again its view that the sanctions violate the MFN and national treatment clause of the Treaty of Friendship, Commerce and Navigation between the U.S. and Japan. The sanctions were suspended in 1997, and withdrawn in May 1999 as a result of bilateral talks. The description in this paragraph is not appropriate, because it can be construed as "pending".

Despite the situation of the port transport sector in Japan remarkably improved², there still remains the "action" by the revised order dated 9 August 2001 that requires the United States, Japan and third countries' carriers to file reports.

In this regard, Japan would like to point out that the revised order imposes submission of documents beyond the carriers' responsibilities such as copies of any cabinet order, ministerial ordinance or notification implementing or interpreting the revised Port Transportation Business Law.

We would like to seek the U.S. views on this matter.

(c) Cargo preference measure (p. 95, para. 40)

At the last review, the United States replied "take note" to the comment by Japan regarding the abolishment of the Cargo Preference Measures and the disclosure of information concerning cargoes subject to cargo preference requirements and those actually carried on US-flag vessels. Please give details on progress of the U.S. consideration on the abolishment of the above Measures, as well as on the disclosure of the information concerned.

(d) MSP (pp. 95-96, paras. 41-42)

(i) There are 3 classes of shipping company: "trusts", who own U.S.-flag vessels; "U.S.-owned ship-management companies", who charter those vessels; and "foreign-owned carriers", such as APL, Maersk-Sea-Land, who time-charter those vessels. *Which of these 3 classes can directly benefit from MSP subsidies?*

In this regard, please indicate to which class the following words used in this report belong.

- 1) "U.S. shipping companies" on 5th line in paragraph 36, p. 94
- 2) "U.S. companies" on 3rd line in paragraph 37, p. 94
- 3) "U.S.-flag vessel operators" on 2nd line in paragraph 42, p. 96

² The improved situation is as follows:

As for "the previous consultation system", its procedure has been facilitated significantly since shipping companies and port transporters reached an agreement in October 1997.

Japan amended the Port Transportation Business Law and abolished the economic needs test requirement at the major 12 ports (Chiba, Tokyo, Yokohama, Kawasaki, Shimizu, Nagoya, Yokkaichi, Osaka, Kobe, Shimonoseki, Kitakyushu and Hakata) last year, as a result there actually appeared to be new participations in the port transport business.

Port terminal services have steadily progressed toward 24-hour/day operation.

(ii) Please provide the results so far of vessels commandeered under the MSP scheme. It appears that the MSP has the same effect as direct support measures for maritime industries, since despite aiming at national securities, subsidies are supplied for the time corresponding to ordinal commercial operation and consequently distort free and fair competition. Please provide the U.S. view on this point. (p. 96, para. 42).

(e) Foreign vessels for cruises (p. 96, para. 44)

The paragraph mentions that, “[r]ecently, a number of legislative proposals have been made for a relaxation of restrictions on the use of foreign vessels for cruises in the United States”. Please explain the prospect of enacting such legislations.

(f) Longshore work by crew (p. 96, para. 45)

Please provide:

- 1) the list of countries permitted to carry out longshore work by the crews of vessels registered in and owned by the nationals of those some countries on the basis of reciprocity;
- 2) the names of organization referred to in the wording “[t]he authorities” in the first line.

(3) Financial services

(a) Discriminatory measures against foreign banks in obtaining the status of financial holding companies (p. 103, para. 75)

In order for banks to enter securities business through affiliates, it is necessary for such banks to obtain the status of Financial Holding Companies (FHCs), based on the Gramm-Leach-Bliley-Act enacted in November 1999. In this regard, whereas U.S. banks may "automatically" become FHCs as long as they meet certain requirements, it is provided that 'foreign banks are required to meet the same level of necessary capital requirement as U.S. banks affiliated to the FHCs'. Japan thinks that this gives too much discretion to the FRB in making the 'well capitalized' judgement. Therefore, Japan requests the United States to clarify the criteria of FRB's judgement regarding this 'well-capitalized' requirement.

Also, when making judgements on capital adequacy, the FRB seems to consider whether or not foreign banks rely on public funds for their capital. However, this practice does not conform to the principle of the Basle Accord, which does not discriminate capital according to the nature of the shareholders. Accordingly, Japan requests the United States to eliminate unfavourable treatment of foreign banks' branches on the ground of reliance on public funds. *What are the U.S. views on these points?*

(b) Discriminatory measures against foreign banks in raising funds within the United States (p. 104, para. 79)

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. This causes a substantial opportunity cost in complying with the requirement, 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 'fund collateral posting by foreign banks' be abolished, or if not possible, qualifications for eligible

collateral should be expanded to include, for example, standard loan assets in order to provide flexibility for foreign banks. *What are the U.S. views on these points?*

(c) Regulations under the Investment Company Act of 1940 (p. 105, para. 88)

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 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 by their business practice, are recognized as 'investment companies' under the Act, and therefore required to comply with relevant regulations. Although there are exemption clauses in the Act, Article 3 (b) 2 that stipulates companies applying for such exemption should be declared by the SEC to be primarily engaged in other businesses, this gives a room for discretion by the SEC. Japan therefore requests the United States to clarify and relax the criteria of 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?*

(d) Different insurance regulatory regimes in States (pp. 106-107, paras. 92-97)

Since regimes of insurance supervision and regulation differ from one State to another, in order for insurance companies to engage in inter-state business, they need to apply for a license in each State, as well as to comply with supervisory regulations set by each State's authorities. While Japan takes note of the NAIC's effort to achieve uniformity among States' regulatory regimes, it requests further deregulation regarding inter-state insurance business. *What are the U.S. views on this point?*

(e) Discriminatory measures against foreign insurers

Japan requests the elimination of discriminatory regulations as mentioned below. *What are the U.S. views on these points?*

(i) Requirements for foreign insurers to trust funds or to submit a letter of credit issued by primary insurers in reinsurance business. (p. 108, para. 100)

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 L/C by the original underwriter. Japan requests the elimination of this system, since it discriminates against foreign insurers.

(ii) Compulsory trust of assets for foreign insurers (p. 108, para. 99)

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 investment with flexibility, and they thus may miss investment opportunities, Japan requests the elimination of this system, since it discriminates against foreign insurers.

(iii) Tax on cross-border insurance transaction (p. 110, para. 102)

When a foreign insurer undertakes to cover risks within the United States, it is liable to a federal tax whose rate is 4% of premiums for non-life insurance and 1% of premiums for life insurance and reinsurance. Japan requests the elimination of this system, since it discriminates against foreign insurers.

- (iv) Citizenship requirement for foreign insurance companies (p. 108, paras. 88-89)

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.

(4) Telecommunications services

- (a) Harmonisation of state-level regulations (p. 111, para. 107)

Telecommunications services are regulated at both federal and state level. Japan is concerned that each State not only has different procedures, but also has different terms and conditions for certification and that applicants must adapt themselves to the regulations at federal level, as well as those of each State, where they wish to provide services. Such differences have caused serious burdens upon those operators. The Government of the United States should, therefore, resolve the current situation, which could constitute a market entry barrier for carriers wishing to enter the U.S. telecommunications market, and should take a positive position towards harmonising the state-level regulations in response to the trend of liberalisation and internationalisation of the telecommunications business. *Does the Government of the United States have a plan to standardise application forms, and contents and forms for licenses' report? If so, please explain its outline and current status.*

- (b) Implementation of Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (p. 111, para. 108)

The Government of the United States should refrain from adopting the approach of exercising pressure upon trading partners by using the threat of resorting to unilateral sanctions under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Please comment on this point.

- (c) Regulations on "dominant carriers" (p. 111, para. 109)

A foreign carrier providing international telecommunications services, which has "market power" in its own market, is more regulated than other carriers. 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. Applied according to U.S. domestic law, these regulations, which have no basis under the WTO Agreement, may be inconsistent and should therefore be revised. *What is the U.S. view on the matter?*

- (d) Certification and licensing criteria for foreign carriers' entry into the U.S. telecommunications market (p. 112, para. 110)

Regarding the certification and licensing criteria for foreign carriers' entry into the U.S. telecommunications market, the Government of the United States retains discretionary criteria concerning the "public interest" factors, such as "trade concerns" and "foreign policy", and a "very high risk to competition". The existence of such criteria is regarded by foreign carriers, including those from Japan, as a concern lasting into the future. The Government of Japan considers that the criteria of "trade concerns" and "foreign policy" should be abolished as these could be invoked for refusing the issuance of a certification or license for reasons irrelevant to the telecommunications policy. Please explain the position of the Government of the United States in this regard. The Government of Japan further considers that the Government of the United States should clarify and publish some guidelines under which the criteria of a "very high risk to competition" would be invoked. *Is there any plan to do so? If not, then why?*

(e) Restriction of foreign investment on the licensing of radio stations (p. 112, para. 111)

The Government of Japan abolished the restriction of foreign investment on the licensing of radio stations for the purpose of conducting telecommunications activities, and thus, has been requesting the Government of the United States to take the same action on the restriction of foreign investment stipulated in Section 310 of the Communications Act 1934. In addition, the Fourth Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy states that, "[t]he United States Government will continue a dialogue on this issue with the Government of Japan". On the other hand, however, the Report states that, "[t]here are no plans to abolish the restrictions on direct ownership of a common carrier radio license". Please explain the position of the Government of the United States with regard to these restrictions. In particular, please explain the grounds for maintaining the restrictions on direct investment, despite the fact that indirect investment itself has been fully liberalised.

(f) Inter-state access charge

Regarding the inter-state access charge, the Government of Japan has been requesting the Government of the United States to establish the legal foundation for the LRIC model adopted in the U.S. Please provide information on the progress in this regard. In addition, the Government of Japan recognises that different methods, such as the "Bill and Keep" method, are being considered. Please also explain about any progress regarding such consideration.

(6) Professional services

(a) Accounting services regulation (p. 117, paras. 134-135)

(i) We understand that the SEC intends to accept financial statements from foreign private issuers which are already prepared by using the International Accounting Standards for the purpose of raising funds in the United States. Please confirm our understanding.

(ii) *What level of reconciliation would the SEC require when permitting the use of IAS in the United States?*

(iii) *What is the schedule for accepting IAS in the United States?*

(b) Acceptance of Foreign Legal Consultants (FLC) (p. 118, paras. 141-142)

(i) It is stated in the para.141 that "nine jurisdictions require in-state offices for licensing, and 16 jurisdictions maintain in-state or U.S. residency requirements," please specify those states which maintain such regulations.

(ii) In the United States, 23 States, as well as the District of Columbia, have regulations regarding foreign legal consultants (FLC). The period of practising experience which is required to be eligible as a FLC under these regulations varies from 3 to 5 years among those States and the District. For the purpose of promoting international business, all States should accept foreign qualified lawyers as FLCs and should reduce the period of the practising experience requirement down to three years. It would be appreciated if the Government of the United States would explain the results of its consultations with the American Bar Association regarding the acceptance of foreign qualified lawyers.

5. MISCELLANEOUS

(1) Re-export control

The U.S. Export Administration Regulations mandate firms located outside the U.S. to obtain authorisation from the Government of the United States when it is necessary to re-export certain goods. Such a requirement apparently constitutes an extraterritorial application of the U.S. laws and thus should be abolished. Furthermore, until its abolishment, the following transitional measures should be taken into consideration:

- (i) in light of the fact it is difficult that for non-U.S. companies to obtain information on re-export regulations, the United States should strengthen its efforts to publicise such information, and in case where a company cannot be expected to know a specific requirement, it must not be held liable;
- (ii) the United States should publicise as a guideline the methodology used by the DOC when calculating the ratio of software and technology incorporated in a product;
- (iii) companies should be allowed to resort to a de minimus level, according to their own judgement, by making use of the above guidelines.

(2) Metric system (SI Unit)

Considering the impact of the U.S. market on the world, the Government of Japan strongly requests that the metric system (the SI Unit), which is a global standard, be adopted more broadly by the Government of the United States and American businesses. We note that the United States did indeed commit itself to this issue in the 2nd annual report of the SII (Structural Impediments Initiative) in 1992. We would appreciate receiving the U.S. view on this matter.

HONG KONG, CHINA

Textiles (WT/TPR/S/88, pp. 87-88, paras. 10-13 & Table IV.2)

We note with great disappointment that insofar as the US ATC integration programme is concerned, phasing out of the bulk of textile quotas has been left until 2005. In the case of HKC, as much as 84% of the value of our imports into the U.S. in 2000 will not be liberalized until 2005. Where the U.S. integration programme may have complied with the letter of the ATC, it has fallen far short of honouring its spirit. Being the world's leading importer of textiles and clothing, does the U.S. Government have any plan to further liberalize the textile and clothing sector before 2005 by making use of the flexibility available under Articles 2.10 and 2.15 of the ATC? *If so, what are the details?*

To prepare for the eventual integration of the textiles and clothing sector into GATT 1994, Article 1.5 of the Agreement on Textiles and Clothing provides that members should allow for continuous autonomous industrial adjustment and increased competition in their markets. *Can the U.S. share with members the measures it has put in place to implement this particular provision, particularly in view of the fact that the vast majority of its textiles and clothing imports will not be liberalised until 2005?*

Up till now, the U.S. Government has yet to announce the details of the outstanding implementation arrangements, including the visa requirement for integrated products. Bearing in mind that commencement of Stage 3 integration is only three months down the road, *could the U.S. Government announce such arrangements, including confirming that the visa arrangement for products integrated under Stage 3 will be eliminated with effect from 2002, as was the case with Stage 2?*

Anti-Dumping (WT/TPR/S/88, p. 34, para. 32)

We note that the number of anti-dumping investigations initiated per year by the U.S. has increased from an average of 37 cases in 1987-1997 to an average of 42 cases in 1998-2000. *What is the U.S.' comment on this rising trend? Does the U.S. envisage this trend to continue in the coming years? If so, what might be the reasons?*

We also observe that of those anti-dumping investigations initiated in 1998-2000 for which a determination had been made, almost 40% resulted in no provisional measure being imposed, either because of a finding of no injury by the International Trade Commission or of a preliminary finding of no dumping by the International Trade Administration. This is a cause for concern as investigations without clear and objective justifications would result in trade harassment to exporters and hamper free trade. *What are the measures in place to prevent unjustified investigations from launching? Given the high portion of investigations not resulting in provisional measures, would the U.S. consider further measures to ensure that utmost caution is exercised before investigations are launched, so as to prevent them from being abused?*

Some independent studies in the U.S. (re. Brink Lindsey of CATO) pointed out that the number of AD measures in force against U.S. goods during 1996-2000 was 41% higher than that during 1991-95. The number of AD cases have indeed increased quite dramatically after the conclusion of the UR Agreements. *What is the assessment by the U.S. on the impact of such surge of AD actions on its industries? Is there a case calling for tightening of relevant disciplines so as to prevent potential gain from trade liberalization be further hampered?*

Standards and Technical Regulations (WT/TPR/S/88, p. 48, para. 88)

We note that technical regulations may be established at sub-federal level. However, no notification of such measures has been received by the WTO. We consider that sub-federal technical requirements could also have substantial effect on other WTO Members. *We would like to know whether the U.S. has, for transparency purpose, any plan to notify such proposed measures to WTO if they do not follow international standards or if international standards are yet to be developed.*

Regional Trade Agreements (WT/TPR/G/88, p. 11, para. 40)

We note that the U.S. sees that regional agreements can become models for future multilateral liberalization in new areas, for example, environment and labour standards etc. However, it appears that there is still controversy within the U.S., notably in the U.S. Congress, over the inclusion of these new areas in regional initiatives/agreements. A prominent example is the U.S.-Jordan Free Trade Agreement, which is yet to be ratified by the U.S. Congress. *We would like to know the U.S.' latest stance on these new areas in the context of its future regional initiatives/agreements.*

Competition Policy (WT/TPR/S/88, pp. 73-74, para. 176)

We note that the Department of Justice regularly expresses its view on the appropriateness of antitrust exemptions, and seeks the elimination of antitrust exemptions where warranted. We are interested to know more details in this regard, including the reasons for maintaining the existing antitrust exemptions as well as the amount and nature of the antitrust exemptions that have been eliminated in recent years.

Intellectual Property Rights (WT/TPR/S/88, p. 74, para. 178)

We note that under U.S. legislation, parallel imports of goods containing protected intellectual property, in the form of patents, copyrights, or industrial designs, may be prevented entry by the right holder of the goods and stopped at the border by Customs. We would appreciate details of the circumstances under which parallel-imported goods would be barred from importation and the reasons behind.

Agriculture (WT/TPR/G/88, p. 9, para. 30)

It is noted that the U.S. proposals for the mandated negotiations on Agriculture include the progressive elimination of export subsidies over a fixed period of time. We are interested in the current level of export subsidies the U.S. provides for its agricultural sector, and further details on the pace and timeframe of its proposal in the agricultural negotiations to eliminate export subsidies.

Maritime Transport (WT/TPR/S/88, p. 96, para. 43)

We are concerned that the Jones Act limits cargo and domestic passenger service between ports in the U.S. to ships that are registered under the U.S. flag, U.S. crewed, and built in the U.S. That poses a major barrier for market access to the U.S. market. *Could the U.S. explain whether the conditions which created the need for such protection still prevail; and if so, provide the details of such conditions?*

Air Transport Services (WT/TPR/88, p. 99, para. 57)

We note that the U.S. maintains MFN exemptions with regard to the selling and marketing of air transportation services as well as the operation and regulation of computer reservation system (CRS). *Would the U.S. withdraw its exemptions upon expiry of 10 years in accordance with the relevant GATS provisions?*

Financial Services (WT/TPR/S/88, p. 104, para. 83)

We note that there is an uneven penetration of foreign banking branches into the U.S. market. It is mentioned in the report that some States restrict the issuance of licences for branches or agency and some restrict the opening of representative offices by foreign banks. We are interested to know more information of those restrictions.

(WT/TPR/S/88, p. 105, para. 88)

The Investment Company Act of 1940 prohibits foreign investment companies from publicly offering their shares in the U.S. unless an order is so issued by the Securities and Exchange Commission after looking into the circumstances of individual cases. That seems to have posed obstacles for market access of foreign investment funds. As a result, few foreign funds are registered in the U.S. *Would the U.S. review the procedures and requirement for the registration of foreign funds?*

(WT/TPR/S/88, p. 108, para. 98)

Foreign direct investment can enter the U.S. insurance market either by acquisition of a licensed insurance company or by establishing a subsidiary or a branch. However, it is noted that quite a number of States disallow the establishment of a subsidiary or branch by non-US insurers. *We would like to know whether there is any plan to remove these impediments.*

Professional Services (WT/TPR/S/88, pp. 115-116, paras. 125-129)

The absence of uniform regulatory regimes and requirements among States constitutes barriers to the entry of foreign services suppliers. We would like to know if the U.S. has any plan to ensure harmonisation of regulations among States in this respect.

REPUBLIC OF KOREA**II. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY****p. 16 (para. 15)**

Paragraph 15 of page 16 of the Secretariat's report indicates that the U.S. has demanded the reduction of environmentally harmful and trade distorting fisheries subsidies. However, the recent reports of OECD and FAO did not find any objective evidences on the relationship between fisheries subsidies and fisheries resources. *What is the basis for the U.S. to argue that fisheries subsidies are environmentally harmful?*

*OECD(2000): Government Financial Transfers and Resource Sustainability

FAO(2001): Report on the Export Consultation on Economic Incentives and Responsible Fisheries

III. TRADE POLICIES AND PRACTICES BY MEASURE**p. 24 (para. 3-4)**

Excluding the ad valorem equivalents (AVEs), the US's average applied MFN rate was 4.6% in 2000, but the average of AVEs was estimated at 11.5% and specific and compound duties accounted for 75 of the 100 highest rates in the same year. *What are the objectives pursued in maintaining the specific and compound duties? Does the U.S. have any plan to reduce the number of products subject to those duties?*

p. 25 (Table III.1)

Table III.1 shows that items subject to tariff peaks with tariffs over 15% account for 7.0% in 2000. This level is higher than that of other developed countries. *What is the U.S. plan to reduce items subject to tariff peaks in the future?*

p. 25 (para. 6)

In the U.S., tariff escalation, which arises when tariffs increase with the degree of processing, is particularly noticeable in the food, beverages, tobacco, textiles, clothing and leather industries. *Does the U.S. Government intend to ease or eliminate these tariff-rate structures?*

p. 31 (paras. 20-21)

The Harbor Maintenance Tax (HMT), introduced in 1986, was levied by the U.S. Customs Service on the value of imports and domestic cargo shipped through U.S. ports until 1998, when the U.S. Supreme Court ruled that the portion of the HMT levied on exported cargo violated the Export Clause of the Constitution.

a) The continuous levying of the HMT on imports, while domestic cargo has been exempted, could appear to be a violation of GATT 1994 Article III (National Treatment). *Does the U.S. have any plan to eliminate the HMT on imports?*

b) The U.S. Administration is considering replacing the remaining portions of the HMT as well as the previous export portion with a cost-based Harbor Maintenance Fee. Korea is concerned that this new fee could violate GATT 1994 Article VIII 1.(a) as it could be charged for purposes unrelated to the actual use of port services such as the development of new ports. *Can the U.S. provide a detailed explanation on the planned Harbor Maintenance Fee?*

pp. 33-34 (paras. 27-30)

The U.S. enacted the Continued Dumping and Subsidy Offset Act of 2000 in October 2000. The Act, also known as the Byrd Amendment, includes provisions for allocating the proceeds of anti-dumping and countervailing duty orders to the domestic producers who are petitioners.

This allocation constitutes a violation of the Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures because it provides additional remedy not allowed under the said WTO Agreements. *What is the U.S. view on this matter?*

It is our deep concern that such a measure would lead to proliferation of petitions for anti-dumping and countervailing measures and the disruption of the multilateral trading system. *Does the U.S. Government have any intention to amend the Act to make it consistent with WTO Agreements?*

p. 42 (para. 60)

In June 2001, the USTR requested the USITC to initiate an investigation of injuries to the steel industry under Section 201 of the 1974 Trade Act. Following this request, the USITC initiated a Steel Global Safeguard Investigation.

a) It appears that the current difficulties faced by the U.S. steel industry are not caused by imports from foreign countries, but mainly by structural problems experienced by this industry. In this sense, it would seem necessary for the U.S. Government to review first the restructuring of the U.S. steel industry instead of introducing safeguard measures. *What is the U.S. view on this matter?*

b) Safeguard measures taken under Section 201 of the Trade Act would most likely encourage rise of protectionism in world trade and adversely affect the launch of a New Round at the Doha Ministerial Conference. Bearing this in mind, *does the U.S. have any intention to consider not taking safeguard measures?*

Government Procurement

p. 43 (para. 65)

No statistical information had been provided up to May 2001 by the United States to the WTO under Article XIX:5 of GPA.

a) *What is the main reason not to provide information?*

b) *What percentage of the total amount of the U.S. government procurement is open to GPA signatories? What percentage of U.S. government procurement do foreign companies represent?*

pp. 44-45 (para. 71)

The U.S. GSA maintains a negative list of suppliers, domestic and foreign, which must be excluded from federal procurement. *What are the criteria used when drawing this list? How can listed suppliers be excluded from the list?*

Articles 210.21 (d)(2)(i) and (ii) of the National School Lunch Act, which were revised in 1998 but are not explicitly mentioned in the Secretariat's report, stipulate that "the Department of Agriculture shall require that a school food authority purchase, to maximum extent practicable, domestic commodities or products." This language contrasts with the language used in the pre-1998 NSLA which simply stipulated that DOA should provide only domestic agricultural products to those school authorities. Such procurement of domestic agricultural products by DOA for those programmes is exempted from national treatment obligations of GPA, as mentioned in Annex 1.1 of the U.S. GPA schedule. However, if the U.S. Government obliges school food authorities to buy only domestic commodities, this raises question as to whether the new NSLA violates GATT 1994 Article III. *What is the U.S. view on this matter?*

pp. 48-49 (para. 89)

In order to reduce technical trade barriers, the United States considers that national treatment could be achieved through cooperative arrangements between national conformity assessment bodies, instead of focusing on mutual recognition agreements (MRAs). *What does "cooperative arrangements between national conformity assessment bodies" mean in detail, and what is the difference with mutual recognition agreement?*

p. 49 (para. 90)

Although the U.S. Government permitted the import of Korean mandarin oranges in August 1995, five major producing states (California, Louisiana, Texas, Florida and Arizona) still prohibit the import of this product due to concerns related to the citrus canker disease. However, the phytosanitary concerns were effectively addressed through a risk assessment process completed in June 2001. Therefore, the U.S. needs to revise federal regulation (7 CFR 319.28) as soon as possible so that the aforementioned states open their markets to Korean mandarin oranges. *Korea would appreciate it if the U.S. could express its views on this issue.*

p. 82 (para. 211)

The USTR places trading partners on the Special 301 Priority Watch List in case these countries are considered "to deny adequate and effective protection of intellectual property rights" or "fair and equitable market access to U.S. artists and industries that rely upon intellectual property protection". *What is the definition of "adequate and effective" and "fair and equitable"? Does the U.S. have any objective criteria? Couldn't the U.S., by using such classification, run the risk of being too arbitrary?*

IV. DEVELOPMENT IN SELECTED SECTORS

p. 93 (para. 31)

The Jones Act prohibits the commercial use of foreign-built ships on domestic routes. The U.S. argues that such protection is needed to maintain a naval capacity for national security reasons. However, a number of WTO Members express doubts whether such a rationale is still valid. *Does the U.S. plan to review the Jones Act?*

p. 95 (para. 40)

The U.S. maintains cargo preference requirements which provide substantial support to the U.S. maritime industry. The government-generated cargoes, military cargoes, cargoes generated by Eximbank loans and the Alaskan crude oil "must be carried on U.S. flag-vessels, unless a waiver is granted by MARAD". This U.S. cargo preference system is not consistent with the principles of free

and fair competition, and, in particular, the principle of national treatment embodied in GATS Article XVII. Considering these concerns, *does the U.S. intend to eliminate this preference system?*

p. 103 (para. 77)

Paragraph 77 of page 103 of the Secretariat's report says that: "U.S. branches of foreign banks are involved primarily in wholesale banking, and seldom in retail banking; this may reflect the fact that, with very limited exceptions, no foreign bank branch or agency may accept or maintain retail deposits of less than US\$100,000."

a) *What are the detailed requirements to accept retail deposits of less than US\$100,000 by a foreign bank branch in the U.S.?*

b) *Is there any plan to ease or eliminate the restraint for foreign bank branches in banking services?*

EUROPEAN UNION

Report by the Government (WT/TPR/G/88)

I. THE UNITED STATES IN THE MULTILATERAL SYSTEM

(para. 4) The Report states that "Agricultural export subsidies impose especially unfair burdens on farmers in the poorest countries." *Could the U.S. please explain the continued use of export enhancing instruments, such as export credits, P.L. 480 and the EEP, in the light of such a statement and in the light of the comprehensive framework proposal submitted to the WTO Committee on Agriculture?*

II. THE UNITED STATES ECONOMIC AND TRADE ENVIRONMENT

(para. 16) The Report states that it is implementing its UR commitments on time and in full. *Could the U.S. please elaborate on the delays in notifying the domestic support levels for 1998 to the WTO Secretariat?*

III. TRADE POLICY DEVELOPMENTS, 1999-2001

(1) WTO AGREEMENTS AND INITIATIVES

(ii) Built-in-Agenda Negotiations in Agriculture and Services

(para. 30) The Report states that the U.S. comprehensive framework proposal "sets out clear, attainable goals for far-reaching, ambitious reforms". In the light of the continued need for additional subsidies for U.S. farmers and exporters, and the discussion on which U.S. policies should be classified as Amber Box, *is the U.S. ready to stand by proposals which would seem particularly difficult for its own agricultural production base?*

(para. 31) The U.S. proposes to eliminate the current three classifications of domestic support and replace them by trade distorting and non-trade distorting support. However, it is clear that the 1996 Farm Bill, combined with almost assured annual emergency payments, has led to surplus production in some cases. This has led to increased government use of export measures. These would also include food aid programs, whereby the aid consists of commodities rather than financial aid to buy the necessary commodities on the world market. In fact, disposing of surplus stocks is a stated objective of U.S. food aid. Aside from the implied need for Blue Box policies, this unintended effect

of surplus stocks on world markets caused by current farm legislation should be taken into account. *Is the U.S. preparing a new Farm Bill that takes the effects on international trade of domestic support fully into account? Are countercyclical payments also viewed as having an impact on international trade?*

(2) REGIONAL INITIATIVES

Free Trade Area of the Americas (FTAA)

(paras. 44, 45) *Could the Government please explain its views on the relationship between the ongoing FTAA negotiations and a New Round of WTO negotiations?*

Asia Pacific Economic Partnership (APEC)

(para. 47) *Could the Government inform what will be the impact of the APEC work programme on trade in services on GATS negotiations?*

The Caribbean Basin Initiative (CBI) and the AGOA

(para. 60) The Report states that "The United States intends to request any WTO waivers which may be necessary for the enhanced benefits of the CBTPA." *Can the U.S. specify its intentions in this regard? What is the situation with regard to the AGOA (paras. 52-58), where no reference is made to any waiver requests?*

(3) BILATERAL INITIATIVES

(paras. 64, 66) *To what extent do the bilateral FTA negotiations with Chile and Singapore address trade in services? What are the U.S. objectives?*

(5) LEGISLATIVE AGENDA

(para. 74) *What are the services aspects of the bilateral Trade Agreements with Jordan, Viet Nam and Laos?*

(7) ENVIRONMENTAL ISSUES

(para. 83) *How does the U.S. see the role of international, as opposed to purely national, environmental policies in complementing international trade?*

(para. 85) The EU shares the U.S.' belief that it is important to identify and pursue area where trade liberalisation holds particular promise for yielding both trade and environmental benefits. An area which the EU considers worth examining in this respect is that of energy subsidies, including pricing and taxation systems which effectively amount to subsidisation by avoiding that the true environmental costs of energy use are reflected in the price of energy. *To what extent does the U.S. share this view and is open to examine and review its own policies in this area?*

(para. 87) The U.S. has stated that it will conduct an environmental review of the negotiations on services and agriculture; *why has the U.S. chosen to carry out only an environmental review as opposed to a broader review taking into account all three pillars of sustainable development?*

Secretariat Report (WT/TPR/S/88)

SUMMARY OBSERVATIONS

(para. 35) *Could the U.S. please provide more information on the liberalisation of services they have undertaken beyond U.S. commitments under the GATS?*

(para. 41) The Report states that the U.S. Federal system reserves the governance of professions to individual U.S. States. *Does this principle not also apply to other services sectors (see U.S. GATS schedules)? Which measures in the sense of Article 1 para 3 of the GATS will the U.S. take for ongoing GATS negotiations to ensure the observance and improvement of U.S. obligations and commitments by regional and local governments and authorities and non-governmental bodies within U.S. territory?*

I. RECENT ECONOMIC DEVELOPMENTS

(4) BALANCE OF PAYMENTS

(ii) Trade in services

(para. 29) *With regard to Table AI.5, would it be possible to have a breakdown of Business, professional, and technical services?*

(paras. 31-33) *Could the U.S. please provide some more complete analysis on the development of their trade through commercial presence, in particular on the main sectors on the import side?*

(iii) Foreign direct investment

(paras. 34, 35) *Could the U.S. provide some more detailed information on the shares of services in outbound and inbound U.S. FDI, distribution by countries and sectors, and their reasons?*

II. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY

(4) INVESTMENT POLICIES

(i) Foreign direct investment

(para. 46) *Could the U.S. give some more information on the rationale for its restrictions on foreign ownership in domestic air and maritime transportation, and several activities in the energy sector (e.g. oil and gas pipelines), leases to develop mineral resources on federal lands, telecommunication services, and primary dealers in financial services, as well as restrictions at the State level in insurance. Are there foreign ownership restrictions in other services sectors? Are there any policies to address such investment and trade restrictions, including in a cross-sectoral fashion? And what are the other existing restrictions to foreign ownership in the non-services sectors, i.e. in agricultural and manufacturing industries. In this regard, it would be relevant to know what are the particular restricting measures adopted, at the sub-federal level, by each State.*

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Tariffs and other charges affecting imports

Under the Information Technology Agreement, a complete elimination of tariffs for information technology products was envisaged by the year 2000. Despite this, optical fibres and tubes for computer monitors are still subjected to tariffs. *Could the U.S. please indicate when it*

intends to include these information technology products within the scope of the Information Technology Agreement?

(b) MFN tariff rates

(para. 5) The Report concludes that "Sizeable tariff barriers tend to be concentrated in a few 'sensitive' sectors, which are often also of particular interest to exporters from developing countries." *Could the U.S. please indicate to what extent it intends to address the further liberalisation of sensitive sectors in the New Round of Trade negotiations? Also, could the U.S. clarify the extent to which it grants its duty-and quota-free access for products from least-developed countries and further measures which may be envisaged to implement this commitment?*

(c) Tariff quotas

(para. 8) The division of quotas for certain cheeses into Tokyo Round quantities and Uruguay Round quantities, complicates license applications by traders, and should be eliminated. A single quota for each cheese group would be more transparent, comprehensible and accessible (and is particularly needed for the NSPF (not specifically provided for) group). *Could the U.S. confirm that it will introduce such a system and take notice of the April 2001 study by the USDA's Economic Research Service which identified inefficiencies in current quota administration?*

(ii) Anti-dumping, countervailing and safeguards actions

(paras. 31-49) We note that the Secretariat report places much emphasis on the use of anti-dumping measures by the U.S. *Could the U.S. please indicate the stage of the investigation at which suspension agreements were negotiated and in particular whether this was before or after injury/causation had been established?*

(iv) Government procurement

(para. 65) *Could the U.S. please confirm whether or not any special conditions are offered to small businesses, as implied by the Preference Programme referred to in the Federal Procurement Report?*

(a) Institutional and legal framework

(para. 68) The Burma/Massachusetts dispute in the WTO has lapsed. Nevertheless, the EC remains concerned about the wider issue of sub-federal selective purchasing measures, which continue to exist. *What measures is the U.S. preparing to ensure that Supreme Court judgement on Burma/Massachusetts case is being respected, and what consultation is going on with sub-federal entities in relation to both the GPA review and the transparency exercise?*

(para. 69) A number of changes to the Federal Acquisition Regulation (FAR) have been introduced since 1999 related to the bidding process. *Could the U.S. provide the WTO Secretariat with more details?*

New legislation also includes the Construction Industry Payment Protection Act of 1999. *Could the U.S. authorities explain how it might affect procurement?*

(para. 71) Federal government agencies may use positive list of U.S. suppliers that include also potential EU suppliers. *On the grounds of which documents or certifications can EU companies be included in this positive list?*

What are the criteria used by the General Services Administration (GSA) to draw up a negative list of non eligible suppliers? What are the information sources used to exclude non U.S. suppliers in general and EU companies in particular.

(para. 74) The Buy American Act (BAA) and other similar rules cover a number of discriminatory measures which apply to government-funded purchases. These exceptions have trade distorting effects on a free and efficient market, reducing the opportunities for EU exports, but also discouraging US bidders from using European products or services. *Is the U.S. prepared to review and roll back "Buy American" restrictions in the context of further negotiations?*

(para. 78) The PRO-Net is an interesting tool for tendering opportunities. *Is the Small Business Administration (SBA) intending to open this register to small foreign companies?*

(para. 81) The U.S. maintains sanctions against some EU member states under Title VII of the 1988 Omnibus Trade and Competitiveness Act. The sanctions were imposed following the adoption of the EC's "Utilities Directive" in 1993 on the grounds that it discriminated against US suppliers. Now that the EC telecoms sector has been liberalised (the Directive is to be amended accordingly), *what is the rationale for continuing these sanctions? Could the United States indicate when it will lift them? As soon as the US takes steps to repeal the sanctions, the EC will lift its own countermeasures.*

(v) Standards, technical regulations and sanitary requirements

(a) Standards and technical regulations

In many areas state and local authorities are free to set their own technical regulations, even when federal regulations exist. This leads in some cases to a very complicated regulatory environment. At the same time the National Technology Transfer and Advancement Act (NTTAA) of 1995 aims at promoting the use of voluntary standards by federal agencies and to co-ordinate their standards activities. *Therefore, firstly, we would be interested to know if the U.S. is considering extending the NTTAA to state and local authorities, and if not, what co-ordination activities do take place to ensure that Article 3 of WTO/TBT Agreement is implemented? Secondly, does the NTTAA require federal agencies to review international standards when developing regulations? If not, how is the application of Article 2(4) of the WTO/TBT Agreement ensured by federal agencies? And thirdly, if a federal agency does not examine an existing international standard as a basis for a technical regulation, would this constitute an infringement of the Administrative Procedures Act, with regard to failure to consider reasonable alternatives or failure to explain reasons for rejecting them?*

In certain sectors, for example pressure vessels and in relation to building codes, private sector standards bodies basically develop the technical regulations which are used by state and local authorities in their regulations. *Could the U.S. please explain how transparency and public comment is ensured since the Administrative Procedures Act does not apply to state and local authorities?*

Electrical and electronic equipment amounts to 6% of total EU export to the U.S. However, this trade is impeded by obstacles such as U.S. standards diverging from the international standard (IEC) and onerous conformity assessment requirements. Although the Occupational Safety and Health Administration (OSHA) regulations (29 CFR 1910) do not explicitly rule out international standards as a basis for the testing and certification to be done by NRTLs, so far only U.S. standards (UL and ASTM standards mostly) are accepted by OSHA. In addition, the Annex on Electrical Safety to the EU-U.S. Mutual Recognition Agreement (MRA), negotiated in accordance with Article 6 Of the WTO/TBT Agreement, is not yet implemented correctly on the U.S. side. Under the MRA, European designated laboratories should certify equipment according to U.S. regulations. However, OSHA continues to deny European authorities the right to designate European laboratories to operate under the Annex on Electrical Safety. The behaviour of this Agency renders void the signature of the MRA

by the US Government. 1) *Has OSHA examined the technical content of relevant ISO and IEC standards to ensure that they, or their relevant parts, are not an appropriate or effective means of fulfilling the legitimate objectives set in US law? If not, how does OSHA, as a central government body, intend to ensure that Article 2(4) of the WTO/TBT Agreement is adhered to in terms of its regulations?* 2) *Can the U.S. give any indication that it will follow the practice adopted by most other countries in the world with regard to reverting to suppliers self-declaration instead of third party certification for electrical and electronic products?* 3) *Will the U.S. also confirm that it will comply fully with the provisions of the MRA?*

The EU has previously asserted that U.S. track record in implementing ISO and IEC standard is poor. Previous questions from other WTO Members have related to the rate of U.S. transposition of international standards as national standards. The U.S. has responded that the U.S. Government did not collect comprehensive data on the number of standards in existence and that there is no data that would support the assertion of a poor transposition rate. *We would like to know what data exists to support a high transposition rate of ISO and IEC standards as U.S. national standards? Does ANSI and/or its accredited standards development organisation have such data and what are the results?*

(para. 85) The Secretariat report states that ANSI has developed a “National Standards Strategy for the United States” and that this new strategy could increase the rate of transposition of ISO and IEC standards in the U.S. However, the transposition of ISO and IEC standards and the withdrawal of conflicting national standards seems to play a subordinate or even non-existing role in the strategy. The strategy paper itself states in its strategic vision that for only some technology sectors ISO and IEC are the preferred organisations within which to achieve one global standard. *Could the Government inform us what commitments and/or obligations, if any, do the standards bodies accredited by ANSI and ANSI itself have to transpose ISO and IEC standards as U.S. national standards and withdraw conflicting national standards, in particular when the U.S. has actively participated in their development? Furthermore, please indicate for which sectors are ISO and IEC the preferred organisations? And why are ISO and IEC not suitable for other sectors?*

(para. 89) The Secretariat Report states that in relation to standards the U.S. conformity assessment system largely rests on supplier’s self declaration. However, most of the larger standards organisations (UL, ASTM, ASME etc.) provide third party product certification and marking schemes for a large number of sectors as well. It seems that these schemes have a very large impact on market access almost to the point of constituting de facto technical regulations. Even state and local authorities will refer not only to the standards of these organisations but also to their approvals and/or markings as a prerequisite for approval, use and/or installation. *Could the U.S. please indicate us the sectors covered by “voluntary” third party marking schemes? And inform to what extent and in which sectors federal, state and local authorities rely on private certification and marking schemes in relation to their regulations?*

(b) Sanitary and phytosanitary (SPS) measures

Procedures exist at both at Federal and State level, for the approval of wine labels. Names and descriptive material that may pass off U.S. wine as possessing characteristics or qualities of EU wine are often approved, undermining the reputation of the EU product and displacing potential sales. *Can the U.S. give assurances that the approval procedures will be improved so that this will not occur in the future?*

(para. 91) The "Code of Federal Regulations of 1996, Title 7, Subtitle B, Ch.III, §319-56-2r" provide for a pre-clearance inspection programme of apples and pears with the aim of guaranteeing, prior to shipment, that consignments are free from certain specified insect pests and from “other insect pests that do not exist in the U.S. or that are not widespread in the U.S.” Operating on the basis of an open list of unspecified pests is not scientific and is contrary to the spirit of transparency as provided for in

the International Plant Protection Convention and to the requirement of pest risk analysis and transparency laid down in the WTO Sanitary and Phytosanitary Agreement (SPS). The system increases costs and has had a negative effect on EU exports of apples and pears to the U.S. *We would like to know if the U.S. has intentions to re-evaluate the procedure with a mind to following more closely the International Plant Protection Convention and the WTO SPS?*

In addition, the EU is concerned about some specific market access issues not referred to in the report. *Could the U.S. therefore please further elaborate on the following:*

Registration, documentation and customs procedures

The invoice requirements for exporting certain products to the U.S. far exceed normal customs declaration and tariff procedures and are unnecessary since U.S. Customs can demand all relevant supplementary documents and information during clearance. This practice is costly and acts as a significant barrier to small and new competitors, particularly those in diversified high-value and small quantity markets.

As U.S. Customs refuses to recognise the EC as a country of origin, EU firms are forced to incur additional expense by providing supplementary documentation and following further procedures.

Customs formalities for imports of textiles, clothing and footwear to the U.S. require the provision of particularly detailed information which in some cases include confidential processing methods. These requirements lead to additional costs. Much of this information would appear to be irrelevant for customs or statistical purposes.

The liquidation period presently stands at 210 days which, according to importers, may be extended for the most insignificant of reasons. This is particularly cumbersome for articles of apparel such as fashion items that must be sold within two to three months and be marketed immediately. As a result, the retailer is often unable to re-deliver the goods upon request by U.S. Customs and is therefore liable to an excessive penalty of 100% of the value of the goods.

State level impediment to trade

Some States still persist in having rules that: prevent cross-state retail sales of wines and spirits; prohibit EU exporters from distributing, rebottling, or retailing their own wine. These measures are a severe impediment to the free circulation of alcoholic beverages originating from the time of prohibition.

Wine originating from the EU cannot be imported until the labelling is approved by the Bureau of Alcohol and Firearms, for which a fee is charged. It may be argued that cost recovery justifies the ATF fee but there can be no excuse for the subsequent fees imposed on a state level. Furthermore, U.S. wine sold in its state of origin does not encounter the ATF fee.

The Merchandise Processing Fee (MPF) is levied on all imported merchandise (with certain exceptions) including that entered under Schedule 8, Special Classifications, of the Tariff Schedules of the U.S. As of 1 January 1995, this fee amounts to 0.21% *ad valorem* on formal entries with a maximum of US\$485. The MPF was originally set to expire in 1990 but is currently set to run until 30 September 2003. We are concerned that additional amendments would be made extending the time beyond this date.

The Luxury Tax is an excise tax imposed on cars valued above an arbitrary threshold, currently around US\$36,000. The tax has a higher incidence on imported cars than on U.S. produced

cars; the EU has a total market share of only 6% but bears nearly 70% of revenue generated by the tax. The EU would appreciate it if the US could confirm that this tax will be eliminated as planned in 2003.

Quotas

Each year, the U.S. fixes the total allowable level of foreign fishing (TALFF) and accordingly makes allocations to foreign fishing fleets. Mackerel migrating off the East coast is the only stock currently identified as being in surplus in the U.S. Exclusive Economic Zone. However, the U.S. authorities have set a zero TALFF since 1990 for this stock, following pressure from its domestic industry. The EU believes that this line neither corresponds to the provisions and intentions of the Magnuson-Stevens Fishery Conservation and Management Act or to the provisions of Article 62 of the UN Convention on the Law of the Sea.

(2) EXPORT MEASURES

Are there any measures or programmes specifically designed to support U.S. services exports, or is information available to what extent general export measures benefit services exports?

(i) Measures related to agri-food exporters

(a) Export subsidies

(para. 105) *Could the U.S. clarify the purpose of its export subsidy regime which operates for certain grains and rice? Whilst the stated purpose of the regime is to “enable U.S. exporters to meet prices that are being subsidised by other governments into the world market”, para. 102 notes the central objective of U.S. trade policy is to “open markets to U.S. exporters” to which end export assistance measures are utilised.*

(para. 106) The EU is concerned to note that the latest WTO notification by the U.S. shows values for export subsidies and subsidised export volumes exceeding those specified in the U.S. Schedule of WTO commitments for dairy products. *What is the justification for U.S. export subsidies and subsidised export volumes exceeding those specified in the US schedule of WTO commitments for dairy products?*

(b) Export finance, insurance, and guarantees

(para. 108) *Does the U.S. intend to share its estimates of total budgetary outlays for 1990-2000 under subsidised export credits and guarantee programs with the Secretariat?*

(para. 110) Other forms of export enhancements are the use of credit facilities which have been recognised as trade distorting. Discussions in the OECD are ongoing with a view to establishing an acceptable Agreement on the use of credits as an export enhancement tool. U.S. suggest that the use of export credits can be beneficial in that importing countries might otherwise lack financial “liquidity”. However, in the recent OECD report “An Analysis of Officially Supported Export Credits in Agriculture” it is suggested that export credits might actually create demand under certain circumstances. It notes in particular that “the U.S. export credits are calculated to be almost twice as distorting on a per unit basis as any other countries’ and, given the USA’s relatively large programme, account for the majority of the distortions in world markets caused by officially supported export credits.”

(c) Food aid

(para. 111) The report notes that the U.S. is the largest food aid supplier in the world and that food aid volumes are “negatively correlated” with world cereals prices, i.e. when prices are high, food aid shipments go down. Part of the stated purpose of the U.S. food aid programme is to “stabilise U.S. farm incomes by disposing of surplus stock.” In effect therefore, the use of food aid could be construed as another form of subsidy.

(v) Export restrictions and controls

(para. 137) Title III of the Helms-Burton Act allows U.S. citizens to file lawsuits for damages against foreign companies investing in confiscated U.S. (including Cuban-American) property in Cuba. Title IV requires the U.S. Administration to refuse entry to the U.S. to the key executives and shareholders of such companies. The EU is of the view that these measures are contrary to US obligations under the WTO Agreements, in particular the GATT (General Agreement on Tariffs and Trade) and GATS (General Agreement on Trade in Services). Recently, the U.S. suspended Title III for an additional six months but its commitment to grant a waiver on Title IV has not yet been honoured. *Does the U.S. intend to introduce a permanent solution to this problem?*

(para. 138) The U.S. has recently extended the provisions of the Iran and Libya Sanctions Act (ILSA) for another period of five years. *Could the U.S. give any indication that the EC's objections to the U.S. Congress in response to this extension will be considered seriously and give any indication as to the likelihood of the extension being withdrawn or reduced?*

(para. 138) The Iran Non-proliferation Act, 2000 provides for discretionary sanctions against foreign companies that transfer to Iran goods, services and technology listed under the international export control regimes, as well as any other item prohibited for export to Iran under U.S. export control regulations, as potentially contributing to the development of weapons of mass destruction. The EC sees the adoption of this Act as a sign of failure to comply with the U.S. commitment to resist the passage of extraterritorial sanction legislation. *Will the U.S. confirm that the promise made by President Clinton (to work with Congress in order to seek to rationalise the reporting requirements on transfers deemed legal under applicable foreign laws and consistent with the multilateral export control regimes) will be honoured under the current administration?*

(3) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

(i) Government support to business

(b) Assistance to the agri-food sector

(para. 162) Risk management policy: It is said that these insurance programs have been notified to the WTO as Amber Box, under *de minimis* provisions. *Could the U.S. please specify whether this includes the crop insurance premiums as well, or just the coverage against non-catastrophic events such as price declines?*

IV. DEVELOPMENTS IN SELECTED SECTORS

(3) THE STEEL INDUSTRY

(paras. 27-30) *Given the importance of the steel industry in U.S. trade policy, the EU would like to have seen discussion of a wider variety of factors that may contribute to the industry's problems. For example, whilst imports are emphasised as the main cause of difficulties, other factors such as lack of cost competitiveness have not been mentioned.*

(5) MARITIME TRANSPORTS AND RELATED SERVICES

(i) International shipping services

(para. 40) *Could the U.S. please give updated figures concerning the value/volume of the international cargo carried out under each of the cargo preference instruments mentioned?*

(paras. 43-44) No foreign-built vessel can be documented and registered for dredging, towing or salvaging in the U.S. despite the fact that part of the U.S. fleet needs renewing and many U.S. ports are in need of dredging. *Could the U.S. confirm whether there are any initiatives to relax these restrictions?*

(para. 48) Progress on the U.S. Administration's efforts to obtain implementing legislation for the OECD Shipbuilding Agreement is unclear. *Could the U.S. give an indication of how close it is to achieving this?*

(6) AIR TRANSPORT SERVICES

(i) Recent developments

(para. 52) It is stated in the report that, by including beyond rights (or the "fifth freedom"), the Open Skies agreements have "greatly enhanced" market access for U.S. carriers and their foreign counterparts in the geographic areas covered. *How many foreign carriers are currently taking advantage of their rights under such agreements to fly fifth freedom flights in between the U.S. and other Open Skies countries, which countries are these airlines from and which routes do they operate?*

(para. 53) In the context of the "multilateral" Open Skies agreement, the U.S. has sought to maintain a tight control on foreign investments by U.S. carriers – *why is it not considered beneficial or appropriate for U.S. companies to make international investments in the aviation sector in the same way that they do in other industries?*

(para. 53) *Under what exact circumstances would the U.S. Government make use of the provision in the "multilateral" Open Skies agreement that allows it to cancel the traffic rights of an airline based in one of the parties, but controlled by American nationals?*

(para. 56) Given that in several EU/U.S. transatlantic markets, the market share of carriers, in particular U.S. carriers, from outside the principle alliance appears to have fallen considerably, *is there evidence to show that the combination of an Open Skies agreement and anti-trust immunity for an alliance maintains enough choice in those markets for time sensitive passengers?*

(ii) Further liberalization of air transport services

(para. 57) *Are there any plans to bring air transport into the NAFTA agreement and thereby adopt a more liberal regime on a regional basis?*

(para. 57) There appears to be little envisaged by the US in the way of further liberalisation of air transport services. Given the general benefits of liberalisation and increased competition in all service industries, in particular for consumers, *does the U.S. see any scope at all for further liberalising measures providing for market access by foreign carriers into the U.S. market or relaxation of foreign investment rules?*

(iii) Conditions affecting foreign competition

(a) Foreign ownership and cabotage

(para. 62) The U.S. rules on "wet" leasing prevent any lease of non-U.S. registered aircraft by U.S. carriers. No Community-registered aircraft with Community flight crew can thus be leased to U.S. companies. *Does the U.S. Administration intend to eliminate this restriction as a result of further GATS negotiations?*

(b) Airport and other services

(para. 68) *There is concern on the FAA re-authorisation bill (AIR-21) of April 2000, which directs the Administrator to establish an aircraft repair and maintenance advisory panel, and also directs the Secretary of Transportation to request information from foreign air carriers in order to assess balance of trade issues. How is the U.S. Administration going to ensure that this bill does not conflict with the GATS-specific commitments undertaken by the U.S. regarding aircraft repair and maintenance services?*

(7) FINANCIAL SERVICES

(ii) Banking services

Interstate branching by de novo establishment is still limited (in 17 States). *Could the U.S. please inform if other States plan to allow it? What are the reasons for their reluctance? Does the federal State contemplate to do anything to prompt them to do so?*

Many banks are concerned over the requirement of the Office of the Comptroller of the currency and of some State banking supervisors to maintain 'asset pledges' in addition to the paid-up capital they maintain in their home country. *Do the U.S. have any plans to ensure the elimination of this requirement?*

(iii) Security services

The market is de facto almost closed for foreign investment funds willing to offer their shares. *What is the rationale of this policy? Is any remedy contemplated?*

There is concern over the impracticability to establish a branch in the U.S. by foreign securities firms in broker-dealer activities, since registration as a broker-dealer means that the foreign firm establishing the branch has to register and become itself subject to SEC regulations. *Is there anything contemplated to eliminate this barrier?*

A market access restriction not mentioned in the Report pertains to foreign electronic securities markets providing to remote access facilities ('screens') to brokers-dealers in the U.S., so that they can access those markets on a remote basis. *Could the U.S. explain the rationale of this policy? Is any remedy contemplated?*

(iv) Insurance services

Many States have no mechanism for licensing initial entry of non-U.S. insurance companies. *What is contemplated to remedy this problem?*

A branch of a foreign company may write premiums based only on its U.S. situs capital, whereas all its assets in the world are subject to liability to policyholders. *How does the U.S. explain the contradiction between those two rules?*

Some States have regulations that imply direct discrimination for foreign for foreign firms, such as the requirement to buy reinsurance from State-licensed companies, or the need of companies that specialise in the 'surplus lines' market to be 'white-listed' by the National Association of Insurance Commissioners. *Could the U.S. please clarify how it intends to bring such legislation into line with its international obligations?*

Given the slow pace of harmonisation of legislation between States, *what are the subjects that the Federal State contemplates to pre-empt to ease the process?*

(8) TELECOMMUNICATIONS SERVICES

(para. 108) In 1997, the Federal Communications Commission adopted two rulings to implement U.S. commitments in the Basic Telecoms Agreement. However, despite some improvements, it retained the very unclear "public interest" criteria which can be invoked to deny a licence to a foreign operator for various motives, such as "trade concerns", "foreign policy concerns" and "very high risk to competition". *Can the U.S. give any assurances that the "public interest" criteria will be revoked, or at least clarified?*

(i) Licensing and competition

Also foreign investors in the communications sector still face a degree of uncertainty and lengthy procedures (in particular, the uncertainty of leaving the implementation of U.S. commitments to suppress restrictions to indirect investment to FCC waivers, in the absence of any specific legislation in this regard). *Could the U.S. confirm that it is willing to introduce more certainty in procedures relating to foreign investment in the U.S. communications sector?*

(para. 112) The report notes that it took more than seven months for a European company to get approval. This is much longer than what happens in the EU for a similar case. The report does not mention in that respect that the company had to go through two procedures in parallel (those of the FCC and the DOJ) and that the second one was much quicker to assess the same issues. *Do the U.S. authorities have any plans to suppress duplication and speed up the process?*

(para. 112) The report also does not mention that the U.S. Congress considered during the year 2000 legislation that would have severely limited the ability of foreign govt-owned companies to invest in U.S. telecommunications companies. In particular, one piece of legislation would have, if adopted, constituted a clear violation of U.S. commitments in the WTO on foreign investment and would have affected the interests of European companies. Such initiatives are affecting the climate for foreign investment in the sector and bringing uncertainty to the procedures above-mentioned, in contradiction with the objectives of the WTO.

(ii) International pricing arrangements

(b) International Internet charging arrangements

(para. 115) *Could the U.S. please explain how it defines a "public telecommunications service"?*

(iii) Satellite services

The EU notes that it takes a long time for foreign operators to get an unconditional license: *what does the U.S. intend to do to remedy this situation which tilts the balance in favour of U.S.-based operators?*

(para. 120) 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 company³ even for WTO members' territories : can the U.S. explain how this conforms with its WTO obligations on market access, Most Favoured Nation (MFN) and National Treatment?*

(paras. 122, 123) New Skies and Inmarsat are EU-based companies. According to the U.S. commitments in the WTO, market access should not be limited for companies constituted and registered in an EU member state (thus intending to provide a cross-border service to the U.S.) or for companies constituted in the U.S. that European companies own or control in the sense of the GATS (thus having a commercial presence in the U.S.). *Can the U.S. explain thus why it takes so long for those companies to get full and unconditional market access in the U.S.? What is the rationale of requiring these companies to conduct IPOs and how does it conform to the U.S. WTO obligations? In particular, why is there a need for a «substantial dilution of Intelsat signatories» as mentioned in paragraph 122 and how is it consistent with U.S. WTO obligations?*

A number of issues have not been addressed in the section:

Following a U.S. decision to allocate to second generation systems the frequency bands which had been identified for third generation systems by the ITU, there is a lack of availability of frequencies in the U.S. that restricts access of 3G mobile communication systems to the U.S. market. *Could the U.S. explain the efforts and progress it has made in ensuring future availability of frequencies for foreign 3G mobile communication systems in the U.S.?*

Can the U.S. explain how current universal service is defined and financed? In particular can it give assurances that foreign consumers are not subsidising universal service obligations in the U.S.?

For digital terrestrial television, the US 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 being adopted in several countries around the world from entering into the U.S. market. *Can the U.S. explain why it does not let the market choose which technology is working best?*

³ "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."

(9) SELECTED PROFESSIONAL SERVICES

As a general remark, the EU would like to express its regrets that the report could not include the sub-sectors of construction, engineering and computer and management consulting services, which account for large shares of the U.S. trade in services, as indicated by table AI-5.

The Report discusses at length the problem of regulation of professions at the state level which severely impacts on the ability of foreign (and domestic) professionals to supply their services across the U.S. *What does the U.S. envisage to remedy this?*

Additional questions on behalf of the European Union**Report by the Government (WT/TPR/G/88)****III. TRADE POLICY DEVELOPMENTS, 1999-2001****(2) REGIONAL INITIATIVES**

Based on an agreement in 1991 (Rose Garten Agreement), the U.S. has entered in discussions with the Mercosur countries with a view to launch negotiations in a 4+1 format. *Could the U.S. please inform about: (a) the nature and state of play of these discussions, (b) the objective and timeframes of the negotiations, (c) whether a free trade area between the Mercosur countries and the U.S. is foreseen or among US intentions; and/or whether sectoral liberalisation is foreseen or among U.S. intentions, (d) its relation to the FTAA negotiations.*

Report by the Secretariat (WT/TPR/S/88)**III. TRADE POLICIES AND PRACTICES BY MEASURE****(1) MEASURES DIRECTLY AFFECTING IMPORTS****(v) Standards, technical regulations and sanitary requirements**

The EC is operating a policy of regionalism where restrictions are applied in zones affected by certain animal diseases, with free movement of animals and products outside the affected zones. Furthermore, the same principle as an effective means of controlling animal disease has now been incorporated into the U.S. Tariff Act 1930 by the NAFTA and is part of the WTO SPS Agreement. However, U.S. import administrative rules concerning Foot and Mouth Disease (FMD), Rinderpest and other relevant diseases have still not been amended to reflect this change in legislation, despite a clear commitment in the EU-U.S. Agreement on Application of the Third Country Meat Directive, reached in 1992. Imports into the U.S. of uncooked meat products such as San Daniele ham, German sausage, Ardennes ham, are still the subject to a long-standing prohibition despite the fact that meat products may come from disease free regions and that the processing involved should render any risk negligible. *Could the U.S. could further elaborate on how it intends to meet its international obligations concerning regionalisation?*

(3) OTHER MEASURES AFFECTING PRODUCTION AND TRADE**(iii) Intellectual property rights**

The U.S. is party to the Berne Convention for the Protection of Literary and Artistic Works (1971). However, despite the unequivocal obligation to make “moral rights” available for authors, the U.S. has never introduced such rights and has repeatedly announced that it has no intention to do so in

the future. Whilst U.S. authors continue to benefit fully from moral rights in the EU, the converse is not. *Could the U.S. please indicate if it intends to grant the same treatment to other Berne Convention members as is granted to itself?*

Advertising low price perfumes imitating famous European brands and thus benefiting from the well-known reputation of the European brands is not prohibited. This practice may violate the Paris Convention for the Protection of Industrial Property, as incorporated into the TRIPs Agreement. *Does the U.S. have any plans to assure its compliance with the Paris Convention?*

Under U.S. law (28 US Code Section 1498) a patent owner may not enjoin or recover damages on the basis of his patent for infringements due to the manufacture or use of goods by or for the U.S. government authorities. This practice is apparently extremely widespread in all government departments. *Could the U.S. please explain if it considers that this practice is in conformity with the TRIPs Agreement that introduces a requirement to inform promptly a right holder about government use of his patent?*

MALAYSIA

1) The U.S. economy has been experiencing an economic slowdown since the third quarter of 2000. This is of concern to trading partners. *What measures are the U.S. undertaking to counteract the effects of the downturn and to return the U.S. to more sustainable rates of growth, other than a more relaxed monetary policy?*

2) The U.S. tariff regime, while having generally low ad valorem duties, continues to exhibit high specific duties as well as tariff escalation in sectors of export interest to developing countries. This has been in force for some time. *Is the U.S. undertaking a review of these rates, particularly in light of possible new negotiations on tariffs and in line with U.S. commitment to an open market policy (U.S. Government report, para. 15).*

3) The U.S. has made active use of anti-dumping and countervailing measures, particularly in the last two years. The large number of investigations involving steel-related products have been the main cause of this increase. In addition, the U.S. has also initiated safeguard actions into steel-related products. *Does not such actions reflect an over-protectionist reaction by the U.S. against normal competitive market-driven pricing norms in an environment of over-supply and constitute a misuse of WTO contingency measures?*

4) There have been concerns expressed over U.S. unilateral trade measures that are not WTO consistent. In particular, we note especially the extension to the Iran-Libya Sanction Act. *How does such Acts reconcile with U.S. obligations under the WTO?*

SWITZERLAND

Summary Observations

IV. OTHER POLICIES AFFECTING TRADE

§32 The Government report remains silent on the current position regarding negotiations on a multilateral competition agreement under the auspices of the WTO, while the Secretariat's report mentions that the US questions whether the WTO is, at this time the appropriate institution to develop such rules. *What is the position of the new Administration on that issue?*

WT/TPR/S/88

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures Directly Affecting Imports

(i) Tariffs and other charges affecting imports

§17 Preferential tariffs: In paragraph 17 the Secretariat notes that "the average tariffs under unilateral U.S. preference schemes tend to be significantly lower than the average MFN rate but still substantially higher than the average under the FTAs that the United States has concluded".

Initiatives have been taken recently by some members to improve the market access opportunities of the LDCs. *Do the USA foresee to improve also the market access opportunities for the LDCs, for instance to grant them the same preference as under the FTAs?*

According to our information the U.S. International Trade commission was working last year on ways to simplify the tariff schedule, the national list of import product categories and sub-categories. *Could the U.S. delegation provide information as to which steps have been taken so far? What have been the ITC recommendations for simplifying the tariff schedule and have they been put in force?*

(iv) Government procurement

§65 *When do the United States foresee to submit statistical information to the WTO under Art. XIX:5 of the GPA ?*

§65 *What is the relative share of the main tender procedures for Annex 1, 2 and 3 entities: open, selective and limited? For limited tendering procedure, what is the importance of follow-up purchases (Art. XV, d)?*

§70 *How do the proposed U.S. modifications to the GPA achieve the same level of transparency and of competition as the present regime? How do the new information technologies and forms of contracts impact on tendering procedures and offers?*

II. DEVELOPMENTS IN TRADE AND INVESTMENT POLICY

(2) Participation in the WTO

(i) Agri-food trade negotiations

§10 The U.S. did not ratify the CBD (Convention on Biodiversity). *Could the U.S. explain the reasons for this non ratification?*

(ii) Trade in services

§12 *Do the United States intend to submit further negotiating proposal in the services sector? If this is the case, in which sectors?*

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures directly affecting imports

(v) Standards, technical regulations and sanitary requirements

§82 The U.S. applies many complex technical regulations to a large number of products, for health and safety purposes. *In this context, could you confirm whether the sale of irradiated food is subject to a mandatory declaration?*

If so, does the U.S. consider irradiation to be a production and processing method which alters the nature/character of the product in the light of Article III GATT ("like product")?

If so, what is the difference, in terms of human health implications, between irradiated and non-irradiated food?

If not, does the U.S. consider irradiation to be different, again in the light of Article III GATT, from other production methods such as biotechnological methods?

(2) Export Measures

(i) Measures related to agri-food exports

§103 It is mentioned in §103 that in the 1999-2000 period, there was a reduction in the use of export subsidies and of export credit guarantees. However, in the same period, there was a large increase in food aid volumes, and domestic support to producers went up as well. Given the fact that the U.S. is the world's largest food aid supplier, accounting for 64% (by volume) of food aid delivered in 2000 (para. 111), and that volumes of food aid and world cereal prices are negatively correlated, developing countries could be induced to further benefit from the food aid instead of developing their own cereal production. *How does the U.S. view this assumption?*

§110 Please comment on the statement that export credit guarantee programmes «may relate to trade distortion in third country markets»?

(iii) Fiscal concessions in support of exports

§120 FTZ is centred on oil refining, the production of pharmaceuticals, office equipment, high-technology merchandise, and the automobile sector. *Are there no agri-food products being processed in the FTZ?*

(3) Other Measures Affecting Production and Trade

(i) Government support to business

§147 *What are the main changes expected from the new FAIR act?*

§148 Direct government assistance nearly tripled between 1997 and 2000. This is mainly due to natural disasters and falling prices for agricultural products. It allowed to maintain the net farm income above its lowest level since 1983. *Does this amount of emergency assistance depend more on the natural disasters or on falling prices? Is the emergency assistance being used as compensation for the price fall?*

IV. DEVELOPMENTS IN SELECTED SECTORS

(5) Maritime transport and related services

What are the objectives of the United States in the current GATS 2000 negotiations on maritime transport services?

(6) Air transport services

Would the United States support a clarification by the Council for Trade in Services of the effective scope of the GATS Air Transport Services in the context of the current review of this Annex? What is the United States' view on the possible extension of the coverage of the GATS Air Transport Annex?

INDIA

I. MARKET ACCESS ISSUES

1. In paragraph 1 of the Summary Observations, the Secretariat has observed that in a few important areas significant barriers to market access persist. It has suggested that reducing such remaining barriers would not only increase the otherwise high efficiency of the U.S. economy and benefit its domestic consumers and taxpayers but also lessen distortions in global markets, frictions with the trading partners and strengthen the multilateral trading system. We would like to hear the response of the U.S. delegation to these observations.

2. In paragraph 2 thereof, the Secretariat has observed that “significant barriers to foreign competition have remained in areas like textiles and clothing, transport and some services sectors. The new Administration’s response to these policy challenges will be important to global trade and welfare”. Given the fact that sectors such as agriculture and textiles and clothing that are the mainstay of most of the economies of developing countries, we would like to hear the response of the U.S. delegation to the Secretariat observations.

3. In paragraph 12 of its observations, the Secretariat report observes that ‘the highest tariffs apply mainly to imports of agro-food and tobacco products, as well as clothing, textiles and footwear. In these industries, tariffs tend to increase with the degree of processing’. All these items are of importance to developing countries and increased tariffs on processed items act as a barrier to value-added exports by developing countries to the U.S. We would request the U.S. delegation to respond to these observations.

4. It is understood that the U.S. is imposing quota restrictions on plastic woven sacks and bags and fabrics made out of polyethylene or polypropylene on the grounds that they are classified as textile articles (under chapter 63) and are consumer items. However, it is pointed out that these items are only used for industrial application like packing PP Fibre, multifilament yarn, sand, salt, seeds, chemicals, etc. Further, it may be noted that these items are being exported to Europe without any quota restriction. We would, therefore, request the U.S. delegation to clarify the rationale for continuing quota restrictions on these items.

5. It is noted that despite a low average MFN rate for all goods, significant tariff peaks and escalations exist in the U.S., especially for the products of interest to developing countries like India. The highest tariffs apply mainly to imports of agri-food, tobacco, clothing, textile and footwear. Non *ad valorem* rates, representing nearly 13% of tariff lines, mask relatively high levels of protection. We would request the U.S. authorities to address this problem and eliminate these tariff peaks.

II. ISSUES CONCERNING AGRICULTURE

6. **Dairy products:** It has been represented that the export subsidy given by the USA on Skimmed Milk Powder (SMP) is around US\$900 per metric tonne, which works out to about 60% of the international price of SMP. The average subsidy on dairy products mainly on SMP by the U.S. Department of Agriculture during 1999-2000 worked out to US\$1,101 per metric tonne. Such a heavy subsidy results in the fall in international prices of dairy products, which, in turn, when imported in India tend to destabilise the prices and adversely affect the dairy farmers of the country. We would request the U.S. authorities to consider phasing out all direct and indirect subsidies in this sector.

7. **TRQ on Tobacco:** It is understood that the base period for working out total quota for tobacco import was taken as 1992-1994. We would like to know from the U.S. delegation the basis for selecting this base period. We would also like to know the major suppliers under the existing TRQ regime, the fill rate of the Quota and the methodology of reallocation of unfilled TRQ. Despite the fact that India is the world's second largest producer of tobacco and has one of the largest shares in the export of FCV tobacco, its present quota for export to U.S. is very small. India seeks to have a TRQ of at least 10,000 tonnes per annum. Taking into account these factors, we would request the U.S. authorities to consider allocating unfilled TRQs to the developing countries like India.

8. **Need for increase in sugar quota:** India's quota for export of sugar to the U.S. has remained at around 0.8% of the total quota since 1982. One of the criteria for allocation of quotas to various countries is the share of the individual countries in the total import into the U.S. market during the period 1975-81. The economic situation has changed considerably since then and in several countries, the production capacity and marketable surplus have increased whereas for the others, though they have high quota available, their own production and consumption of sugar hardly leaves them with any marketable surplus. We would therefore request the U.S. authorities to change their quota allocation policy with a view to allocating a higher quota to some countries commensurate with their production and export potential. We would also request the U.S. to review its sugar policy in view of the U.S. International Trade Commission's estimate that repeal of the Federal Sugar Programme would add nearly US\$1bn to national welfare and cut domestic sugar prices by 8.6%.

III. ISSUES CONCERNING TEXTILES AND CLOTHING

9. **Integration of textile sector under ATC by U.S.:** It is noted that the 1st and 2nd stage integration and the schedule finalised for the 3rd stage integration makes it clear that the U.S. has implemented the provisions of ATC in letter but not in spirit. The main apparel items, that are going to be integrated in the 3rd stage, are gloves, men's and women's nightwears, underwears, hosiery, silk and silk blended garments. 80% of trade in textiles and clothing covered by bilateral restraints would still remain to be integrated by 1 January 2005. For apparel, the final percentage to be integrated would be even higher, at 89%. For India, as Floor Coverings and Silk Garments are already exempted and outside quotas, at the end of the tenth year, 96.64% of India's apparel trade would remain to be integrated. Similarly, 95.83% of India's yarn trade and 98.88% of fabric trade would also remain to be integrated. In view of the fact that so far the integration by U.S. has not really been progressive in nature, we would request the U.S. to accelerate the integration process in keeping with the spirit of the ATC Agreement and also given the fact that these products are of great interest to the developing countries.

10. **Changes in the U.S. Rules of Origin:** As was also highlighted in the last TPR of the U.S., the revised U.S. Rules of Origin on textiles which entered into force on July 1, 1996 have adversely affected the exports by its trading partners. It has also resulted in a situation of double jeopardy as Indian exports to the European Union are debited to our fabric quota for the EU and if they are converted into made ups such as bed sheets or scarves, and exported to the U.S., the U.S. would debit

India's textile quota again, thus leading to India's quota being debited twice for the same exports. It is observed that such unilateral changes in the Rules of Origin are in violation of Articles 2.4 and 4.2 of the Agreement on Textiles and Clothing and of Article 2 of the Agreement on Rules of Origin. The problem has been further exacerbated as, consequent upon the agreement with the EU, the U.S. amended its Rules of Origin as notified through Trade and Development Act, 2000 under which origin of dyed silk fabric would be the country where the silk fabric is dyed and printed. However, strangely, this rule does not apply in the case of fabric containing more than 16% cotton. Such an arbitrary rule of origin has adversely affected the market access of cotton producing countries. We would request the U.S. authorities to take steps to rectify this situation.

11. **Holding up of consignments of 'India Items':** Under the provisions of the Indo-U.S. Textile Agreement, 'India Items' are exempt from quota restrictions. The Development Commissioner (Handicrafts), is the authority designated by Government of India for certification of 'India Item' consignments. However, lately, there has been an increase in the number of held up consignments at various ports as it has been reported that the U.S. customs often disregard the certification issued by the DC (Handicrafts). As exporters have to clear their consignments to meet the delivery schedules, such consignments are often cleared under the visa waiver provisions by issuing visa in the re-classified categories. This results in debiting of quotas. The Agreement does not permit unilateral modification of definitions contained in the Agreement. Hence, we would request the U.S. authorities to reconsider the matter and honour the certification by the DC (Handicrafts)

12. **Tariffs on garments:** The tariff rate on garments in the U.S. is between 17.5% and 22.5% with an average tariff rate of 18.3%. We would request the U.S. to consider reduction in such peak tariff rates.

13. **Differential Treatment to cotton producing countries under ATC:** As per Article 1.3 of the ATC, the cotton producing countries were to be given a special treatment. However, no additional quota access has been granted to cotton producing countries like India. We would request the U.S. to take positive action in this regard.

14. **Subsidies in textile industry:** It is learnt that the U.S. has been giving large amounts of direct and indirect subsidies to the cotton farmers. According to a study commissioned by one of our NGOs, the Consumer Unity and Trust Society (CUTS), Jaipur, the direct and indirect subsidy given to the U.S. cotton farmer is US\$2.5 for each pound of cotton. This is based on the calculation of total subsidy bill (excluding exclusive exports subsidies) in 1997 amounting to around US\$1.6 billion. We would request the US authorities to consider plans for reducing the extent of this subsidy.

15. **Continuation of visa requirements for integrated products:** In certain categories like 369 (O), visa continued to be issued even though this item was integrated in 1995. It is reported that in actual practice, all restricted and non-restricted items to the U.S. require visa. Similarly, the U.S. customs is insisting on visa for export of jute bags, which are not covered under quota. This is a restrictive measure and increases the transaction cost and adds to administrative burden. We would request the U.S. authorities to address this issue. We would also request the U.S. delegation to clarify whether, with the elimination of quotas, the U.S. would do away with such procedural requirements/documentation formalities like issuance of visas, certification aimed at prevention of circumvention of quota or trans shipments etc.

16. **High conversion factor for socks:** Presently, a high conversion factor is being applied by the concerned U.S. authorities in respect of socks for debiting quotas under Cat. 332 Group-II. The CITA is correlating the conversion factor for Cat. 332 with HS No. 61.15, which covers, besides socks, items like Panty Hose, Tights and Stockings. In this situation, a high conversion factor of 3.80 SME per dozen pairs gets applied to socks, resulting in higher debittance of quotas under Cat. 332

Group II. The technical study conducted by the Office of the Textile Commissioner has shown that the average requirement for manufacturing 1 dozen pair of socks is about 1.22 Sq. mtr. Hence, it would be seen that the U.S. is applying disproportionately higher conversion factor as compared to the actual consumption norm. We would request the US authorities to correct the situation.

IV. ISSUES CONCERNING SERVICES

17. In Paragraph 41 of its summary observations, the Secretariat has observed that 'in the case of professional services, the US federal system reserves the governance of professions to individual states, each state has its own licensing regulations and licensing board to administer the regulations. The absence of a uniform national regulatory regime, and divergent market access conditions across States complicate inter-State supply and foreign market access'. We would like to hear the response from the U.S. delegation. Further, we would like to know if the Federal Government could give some guidance to the States in the matter of having certain minimum uniform national regulatory regime for professional services.

18. **Problem relating to social security taxes for Indian professionals working in USA:** It is noted that Indian professionals employed in India and deputed temporarily in USA for rendering software consultancy and development services are being made to pay social security taxes under Federal Insurance Contribution Act (FICA) (12.4%), MEDICARE (2.9%) and Federal Unemployment Tax Act (FUTA) (6.2%). This works out to a total of 21.5% of the total wages. It has been pointed out that since the Indian employees are only deputed for a temporary period and the services rendered by them are only sporadic and temporary in nature, this deputation does not constitute any form of 'employment' for the purpose of levy of Social Security Taxes by the U.S. The Indian professionals continue to get their wages in India in Indian rupees and they are only paid 'away from home' living expenses in USA within the per diem rates published by the U.S. Internal Revenue Service. At the same time, their provident fund contributions and other social security taxes are also deducted at source in India. Moreover, according to the U.S. laws, a person has to work in USA for 40 quarters or 10 years to claim any social security benefit whereas the maximum period of stay allowed under H-1B visa (under which the professionals mostly work in USA) is 6 years. As such, the Indian software professionals pay social security in USA for which they neither get any refund nor any benefit. Given the genuineness of the problems, we would request the U.S. authorities to remove this anomaly.

19. **Wage parity:** The U.S. Department of Labour has stipulated Wage Parity on foreign skilled manpower working in the U.S. for short-term duration. However Indian software professionals, who go to the U.S. for short duration, are paid salaries in India. The company concerned also spends the amount on the airfare of these professionals. It is therefore noted that insistence on wage parity by the U.S. is to be seen as a kind of non-tariff barrier. With a view to facilitating better movement of professionals, it would be appropriate that wage parity is not insisted upon in the H-1B category visas. We would request the U.S. authorities to consider removal of this stipulation. We would also request the U.S. authorities to put in place more transparent procedures for locational changes during the validity period of H1-B visas.

20. **Locational Issues of H-1B visas:** An Indian professional going to U.S. on H-1B visa is allowed to work only in a particular State of the U.S. If during the maximum six years-period for which the H-1B visa is valid, a professional has to go to another State on account of change of assignment, he is required to take specific permission from the U.S. INS for change of location. It has been represented that this procedure is a time consuming one and thus acts as a non-tariff barrier. We would suggest to the U.S. authorities to consider making the H1-B visa valid for working throughout the US and in any State of the U.S. without any requirement for a specific permission to move from one State to another.

21. **Increase in world-wide H-1B visa cap:** It is learnt that the U.S. continues to suffer from domestic shortage of IT professionals. According to Information Technology Association of America (ITAA), the U.S. faces a shortage of 300,000 IT professionals in the next three years. It would be highly appreciated if we could be informed of the steps being taken by the U.S. in order to meet this shortfall. We would also request the U.S. authorities to consider increasing the visa cap for H-1B for the next three years.

V. SPS/TBT MEASURES

22. **Import alert on Fresh, Frozen and Cooked shrimp from India:** The U.S. FDA has been operating an Automatic Import Alert (automatic detention and testing) in respect of Indian Fresh (Raw) and Frozen Shrimps since 1979. In 1995, the FDA extended the Automatic Import Alert to cover cooked shrimp export from India. Some Indian exporters are exempt from such Automatic Import Alert and are only subject to random checks. It may be noted that the processing technology in India has been upgraded with modern facilities, and 103 processing establishments have been approved by the European Commission for exports to the European Union. Many other processors exporting to the U.S. have implemented HACCP (Hazard Analysis and Critical Control Points) principles. We would request the U.S. FDA to consider according similar approval after inspection of the exporting units. Taking into consideration the developments in the Indian seafood industry, we would also request the FDA to lift the import restrictions such as detention of Indian shrimps imposed vide Import Alert IA#1635. Further, it is noted that while the U.S. FDA publishes the details of detained consignments and give wide publicity, it does not publish the results of examination subsequently. We feel that this is not fair as such publicity concerning detained consignments would create a bad impression concerning the exporters in question in the minds of the U.S. seafood importers. We would therefore request the U.S. authorities to consider giving adequate publicity concerning clearance given to such detained goods upon physical, chemical and bacteriological examination.

23. **Ban on mango exports to U.S.:** It has been reported that the U.S. has imposed a ban on import of Indian mangoes on account of the problem of stone weevil and occurrence of oriental fruit fly. This was in spite of the fact that the problem was restricted to a small belt of the mango producing area and was being addressed through new technologies for detection (like x-ray radiography technique) and control (like Hot Water Dip Treatment, Integrated Pest Management System and Vapour Heat Treatment). In such circumstances, we would request the U.S. authorities to lift the continued ban on import of mangoes from India.

24. **Strict and burdensome sanitary and phytosanitary requirements:** All imports of fresh fruits and vegetables into the U.S. require clearance by the U.S. Department of Agriculture. Such clearance is often given only after extensive tests and inspection of the areas where the items have been grown. The U.S. requirements are sometimes quite unreasonable and take excessively longer time. We would request the U.S. authorities to consider this matter and take steps to streamline the procedure.

25. **Meat and milk products:** It has been represented that the U.S. does not allow import of meat and milk products from India on the ground of presence of foot and mouth disease in the animals. Since it has now been proved that these are now free from BSE (Bovine Spongiform Encephalopathy)/ scrapie, it is requested that the ban in question may be removed.

26. **Ban on bidi import on the basis of non-trade related issues:** The US Customs Department issued temporary orders in the latter half of 1999 suspending imports of 'Ganesh' brand bidis into the U.S., on the ground that the concerned Indian Bidi manufacturer was employing forced child labour in the manufacture of bidis. India expresses its strong concern at raising such trade barriers which are not WTO-consistent. We would request the U.S. authorities to lift the ban in question.

27. **Caution label on natural rubber gloves:** The U.S. law requires natural rubber gloves to carry caution label that the natural rubber latex can give allergic reaction in some individuals. We would request the U.S. to clarify the basis of imposition of such a standard and provide details of the data collected in this regard.

VI. PREFERENTIAL ARRANGEMENTS INCLUDING THE GSP SCHEME

28. In paragraph 14 of its summary observations, referring to the unilateral extension of preferences under the U.S. GSP scheme, the Secretariat has observed that 'these preferences can be made conditional to policy changes in the beneficiary countries in areas such as protection of labour rights and of intellectual property'. The GSP scheme is a non-reciprocal scheme of incentives granted to developing countries without any conditions attached and as such India strongly opposes any linkage of GSP benefits to non-trade issues such as labour rights. We would like to hear the response of the U.S. delegation.

29. In paragraph 15 of its summary observations, the Secretariat referring to the U.S. Trade and Development Act (TDA) of 2000 that includes both the African Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act has pointed out that textile and clothing imports from beneficiary countries in sub-Saharan Africa and the Caribbean would enter the U.S. market duty-free and quota-free subject to content requirements on U.S. produced-inputs. According to the Secretariat, this requirement would 'ensure that U.S. input producers also benefit from the arrangement, possibly at the expense of lower-cost third-country suppliers'. We would like to hear the response of the U.S. delegation to these observations. We would also like to know whether all the Acts referred to in this paragraph have been notified to the WTO. If yes, the details of the notification may be given. If not, the reasons thereof and the likely time-frame by which the notification would be made may be indicated. Since AGOA is neither generalised nor non-reciprocal, it cannot be dealt with under the 'Enabling Clause'. The U.S. delegation is requested for information on when they propose to approach the CTG and the General Council with a waiver request.

30. **Problem of classification of Elastic Rubber Tape (ERT):** It has been brought to our notice that under the provisions of the new Caribbean Basin Trade Partnership Act (CBTPA), a very narrow definition has been adopted for Elastic Strips to qualify as Findings and Trimmings, namely, that they should be less than one inch in width and should be used only in production of brassieres. Further, the Indian exporters are finding their market access of Elastic Rubber Tapers (ERT) to the USA severely affected on account of a provision in the CBTPA that the quota and duty preference on the garment would be allowed in the U.S. provided that not more than 25% of the value of the garment is made from foreign "Findings and Trims". We would like to have a clarification from the U.S. authorities on the reasoning behind adoption of such a narrow definition for ERTs and on the difficulties being faced in classifying Elastic Rubber Tape (ERT) similar to Narrow Woven Elastic/Spandex and giving protection and preference to ERT as given to Narrow Woven Elastic/Spandex?

31. **Denial of GSP benefit to industrial leather gloves:** It has been brought to our notice that as specified under chapter 42 of the U.S. Customs Tariff, articles of leather of different types are eligible for concessional/duty free import under the U.S. GSP Scheme. However, in the guidebook published by the office of USTR, work-gloves (HSN Code 4203.29) are not included in the list of articles eligible for GSP. We would request the U.S. authorities to clarify the reasons for such a specific exclusion and also to consider inclusion of work-gloves in the list of items eligible under its GSP scheme.

32. **Preferential Agreements:** In the process of conferring access to Preferential Trading Agreement (PTA) members, the opportunities for other members in the given market are adversely affected. Very often, preferential quota given to members of a PTA is counted as a part of the MFN tariff quota, and thereby limits export opportunities available to the MFN trading partners. For

example, the total tariff quota of the USA for refined sugar was 22,000 tonnes in 1998. Under the provision of pre-allocated bilateral quota, an FTA partner received a quota of 2954 tonnes, and got an additional quota of 25,000 tonnes under the NAFTA. Hence, channelisation of regional/bilateral tariff quota through tariff quota seeks to limit the market access opportunity of non-PTA members of the WTO. We would request the US authorities to reconsider the matter.

VII. ANTI-DUMPING

33. **Constructive remedy clause:** We would request the U.S. delegation to confirm that in the various anti dumping investigations initiated by the U.S. against imports from developing countries, efforts have been made to explore constructive remedies as required under Article 15 of the Anti-Dumping Agreement and that the special situation of developing country members is given special regard? We would like to know whether there is an in-built mechanism in the U.S. anti-dumping law for giving effect to the provisions contained in Article 15 of the Anti Dumping Agreement.

VIII. INTELLECTUAL PROPERTY RIGHTS

34. **Intellectual Property Rights Violation:** It has been noted that the piracy of Indian video films and music CDs and cassettes is on the rise and as a result, the Indian entertainment (film and music) industry is being deprived of royalties. We would request the U.S. authorities to ensure stricter enforcement of Intellectual property rights for Indian music CDs and cassettes?

IX. DRUG APPROVAL PROCEDURES

35. **Pharmaceutical drug approval procedures:** Such procedures pose difficulties for non-U.S. based firms, including those from India as the U.S. Food and Drug Administration has to approve any new medicinal product before it can be put on sale. It has been represented that for non-U.S. medicinal products, this procedure takes significantly longer than for those developed locally. We would request the U.S. authorities to look into the matter and ensure that non-U.S. based firms are not placed at a disadvantage.

X. ISSUES CONCERNING STEEL

36. **Proposed Steel Revitalisation Act, 2001:** It is understood that this act has been designed to provide certain safeguards to the U.S. steel industry by empowering the U.S. President to take necessary steps by imposing quotas, tariff surcharges, negotiated and forcible voluntary restraint agreements or other measures on steel import in USA. It is further learnt that the aim of this act would be to ensure that the imports of iron and steel products into USA during any month do not exceed the average tonnage of each such product imported monthly into the USA during the 36 month period preceding July 1997 and that the share of domestic consumption of such imported steel products does not exceed the average monthly share of domestic consumption of that steel product in the past 36 months. We request the U.S. to explain the rationale for this Act and its consistency with the WTO rules.

37. **Steel Import Notification and Monitoring Programme:** It is learnt that this programme shall include a requirement that any person importing a product classified under chapter 72 or 73 of Harmonised Tariff Schedule of the USA has to obtain an Import Notification Certificate before such products entered the US. The application for import certification would have to contain importer's name and address, country of origin, port of entry, description of goods, quantity and CIF value of goods to be imported etc. It is also learnt that the import certificate would be valid only for 30 days. We would request the U.S. authorities to explain the rationale for such a requirement which, given the limited period of validity of the Certificate, would act as a non-tariff barrier.

38. **Multilateral initiative on steel:** On June 4, 2001, the U.S. President in a statement on multilateral initiative on steel, has indicated intention to initiate discussions to eliminate the excess capacity of steel in the world, to eliminate subsidies and to make rules of trade as per U.S. trade laws. In paragraph 5 of its Report, the Secretariat has also referred to this initiative concerning negotiations on elimination of global excess capacity of steel and development of rules to govern steel trade. We would like to hear from the U.S. delegation more details regarding this initiative including the present stage and also on how inefficient production capacity would be defined. We would also like to know the compatibility of this initiative with WTO obligations.

XI. UNILATERAL MEASURES

39. In paragraph 30 of its summary observations, the Secretariat report observes that ‘trade restrictions imposed by the United States for national security and foreign policy reasons may be a source of concerns for some trading partners, particularly, because of the unilateral nature of certain such measures. ... Congress is considering reforms to sanctions policy and to export controls’. We are interested to know the details of the reforms being considered by the U.S. Congress.

40. **Unilateral actions under U.S. Trade Legislation:** The U.S. still retains the option to resort to unilateral trade measures, for example, through sanctions such as under Super 301 and Special 301 provisions of the 1974 U.S. Trade Act. These are based on solely U.S. evaluation of a country’s laws/administrative practice. India has been placed under the Priority Watch List for Special 301. It has been brought out in the WTO Secretariat Report (WT/TPR/S/88 dt. 15th August, 2001-Page 52) that Section 301 laws have been used sparingly since 1999. Even though it has been noted that the action under these laws is linked to the WTO’s Dispute Settlement Understanding, we feel that the threat of unilateralism still remains. We would therefore request the U.S. authorities to completely stop taking recourse to these provisions in the future.

41. **Extra territorial application of provisions of U.S. laws:** Extra territorial application of provision of US laws hamper international trade with the US. We would request the U.S. authorities to refrain from applying such laws.

XII. GOVERNMENT PROCUREMENT

42. **Buy America Act:** It is noted that this act covers a number of discriminatory measures, which apply to government-funded purchases. It has been pointed out that some of its provisions prohibit public sector bodies from purchasing goods and services from foreign sources; some establish local content requirements while some others still extend preferential price terms to domestic suppliers. Products covered by this law include the manhole covers, rings, frames, catch basin frames and grates etc. We would like to know if the U.S. Government has any proposal to modify this law so as to improve market access for developing countries. Furthermore, it is noted that affirmative action for small business and minority protection schemes are also being widely employed in many U.S. States. Under the “Berry Amendment”, the concept of national security has been used to restrict purchases by the Department of Defence to U.S. sources. We would like to know if the U.S. has any proposal to improve market access for its trading partners in this regard.

AUSTRALIA

U.S. Farm Bill

Can the United States confirm its commitment in future farm legislation to a movement of domestic support mechanisms away from "amber" into the "green" box as was the original intent of the FAIR Act?

Agricultural Domestic Support Arrangements

We note that since 1998 Congress has approved annual multi-billion dollar payments to farmers in the form of additional Agricultural Market Transition Act (AMTA) payments, as a response to low commodity prices. The United States has recognised that these payments were linked to commodity prices. In June 2001 the United States notified US\$10.4 billion in payments for the 1998/99 marketing year as trade-distorting "amber" box payments to the WTO. *When will the United States notify the WTO that the payments made in 1999, 2000 and this year were "amber" box payments?*

Food Aid

While food aid for genuine humanitarian assistance is widely supported, food aid donations can be contentious and the United States has been criticised by its export competitors for many donations. In its food aid decision-making, *does the United States take account of exports by a recipient country of the commodity in questions, given the requirement that the recipient country does not export the same or like commodity during the supply and use period?*

Sugar

We note that access to the U.S. market for raw sugar, governed by a tariff rate quota, is now at near record low levels, and in the current year only just exceeds the U.S.' WTO minimum access commitment. We note also that the differential between the world market price for sugar and the U.S. price is now at near record levels, with the U.S. price nearly three times the world market price. The sugar programme is continuing to send the wrong market signals to U.S. producers who are expanding production at a time of low world prices. Given that the sugar programme has moved into surplus (with the Government not only stockpiling, but also selling sugar back to its own producers and requiring them not to produce), *what plans does the United States have to bring the sugar programme back into balance, to make it more liberal and market oriented and to progressively liberalise market access?*

When will the United States be rectifying its Harmonised Tariff Schedule to take account of the long acknowledged necessary polarity adjustment for raw sugar? (The polarity adjustment would mean the base tariff equivalent to be applied to raw sugar imports entering the United States under the second tier of the tariff rate quota would be 17 cents per pound instead of 18 cents per pound.)

Non-tariff Measures (NTM)

We note the finding in the June 1999 OECD Economic Outlook "Trends in Market Openness" that, notwithstanding improvement over recent years. NTMs still have a high frequency in the U.S. (16.8% of tariff lines, against 19.1% for the EU and 10.7% for Japan). *How does the U.S. propose to further decrease the incidence of NTMs in its market?*

Government Procurement

The U.S. Government procurement market is severely restricted by bilateral and plurilateral trade agreements and by the Buy-America Act. *What measures does the U.S. envisage adopting to improve access to, and increase the competitiveness of this important market segment?*

Safeguards Legislation

Given that the WTO Safeguards Agreement already provides for the application of temporary trade restrictions in certain specific circumstances and that legislative proposals before the U.S. Congress would significantly lower the U.S. domestic legal standard for obtaining import relief, *what plans does the United States have for preventing Section 201 of the 1974 Trade Act from being used by U.S. industries faced with unsubsidised import competition to avoid making competitive adjustments?*

Intellectual Property

Could the U.S. outline its intentions to fully comply with the rulings and recommendations of the DSB in the "United States – Section 110(5) Copyright Act" case (WT/DS160/R)?

In light of compensation discussions with the European Communities arising from the U.S.' failure to comply within the reasonable period of time, Australia seeks assurances from the United States that any compensation arrangements will be extended to Australian rightholders, in accordance with the U.S. obligations under the WTO Covered Agreements.

Services

What measures or reforms does the U.S. envisage to ensure that state-level regulation (e.g. skill and residency requirements) does not create unnecessary impediments to market access for business and professional service providers, particularly in accountancy, law, engineering and architecture?

Maritime Services

U.S. laws governing coastal shipping, the 1920 Merchant Marine Act and the 1885 Passenger Services Act, effectively preclude foreign involvement in the U.S. maritime sector. *How does the U.S. intend to liberalize the unusually restrictive laws on the provision of maritime services?*

BRAZIL

GOODS

1. In its report, the United States affirms that NAFTA agreements “can become models for future multilateral liberalization in new areas, such as agriculture, services, investment, and environmental and labour standards” (page 11, §40). In view of the fact that to be eligible for NAFTA preferences it is necessary to fulfil strict rules of origin, NAFTA is seen as highly distortive to commerce. *Therefore, how can agreements such as NAFTA contribute to freer trade?*

1. The Enabling Clause (Decision of 28 November 1979) establishes, in its Article 5, that “The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade

needs". Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs". However, as mentioned in the Secretariat Report, the United States have been conditioning the concession of preferences under agreements such as GSP, CBTPA and AGOA to adherence to labour and environmental standards, among others. *How are these requirements consistent with the Enabling Clause?*

2. In the Secretariat Report, it is stated that despite the relative openness of the U.S. economy, "sizeable tariff barriers tend to be concentrated in a few "sensitive" sectors, which are often also of particular interest to exporters from developing countries. These sectors involve mainly agricultural, food, and tobacco products, as well as textiles and footwear; tariffs reach *ad valorem* or *ad valorem* equivalent rates of 350% for tobacco, 164% for peanuts, and 132% for peanut butter (out-of-quota tariff rates)" (page 25, §5). *How is that feature consistent with the stated objective of "extending the benefits of trade liberalization to the developing world and fostering their further integration into the multilateral trading system"?* (Government Report, page 6, §6)

3. The Secretariat Report identifies the presence of important tariff escalation and tariff peaks in U.S. tariffs (pages 25-26). *Please describe what are the main sectors protected by these instruments and the possible effects on other countries.*

4. *Could an explanation be provided as to why the U.S. has not consolidated two lines covering crude petroleum? What is the applied rate for these tariff lines? Does the United States have plans to consolidate these tariff lines?*

5. According to the WTO IDB, the U.S. Tariff has 4.2% of total of tariff lines consolidated in terms of non *ad valorem* rates, applying mainly to agricultural products, footwear, textiles and base metals (Secretariat Report, page 24). Given the known distortive effect of specific and compound tariffs, *what are the views of the United States, in case of a new WTO round, on the possibility of consolidating only ad valorem tariffs?*

6. *What are the views of United States on tariff quotas and on their administration methods?*

7. According to the Secretariat Report, in 1999, the United States imposed Special Safeguards on certain products, including fresh and frozen beef, sweetened milk, milk fats and oils, milk based drinks, cheeses, sugar and peanuts (page 29, §13). *Could more information be provided on this issue (i.e. the level of safeguard duties on these products)?*

8. *Please provide detailed explanation of the "Carousel Amendment".*

Government procurement issues

9. Secretariat Report, para. 71, page 44. Is there a possibility for potential foreign suppliers from countries that are not party to the GPA to be included in the positive lists of suppliers used by federal government agencies to invite for bidding process? If affirmative, *how should those suppliers proceed to be included? Which are the requirements to be qualified in those lists? Would suppliers from countries part of other commercial agreements in which the U.S. is signatory have a preferential treatment in this regard?*

10. Secretariat Report, pages 45-46. *What is the criteria used to characterize a small business? It is mentioned, in paragraph 76, that small business are excluded from the GPA. What is the reason for this exclusion?*

11. Secretariat Report, para. 77. The HUB Zone (Historically Under-utilized Business Zone) foresees preferential treatment to qualified small business located in historically under-utilized business zones. *What characterizes an HUB zone?*

12. Regarding the principle of national treatment that may exist in other commercial agreements of which the U.S. is a Party, *do small business from countries Parties in those agreements have equal treatment (with preferential access conditions) in U.S. government procurement?*

13. *Is there any other entity, besides the Department of Defense, excluded from entities coverage in commercial agreements of which the U.S. is a Party?*

14. Regarding government procurement, *are there federal government entities that cannot start an international bidding process? Which are they?*

15. *Is the Built Operate Transfer (BOT) included in the coverage of commercial agreements, such as GPA, NAFTA and others?*

16. *Which are the offsets allowed in the US bidding process?*

17. *Are there any eco-labeling or eco-audit offsets in the U.S. government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.*

18. *Are there any social clause requirements in the U.S. government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.*

19. *What is the application of the reciprocity principle in government procurement agreements maintained by the U.S.? Please mention examples regarding entities coverage within the scope of NAFTA.*

Contingency measures

20. The Secretariat Report draws attention to the fact that “the application by the United States of anti-dumping, countervailing and safeguard measures has been one of the main sources of complaint by its trading partners: seven U.S. anti-dumping and countervailing measures in effect since 1995 have been challenged under the WTO” (Secretariat Report, page 18, §27). As the United States affirms that “*the fundamental features of U.S. trade policy continue to be the maintenance of an open, competitive market at home, compliance with WTO obligations...*”(Government Report, page 5), *why have there been so many challenges to US trade policies?*

21. *How does the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment, which is due to come into effect on 1 October 2001, alter the existing legislation on anti-dumping and countervailing duties? Was an assessment made on how the new legislation would affect trade in iron, steel and orange juice?*

22. Secretariat Report, page 33, paras. 27-30. With regard to the Byrd Amendment, *please explain how the provisions of that legislation are consistent with WTO rules, particularly the provisions of the Agreement on Subsidies and Countervailing Measures.*

23. Secretariat Report, pages 37 and 38, paras. 42-43. *Please explain in detail how the U.S. Government has implemented in its legislation the recommendations of the AB (in WT/DS138/AB/R) concerning the “change-of-ownership” methodology in countervailing duty investigations.*

24. Secretariat Report, page 92, para. 30. The U.S. Government stated that the U.S. steel industry has been affected by foreign government intervention, which has resulted in excess capacity and inefficient production. *How can it be argued that the problems of competitiveness of the U.S. steel industry are caused by foreign production given that the U.S. Government has taken an array of measures in the last two decades to eliminate or minimize the alleged distortions in its internal market?* The voluntary restraint agreements of the 1980's and the various antidumping investigations and countervailing actions of the last decade and even more recently are the concrete examples of the actions taken by the U.S. Government to protect the sector.

25. Secretariat Report, page 92, para. 30. *Please explain the arguments underlying the statement that there is inefficiency in the global production of steel.*

26. Secretariat Report, page 92, para. 30. With regard to item "a" which refers to the U.S. initiative to negotiate with trading partners seeking the elimination of global excess capacity, *please explain how the U.S. intends to proceed with this action in a manner consistent with WTO rules?*

27. Secretariat Report, page 92, para. 30. With regard to item "b" which refers to negotiations on international rules to govern steel trade with a view to eliminating subsidies. Given that the ASCM already sets out the adoption of measures aimed at eliminating the negative effects of these practices in the market of the importing country, *what is the rationale for negotiating new rules specifically for the steel sector? What could be the consequences of such an initiative, tailored to cater to the interests of one single sector of the U.S. economy, for the multilateral trading system?*

28. Secretariat Report, page 92, para. 30. With regard to item "c", it is stated that the ITC initiated a Section 201 safeguard investigation of injury to the U.S. steel industry. *How does the US government explain the "overlap of measures" due to the fact that already there are several antidumping duties and countervailing measures in force for the steel sector with a view to neutralize the alleged injury to domestic industry?* Moreover, the adoption of a safeguard measure implies that there is lack of competitiveness in the domestic industry. Therefore, if the U.S. authorities recognize that the country's steel sector needs this kind of measure in order to eliminate serious injury and facilitate the adjustment of the domestic industry to international competition, *please explain how causality can be established according to the provisions of the Anti-dumping and ASCM Agreements?*

Agriculture and SPS Issues

29. *What is, and how does the FAIR Act affect the net income of American farmers?*

30. Secretariat Report, Summary Observations, para. 22. The U.S. Government has, for alleged sanitary and phytosanitary reasons, prohibited imports of meat from Brazil originating from areas declared free from Foot and Mouth Disease by the International Office of Epizootics. In light of the concept of pest-or disease-free areas enshrined in the IOE, *please explain what is the rationale for maintaining these measures when the exporting country complies with all the other sanitary and phytosanitary requirements?*

31. Secretariat Report, page 69, paras. 160-161. *What is the U.S. government's assessment of the effects of the Loan Deficiency Payments on international prices, particularly in the case of soy beans?*

TBT issues

32. Concerning para. 83 (page 47) *which are the measures adopted by the U.S. Government in order to comply with Article 3 of the TBT Agreement with respect to the use of standards such as those mentioned in this paragraph?*

33. Regarding para. 84, *which are the measures adopted by the U.S. Government aiming at assuring that the technical requirements embodied in technical regulations are in accordance with existing international standards? Is there any effort to change those technical regulations that are older than the TBT Agreement?*

34. Concerning para. 85 and considering that the U.S. is the most represented country in international standards bodies (such as ISO), *which are the measures adopted by the U.S. Governments for:*

- a. helping ANSI and U.S. Standardizing Bodies to improve the use of international standards in order to avoid practical technical barriers to U.S. market access by foreign suppliers?
- b. adopting these international standards, or relevant parts of them, as a basis for technical regulations (both in case of new and revised ones)?

35. Regarding para. 89, considering that the “U.S. conformity assessment system is unique in that conformity assessment in the area of standards largely rests on supplier’s self-declaration, and is to a large extent enforced through product-liability laws” and also the positions expressed by U.S. representatives at the WTO TBT Committee during last years proposing a wider use of declaration as a cheaper and time-saving way for conformity assessment, which are the rules for acceptance of such declarations from foreign suppliers?

INTELLECTUAL PROPERTY

36. With regard to para. 180 (page 75), *in what cases and how can a patent protection be extended? Please explain.*

37. Concerning para. 181, *please indicate if there is any case of compulsory license of patents under Section 203, 204 or 209 of Chapter 18, Part II, Title 35 of the U.S. Code. If not, please explain how it would be implemented?*

38. Regarding para. 199 (page 80), *please give more details about the meaning of the sentence “(...) registration at the Copyright Office is not required before an infringement suit can be brought (...)” referring to non-U.S. works.*

39. *Please give more details about compulsory license for making phono records of published musical works, as indicated in para. 203 of page 80.*

40. Concerning para. 208 (page 81), *please describe how Section 110(05) of Title of the U.S. Copyright Act now implements Article 13 of the Trips Agreement.*

SERVICES

41. para. 58. In the context of the review of the GATS Annex on Air Transport Services there are U.S. statements regarding the opportunity of adding new services under the coverage of the GATS. In the view of the U.S., *which are the services that could/would be part of this coverage, since document S/C/M/50 do not clarify this point?*

42. para. 66. *Could more information be provided on the Federal Aviation Administration AIR-21, adopted in April 2000, mainly regarding questions as aircraft repair and maintenance advisory panel and request of information to assess balance of trade issues vis-à-vis the U.S. commitments on aircraft repair and maintenance services?*

43. para. 127. *Is there any ongoing negotiation under GATS Article VII.4 (Recognition)?*

44. para. 133. The recommendations that licensed certified public accountants (CPAs) in public practice be authorized to operate across State lines, in person or electronically, to service clients outside their State of licensure require the passage of a new Uniform Accountancy Act. *What is the current status of this measure?*

45. *Which States have adopted the current Uniform Accountancy Act?*

46. para. 137. The proposal to liberalize trade in accounting services in WTO negotiations lists obstacles identified in this sector. As some of these obstacles exist in the U.S., particularly with regard to U.S. citizenship requirements (Alabama and North Carolina), *does the U.S. plan to eliminate those in the negotiations?*

47. para. 139. Regarding the U.S. negotiating proposal in the WTO on legal services, *please provide examples of the measures sought from trading partners in the current negotiations that are schedulable under Articles XVI and XVII of the GATS.*

48. para. 142. In 1993 the American Bar Association adopted a proposed Model Rule for the Licensing of Foreign Legal Consultants to encourage the States to liberalize regulations concerning foreign lawyers in a standardized manner. Until 1999 twelve States had adopted it. *Have other States adopted the Model Rule? If so, was the adoption integral or did it suffer any modifications?*

49. *Has there been any progress on the July 1998 joint recommendations for the recognition of foreign legal consultants in the NAFTA context? (WT/TPR/S/56 p. 216)*

50. *What is the current status of the negotiations on mutual recognition regarding professional services with the European Union? The WT/TPR/S/56 document acknowledges the possibility of establishing mutual recognition agreements in "other services". Which are they? (WT/TPR/S/56 p. 213)*

51. Article V of the GATS establishes that bilateral or regional agreements liberalizing trade in services must have substantial sectoral coverage. In order to meet this condition, agreements should not provide for the "a priori" exclusion of any mode of supply. *How does the U.S. find the NAFTA Services Chapter to be consistent with that condition?*

52. para. 14, page 15. *Please provide in more detail a definition of the term "substantial nexus" and how it is assessed for purposes of taxation.*

53. para. 128, page 115. *Please clarify whether and how the U.S. negotiating proposal on mode 4 (S/CSS/W/29) includes regulation at the sub-federal levels.*

Electronic Commerce issues

54. *How does the U.S. analyze the issue of taxation in electronic commerce? Does the U.S. fully agree with the views raised in OECD documents such as, for instance, the Taxation Framework Conditions?*

55. *Does the U.S. maintain the position stated in document S/C/W/81, that "software" is classified as a service under computer and related services of the W/120 under CPC 842 (software implementation services)?*

56. *Does the U.S. consider that, addressing electronic transmissions as its similar tangible goods might have trade-distortive effects? Is it possible that electronic commerce brings negative outcomes to traditional exporters of equivalent physical products?*

57. The U.S. Technology Transfer Commercialization Act of 2000 includes provisions for a federal agency to grant licenses for federally owned inventions only to licensees agreeing to manufacture substantially the license-related products within the United States (WT/TPR/S/88 § 183). Electronic Commerce is supposed to have positive effects on competition, for instance, by allowing SME's to have access to the global market and by possibly reducing the economic gap between Developed and Developing Countries since location is no longer important. *In this sense, is the working requirement embodied in the condition of manufacturing substantially license-related products within the U.S. compatible with articles 7 and 27(1) of the TRIPS Agreement? Is it possible that US legislation such as this Act hinder transfer and dissemination of technology and, thus, harm the benefits of e-commerce for the developing countries?*

58. The U.S. has highlighted its regional initiatives toward liberalization in its document WT/TPR/G/88 (§44). *How is the U.S. approach in those fora – such as NAFTA, FTAA and the Transatlantic Economic Partnership (TEP), on matters related to Electronic Commerce?*

Agriculture

59. Secretariat Report, para. 154, page 68. *Please explain in more detail how PFC and ELP affect agricultural investment and production.*

60. Secretariat Report, para. 1, page 85. The report states that the U.S. has justified the large amounts of government support to the agri-food sector by its inherent volatility and by the support and protection afforded to agri-food by its main trading partners. *Please explain the role played by these programmes in the sectors volatility, particularly with regard to the recent decreases in international prices of agri-food products. Additionally, please clarify what would be the volatility without recourse to these programmes.*

COSTA RICA

SECRETARIAT REPORT (WT/TPR/S/88)

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures directly affecting imports

- (i) Tariffs and other charges affecting imports
- (a) MFN tariff rates

Paragraph 5

According to this paragraph, the United States maintains sizeable tariff barriers in respect of products *which are frequently of particular interest to developing country exporters.*

What degree of readiness is there on the part of the United States to reduce tariff commitments in these sensitive sectors, within the framework of a possible new round of multilateral negotiations?

Paragraph 6

United States tariffs show a high degree of tariff escalation, as indicated in this paragraph. *How would the United States envision the future in this area if there is a trend towards greater value added in the exports of developing countries?*

- (d) The Harbour Maintenance Tax (HMT)

Paragraphs 20 and 21

We should like to be given more details concerning the application of the harbour maintenance tax of 0.125% which the U.S. Customs Service is entrusted with collecting. *What is the basis for calculating the tax in the case of imports? How is the tax calculated for cargo shipments within the United States?* According to the report, the tax has not been applied to exported cargo since 1998. *What is the reason for that situation? What changes are planned to resolve the issue of the non-application of the tax? When and how are such changes expected to come into effect?*

- (ii) Anti-dumping, countervailing and safeguard actions

- (b) Anti-dumping and countervailing measures

Legislation and administration

Paragraph 25

Could you explain in more detail the reference to "... deleting the "not likely" standard and incorporating the "necessary" standard of the Anti-Dumping Agreement"?

Paragraph 26

This paragraph refers to a claim by Canada. *Could you indicate what decision was taken in this respect?*

Paragraph 28

The implementation of countervailing measures and anti-dumping measures should in theory have the effect of eliminating injury to the industry of the importing country and is justified as long as subsidization and dumping continue to be practiced. If market prices do not return to "fair" levels after the implementation of such measures, this would be thought to be due to miscalculation of the measures applied. *Could it be that the "Byrd Amendment" is being justified by the possibility of miscalculation, by the investigating agency, of the amounts of anti-dumping and countervailing measures?*

Anti-dumping investigations

Paragraph 31

Owing to the size of the United States economy, subsidies and other measures of assistance to domestic producers have substantial effects on the world economy. *How can it justifiably be claimed that the direct payments made by the Government to farmers do not constitute an instrument of artificial competitiveness vis-à-vis other competitors, when such payments represent more than half of farmers' income?*

Countervailing duty investigations

Paragraph 40

This paragraph indicates that many countervailing duty investigations were initiated with parallel anti-dumping investigations. *Could you indicate what percentage of these investigations ended with the imposition of anti-dumping measures and what percentage with the imposition of countervailing measures?*

Paragraph 41

This paragraph refers to the fact that 73% of countervailing measures were applied to steel products. *What countries were targeted by these measures?*

Paragraph 43

Where the pre-sale and post-sale entities are different legal persons, is consideration even then given to the possibility that the post-sale entity is receiving a subsidy pursuant to the change-of-ownership transaction?

(c) Safeguards

Paragraph 56

This paragraph refers to the fact that some procedural aspects have been challenged. The institution that carries out these procedures is the same one which deals with similar aspects of anti-dumping and subsidy investigations. *Were any of the challenges on these matters also made in respect of anti-dumping or subsidy investigations?*

(v) Standards, technical regulations and sanitary requirements

(a) Standards and technical regulations

Paragraph 88

This paragraph refers to the existence of technical regulations established at sub-federal level. In particular, it is mentioned by way of example that, in the state of Idaho, food products containing foreign eggs must bear the indication "*foreign eggs used in this product*". In accordance with the provisions of Article 2.2 of the WTO Agreement on Technical Barriers to Trade, *what legitimate objective would be pursued by technical regulations of this kind? Are there any other similar technical labelling requirements at federal or sub-federal level in the United States which call for products to be differentiated according to the origin of their constituent ingredients?*

(b) Sanitary and phytosanitary (SPS) measures

Paragraph 91

Please explain what scientific principles justify the prohibition on entry into your country of plants exceeding 18 inches in length, in accordance with the provisions of Section 319.37-2(b) point 6(i) of the Code of Federal Regulations (Title 7, Agriculture, parts 300 to 399)?

What criteria were used by the sanitary authorities of the United States to determine the appropriate level of protection in this case, in accordance with Article 5.5 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures?

Have the United States sanitary authorities considered the possibility of implementing alternatives to the measures applied to plants exceeding 18 inches in length, which would be less trade-distorting and at the same time make it possible to establish the same appropriate level of protection?

3. Other measures affecting production and trade

iii) Intellectual property rights

1. *Please explain in detail how your legislation implements Article 61 of the TRIPS Agreement.*
2. *Please describe the criminal procedures and penalties contained in your legislation, including penalties of imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.*

II. DEVELOPMENTS IN SELECTED SECTORS

2. Textiles and clothing

In the case of the United States, the integration of the most sensitive textile products and the elimination of the majority of quotas will take place at the end of the ten-year period provided for in the WTO Agreement on Textiles and Clothing. *Is the Administration thinking of promoting greater liberalization in this sector over the next four years, with a view to preparing for the integration of textiles into the GATT rules, scheduled for 2005? What other measures might the United States be considering for implementation in connection with this topic?*

REPLIES PROVIDED BY THE U.S. GOVERNMENT

PART 1

1. Economic Environment

(Japan) (page 1, para.1) Economic growth in the United States decelerated as of the third quarter of 2000, and it is predicted that the deceleration of growth will reach as low as 1.5% for the whole of 2001. Negative indicators, such as the fall in stock prices, are also more apparent. How does the Government of the United States view this situation? What kind of policy measures does the Government of the United States think should be adopted for supporting sustainable growth? How does the Government of the United States assess the economic impact of the tax reductions and expansionary monetary policy promoted by the Bush Administration?

(Malaysia) The U.S. economy has been experiencing an economic slowdown since the third quarter of 2000. This is of concern to trading partners. What measures are the U.S. undertaking to counteract the effects of the downturn and to return the US to more sustainable rates of growth, other than a more relaxed monetary policy?

Answer (For both questions)

The current slowdown of the U.S. economy reflects several quarters of reductions in business inventories and declines in non-residential business investment. On an annualized rate, the U.S. GDP rose at just 0.2 percent in this year's second quarter. The Administration, however, expects a pick up in economic activity in the second half of the year, supported by the fiscal stimulus of the recent tax cut and the Federal Reserve's reductions in interest rates. The Administration estimates that the tax cut alone will add roughly one percentage point to economic growth in the second half of 2001 and early in 2002. For 2002, the Administration expects U.S. real GDP to grow at an annual rate of 3.7 percent.

(Canada) The GDP figures have been updated recently; and therefore those figures cited in paragraph 5 and in Table I.1, are no longer accurate. For example, real GDP growth in 2000 should be 4.1%, down from the previous figure of 5.0%. The U.S. may wish to follow-up with the WTO Secretariat to ensure that the Secretariat report includes the most updated figures.

Answer:

We agree that the data for GDP growth in 2000 have been adjusted to 4.1 percent.

(Canada) The US Administration forecast GDP growth of 2.4% in 2001 and 3.4% in 2002 seems to be overly optimistic. On August 16, the Administration's forecast was reduced to 1.7% this year and 3.2% next year. The U.S. may wish to follow-up with the WTO Secretariat to ensure that the Secretariat report includes the most updated figures.

Answer:

Current forecasts indicate U.S. GDP growth in 2001 of 1.7 percent, and of 3.7 percent in 2002.

2. Miscellaneous Issues

Labor Standards and Trade

(Japan) (pages 17-18, paras.22-25, Labour Standards and Trade) The California State Law (SB1888), which was amended in September 2000, prohibits the purchase of any foreign goods and services produced by using such labour as forced labour, or from the benefits of such labour as forced labour. These provisions target only foreign goods and services, and therefore are considered as constituting violation to Article 3 of the WTO Government Procurement Agreement (i.e. National Treatment clause). The Government of Japan requests that the Government of the United States takes appropriate measures in order to bring these provisions into consistency with the WTO Agreement. The Law also obliges contractors to verify that foreign-made products furnished to the State are not produced with the use of such labour as forced labour. While the Smoot-Hawley Act of 1930 prohibits the import of products produced with the use of such labour as forced labour under penal sanctions, contractors are additionally obliged by the State law to verify after customs clearance that such labour has not been used. Such dual obligation has caused an excessive burden to foreign suppliers. We would appreciate if the Government of the United States would explain the reason for this matter.

Answer:

U.S. laws and regulations prohibit the use of forced or indentured labor within the jurisdiction of the United States. Some jurisdictions have taken steps to ensure that requirements regarding forced labor that apply to domestic suppliers are applied by all suppliers that provide goods and services to governments, including imports.

(India) Ban on bidi import on the basis of non-trade related issues: The US Customs Department issued temporary orders in the latter half of 1999 suspending imports of 'Ganesh' brand bidis into the US, on the ground that the concerned Indian Bidi manufacturer was employing forced child labour in the manufacture of bidis. India expresses its strong concern at raising such trade barriers which are not WTO-consistent. We would request the US authorities to lift the ban in question.

[Answer to be supplied]

Shipbuilding

(Japan) (pages 93 and 96, paras 31 and 43, The Merchant Maritime Act of 1920) The Merchant Maritime Act of 1920 prescribes that ships for coastal shipping services are required to be built in the United States. Although this issue was dealt with in the review process pursuant to the paragraph 3.(b) of the GATT 1994, Japan regrets that sufficient explanation by the United States, on whether the conditions which created the need for the exemption still prevail, was not provided, and would expect an appropriate review next time. Please provide the U.S. view on this point.

Answer:

The U.S. position on this issue was stated unambiguously during the review process under paragraph 3(b) of the GATT 1994.

Section 301

(Japan) (page 59, paras.127-128, Section 301 of the Trade Act of 1974) (a) Although the Super 301 will expire at end of this year, Section 301 of the Trade Act of 1974 will, itself, remain in effect. Japan requests the United States to apply Section 301 in an appropriate manner in order to abide by its

obligations set out in the WTO agreements, as per the findings of the Panel Report regarding the same matter. What is the U.S. opinion?

Answer:

The United States is committed to complying with its obligations under the WTO Agreement.

(Japan) (page 59, paras.127-128, Section 301 of the Trade Act of 1974) (b) Japan is concerned about the consistency of the so-called "Carousel" amendment with the WTO agreements, since it requires the Government of the United States to periodically revise the list of products subject to the suspension of WTO concessions, thereby affecting the stability and the predictability of trade. The amendment is a subject of the consultations between the U.S. and the EC, and Japan is carefully monitoring the development of these consultations. Please explain the U.S. view on this.

Answer:

This question refers to section 407 of the Trade and Development Act of 2000, amending section 306(b)(2) of the Trade Act of 1974. As the United States explained in consultations held last year with the EC, nothing in section 407 requires actions inconsistent with U.S. obligations under the WTO Agreement.

(Canada) (para 127) According to para 127, "since the [Section 301] provision first entered U.S. trade law in 1974, the USTR has initiated 119 such investigations; since January 1999, however, only four Section 301 investigations have been initiated." There were seven U.S.-initiated investigations addressing Canadian wheat trade between 1990 and 1998. While none of these seven investigations has shown any evidence to indicate that wheat is traded unfairly, wheat was the subject of one of the four Section 301 investigations initiated since 1999. Please explain how the U.S. ensures that any trade action that might be undertaken pursuant to a Section 301 investigation fully respects U.S. WTO obligations.

Answer:

The U.S. Trade Representative decides what actions, if any, are taken as a result of an investigation under sections 301-309 of the Trade Act of 1974, and the Trade Representative is committed to complying with U.S. obligations under the WTO Agreement.

(Japan) (page 60, para.130, 1995 measures by the Government of Japan and the Government of the United States regarding autos and auto parts) The measures mentioned herein are taken not only by the Japanese Government, but by each government respectively and are not international agreements. This fact should be accurately reflected in the Report. The Japanese Government did not only remark that the measures adopted in 1995 had outlived its significance, but also proposed last year an idea of establishing a new bilateral dialogue mechanism designed to better respond to today rapid advance of globalization and the development of information technology. When the discussion between Japan and the United States on the auto and auto parts issues is mentioned, the proposal made by the Japanese side should be described accurately.

Answer:

The U.S. Government views the 1995 measures as a bilateral agreement between the United States and Japan, fully consistent with WTO provisions. The measures are focused on issues related to the Japanese automotive market and the Japanese transplants in the United States. The declared joint objective of the Agreement envisages "...achieving significantly expanded sales opportunities to result in a significant expansion of purchases of foreign parts by Japanese firms in Japan and through

their transplants, as well as removing problems which affect market access, and encouraging imports of foreign autos and auto parts in Japan." The Government of Japan made a proposal at the end of last year regarding the establishment of a new bilateral automotive dialogue to look at globalization, information technology and other issues. We regret that this information was not included in our submission.

GATT 1994 Legislative Agenda

(Japan) (page 13, para. 2, Trade Promotion Authority) What, in the view of the Government of the United States, is the prospect of Trade Promotion Authority being approved by Congress? What kind of efforts have been made for achieving this goal?

Answer:

President Bush has placed enactment of Trade Promotion Authority (TPA) at the top of his 2001 International Trade Legislative Agenda. The formal legislative process has begun with the introduction of a bill in Congress for such authority. TPA is an important part of President Bush's plan for opening markets and promoting global economic prosperity, and the Administration intends to work with Congress to enact TPA this fall.

State level impediment to trade

(EU) (State level impediment to trade) Some States still persist in having rules that: prevent cross-state retail sales of wines and spirits; prohibit EU exporters from distributing, rebottling, or retailing their own wine. These measures are a severe impediment to the free circulation of alcoholic beverages originating from the time of prohibition.

Answer:

All alcohol beverage products intended for sale in the interstate commerce of the United States, whether domestic or imported, are subject to labeling requirements found in the Federal Alcohol Administration Act. One of the labeling requirements includes obtaining a "Certificate of Label Approval", which is administered by the Bureau of Alcohol, Tobacco and Firearms (ATF). ATF does not charge any application fees for the issuance of a Certificate of Label Approval, whether the product is imported or domestic.

Other Measures Affecting Production And Trade

(Japan) (Metric system) Considering the impact of the U.S. market on the world, the Government of Japan strongly requests that the metric system (the SI Unit), which is a global standard, be adopted more broadly by the Government of the United States and American businesses. We note that the United States did indeed commit itself to this issue in the 2nd annual report of the SII (Structural Impediments Initiative) in 1992. We would appreciate receiving the U.S. view on this matter.

GATT 1994 Answer:

The U.S. Metric Program, located at the National Institute of Standards and Technology in the U.S. Dept. of Commerce, is undertaking renewed efforts to provide leadership, example, and model initiatives for building awareness of the metric system's widespread presence, its relative ease to learn and use as a language of measurement, and its vital role in an increasingly global marketplace. This involves encouraging, facilitating, and promoting the acceptance and use of the metric "language" in federal, state, and local government organizations, in business and manufacturing, in packaged

consumer products, in business and public education, and in general trade. We seek to heighten public awareness and appreciation for the metric system and to promote its use in daily life.

The U.S. Metric Program office plans to take the lead to promote changes to the U.S. Fair Packaging and Labeling Act (FPLA) to permit metric only declarations on U.S. consumer product. This will be accompanied by efforts to contact state weights and measures directors, in those states that haven't already implemented the Uniform Packaging and Labeling Regulations (UPLR) option on metric-only labeling, and working with them to promote parallel changes in their state laws and regulations to permit metric only labeling on consumer products regulated by the UPLR. Plans are being developed to meet with representatives of U.S. companies experienced in using the metric system to explore opportunities for sharing their successful transition techniques with other companies, particularly small- and medium-sized U.S. enterprises, to assist their management and employees in implementing the metric system.

The objective of these efforts will be to promote, directly and through professional and trade associations, metric resource materials that businesses can use in products and services, a goal being to facilitate the use of metric measures in manufacturing and production, as well as in metric-only packaging (when permitted by FPLA), and to increase the number of products sold in metric sizes.

Developments in Selected Sectors

(EU) Each year, the U.S. fixes the total allowable level of foreign fishing (TALFF) and accordingly makes allocations to foreign fishing fleets. Mackerel migrating off the East coast is the only stock currently identified as being in surplus in the U.S. Exclusive Economic Zone. However, the U.S. authorities have set a zero TALFF since 1990 for this stock, following pressure from its domestic industry. The EU believes that this line neither corresponds to the provisions and intentions of the Magnuson-Stevens Fishery Conservation and Management Act or to the provisions of Article 62 of the UN Convention on the Law of the Sea.

Answer:

We take note of the EU's views.

3. Measures

Regional Initiatives

(Japan) (page 19, para.32 and page .35, para.38) (a) Please explain the U.S. position on the relationship between the multilateral trading system established by the WTO agreements and bilateral free trade agreements.

Answer:

Bilateral trade agreements that are fully consistent with WTO rules and compatible with its objectives can also support and complement the rules-based and trade-expanding orientation of the multilateral trading system. The United States is presently seeking to encourage further trade liberalization through the pursuit of several bilateral agreements. Such initiatives include the U.S.-Jordan FTA and the negotiation of free trade agreements with Chile and Singapore.

(EU) (para 44- 45, Free Trade Area of the Americas (FTAA) Could the Government please explain its views on the relationship between the ongoing FTAA negotiations and a New Round of WTO negotiations?

Answer:

The FTAA will support and enhance the U.S. commitment to the multilateral system. It is premised on the success of the Uruguay Round, and on further contributions and commitments to the multilateral system. In April 2001, trade ministers from throughout the Western Hemisphere reiterated their pledge that the FTAA will be a balanced, comprehensive agreement that is consistent with the rules and disciplines of the WTO, and improve upon those rules and disciplines wherever possible and appropriate, taking into account the full implications of the rights and obligations of countries as members of the WTO. The increase in economic growth and improved access to new ideas resulting from liberalized trade brought about by the FTAA will also reinforce democratic principles in the region.

(EU) (para 60, The Caribbean Basin Initiative (CBI) and the African Growth and Opportunity Act (AGOA) The Report states that "The United States intends to request any WTO waivers which may be necessary for the enhanced benefits of the CBTPA." Can the U.S. specify its intentions in this regard? What is the situation with regard to the AGOA (paras. 52-58), where no reference is made to any waiver requests?

Answer:

The United States is evaluating what sort of waiver it needs for these programs and intends to submit its waiver request soon.

(Canada) (para 31, Relations with Canada and Mexico) According to para 31, two-way trade between the United States and Canada is about US\$1.1 billion daily. This is the 1999 figure. The updated 2000 figure from the US Survey of Current Business is US\$1.23 billion. Using a Canadian source, the corresponding figure is even higher, at US\$1.3 billion daily. The U.S. may wish to follow-up with the WTO Secretariat to ensure that the Secretariat report includes the most updated figures.

Answer:

In June 2001, the U.S. Department of Commerce indicated that total two-way trade in goods with Canada is \$409.8 billion, or \$1.12 billion daily.

(Hong Kong) (page 11, para 40) We note that the U.S. sees that regional agreements can become models for future multilateral liberalization in new areas, for example, environment and labour standards etc. However, it appears that there is still controversy within the US, notably in the U.S. Congress, over the inclusion of these new areas in regional initiatives/agreements. A prominent example is the US-Jordan Free Trade Agreement, which is yet to be ratified by the U.S. Congress. We would like to know the US' latest stance on these new areas in the context of its future regional initiatives/agreements.

Answer:

The achievement of mutually supportive trade and environment and trade and labor policies is part of the President's 2001 International Trade Agenda. More broadly, the U.S. Congress has explicitly linked respect for internationally recognized worker rights and/or for environmental values with aspects of U.S. trade, investment, and lending policies in over a dozen pieces of legislation over the last twenty years. These include the original (1983) Caribbean Basin Initiative, OPIC, the Trade Act of 1988, NAFTA, and the Uruguay Round Agreements Act. The Administration will continue to work with Congress to develop negotiating objectives addressing these issues in Trade Promotion Authority legislation.

Bilateral Initiatives

(Bangladesh) (II(3)(iii) Unilateral Preferences) Under the TDA 2000, the U.S. has provided duty-free and quota-free market access for the products of 72 countries, of which 35 belong to the category of LDC. Among the 49 LDCs designated as such by the UN, 14 LDCs have been left out of the purview of this legislation. Does the U.S. have any plans of extending similar preferential treatment to the remaining 14 LDCs?

Answer:

We plan to work towards the objective of duty-free and quota-free market access for all LDC imports as stated at the Third United Nations Conference on the Least Developed Countries.

(Canada) (paras 52-58, African Growth and Opportunity Act (AGOA)) What are the expected benefits to sub-Saharan African countries of the various market access provisions in AGOA? Does USTR anticipate substantial increases in exports from these countries not least because many of the provisions are subject to the use of U.S.- produced raw materials? What are the anticipated impacts on employment and poverty reduction in sub-Saharan Africa?

Answer:

AGOA provides expanded trade opportunities for eligible countries, and is especially beneficial to those countries that put in place a business environment that will attract and retain investors who are interested in taking advantage of the benefits AGOA provides. AGOA has already begun to generate increased trade flows with the United States, increased investor interest across the region, and job creation in the region. For example, Kenya estimates that AGOA will create 50,000 new jobs directly and over 100,000 jobs indirectly. South Africa anticipates about \$100 million in investment in its textile and apparel facilities, creating 13,000 new jobs. As a result of AGOA, Madagascar has received more foreign direct investment in the first quarter of this year than in all of 2000. Lesotho's apparel sector is expected to receive \$122 million in new investments as a result of AGOA.

(Thailand) Please describe the preferences under the Trade and Development Act (TDA) of 2000 which offers to Sub-Saharan African and Caribbean countries including the process of certifying beneficiary countries.

Answer:

The Caribbean Basin Trade Partnership Act (Title II of the TDA) expands on previously-existing preferential treatment extended to eligible Caribbean and Central American countries. Duty- and quota-free treatment is provided for certain apparel products, subject to specific origin requirements including use of U.S. yarns and fabrics. In addition, other previously-excluded products (including petroleum products, canned tuna, and leather footwear) are now eligible for U.S. tariff treatment equivalent to that extended to Mexico under the NAFTA. Eligibility for these enhanced preferences was conditioned on a review of the countries' adherence to legislative criteria dealing with trade policies, protection of intellectual property, protection of worker rights, transparency in government procurement, efforts to combat corruption, and counter-narcotics efforts.

The African Growth and Opportunity Act (AGOA), Title I of the Trade and Development Act of 2000, provides duty free and quota free access to the U.S. market for a substantial number of products from eligible beneficiary sub-Saharan African countries. For textiles and apparel, AGOA provides the following benefits:

- (1) lifts all existing quotas on apparel products from sub-Saharan Africa, after these countries have implemented effective visa systems to combat illegal transshipment;
- (2) extends duty/quota free treatment for sub-Saharan African apparel made from yarns and fabrics not available in commercial quantities in the U.S.;
- (3) extends duty/quota free treatment for sub-Saharan African apparel made in Africa from U.S. yarn and fabric;
- (4) extends duty/quota free treatment for knit-to-shape sweaters made in sub-Saharan Africa from cashmere and some merino wools as well as apparel produced in Africa from silk, velvet, linen, and other fabrics not produced in commercial quantities in the U.S.;
- (5) extends duty free and quota free U.S. market access for apparel made in Africa with African/regional fabric and yarn, subject to a cap (limit) ranging from 1.5 to 3.5 percent of the U.S. apparel import market over an 8 year period; and
- (6) promotes investment in Africa's poorest countries through a special provision in the cap which allows African countries with an annual GNP of \$1,500 and below to use third country fabric inputs for 4 years.

AGOA extends U.S. Generalized System of Preferences (GSP) benefits for eight years for eligible sub-Saharan African countries and eliminates the GSP competitive need limitation for AGOA beneficiary countries. AGOA also mandates a U.S.-sub-Saharan Africa Trade and Economic Cooperation Forum to facilitate regular trade and investment policy discussions, provides for technical assistance to develop trade capacity in Africa and established equity and infrastructure funds for Africa. Thirty-five of the 48 sub-Saharan African countries are eligible to receive AGOA's trade benefits. The President may designate a country as a beneficiary sub-Saharan African country if he determines that the country meets the eligibility criteria set forth in section 104 of the AGOA.

(Japan) (page 19, para.32 and page .35, para.38) (b) When does the Government of the United States expect the Congress to ratify the U.S.-Jordan FTA?

Answer:

Implementation of the U.S.-Jordan Free Trade Agreement is a high priority for the Administration. The President signed implementing legislation for the Agreement in October. We expect the Agreement to enter into force on December 15, 2001.

(Japan) (page 19, para.32 and page .35, para.38)(c) If the U.S.-Chile FTA is concluded, does it mean expansion of the NAFTA, seeing as there already exists a Canada-Chile FTA and a Mexico-Chile FTA? Please explain the U.S. position on the relationship between the U.S.-Chile FTA and the FTAA.

Answer:

The U.S.-Chile FTA is a stand alone agreement, not an accession to the NAFTA. In our negotiations, we are striving for a state-of-the-art bilateral free trade agreement. With respect to the FTAA, our efforts to conclude this agreement complement our efforts on the FTAA.

Export Restrictions and Controls

(Japan) (page 60, paras.131-133, Export restrictions and controls) (a) As an example of export restrictions, the Report says or example, exports of unprocessed timber originating from non-federal public lands in the western continental United States are prohibited. It should be corrected to or example, 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 United States are prohibited. Japan thinks that this measure is rather an export quantitative restriction for protecting domestic sawmillers as, first of all, protection of spotted owls must be done through regulating logging and not by export bans. Secondly, only export restrictions have been introduced, whereas no regulations have been established for the domestic transactions of logs. Moreover, the United States strongly requests its exports of timber products to Japan, therefore, Japan would like to request the United States to remedy this measure in accordance with the WTO Agreement once again as we requested at the last Trade Policy Review of the United States.

Answer:

We take note of Japan's comments.

(Japan) (page 60, paras.131-133, Export restrictions and controls) (b) The Report says he U.S. maintains export restrictions and controls for (i)national security, (ii)and foreign policy reasons, (iii) or to prevent situations of short supply. Although we hear that agricultural products are not included in the Control List of restricted and controlled products, will the possibility of including these agricultural products in the Control List arise, if export restrictions and controls for (ii) or (iii) are undertaken? For the trading of commodities such as agricultural products, international prices depend significantly on the actions taken by the exporting countries. If the agricultural products are subject to export restrictions and controls, the exporting countries are free to impose export restrictions and controls. This system raises not only a trade distorting effect, but also difficulty on food security, which impedes stable food supply to the importing countries.

Answer:

It is U.S. policy not to institute export restrictions on foodstuffs and medicine except under extraordinary circumstances. Article 12 of the WTO Agreement on Agriculture requires members instituting export restrictions to notify such measures to the Committee on Agriculture. The United States has been diligent in doing so when necessary.

(Japan) (Re-export control) The U.S. Export Administration Regulations mandate firms located outside the U.S. to obtain authorization from the Government of the United States when it is necessary to re-export certain goods. Such a requirement apparently constitutes an extraterritorial application of the U.S. laws and thus should be abolished. Furthermore, until its abolishment, the following transitional measures should be taken into consideration:

- (i) in light of the fact it is difficult that for non-U.S. companies to obtain information on re-export regulations, the United States should strengthen its efforts to publicize such information, and in case where a company cannot be expected to know a specific requirement, it must not be held liable;*
- (ii) the United States should publicize as a guideline the methodology used by the DOC when calculating the ratio of software and technology incorporated in a product;*
- (iii) companies should be allowed to resort to a de minimus level, according to their own judgement, by making use of the above guidelines.*

Answer:

We take note of Japan's comments.

(Japan) (page 42, para 61, Quantitative restrictions on imports) It is said that the United States is maintaining bans on imports from certain countries for foreign policy purposes. Could the United States provide the details of the bans (e.g. banned products and countries)?

Answer:

Under regulations promulgated under the International Emergency Economic Powers Act (IEEPA), certain products from selected countries may only be imported into the United States pursuant to a license. Such license requirements apply to certain imports from Sudan, Iran, Iraq, Libya, and Liberia. An expedited license (notification) procedure is in place for North Korea. Applications for licenses can be made to the Department of the Treasury's Office of Foreign Assets Control (OFAC). There is no quantitative limit to the number of licenses that may be issued.

(Japan) (pages 62-63, paras 134-138, Sanctions Acts) Sanction measures based on the Iran and Libya Sanctions Act of 1996 (ILSA) and the Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act) could constitute an extraterritorial application of domestic laws, which is not permissible under general international law, and may thus be considered as problematic in relation to the WTO Agreement. The Government of Japan requests the Government of the United States to be prudent when implementing these Acts in order to ensure consistency with international law. In particular, the Government of the United States should refrain from applying sanctions to companies from third countries.

(Japan) Despite repeated appeals from many WTO members, including Japan, it is regrettable that the ILSA was renewed in August with such problems remaining unresolved. We strongly urge the Government of the United States to implement the Act with due prudence while, at the same time, maintaining consistency with international law. What is the U.S. opinion on the above?

(EU) (para 138) The U.S. has recently extended the provisions of the Iran and Libya Sanctions Act (ILSA) for another period of five years. Could the U.S. give any indication that the EC's objections to the U.S. Congress in response to this extension will be considered seriously and give any indication as to the likelihood of the extension being withdrawn or reduced?

(India) In paragraph 30 of its summary observations, the Secretariat report observes that 'trade restrictions imposed by the United States for national security and foreign policy reasons may be a source of concerns for some trading partners, particularly, because of the unilateral nature of certain such measures.Congress is considering reforms to sanctions policy and to export controls'. We are interested to know the details of the reforms being considered by the US Congress.

(Malaysia) There have been concerns expressed over US unilateral trade measures that are not WTO consistent. In particular, we note especially the extension to the Iran-Libya Sanction Act. How does such Acts reconcile with US obligations under the WTO?

Answer: (For all five questions)

We appreciate the views of all our trading partners in these matters.

The Iran and Libya Sanctions Act (ILSA) remains U.S. law. In August 2001, the Act was extended for a further five years, until 2006, with amendments. The re-authorizing legislation includes a provision calling for a report by the President to Congress on the impact of certain actions

taken pursuant to the Act. The President is invited to include in that report a recommendation on whether the Act should be terminated or modified. In his statement upon signing the legislation, the President welcomed this provision, emphasized our continuing concerns about Iran and Libya, and noted that we are strengthening our cooperative efforts with other countries to pursue effective approaches to the problems of proliferation and terrorism that are key ILSA concerns. By its terms, ILSA applies to those who engage in activities covered by the statute, without distinction by nationality. The legislative history of the Act indicates a concern by Congress that the law be applied in a manner consistent with the international obligations of the United States.

The United States believes that the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act is consistent with U.S. obligations under the GATT 1994 and the GATS. Since the enactment of the LIBERTAD Act the President has exercised his authority under Title III of the Act to suspend the right of U.S. nationals to file suit against persons that are trafficking in confiscated property in Cuba. That suspension remains in effect. In 1998, the United States and the European Union reached an Understanding with Respect to Disciplines for the Strengthening of Investment Protection. That Understanding provides that the United States would continue consultations with the Congress with a view to obtaining an amendment of Title IV of Helms-Burton that would provide authority for a waiver that would apply, with respect to the EU, once the EU has adhered to the agreed disciplines and principles. Consultations with the Congress are continuing.

(EU) (para 137, Export restrictions and controls) Title III of the Helms-Burton Act allows U.S. citizens to file lawsuits for damages against foreign companies investing in confiscated U.S. (including Cuban-American) property in Cuba. Title IV requires the U.S. Administration to refuse entry to the U.S. to the key executives and shareholders of such companies. The EU is of the view that these measures are contrary to U.S. obligations under the WTO Agreements, in particular the GATT (General Agreement on Tariffs and Trade) 1994 and GATS (General Agreement on Trade in Services). Recently, the U.S. suspended Title III for an additional six months but its commitment to grant a waiver on Title IV has not yet been honoured. Does the U.S. intend to introduce a permanent solution to this problem?

Answer:

In 1998, the United States and the European Union reached an Understanding with Respect to Disciplines for the Strengthening of Investment Protection. That Understanding provides that the United States would continue consultations with the Congress with a view to obtaining an amendment of Title IV of Helms-Burton that would provide authority for a waiver that would apply, with respect to the EU, without a specific time limit, so long as the Understanding was in effect. Consultations with the Congress are continuing.

(EU) (para 138) The Iran Non-proliferation Act, 2000 provides for discretionary sanctions against foreign companies that transfer to Iran goods, services and technology listed under the international export control regimes, as well as any other item prohibited for export to Iran under U.S. export control regulations, as potentially contributing to the development of weapons of mass destruction. The EC sees the adoption of this Act as a sign of failure to comply with the U.S. commitment to resist the passage of extraterritorial sanction legislation. Will the U.S. confirm that the promise made by President Clinton (to work with Congress in order to seek to rationalize the reporting requirements on transfers deemed legal under applicable foreign laws and consistent with the multilateral export control regimes) will be honoured under the current administration?

Answer:

The Clinton Administration opposed the Iran Proliferation Act in the Congress but the legislation passed by an overwhelming margin. President Clinton signed the legislation after being

satisfied that the bill would not damage international cooperation with non-proliferation efforts. The President has flexibility to impose or not impose sanctions under the Act.

(Brazil) In its report, the United States affirms that NAFTA agreements “can become models for future multilateral liberalization in new areas, such as agriculture, services, investment, and environmental and labour standards” (page 11, §40). In view of the fact that to be eligible for NAFTA preferences it is necessary to fulfil strict rules of origin, NAFTA is seen as highly distortive to commerce. Therefore, how can agreements such as NAFTA contribute to freer trade?

Answer:

Every preferential trade agreement includes rules of origin which assure that the benefits of the agreement flow to the parties of that agreement. For the majority of products, NAFTA's rules of origin require that processing or assembly of goods within the Parties that contains non-NAFTA inputs be sufficient to result in a designated change in tariff classification under the Harmonized Tariff System, as specified in NAFTA's Annex 401. In some product sectors, the change in tariff classification requirement is supplemented or replaced by a requirement that a specified percentage of either the value of the goods or their net cost be attributable to labor performed and materials produced in the territories of the NAFTA parties.

In all cases, NAFTA's rules of origin are defined in a clear, transparent manner that do not distort trade flows. NAFTA also provides for advanced rulings regarding origin to allow traders to make sourcing and manufacturing decisions with a high degree of certainty. In addition, the NAFTA allows for modification of rules of origin. The Parties have agreed to several such modifications, including those which have simplified, clarified or provided added sourcing flexibility.

(Brazil) Enabling Clause (Decision of 28 November 1979) establishes, in its Article 5, that “The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs”. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs”. However, as mentioned in the Secretariat Report, the United States have been conditioning the concession of preferences under agreements such as GSP, CBTPA and AGOA to adherence to labour and environmental standards, among others. How are these requirements consistent with the Enabling Clause?

(India) In paragraph 14 of its summary observations, referring to the unilateral extension of preferences under the US GSP scheme, the Secretariat has observed that ‘these preferences can be made conditional to policy changes in the beneficiary countries in areas such as protection of labour rights and of intellectual property’. The GSP scheme is a non-reciprocal scheme of incentives granted to developing countries without any conditions attached and as such India strongly opposes any linkage of GSP benefits to non-trade issues such as labour rights. We would like to hear the response of the US delegation.

Answer: (For both questions)

We believe that the conditions for eligibility are fully consistent with beneficiaries' development, financial, and trade needs. If countries feel otherwise and that the Enabling Clause is being violated, they are free to forego the unilateral grant of preferences. We believe that the edibility criteria reinforce the development and trade incentives in the trade preference programs by encouraging countries to engage in self-help in crucial areas. We also believe that the trade preferences should benefit workers as well as firms

(EU) Based on an agreement in 1991 (Rose Garden Agreement), the US has entered in discussions with the Mercosur countries with a view to launch negotiations in a 4+1 format. Could the US please inform about: (a) the nature and state of play of these discussions, (b) the objective and timeframes of the negotiations, (c) whether a free trade area between the Mercosur countries and the US is foreseen or among US intentions; and/or whether sectoral liberalisation is foreseen or among US intentions, (d) its relation to the FTAA negotiations.

Answer:

The 4 + 1 format seeks to explore expanded market access. No FTA negotiations are contemplated at this time.

(India) In paragraph 15 of its summary observations, the Secretariat referring to the US Trade and Development Act (TDA) of 2000 that includes both the African Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act has pointed out that textile and clothing imports from beneficiary countries in sub-Saharan Africa and the Caribbean would enter the US market duty-free and quota-free subject to content requirements on US produced-inputs. According to the Secretariat, this requirement would 'ensure that US input producers also benefit from the arrangement, possibly at the expense of lower-cost third-country suppliers'. We would like to hear the response of the US delegation to these observations. We would also like to know whether all the Acts referred to in this paragraph have been notified to the WTO. If yes, the details of the notification may be given. If not, the reasons thereof and the likely time-frame by which the notification would be made may be indicated. Since AGOA is neither generalised nor non-reciprocal, it cannot be dealt with under the 'Enabling Clause'. The US delegation is requested for information on when they propose to approach the CTG and the General Council with a waiver request.

Answer:

The United States is evaluating what sort of waiver it needs for these programs and intends to submit its waiver request soon.

(India) Problem of classification of Elastic Rubber Tape (ERT): It has been brought to our notice that under the provisions of the new Caribbean Basin Trade Partnership Act (CBTPA), a very narrow definition has been adopted for Elastic Strips to qualify as Findings and Trimmings, namely, that they should be less than one inch in width and should be used only in production of brassieres. Further, the Indian exporters are finding their market access of Elastic Rubber Tapers (ERT) to the USA severely affected on account of a provision in the CBTPA that the quota and duty preference on the garment would be allowed in the US provided that not more than 25% of the value of the garment is made from foreign "Findings and Trims". We would like to have a clarification from the US authorities on the reasoning behind adoption of such a narrow definition for ERTs and on the difficulties being faced in classifying Elastic Rubber Tape (ERT) similar to Narrow Woven Elastic/Spandex and giving protection and preference to ERT as given to Narrow Woven Elastic/Spandex?

Answer:

We are not aware of any current classification problem with this product. The definition of “findings and trimmings” in the CBTPA was developed in 1986 for use in the Caribbean Basin Initiative Special Access Program, which provided guaranteed access to apparel products assembled in CBI countries from fabric formed and cut in the United States. At that time it was determined that elastic textile strips less than one inch in width used in the production of brassieres met the definition of findings and trimmings. Elastic rubber strips, of any width, have always been eligible to be considered as findings or trimmings.

(India) Denial of GSP benefit to industrial leather gloves: It has been brought to our notice that as specified under chapter 42 of the US Customs Tariff, articles of leather of different types are eligible for concessional/duty free import under the US GSP Scheme. However, in the guidebook published by the office of USTR, work-gloves (HSN Code 4203.29) are not included in the list of articles eligible for GSP. We would request the US authorities to clarify the reasons for such a specific exclusion and also to consider inclusion of work-gloves in the list of items eligible under its GSP scheme.

Answer:

These gloves are statutorily excluded from GSP by the Congress. We have no legal authority to consider them for inclusion in the GSP program.

(India) Preferential Agreements: In the process of conferring access to Preferential Trading Agreement (PTA) members, the opportunities for other members in the given market are adversely affected. Very often, preferential quota given to members of a PTA is counted as a part of the MFN tariff quota, and thereby limits export opportunities available to the MFN trading partners. For example, the total tariff quota of the USA for refined sugar was 22,000 tonnes in 1998. Under the provision of pre-allocated bilateral quota, an FTA partner received a quota of 2954 tonnes, and got an additional quota of 25,000 tonnes under the NAFTA. Hence, channelisation of regional/bilateral tariff quota through tariff quota seeks to limit the market access opportunity of non-PTA members of the WTO. We would request the US authorities to reconsider the matter.

Answer:

None of the sugar access provided by the United States to its NAFTA partners reduces the access provided by the United States to other supplying countries under its MFN obligations. With respect to refined sugar, the 2,954 tons cited by India is provided to a NAFTA partner based on historic import shares, consistent with WTO practice, not as a result of any NAFTA commitment. With respect to the 25,000 tones provided to this same party in marketing year 1998, 7,258 tons was allocated based on WTO commitments of the United States, the same volume allocated to this country in years prior to the NAFTA. The additional 17,742 tons, required by the NAFTA, was provided to this country outside of and in addition to the United State’s WTO commitments. That is, the increase in access provided under NAFTA has not reduced the access provided to other supplying countries.

4. Tariffs

(Bangladesh) (Chapter III, Section (1)(i)(d)) The Secretariat report notes that the United States grants unilateral preferential tariff treatment to a number of countries under the AGOA, ATPA, CBTPA and GSP, which are aimed at encouraging the exports from developing countries, particularly from least developed countries. Moreover, over the last two years the U.S. has committed more than US\$ 600 million towards strengthening the trade capacity of developing countries and economies in transition. We welcome the effort of the U.S. towards the effective integration of developing countries in world trade. However, it is noted (table III.3) that while

average preferential tariff on imports from LDCs under GSP is nearly half of MFN tariff average, tariffs on imports of textiles and clothing; and footwear and headgear from LDCs are substantially high. Imports from LDCs into the U.S. comprise mainly the products such as mineral oils {Chapter-27(44.26%)}; woven ready-made garments {Ch-26 (28.5%)}; knitwear {Ch-61 (14.18%)}; headgear and parts {CH-65 (2.13%)}⁴ Although mineral oil from LDCs does enter duty free, MFN duties on mineral oils are negligible. However, other products of export interests of LDCs face high tariffs in the U.S. and are not subject to preferential treatment. Do the U.S. authorities not consider that all LDCs should be provided duty free access under GSP on products of their substantial interest? If so, do the U.S. authorities have any plan to grant preferential treatment to the products of special interest of LDCs particularly in textiles and clothing?

(Switzerland) *Preferential tariffs: In paragraph 17 the Secretariat notes that "the average tariffs under unilateral U.S. preference schemes tend to be significantly lower than the average MFN rate but still substantially higher than the average under the FTAs that the United States has concluded". Initiatives have been taken recently by some members to improve the market access opportunities of the LDCs. Do the USA foresee to improve also the market access opportunities for the LDCs, for instance to grant them the same preference as under the FTAs?*

Answer: (For both questions)

We plan to work towards the objective of duty-free and quota-free market access for all LDC imports as stated at the Third United Nations Conference on the Least Developed Countries.

(Switzerland) *According to our information the US International Trade commission was working last year on ways to simplify the tariff schedule, the national list of import product categories and sub-categories. Could the US delegation provide information as to which steps have been taken so far? What have been the USITC recommendations for simplifying the tariff schedule and have they been put in force?*

Answer:

The USITC completed a report to the Congress and the President in 2000 suggesting means for simplifying the tariff, mainly through consolidating rate lines which are scheduled to be reduced to common levels by 2004. The USITC also noted that, due to tariff rate compression, there were many rates that fall below 5% ad valorem and that the next round of tariff negotiations could offer opportunities for further rate harmonization and simplification. A copy of the report is available on the Internet at <http://www.usitc.gov/wais/reports/arc/w3318.htm>.

(Chile) *The application of specific duties affords greater protection to lower-value products, thereby making it possible to stabilize domestic prices against fluctuations in the international prices of those products. If a country intensively exports agricultural products and their price falls, that country, instead of being able to benefit from its greater competitiveness, finds that its exports to the United States have become more expensive, since it has to pay a specific duty whose ad valorem equivalent varies from approximately 40 to 232 % thus becoming an effective barrier to trade. Does the United States intend to stop applying specific duties within the near future?*

⁴Figures in the Parenthesis indicate the share of each category of products in total imports from LDCs into the U.S. in 2000 and are based on USITC Trade Dataweb online information.

Answer:

The WTO does not prohibit the use of specific duties. Many WTO Members employ specific rates on certain products. With respect to Chile's concern, where applicable, a specific rate also provides overall price stability in cases where the cost of the product from Chile might increase.

(Japan) (page 24, para.1, Tariff rates of trucks (motor vehicles for the transport of goods) The United States imposes high tariff rates, such as 25%, on most trucks (HS 8704). In comparison with Japan, which sets its tariff rates at 0% on the same items, the U.S. figure remains considerably high. Japan would also like to know why the United States imposes tariff rates on trucks 10 times higher than on passenger vehicles (of which the bound rate is at 2.5%.) According to the Minutes of the 1999 Trade Policy Review, the United States stated that it had initiated the necessary domestic procedures in its reply to a similar question. Japan would like to know the current situation of the above case, and further would like to request elimination of this tariff peak. Please provide the U.S. view on the matter.

Answer:

The United States has indicated a willingness to engage in comprehensive market access negotiations on goods to complement the negotiations on agriculture and services mandated in the WTO's built-in-agenda. With respect to the domestic procedures discussed at the last TPR, in November 1999 the U.S. International Trade Commission completed its report on the probable economic effects of various scenarios of tariff reductions.

(Japan) (page 5, para. 5) The Report says, sizeable tariff barriers tend to be concentrated mainly in agricultural, food, and tobacco products ; tariffs reach ad-valorem or ad-valorem equivalent rates of 350% for tobacco, 164% for peanuts, and 132% for peanut butter (out-of-quota tariff rates). Could the United States provide the reason for maintaining such a high tariff on these products and does the United States have future plans to improve this?

Answer:

These tariffs are permitted under the U.S. WTO obligations. In the agriculture negotiations, the United States has proposed that all WTO members should reduce substantially, or eliminate, all tariffs.

(Japan) (page 25, para.7) The authorities of the United States stated that the current applied and bound rates are identical. It would, therefore, appear that the United States is in no hurry to complete the modification process of its Schedule for the purpose of introducing the HS96 changes. What is the situation of negotiations with countries having made reservations on U.S. Schedule changes?

Answer:

The United States Harmonized Tariff Schedule has since 1996 reflected HS96 nomenclature, as does our electronic submission to the Consolidated Tariff Schedule (CTS). Through agreed procedures in the Market Access Committee, we have completed consultations regarding the United States' HS96 changes with all but one Member, with whom we are in the process of finalizing an understanding.

(New Zealand) 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 trade opened that are a feature of the U.S. Government report (G/I, paras 1,3

and 4). Table III.1 of the Secretariat report (S/III, page 25) also demonstrates that while a simple average applied tariff rate on non-agricultural products fell from 5.7 percent in 1996 to 4.5 percent in 2000, on agricultural products it actually rose slightly from 10 percent in 1996 to 10.4 percent in 2000 (with a peak of 10.7 percent in 1999).

The Secretariat notes that “sizeable tariff barriers” tend to be concentrated in a few “sensitive” sectors, including agriculture, and that tariff escalation was particularly noticeable in food industries where out-of-quota tariffs range to 350% and may act as import prohibitors (S/III, pages 22-26). These barriers of course have a negative impact on higher-value-added exports, from developing and developed countries.

--In view of this, what is the US' justification for maintaining high tariff protection in sectors such as agricultural and 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?

Answer:

These tariffs are permitted under the U.S. WTO obligations. In the agriculture negotiations, the U.S. has proposed that all WTO members should reduce substantially, or eliminate, all tariffs. This includes substantial reduction or elimination of tariff disparities.

(Korea) (page 24, paras 3-4, tariffs) Excluding the ad valorem equivalents (AVEs), the average applied MFN rate of the United States was 4.6% in 2000, but the average of AVEs was estimated at 11.5% and specific and compound duties accounted for 75 of the 100 highest rates in the same year. What are the objectives pursued in maintaining the specific and compound duties? Does the U.S. have any plan to reduce the number of products subject to those duties?

Answer:

WTO rules do not prohibit the use of compound or specific duties. The United States has indicated a willingness to engage in comprehensive market access negotiations on goods to complement the negotiations on agriculture and services mandated in the WTO's built-in-agenda.

(Korea) (page 25, Table III.1) Table III. 1 shows that items subject to tariff peaks with tariffs over 15 % account for 7.0% in 2000. This level is higher than that of other developed countries. What is the U.S. plan to reduce items subject to tariff peaks in the future?

Answer:

Table III.1 also indicates U.S. tariff rates above 15% have declined since 1996, consistent with our UR commitments. See also answer to question 2 above.

(Korea) (page 25, para. 6) In the US, tariff escalation, which arises when tariffs increase with the degree of processing, is particularly noticeable in the food, beverages, tobacco, textiles, clothing and leather industries. Does the U.S. government intend to ease or eliminate these tariff-rate structures?

Answer:

See previous response.

(Malaysia) (Government Report, para 15) The U.S. tariff regime, while having generally low ad valorem duties, continues to exhibit high specific duties as well as tariff escalation in sectors of export interest to developing countries. This has been in force for some time. Is the U.S. undertaking a review of these rates particularly in light of possible new negotiations on tariffs and in line with U.S. commitment to an open market policy.

Answer:

Please see the response to question from Japan.

(Brazil) In the Secretariat Report, it is stated that despite the relative openness of the US economy, "sizeable tariff barriers tend to be concentrated in a few "sensitive" sectors, which are often also of particular interest to exporters from developing countries. These sectors involve mainly agricultural, food, and tobacco products, as well as textiles and footwear; tariffs reach ad valorem or ad valorem equivalent rates of 350% for tobacco, 164% for peanuts, and 132% for peanut butter (out-of-quota tariff rates)" (page 25, §5). How is that feature consistent with the stated objective of "extending the benefits of trade liberalization to the developing world and fostering their further integration into the multilateral trading system" ? (Government Report, page 6, §6)

Answer:

Overall, the U.S. market is one of the most open in the world. The average U.S. tariff currently is 5.5 percent and will drop to 3.1 percent upon full implementation of the United States' Uruguay Round commitments. Moreover, 66 percent of imports from developing countries enter the U.S. market duty free under MFN or our trade preference programs. The United States is prepared to consider further duty reductions in the context of new negotiations in market access.

(Brazil) The Secretariat Report identifies the presence of important tariff escalation and tariff peaks in US tariffs (pages 25-26). Please describe what are the main sectors protected by these instruments and the possible effects on other countries.

Answer:

Page 25 of the Report indicates the sectors that are affected. The United States has not conducted a study of the effects on other countries; however, some further analysis can be found in the WTO Secretariat's Special Study 6 regarding Market Access.

(Brazil) Could an explanation be provided as to why the US has not consolidated two lines covering crude petroleum? What is the applied rate for these tariff lines? Does the United States have plans to consolidate these tariff lines?

Answer:

The 2001 U.S. applied rates are: 5.2 cents/bbl for HS 2709.00.10 and 10.5 cents/bbl for HS 2709.00.20.

(Brazil) According to the WTO IDB, the US Tariff has 4.2% of total of tariff lines consolidated in terms of non ad valorem rates, applying mainly to agricultural products, footwear, textiles and base metals (Secretariat Report, page 24). Given the known distortive effect of specific and compound tariffs, what are the views of the United States, in case of a new WTO round, on the possibility of consolidating only ad valorem tariffs?

Answer:

There are no WTO limitations on the use of compound or specific rates. The United States is prepared to review tariff rates in a future round of market access negotiations.

(India) In paragraph 1 of the Summary Observations, the Secretariat has observed that in a few important areas significant barriers to market access persist. It has suggested that reducing such remaining barriers would not only increase the otherwise high efficiency of the US economy and benefit its domestic consumers and taxpayers but also lessen distortions in global markets, frictions with the trading partners and strengthen the multilateral trading system. We would like to hear the response of the US delegation to these observations.

Answer:

The United States is prepared to consider further duty reductions and to discuss non-tariff measures in the context of a new negotiation in non-agricultural market access.

(India) In paragraph 2 thereof, the Secretariat has observed that “significant barriers to foreign competition have remained in areas like textiles and clothing, transport and some services sectors. The new Administration’s response to these policy challenges will be important to global trade and welfare”. Given the fact that sectors such as agriculture and textiles and clothing that are the mainstay of most of the economies of developing countries, we would like to hear the response of the US delegation to the Secretariat observations.

Answer:

See answer to previous question.

(India) In paragraph 12 of its observations, the Secretariat report observes that ‘the highest tariffs apply mainly to imports of agro-food and tobacco products, as well as clothing, textiles and footwear. In these industries, tariffs tend to increase with the degree of processing’. All these items are of importance to developing countries and increased tariffs on processed items act as a barrier to value-added exports by developing countries to the US. We would request the US delegation to respond to these observations.

Answer:

See response to Brazil question 1.

(India) It is noted that despite a low average MFN rate for all goods, significant tariff peaks and escalations exist in the US, especially for the products of interest to developing countries like India. The highest tariffs apply mainly to imports of agri-food, tobacco, clothing, textile and footwear. Non ad valorem rates, representing nearly 13% of tariff lines, mask relatively high levels of protection. We would request the US authorities to address this problem and eliminate these tariff peaks.

Answer:

There are no WTO limitations on the use of compound or specific rates. The United States is prepared to review tariff rates in a future round of negotiations.

5. Rules of Origin/Marking/Labeling

(EU) (EC as a country of origin) As U.S. Customs refuses to recognize the EC as a country of origin, EU firms are forced to incur additional expense by providing supplementary documentation and following further procedures.

Answer:

As is the case for numerous WTO members, many of the trade laws of the United States are written in terms of country of origin, and do not contemplate a 'customs union of origin.'

6. Non-Tariff Measures

(EU) The Merchandise Processing Fee (MPF) is levied on all imported merchandise (with certain exceptions) including that entered under Schedule 8, Special Classifications, of the Tariff Schedules of the US. As of 1 January 1995, this fee amounts to 0.21% ad valorem on formal entries with a maximum of US\$485. The MPF was originally set to expire in 1990 but is currently set to run until 30 September 2003. We are concerned that additional amendments would be made extending the time beyond this date.

(Canada) (Merchandise Processing Fee) Canada understands that the U.S. Congress is proposing to extend the imposition of the Merchandise Processing Fee (MPF) to 2011. Of particular concern to us is that the current legislative proposal would divert fee revenues away from customs clearance operations and would channel the same to offset any shortfalls to the U.S. Social Security Trust Fund. What are the U.S. government's views in regard to the consistency of this proposal with U.S. international trade obligations?

(Chile) Could the United States explain the WTO consistency of levying a so-called Merchandise Processing Fee to pay for the cost of the newly enacted Patients Protection Act? Would the United States consider this fee as tariff considering that it is paid at the border, and if so how would this compromise the tariffs consolidated by the U.S. before the WTO. Would the United States agree that the proposed users fees, given the existing users fees could change the established market conditions and give greater protection to domestic producers

Answer: (For all three questions)

The inclusion of legal extension of the Merchandise Processing Fee in the Patients Protection Act does not alter how the fee is calculated or applied, nor how the revenues of the fee are used. Use of the revenues remains restricted to customs clearance operations for goods upon which the fee is levied. None of the provisions of the Merchandise Processing Fee have changed with its extension, and it remains consistent with the WTO Agreement.

(EU) (Registration, documentation and customs procedures) The invoice requirements for exporting certain products to the U.S. far exceed normal customs declaration and tariff procedures and are unnecessary since U.S. Customs can demand all relevant supplementary documents and information during clearance. This practice is costly and acts as a significant barrier to small and new competitors, particularly those in diversified high-value and small quantity markets.

(EU) (Customs formalities for imports of textiles) Customs formalities for imports of textiles, clothing and footwear to the U.S. require the provision of particularly detailed information which in some cases include confidential processing methods. These requirements lead to additional costs. Much of this information would appear to be irrelevant for customs or statistical purposes.

Answer: (For both questions)

The U.S. Customs Service is required to determine the proper classification of goods under the U.S. Harmonized System Tariff Schedule, and to determine the proper country of origin of goods which are imported into the United States. To do this, Customs will occasionally request specific information from importers, which is additional to that provided in the entry documentation.

(EU) (Liquidation Period) The liquidation period presently stands at 210 days which, according to importers, may be extended for the most insignificant of reasons. This is particularly cumbersome for articles of apparel such as fashion items that must be sold within two to three months and be marketed immediately. As a result, the retailer is often unable to re-deliver the goods upon request by U.S. Customs and is therefore liable to an excessive penalty of 100% of the value of the goods.

Answer:

Liquidation of an entry simply means that all final actions on the part of Customs and the trade have occurred regarding the importation of merchandise. It does not affect the release of the goods into the commerce of the country. Goods may enter the country even though the paperwork is not finalized i.e. not liquidated. Keeping the liquidation open for 210 days allows the U.S. Customs Service to take enforcement action at a later date if necessary. It also allows the importer to present additional information to Customs that might affect that particular shipment. In the case of origin fraud, illegal transshipment the goods are deemed inadmissible and Customs would ask for a re-delivery of the goods back to Customs custody. If the goods are not recoverable, then fines are charged to the importer. If the inadmissibility involves a violation of law, civil or criminal penalties are sought directly, without reference to the liquidation period.

(EU) The Luxury Tax is an excise tax imposed on cars valued above an arbitrary threshold, currently around US\$36,000. The tax has a higher incidence on imported cars than on U.S. produced cars; the EU has a total market share of only 6% but bears nearly 70% of revenue generated by the tax. The EU would appreciate it if the U.S. could confirm that this tax will be eliminated as planned in 2003.

Answer:

The Luxury Excise Tax is scheduled to expire on December 31, 2002. The tax now applies only to passenger vehicles, and the rate is being phased down on an annual basis. The U.S. Congress approved an extension of the tax once before, tied to the phase-down in the rates.

(EU) (State level impediment to trade) Wine originating from the EU cannot be imported until the labeling is approved by the Bureau of Alcohol and Firearms, for which a fee is charged. It may be argued that cost recovery justifies the ATF fee but there can be no excuse for the subsequent fees imposed on a state level. Furthermore, U.S. wine sold in its state of origin does not encounter the ATF fee.

Answer:

All alcohol beverage products intended for sale in the interstate commerce of the United States, whether domestic or imported, are subject to labeling requirements found in the Federal Alcohol Administration Act. One of the labeling requirements includes obtaining a "Certificate of Label Approval", which is administered by the Bureau of Alcohol, Tobacco and Firearms (ATF). ATF does not charge any application fees for the issuance of a Certificate of Label Approval, whether the product is imported or domestic. Note, however, that some companies can be hired, for a fee, to complete and submit the application paperwork to ATF. We are aware that some states impose requirements and fees prior to allowing alcohol beverage products to be sold in its state. We also

understand that a number of foreign governments have expressed concern about these "non-tariff trade barriers." However, as noted above, no fees are charged on the Federal level.

(Canada) Is the U.S. giving consideration to the removal of requirements that imported industrial alcohol pass through U.S. registered distilled spirits plants to be eligible for an excise tax exemption? What steps is the U.S. taking to address this non-tariff barrier?

Answer:

Under current U.S. law, imported industrial distilled spirits may be transferred in bond from customs custody directly to a distilled spirits plant without payment of tax. Tax paid imported industrial distilled spirits may be shipped directly to an end user or retailer of industrial distilled spirits. These requirements are imposed by the Internal Revenue Code of 1986 and the legislative history can be traced back to 1906. No legislation is under consideration to change the present system. Before any legislation would be considered, the United States would have to assess whether an alternative procedure that would allow non-tax paid imported industrial distilled spirits to be shipped directly to end users or retailers would contain adequate safeguards to protect the revenue.

(Australia) We note the finding in the June 1999 OECD Economic Outlook "Trends in Market Openness" that, notwithstanding improvements over recent years, NTMs still have a high frequency in the US (16.8% of tariff lines, against 19.1% for the EU and 10.7% for Japan.) How does the US propose to further decrease the incidence of NTMs in its market?

Answer:

The United States does not necessarily agree with the OECD's definition of what constitutes an NTM. For example, we do not believe that an inventory that includes necessary regulatory measures provides an appropriate indicator of comparative market openness.

7. Contingency Measures

(Bangladesh) (Chapter III, Section (ii) Antidumping, Countervailing and Safeguard Action) How many anti-dumping and safeguard actions have been initiated by the U.S. against textile and clothing exports from LDCs since 1 January, 1995? Given the special and differential treatment provisions of the ATC, can LD Cs and small suppliers expect an exemption from anti-dumping and safeguard actions in the future?

Answer:

For investigations initiated since 1995, there have been no antidumping or countervailing duty orders imposed on textile/apparel products from LDCs that are WTO Members. Currently, the only U.S. AD/CVD orders on textile/apparel products from a WTO-member LDC is an AD order on shop towels from Bangladesh, imposed as the result of a case initiated prior to 1995.

The application of antidumping and safeguard measures are governed by the provisions of the WTO Agreements on Antidumping and Safeguards, respectively. Article 15 of the WTO Antidumping Agreement does not contemplate exempting developing countries or small suppliers from antidumping duties, rather it provides that members shall explore constructive remedies before applying antidumping duties. Similarly, Article 9 of the WTO Safeguards Agreement does not exempt developing countries from safeguard measures, but restricts their use to situations where exports from a developing country are at least 3 percent of total imports, or where exports from all developing countries accounting for less than 3 percent of total imports comprise at least 9 percent of total imports. The U.S. honors these obligations. Further, while U.S. law does not permit exempting

any country or supplier from the possible application of antidumping duties, the United States consistently endeavors to take into account any difficulties exporters from developing countries have in participating effectively in antidumping investigations.

(Canada) (Chapter III, Section (ii) Antidumping, Countervailing and Safeguard Action) There appears to be some overlap in product coverage between current safeguard investigations and goods covered by anti-dumping orders or anti-dumping investigations. What is the opinion of the United States regarding the permissiveness of this so called stacking of measures?

Answer:

Safeguard measures and antidumping measures are separate remedies for distinct trade situations. As such, there is no reason measures cannot apply simultaneously to the same merchandise.

(Canada) (para 27, Chapter III, Section (ii) Antidumping, Countervailing and Safeguard Action) According to para 27, a new provision, relevant to U.S. anti-dumping and countervailing legislation was enacted in October 2000: the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment. Did Congress pass the Bill partly because it determined that dumping measures, as currently provided, may not be enough to provide appropriate relief to domestic producers? Please explain.

Answer:

The United States does not agree that the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) has particular relevance to U.S. antidumping and countervailing legislation. Although the CDSOA was enacted as part of Title VII, which also contains the antidumping and countervailing duty laws, it does not have any impact on how the AD/CVD laws operate, either substantively or procedurally. Duties collected under antidumping and countervailing duty legislation merely serve as the source of funding for distributions made under the CDSOA. The purpose of the CDSOA is to distribute money to certain persons insofar as they meet the requirements of the statute.

(Canada) (para 27, Chapter III, Section (ii) Antidumping, Countervailing and Safeguard Action) As the number of new users of anti-dumping legislation continues to grow, is the United States not afraid that the so called Byrd Amendment could serve as an excuse for other WTO Members to put in place similar measures?

Answer:

The CDSOA only addresses internal government distribution of revenues which is not the subject of any of the WTO Agreements, except the disciplines on subsidies. Each member must decide how to utilize such revenues.

(Canada) (para 27, Chapter III, Section (ii) Antidumping, Countervailing and Safeguard Action) How much assistance has been distributed by the U.S. Government under the Continued Dumping and Subsidy Offset Act of 2000? Does it intend to notify these disbursements under the Agreement on Subsidies and Countervailing Measures?

Answer:

No assistance has been distributed under the CDSOA. Until final regulations are adopted, and distributions are made, the United States cannot determine whether notification under Article 25.2 will be required.

(Norway) With regard to anti-dumping and countervailing duties, Norway is concerned with the continued prevalence of these in US Trade policies. The passage of the "Continued Dumping and Subsidy Offset Act" ("Byrd Amendment") as part of the Agriculture Appropriations bill for 2001 is particularly discouraging in that it opens for the possibility for financial gain from bringing anti-dumping and countervailing duty cases. Given the fact that the Byrd Amendment did not have the support of a majority in Congress on its own merit, Norway would like to ask the US delegation what the chances are of a new bill being promulgated that would repeal the Byrd Amendment, and whether the administration will push for such a repeal or not?

Answer:

We are unaware of any effort in the U.S. Congress to repeal the CDSOA.

(Japan) (page 19, para.32 and page .35, para.38) According to Article 24 of the GATT 1994, free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories Japan considers that, in the free trade agreements, the provisions on trade restrictive measures, such as safeguards and anti-dumping measures, should be applied without discrimination to the parties and the non-parties. In this regard, please explain the U.S. view on how the provisions on the safeguards and anti-dumping measures, as parts of trade restrictive measures, should be treated in the free trade agreements?

Answer:

While the meaning of Japan's stated view that trade restrictive measures should be applied without discrimination to the parties and non-parties is not entirely clear, we believe that it is up to the parties to any such trade agreements to determine how best to incorporate any provisions on antidumping, subject to existing WTO requirements. This question has been addressed differently by the various bilateral agreements entered into between WTO members.

(Chile) (Chapter III, Section (ii) Antidumping, Countervailing and Safeguard Action) From the point of view of economic theory, within a free trade area dumping is not possible due to the fact that both countries become like different states in a same country; i.e. if goods are really "dumped" or sold below costs, they could be shipped back and be sold at the higher price of the country of origin. Therefore, antidumping measures are redundant in a free trade zone. Taking into consideration that the United States is an active participant of the Free Trade Areas of America (FTAA) and is negotiating a Free Trade Agreement with Chile, will the United States consider the elimination of antidumping mechanisms once the free trade areas are established?

Answer:

Please see our response to Japan's question regarding trade agreements, above. We note in addition that Chile's contention that dumping is not possible in a free trade zone is based on an assumption that no differences remain in the markets of two countries that enter into a trade agreement. We do not believe that this is a realistic assumption with respect to trade agreements currently being negotiated between the United States and other countries, including FTAA and the proposed U.S.-Chile Free Trade Agreement. Since these trade agreements would reduce tariffs and

other trade barriers without necessarily integrating the economies of the countries otherwise, the need for effective remedies against unfair trade practices, including injurious dumping, will remain.

(Hong Kong) (page 34, para 32, Antidumping) We note that the number of anti-dumping investigations initiated per year by the U.S. has increased from an average of 37 cases in 1987-1997 to an average of 42 cases in 1998-2000. What is the US' comment on this rising trend? Does the U.S. envisage this trend to continue in the coming years? If so, what might be the reasons?

Answer:

In light of the many factors that influence the level of antidumping cases brought from year to year, we cannot predict the number of antidumping petitions that will be filed in the future, nor the number of cases that we will initiate. With respect to the figures cited above, the increase in cases brought during the late 1990s was due largely to the massive increase in low-priced steel imports into the United States during this time, which was itself the result of significant structural problems within the global steel industry. Prior to the steel crisis, the number of antidumping cases initiated by the United States had fallen off significantly, from an average of 57 initiations in 1992-1994 to an average of 17 initiations from 1995-1997. See Table III.4 of the WTO Trade Policy Review.

(Hong Kong) (page 34, para 32, Antidumping) We also observe that of those anti-dumping investigations initiated in 1998-2000 for which a determination had been made, almost 40% resulted in no provisional measure being imposed, either because of a finding of no injury by the International Trade Commission or of a preliminary finding of no dumping by the International Trade Administration. This is a cause for concern as investigations without clear and objective justifications would result in trade harassment to exporters and hamper free trade. What are the measures in place to prevent unjustified investigations from launching? Given the high portion of investigations not resulting in provisional measures, would the U.S. consider further measures to ensure that utmost caution is exercised before investigations are launched, so as to prevent them from being abused?

Answer:

The fact that 40 percent of cases result in negative preliminary determinations is a reflection of the stringent requirements in place that the Department of Commerce and the USITC must follow prior to imposing provisional measures. We intend to maintain these procedural protections for foreign firms involved in U.S. antidumping proceedings and to work to ensure that U.S. exporters involved in foreign antidumping actions are afforded similar protections. As for the pre-initiation process itself, the current procedures are fully WTO-consistent and there are no plans to revise these.

(Hong Kong) (page 34, para 32, Antidumping) Some independent studies in the U.S. (re. Brink Lindsey of CATO) pointed out that the number of AD measures in force against U.S. goods during 1996-2000 was 41% higher than that during 1991-95. The number of AD cases have indeed increased quite dramatically after the conclusion of the UR Agreements. What is the assessment by the U.S. on the impact of such surge of AD actions on its industries? Is there a case calling for tightening of relevant disciplines so as to prevent potential gain from trade liberalization be further hampered?

Answer:

We do not want to minimize the extent to which U.S. exporters are subject to antidumping actions and need to ensure that they are treated fairly in these cases. We are currently working toward this goal within the Antidumping Practices Committee and in other venues.

At the same time, it is important to put the statistics cited above in perspective. The 41-percent figure is a reflection of the large number of cases brought in the early 1990s. Since then, according to the Cato Institute's own data, the total stock of antidumping orders against the United States has increased only slightly, from 60 in 1995 to 62 in 2000. During this period the share of worldwide AD orders that concern U.S. exporters actually declined, from 6.8 percent in 1995 to 5.2 percent in 2000. This issue is further clarified once the United States' status as the world's largest exporter is taken into account. While orders against the U.S. accounted for 5.2 percent of the total worldwide stock of antidumping orders in 2000, the U.S. accounted for over 15 percent of worldwide exports.

(EU) (para 31-49, anti-dumping) We note that the Secretariat report places much emphasis on the use of anti-dumping measures by the US. Could the U.S. please indicate the stage of the investigation at which suspension agreements were negotiated and in particular whether this was before or after injury/causation had been established?

Answer:

Suspension agreements are typically negotiated after a preliminary determination of injury/causation and prior to a final determination.

(Korea) (page 33-34, para. 27-30) The U.S. enacted the Continued Dumping and Subsidy Offset Act of 2000 in October 2000. The Act, also known as the Byrd Amendment, includes provisions for allocating the proceeds of anti-dumping and countervailing duty orders to the domestic producers who are petitioners. This allocation constitutes a violation of the Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures because it provides additional remedy not allowed under the said WTO Agreements. It is our deep concern that such a measure would lead to proliferation of petitions for anti-dumping and countervailing measures and the disruption of the multilateral trading system. What is the U.S. view on this matter? Does the U.S. government have any intention to amend the Act to make it consistent with WTO Agreements?

Answer:

The CDSOA is consistent with the Anti-Dumping Agreement, which does not address the internal government distribution of revenues. The Agreement on Subsidies and Countervailing Measures only prohibits certain types of subsidies, i.e., export or import substitution subsidies. The CDSOA is neither an export nor an import substitution subsidy, and therefore does not constitute a prohibited subsidy.

(Malaysia) The U.S. has made active use of anti-dumping and countervailing measures, particularly in the last two years. The large number of investigations involving steel-related products have been the main cause of this increase. In addition, the U.S. has also initiated safeguard actions into steel-related products. Does not such actions reflect an over-protectionist reaction by the U.S. against normal competitive market-driven pricing norms in an environment of over-supply and constitute a misuse of WTO contingency measures?

Answer:

We believe the responses above answer this question. Please see our response to Hong Kong's question regarding the increase in recent cases involving steel products. With respect to the relationship between antidumping and safeguard actions, please see our response to Canada's first question. For the reasons provided in these responses, we do not believe that either the antidumping or safeguard actions taken to date on steel-related products constitute a protectionist reaction to normal competitive market-driven pricing norms. Our views regarding structural distortions in the

global steel industry that necessitate the contingency measures at issue are set forth in more detail in *Global Steel Trade: Structural Problems and Future Solutions*, U.S. Department of Commerce, July 2000.

(Australia) Given that the WTO Safeguards Agreement already provides for the application of temporary trade restrictions in certain specific circumstances and that legislative proposals before the US Congress would significantly lower the US domestic legal standard for obtaining import relief, what plans does the United States have for preventing Section 201 of the 1974 Trade Act from being used by US industries faced with unsubsidised import competition to avoid making competitive adjustments?

Answer:

The SCM and the U.S. countervailing duty laws are designed to protect industries from subsidized import competition. The WTO Safeguards Agreement and Section 201 are separate measures designed to address a different type of import competition and do not require an analysis of subsidies or dumping. With respect to the issue of competitive adjustments, the Safeguards Agreement and Section 201 are designed to provide temporary relief so that the injured industry can adjust competitively, and the Section 201 process provides for the submission of adjustment plans, an important part of the Section 201 proceeding.

(Brazil) The Secretariat Report draws attention to the fact that “the application by the United States of anti-dumping, countervailing and safeguard measures has been one of the main sources of complaint by its trading partners: seven U.S. anti-dumping and countervailing measures in effect since 1995 have been challenged under the WTO” (Secretariat Report, page 18, §27). As the United States affirms that “the fundamental features of U.S. trade policy continue to be the maintenance of an open, competitive market at home, compliance with WTO obligations” (Government Report, page 5), why have there been so many challenges to US trade policies?

Answer:

The remainder of the paragraph cited by Brazil from the U.S. Government report provides the statistical underpinning of the statement regarding the maintenance of an open, competitive market. As the Report notes, the United States is the world's largest importer: In 2000, imports of goods and services totalled \$1.2 trillion, 66 percent of which entered the U.S. duty free. The average duty paid on all imports into the United States in 2000 was 1.6 percent. Less than one half of one percent of all U.S. imports were covered by an antidumping or countervailing duty order. That said, the United States respects the rights of Member countries to avail themselves of the dispute settlement process on measures that they believe are in violation of their rights under existing WTO Agreements, and has abided by adverse dispute settlement rulings in good faith.

(Brazil) How does the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment, which is due to come into effect on 1 October 2001, alter the existing legislation on anti-dumping and countervailing duties? Was an assessment made on how the new legislation would affect trade in iron, steel and orange juice?

Answer:

Although the CDSOA was enacted as part of Title VII, which also contains the antidumping and countervailing duty laws, it does not have any impact on how the AD/CVD laws operate, either substantively or procedurally. We are unaware of any assessment of how this legislation would affect trade in any particular segment of the economy.

(Brazil) Secretariat Report, page 33, paras. 27-30. With regard to the Byrd Amendment, please explain how the provisions of that legislation are consistent with WTO rules, particularly the provisions of the Agreement on Subsidies and Countervailing Measures.

Answer:

The CDSOA only addresses internal government distribution of revenues, which is not the subject of any of the WTO Agreements, except the disciplines on subsidies. With respect to the Agreement on Subsidies and Countervailing Measures, that Agreement only prohibits certain types of subsidies, i.e., export or import substitution subsidies. The CDSOA is neither an export nor an import substitution subsidy, and therefore does not constitute a prohibited subsidy.

(Brazil) Secretariat Report, pages 37 and 38, paras. 42-43. Please explain in detail how the US Government has implemented in its legislation the recommendations of the AB (in WT/DS138/AB/R) concerning the "change-of-ownership" methodology in countervailing duty investigations.

Answer:

On November 15, 1999, the U.S. Department of Commerce revoked the countervailing duty order at issue under its "sunset" procedures. The revocation became effective by operation of law on January 1, 2000. Subsequently, on March 14, 2000, Commerce issued the final results of a "changed circumstances" review in which it made the revocation of the order retroactive to January 1, 1995, and rescinded the ongoing countervailing duty administrative reviews. In light of these actions by the Commerce Department, the United States has fully implemented the ruling in the referenced dispute. We also note that the Appellate Body emphasized repeatedly that its decision was limited to the particular circumstances of the case before it. Moreover, pursuant to a decision by the U.S. Court of Appeals for the Federal Circuit in *Delverde, SrL v. United States*, in December 2000 the Commerce Department adopted a new privatization methodology that is fully consistent with U.S. law and the WTO Panel and Appellate Body decisions.

(Brazil) Secretariat Report, page 92, para. 30. The US government stated that the US steel industry has been affected by foreign government intervention, which has resulted in excess capacity and inefficient production. How can it be argued that the problems of competitiveness of the US steel industry are caused by foreign production given that the US government has taken an array of measures in the last two decades to eliminate or minimize the alleged distortions in its internal market? The voluntary restraint agreements of the 1980's and the various antidumping investigations and countervailing actions of the last decade and even more recently are the concrete examples of the actions taken by the US government to protect the sector.

Answer:

As discussed above, the increase in steel cases brought during the late 1990s was due largely to the massive increase in low-priced steel imports into the United States during this time, which was itself the result of significant structural problems within the global steel industry. The paragraph in the Secretariat report cited by Brazil notes the following facts regarding this period: (1) the U.S. remains the world's largest steel importer; (2) prior to 1998, around 25 percent of domestic consumption was met through imports; (3) in 1998 alone, steel imports rose to 36 percent of domestic consumption. U.S. trade actions help alleviate the harm caused by periodic steel import surges such as occurred in 1998. They have not provided blanket protection to the U.S. industry from imported steel, as the statistics above make clear. The competitiveness of the U.S. steel industry, and the connection between global structural distortions, import trends, and trade remedies, is examined in depth in *Global Steel Trade: Structural Problems and Future Solutions*, U.S. Department of Commerce, July 2000.

(Brazil) Secretariat Report, page 92, para. 30. Please explain the arguments underlying the statement that there is inefficiency in the global production of steel.

Answer:

As noted, the Commerce Department's recent examination of the global steel industry provides a detailed analysis of the inefficiencies created by long-term structural distortions. The analysis is performed on both an aggregate and country-specific basis.

(Brazil) Secretariat Report, page 92, para. 30. With regard to item "a" which refers to the US initiative to negotiate with trading partners seeking the elimination of global excess capacity, please explain how the US intends to proceed with this action in a manner consistent with WTO rules?

Answer:

Initial discussions on this issue were held at the OECD in September 2001. It is our intention that future discussions, and any future negotiations will proceed in a manner consistent with countries' obligations under the WTO.

(Brazil) Secretariat Report, page 92, para. 30. With regard to item "b" which refers to negotiations on international rules to govern steel trade with a view to eliminating subsidies. Given that the ASCM already sets out the adoption of measures aimed at eliminating the negative effects of these practices in the market of the importing country, what is the rationale for negotiating new rules specifically for the steel sector? What could be the consequences of such an initiative, tailored to cater to the interests of one single sector of the US economy, for the multilateral trading system?

Answer:

Government intervention in the global steel industry has been extensive over the past several decades, resulting in overcapacity and trade patterns that do not fully reflect market forces. There are already sector-specific agreements within the WTO that address and/or modify rules set forth in the SCM Agreement, and additional sector-specific agreements have been proposed that may extend disciplines beyond that covered in the SCM. Countries may wish to consider whether steel trade should be subject to stronger disciplines than those currently available under the SCM Agreement.

(Brazil) Secretariat Report, page 92, para. 30. With regard to item "c", it is stated that the USITC initiated a Section 201 safeguard investigation of injury to the US steel industry. How does the US government explain the "overlap of measures" due to the fact that already there are several antidumping duties and countervailing measures in force for the steel sector with a view to neutralize the alleged injury to domestic industry? Moreover, the adoption of a safeguard measure implies that there is lack of competitiveness in the domestic industry. Therefore, if the US authorities recognize that the country's steel sector needs this kind of measure in order to eliminate serious injury and facilitate the adjustment of the domestic industry to international competition, please explain how causality can be established according to the provisions of the Antidumping and ASCM Agreements?

Answer:

As noted above, safeguard measures and antidumping measures are separate remedies for distinct trade-distorting situations. As such, there is no reason measures cannot apply simultaneously to the same merchandise. The two measures contain different injury standards and an affirmative decision in either case has no bearing on the other.

(Brazil) According to the Secretariat Report, in 1999, the United States imposed Special Safeguards on certain products, including fresh and frozen beef, sweetened milk, milk fats and oils, milk based drinks, cheeses, sugar and peanuts (page 29, §13). Could more information be provided on this issue (i.e. the level of safeguard duties on these products)?

Answer:

The U.S. applied price-based agricultural special safeguards on those products in accordance with the tariffs outlined in G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1.

(Brazil) Please provide detailed explanation of the "Carousel Amendment"

Answer:

This question is an apparent reference to section 407 of the Trade and Development Act of 2000, amending section 306(b)(2) of the Trade Act of 1974. To date, this provision has not been applied. Section 407 amends section 306(b)(2) of the Trade Act of 1974 by adding subparagraphs (B) through (F), which provide as follows:

“(B) REVISION OF RETALIATION LIST AND ACTION-

(i) IN GENERAL- Except as provided in clause (ii), in the event that the United States initiates a retaliation list or takes any other action described in section 301(c)(1)(A) or (B) against the goods of a foreign country or countries because of the failure of such country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, the Trade Representative shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation.

(ii) EXCEPTION- The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country, if-

(I) the Trade Representative determines that implementation of a recommendation made pursuant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

(II) the Trade Representative together with the petitioner involved in the initial investigation under this chapter (or if no petition was filed, the affected United States industry) agree that it is unnecessary to revise the retaliation list.

(C) SCHEDULE FOR REVISING LIST OR ACTION- The Trade Representative shall, 120 days after the date the retaliation list or other section 301(a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.

(D) **STANDARDS FOR REVISING LIST OR ACTION-** In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this chapter.

(E) **RETALIATION LIST-** The term 'retaliation list' means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.

(F) **REQUIREMENT TO INCLUDE RECIPROCAL GOODS ON RETALIATION LIST-** The Trade Representative shall include on the retaliation list, and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation and its corresponding preliminary retaliation list do not already meet this requirement."

(India): We would request the US delegation to confirm that in the various anti dumping investigations initiated by the US against imports from developing countries, efforts have been made to explore constructive remedies as required under Article 15 of the Anti Dumping Agreement and that the special situation of developing country members is given special regard? We would like to know whether there is an in-built mechanism in the US anti dumping law for giving effect to the provisions contained in Article 15 of the Anti Dumping Agreement.

Answer:

The U.S. has met its Article 15 requirements in cases to date. We understand from India's WTO challenge to the U.S. steel plate investigation that it alleges the Article 15 requirements were not met in that case. We will provide a more detailed explanation of our practices vis a vis Article 15 in that context.

8. Taxation and Investment

(Japan) (page 22, para.47, Investment—"Exon-Flo" provision) Transparency and predictability in government regulations are important factors for enterprises when making decisions on their investment. These factors are also prerequisites in order for competitive enterprises to do their business in a fair environment. The Government of Japan has concern over the "Exon-Florio" Provision in terms of the legal stability of completed transactions as well as in terms of ensuring the due process. In the application of the "Exon-Florio" Provision, the Government of Japan requests the Government of the United States to refrain from expanding excessively the concept of "national security", and to ensure the maximum transparency and fairness in the entire process, i.e. from the notice to the CFIUS (Committee on Foreign Investment in the United States) up to the final decision by the President. We would appreciate the U.S. view on our comment.

Answer:

The concept of "national security" is not defined in the Exon-Florio statute ("section 721 of the Defense Production Act of 1950") in keeping with other U.S. statutes concerning national

security. Any attempt to offer a definition could improperly curtail the President's broad authority to protect the national security.

The Exon-Florio regulations also do not define "national security" and broadly define the threshold concept of "foreign control" in the context of a merger or acquisition. CFIUS concluded that it is necessary to take this approach in order to provide the President the necessary flexibility to address a transaction that may threaten the national security.

The Exon-Florio provision provides that information submitted to CFIUS under section 721 be kept confidential, which CFIUS has interpreted to include whether or not a notice has been filed with CFIUS. Moreover, in implementing Exon-Florio, CFIUS is acting on behalf of the President in matters that potentially affect the national security. In the past, when the President has taken a decision on a particular transaction, the White House has issued a press release announcing his decision.

CFIUS conducts its national security investigations on a case-by-case basis in the context of a U.S. policy on Foreign Direct Investment that provides foreign investors fair, equitable and non-discriminatory treatment.

(Thailand) (page 22, para 47): Please explain the President's decision-making process to determine the need for a national security investigation. Are the steps in the procedure transparent?

Answer:

Section 721 of the Defense Production Act of 1950 (the so-called Exon-Florio provision) provides authority to the President to suspend or prohibit a foreign merger, acquisition, or takeover of a U.S. company that is determined to threaten the national security of the United States. By Executive Order, the President designated the Committee on Foreign Investment in the United States ("CFIUS") to receive notices of foreign acquisitions of U.S. companies, to determine whether a particular acquisition has national security issues sufficient to warrant an investigation and to undertake an investigation, if necessary, under the Exon-Florio provision. The order also provides for CFIUS to submit a report and recommendation to the President at the conclusion of an investigation. The President alone retains the power to block a foreign acquisition of a U.S. company.

The steps CFIUS takes in implementing Exon-Florio and the steps the President takes in the deliberative process leading to a decision whether to invoke the authority provided under Exon-Florio to suspend or prohibit a foreign acquisition of a U.S. company are not disclosed to the public. National security considerations often preclude disclosing the factors that the Committee or the President consider in reaching a view on a particular foreign acquisition. Second, the Committee is statutorily required to maintain confidentiality with respect to information made available to the Committee under section 721.

(Japan) (page 22, para 48, International investment policy) Improvement of the climate for foreign direct investment should be promoted multilaterally as well as bilaterally. In this connection, it is important to include the negotiations on multilateral investment rules in the new round. It is our understanding that the United States has recently become open to the idea of multilateral investment rules. Please explain the current position of the United States.

Answer:

We are currently exploring what might be sensible in regard to investment rules in the WTO.

(Switzerland) Foreign Trade Zones are centered on oil refining the production of pharmaceuticals, office equipment, high-technology merchandise, and the automobile sector. Are there no agri-food products being processed in the FTZ?

Answer:

There is some food processing in the Foreign Trade Zones for export, of drink mixes, bakery mixes and infant formula . However, the value of such agri-food processing constitutes less than 1% of FTZ production.

(EU) (paras 34_35, Foreign direct investment) Could the U.S. provide some more detailed information on the shares of services in outbound and inbound US FDI, distribution by countries and sectors, and their reasons?

Answer:

In 2000, U.S. direct investment abroad totaled \$135 billion. The leading destination countries included the United Kingdom (\$22 billion or 16% of total outbound investment), Canada (\$14 billion or 11%), Netherlands (\$12 billion or 9%), Japan (\$7.3 billion or 5%), Switzerland (\$7.2 billion or 5%), Bermuda (\$5.8 billion or 4%), Hong Kong (\$4.9 or 4%), Germany (\$4.4 billion or 3%), Ireland (\$4.3 billion or 3%), and Mexico (\$4.3 billion or 3%). By industry, services accounted for 57% of U.S. direct investment abroad in 2000. Finance, insurance, and real estate services accounted for 66% of services trade, wholesale trade 17%, and professional services 11%.

In 2000, foreign direct investment in the United States totaled \$60 billion. The leading source countries included the United Kingdom (\$16.2 billion or 27% of total inbound investment), Netherlands (\$9 billion or 15%), Japan (\$7.3 billion or 12%), France (\$5.6 billion or 9%), Luxembourg (\$4.8 billion or 8%), Switzerland (\$4.2 billion or 7%), and Germany (\$2.6 billion or 4%). By industry, services accounted for 35% of foreign direct investment in the United States in 2000. Of this, wholesale trade accounted for 37%, insurance 28%, depository institutions 19%, and real estate services 10%.

(EU) (Foreign direct investment) (para 46) Could the U.S. give some more information on the rationale for its restrictions on foreign ownership in domestic air and maritime transportation, and several activities in the energy sector (e.g. oil and gas pipelines), leases to develop mineral resources on federal lands, telecommunication services, and primary dealers in financial services, as well as restrictions at the State level in insurance. Are there foreign ownership restrictions in other services sectors? Are there any policies to address such investment and trade restrictions, including in a cross_sectoral fashion? And what are the other existing restrictions to foreign ownership in the non_services sectors, i.e. in agricultural and manufacturing industries. In this regard, it would be relevant to know what are the particular restricting measures adopted, at the sub_federal level, by each State.

Answer:

Restrictions on foreign ownership in domestic air and maritime transportation, and several activities in the energy sector (e.g. oil and gas pipelines), leases to develop mineral resources on federal lands, telecommunication services, insurance, and primary dealers in financial services, are based on U.S. law and practice. Restrictions in other sectors can be located in the Annexes to the NAFTA.

9. Trade Related Intellectual Property

(Hong Kong) (page 74, para. 178, Parallel Imports) We note that under US legislation, parallel imports of goods containing protected intellectual property, in the form of patents, copyrights, or industrial designs, may be prevented entry by the right holder of the goods and stopped at the border by Customs. We would appreciate details of the circumstances under which parallel-imported goods would be barred from importation and the reasons behind.

Answer:

U.S. Customs provides parallel import protection to certain foreign manufactured products bearing trademarks which have been recorded with Customs and where the U.S. trademark owner does not own the foreign trademark and no common ownership or control exists between the U.S. trademark owner and a foreign trademark owner, pursuant to 19 USC 1526(a). Additionally, parallel import protection can be provided with regard to trademarks where a request for protection is made and Customs determines that the U.S. goods are physically and materially different from the foreign product. Customs also provides gray market protection pursuant to exclusion orders issued by the U.S. International Trade Commission (USITC). Exclusion orders may be issued by the USITC, which would result in the denial of entry of goods involving the infringement of all forms of intellectual property rights, including situations involving parallel imports.

(Japan) (page 74, para 179, Bilateral and regional intellectual property agreements) The Government of 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) in the Framework Talks. However, the United States has never entirely implemented the introduction of an early publication system without exceptions, nor the improvement of re-examination. Japan strongly requests the United States to implement these items completely and promptly. Please explain the U.S. view on this.

Answer:

The United States amended its patent law to address a number of issues by enacting Public Law 106-113 on November 29, 1999. This law contains a provision to publish, within 18 months, most patent applications filed in the United States. The law also adds new opportunities for third parties to participate in reexaminations, including determinations made by the patent examiner to the Board of Patent Appeals and Interferences, in accordance with the understanding reached as part of the Framework talks.

(Japan) (page 75, para 180, First-to-Invent system) The United States is the only country to use the "first-to-invent system, which, with regard to the patent system, makes the United States rather unique. This system, however, lacks certainty and predictability in the sense that a patentee status can be overturned by the appearance of the prior inventor afterwards. This will provide extra burden to inventors who are 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 United States to adopt the first-to-file system and also to improve all aspects of the patent systems that restrict trade in the United States. This is due to the necessity of maintaining a transparent and stable system, as well as reducing the burdens borne by users through the difference in systems. Please explain the U.S. view on this.

Answer:

The United States has followed the first-to-invent system throughout the history of its patent law. The first-to-invent system is in full conformity with U.S. obligations under the TRIPS Agreement, as is the rest of the U.S. patent law.

(Japan) (page 75, para 180, "Submarine patents") The early publication system in the United States provides exceptions whereby patent applications filed in the United States, but not filed overseas, or matters included in a patent application filed in the United States, but not included in the corresponding application filed overseas, cannot be laid open at the request of the applicant. It is, therefore, possible for a patent application to become a "Submarine Patent". Without knowing whether or not another application is already on file for the same invention, this system creates serious social and economic loss due to investments in R&D. Any pending applications, already filed with the USPTO at the time of the amendment of the law, continue to benefit from the former patent terms (i.e. a 17-year patent term from the date of the patent grant). There is, therefore, still the possibility that additional submarine patents occur. Japan strongly requests the United States to implement fully and promptly what has already been confirmed under the Framework Talks: i.e. by abolishing the exceptions from the early U.S. publication system, and by publishing all applications except those not pending, or those not able to be laid open, after a period of 18 months from the earliest filing date. Please explain the U.S. view on this.

Answer:

The United States amended its patent law to address a number of issues by enacting Public Law 106-113 on November 29, 1999. This law contains a provision to publish, within 18 months, most patent applications filed in the United States. The law also adds new opportunities for third parties to participate in reexaminations, including determinations made by the patent examiner to the Board of Patent Appeals and Interferences, in accordance with the understanding reached as part of the Framework talks.

(Japan) (page 75, paras 180 and 182, Extension of the patent term) USPTO provides that patent protection may be extended to compensate for any amount of processing delays and USPTO-caused delays. This extended patent term is guaranteed for at least a 17-year patent term. The Government of Japan would like to point out that there is a possibility of deliberate delays being caused, and that under the U.S. current conditions of not having an adequate early publication system, there would be other opportunities of creating a submarine patent through the extension of patent terms. Please explain the U.S. view on this.

Answer:

Extensions of patent term are not available for delays caused by a patent applicant.

(Japan) (page 75, para 181, Priority in the Paris Convention (In re Hilmer) The "Hilmer" doctrine exists in the United States. Foreign applicants usually file applications, first in their own country and subsequently in the United States, 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 United States, even during the priority period, and thereby may suffer disadvantage. This is 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 of personal possession". This is also inconsistent with Article 2.1 of the TRIPS Agreement which requires compliance with Article 4 of the Paris Convention. Please explain the U.S. view on this.

Answer:

The definition of the effective date as a prior art reference under the so-called "Hilmer" doctrine is not inconsistent with the obligations of Article 4B of the Paris Convention, as it does not affect the ability of an applicant to obtain a patent where the applicant has made a priority claim that establishes an effective filing date prior to the effective prior art date of the patent.

(Japan) (page 76, para 185, Unity of invention) The Government of Japan understands that the USPTO has been implementing 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. The Government of Japan wishes to repeat its request to the Government of the United States to adopt the same criterion for its unity of invention as that of Japan and Europe. The U.S. view on the matter would be appreciated.

Answer:

The TRIPS Agreement does not address the requirements for patent applications, except for the requirements regarding disclosure contained in Article 29. Other issues regarding patent applications should be addressed in the context of the WIPO discussions on harmonization.

(Japan) (page 77, para 189; and pages 82-83, paras 210-213, Special 301) There is serious concern over Special 301 provisions, regarding its compatibility with the WTO agreements, as pointed out previously in 3.(11). Please comment on this.

Answer:

The "Special 301" provisions require the U.S. Trade Representative, in consultation with other U.S. government agencies, to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. Identification of these countries do not automatically lead to a "Section 301" investigation. The "Special 301" provisions are in full conformity with U.S. obligations under the WTO agreements.

(Japan) (page 79, para 198, Trademarks (Section 211 of the U.S. Omnibus Appropriations Act of 1988) The panel report [WT/DS/76/R] circulated in August this year points out that Section 211(a)(2) of the U.S. Omnibus Appropriations Act of 1988 is not consistent with Article 42 of the TRIPS Agreement. There is concern over this Section 211 of the U.S. Omnibus Appropriations Act of 1988, involving the registration, renewal or enforcement in the U.S. of a trade mark, trade names and commercial names associated with confiscated assets in Cuba, regarding its compatibility with the provisions of National Treatment and the Most Favored Nation of the TRIPS Agreement. Thus, the Government of Japan would like to ask the Government of the United States for prompt improvement and to provide its view on the matter. Please explain the U.S. view on this.

Answer:

The United States expressed its view that section 211 is consistent with the TRIPs Agreement in numerous submissions to the WTO panel and to the WTO Appellate Body, all of which are available on USTR's website. The European Communities has appealed many of the findings of the panel to the Appellate Body, and the United States has appealed one of the panel's findings. For this

reason, the panel report has not been adopted. As the Appellate Body has not yet issued its report in this dispute, it would be inappropriate for the United States to comment further.

(Japan) (page 80, para 200, Protection of the rights of authors, performers, etc) (i) Japan requests the United States to take the necessary procedures in order to accede as soon as possible to the International Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961), which has already been ratified and acceded to by many developed countries, including Japan and the member states of the EC, in order to improve the protection of performers rights, etc. Japan would also like to request the United States to bring into conformity its protection of the moral rights of authors with the obligations set out under the Berne Convention for the Protection of Literary and Artistic Works, to which the United States became a party in 1989. Please explain the U.S. view on the matter.

Answer:

The United States provides protection for performers and producers of phonograms, and broadcasting organizations under its Copyright Law in a manner that is fully compliant with the TRIPS Agreement. In addition, protection for audiovisual performers is provided under labor law and collective bargaining agreements between the performers' unions and the production studios. With regard to performers and producers of phonograms, the United States provides protection in accordance with the WIPO Performances and Phonograms Treaty (WPPT), to which the United States is a party. The WPPT, which updates and expands the Rome Convention obligations with respect to performers and producers of phonograms, represents the current international standard. Accordingly, since adequate and effective protection of these authors is provided through the WPPT and under U.S. law, the United States does not find that accession to the Rome Convention is necessary.

Regarding protection of moral rights under U.S. law, please see the U.S. response to a question from Japan (iv) below.

(Japan) (page 80, para 200, Protection of the rights of authors, performers, etc) (ii) The right of making available is independently stipulated in Art. 8 of WCT and Art. 10. and Art. 14 of WPPT. Even though the Government of the United States has ratified these two treaties, there is no independent provision for the right in the U.S. Copyright Act. How does the Government of the United States protect the right of making available in the U.S. Copyright Act? Please identify the relevant provisions in the U.S. Copyright Act and explain why those provisions are sufficient enough to meet the obligations under WCT & WPPT.

Answer:

The WCT and WPPT obligation to provide a right of making available (which is not an obligation under WTO Agreements) is fully satisfied through sections 106(3) (right of distribution to the public), 106(4) (right of public performance), 106(5) (right of public display) and 106(6) (right to perform sound recordings by means of digital transmissions) of the U.S. Copyright Law, as they have been interpreted by the Federal courts. See, e.g., *Playboy v. Frena*, 839 F. Supp. 1552 (M.D. Fla. 1993) and *Sega Enterprises Ltd. v. MAPHIA*, 857 F. Supp. 679 (N.D. Cal. 1994)

(Japan) (page 80, para 200, Protection of the rights of authors, performers, etc) (iii) According to Art. 14 of the TRIPS Agreement and Art. 6 of WPPT, performers are accorded the exclusive right of authorization for their live performances. However, Art. 1101 of the U.S. Copyright Act does not provide any protection for live performances other than musical ones, whereas it might violate Art. 14 of the TRIPS Agreement and Art. 6 of WPPT. If the Government of the United States believe that the U.S. Copyright Act meets the obligations under the TRIPS Agreement and WPPT, please identify the relevant provisions in the U.S. Copyright Act and explain why those provisions are sufficient enough.

Answer:

When joining the WTO, which had identical obligations with respect to musical performers, we noted that no change in U.S. law was needed. State statutes and judicial decisions satisfy the obligations for nonmusical performers.

(Japan) (page 80, para 200, Protection of the rights of authors, performers, etc) (iv) The moral rights of authors and performers are protected under Art. 6bis. of the Bern Convention and Art. 5 of WPPT. However, Art. 106 A of the U.S. Copyright Act does not provide any protection for the moral rights other than those of authors of a work of visual art which might violate Art. 6bis. of Berne Convention and Art. 5 of WPPT. If the Government of the United States believes that it satisfies the obligations under Berne Convention and WPPT, please identify the relevant provisions in the U.S. Copyright Act and other laws, if any, and explain why those provisions are sufficient enough.

Answer:

Moral rights are protected in the United States not under a single law, but rather through a combination of Federal Copyright Law, state common law, and other Federal and state laws. Moral rights are protected in the Copyright Act, not only through section 106A, but also through the application of the author's economic rights in section 106, such as the right to prepare derivative works under section 106(2). For instance, the protection of the right of integrity will almost always implicate the author's (or other copyright owner's) right to reproduce the work or to prepare a derivative work. These are rights that would be involved in preparing a modification of an author's work, which could violate the right of integrity (which is probably the moral right most likely to be violated in the digital manipulation of images or text).

(Japan) (v) How does the U.S. Copyright Act protect the rights of broadcasting organizations, since the Government of the United States has the obligation to ensure the protection of these rights according to Art. 14 of the TRIPS Agreement? Please identify the relevant provisions in the Copyright Act and other laws, if any, and explain why those provisions are sufficient enough to meet the obligation under Art. 14 of the TRIPS Agreement.

Answer:

In our view, Japan's question fails to reflect accurately the meaning of Article 14.3 of the TRIPS Agreement. Article 14.3 requires Members to provide protection to broadcasting organizations or, in the alternative, to owners of copyright in the subject matter of broadcasts. Either form of protection is sufficient to satisfy the TRIPS obligation. The United States provides both. U.S. copyright law provides owners of copyright in the subject matter of broadcasts with the exclusive rights of reproduction and public performance, which cover the activities enumerated in Article 14.3, thereby fully satisfying the TRIPS obligation. In addition, broadcasting organizations in the United States enjoy considerable protection, both as authors under the Copyright Law and under the telecommunications laws, which provide for a "right of retransmission consent." These laws provide protection in excess of the minimum levels of protection required under Article 14.3 of the TRIPS Agreement, again fully satisfying that obligation.

(Japan) (page 80, para 200, Protection of the rights of authors, performers, etc) (vi) Does the U.S. Copyright Act provide the exclusive right of rental to the authors of cinematographic works since the Government of the United States has the obligation to ensure the protection of these rights according to Art. 11 of the TRIPS Agreement and Art. 7 of WCT? If the Government of the United States believes that the widespread copying of the works materially impairing the exclusive right of reproduction will not take place even without the right of rental, please explain why.

Answer:

Rental of cinematographic works is permitted in the United States. There is no evidence that copying of such works has been a problem, and no right holder has indicated that such a problem exists in the United States. The U.S. notes in this regard that many WTO members do not provide a rental right for cinematographic works.

(Japan) (page 81, para 208, U.S. Copyright Act Section 110(5) (Implementation of DS160) Regarding the Panel of United States-Section 110(5) of the U.S. Copyright Act (DS160), the United States must implement the recommendations of the Dispute Settlement Body by the end of this year, or on the date when the current session of the U.S. Congress adjourns, whichever comes earlier. We note that the article in question has not yet been amended. As the U.S. accepted the recommendations, it should amend, as soon as possible, the related article of the Copyright Law in order to be in compliance with the obligations under the TRIPS Agreement. Please explain the planned schedule for revising the Copyright Law.

Answer:

The United States has consulted actively with the U.S. Congress and domestic stakeholders regarding section 110(5)(B), and those consultations are ongoing. The United States is also engaged in ongoing discussions with the European Communities to find a positive and mutually acceptable resolution of the dispute. In connection with those discussions, the United States and the European Communities resorted to arbitration under Article 25 of the WTO Dispute Settlement Understanding, in order to determine the level of nullification or impairment of benefits caused by section 110(5)(B). On November 9, 2001, the Arbitrators notified their award to the DSB and the TRIPS Council, finding that the level of nullification or impairment of annual benefits to the EC is \$1.1 million.

(Japan) (pages 83-84, paras 214-216, Section 337 of the Tariff Act of 1930) Import restriction on goods which violate intellectual property rights may be justified under Article 20 (b) of the GATT 1994 with certain conditions. At the time of the GATT 1947, however, a panel report was adopted (November, 1989) wherein it was mentioned that Section 337 of the Tariff Act of 1930 cannot be considered as an exception under the GATT. Following this adoption, there were some improvements on Section 337 due to the amendments implemented through the UR Agreement Act of 1994. However, today there still exists the possibility of unfair treatment on imported goods. As of January, 2000, the EC requested consultations on the matter in the WTO, and Japan and Canada joined as third parties. This dispute is still in the consultation phase and the Government of Japan will continue to closely monitor the process. Please explain the recent practice regarding the period of time between the initiation by the USITC of an investigation and its completion. What is the U.S. view on this matter, taking into consideration its conformity with the WTO agreements, such as GATT 1994 Art. 3(4) and TRIPS Art. 41(2)?

Answer:

The United States amended section 337 of the Tariff Act of 1930, 19 U.S.C. para. 1337, as part of U.S. implementation of the Uruguay Round results. As stated in the "Statement of Administrative Action" accompanying the Uruguay Round Agreements Act, the amendments to para. 337 brought U.S. procedures into conformity with U.S. national treatment obligations, while providing for effective enforcement of intellectual property rights at the border.

The 1994 amendments to section 337 made the following changes to USITC procedures:

Eliminated the requirement that the USITC issue a final determination within a fixed period of time. Instead, the amendment provides that the USITC must complete its investigation "at the

earliest practicable time". To promote rapid adjudication, the USITC must, within 45 days of initiating an investigation, establish a "target date" for its completion. See 19 U.S.C. para. 1337(b)(1). These requirements parallel the procedures set out in Rule 16 of the Federal Rules of Civil Procedure providing district courts with various mechanisms for expediting litigation. They are also consistent with district court efforts to avoid delay, such as by establishing a schedule for the completion of various stages of litigation;

Provided a means to prevent infringement proceedings being brought against imported goods in two fora simultaneously. A district court hearing an infringement case is required to stay its proceedings, at the request of a respondent in a section 337 proceeding, in respect of any claim involving the same issues as those pending before the USITC. Such issues would include questions of patent validity, infringement, and any defenses that might be raised in both proceedings. The district court may, in its discretion, stay any other claims in the case. In addition, the statute provides for the record in an USITC proceeding to be transferred to the Federal district court for its use, with the intended benefit of eliminating any duplication of effort or expense; and

Resolved the problem regarding counterclaims that the GATT 1947 panel identified in its report. A respondent in a section 337 action may file with the USITC any counterclaim that may be filed with a federal court. If the claim is of the form of a defense to the alleged violation of section 337, the USITC will consider the matter. If the party raising the counterclaim seeks a remedy such as damages, the amendments now make that remedy available. Moreover, the amendments ensure that the party raising the counterclaim is not prejudiced by any delay or payment of fees. See 19 U.S.C. para. 1337(c).

(Korea) (page 82, para. 211, Intellectual Property Protection) The USTR places trading partners on the Special 301 Priority Watch List in case these countries are considered "to deny adequate and effective protection of intellectual property rights" or "fair and equitable market access to U.S. artists and industries that rely upon intellectual property protection". What is the definition of "adequate and effective" and "fair and equitable"? Does the U.S. have any objective criteria? Couldn't the US, by using such classification, run the risk of being too arbitrary?

Answer:

The "Special 301" provisions require the U.S. Trade Representative, in consultation with other government agencies, to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. Under the law, adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy commercial benefits, relating to patents, trademarks, copyrights and related rights, mask works, trade secrets and plant breeder's rights. Denial of fair and equitable market nondiscriminatory market access opportunities includes restrictions on the market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works. These criteria are consistent with the objectives of international agreements, such as the TRIPS Agreement, which promotes effective and adequate protection of intellectual property rights. To ensure transparency in the Special 301 process, the public is invited to comment and such comments are part of the record during the annual review. Foreign governments also have the opportunity during the annual review to provide comments, which are then taken into consideration during the review.

(Australia) Could the US outline its intentions to fully comply with the rulings and recommendations of the DSB in the "United States Section 110(5) Copyright Act" case (WT/DS160/R). In light of compensation discussions with European Communities arising from the US's failure to comply within

the reasonable period of time, Australia seeks assurances from the United States that any compensation arrangements will be extended to Australian rightholders, in accordance with the US obligations under the WTO Covered Agreements.

Answer:

The United States has consulted actively with the U.S. Congress and domestic stakeholders regarding section 110(5)(B), and those consultations are ongoing. The United States is also engaged in ongoing discussions with the European Communities to find a positive and mutually acceptable resolution of the dispute, consistent with the WTO-covered agreements.

(Bangladesh) According to Article 66.2 of the TRIPS Agreement, developed Member countries are obliged to provide incentives under their legislation to enterprises and institutions for the purpose of promoting and encouraging the transfer of technology to LDCs. Could the US delegation please enlighten on the implementation status of this provision?

Answer:

As the United States reported to the TRIPs Council in 1999, the following are incentives provided to encourage technology transfer to least developed and developing countries. The references are to Titles of the United States Code and the relevant sections are cited. Copies of the laws themselves are available from the WTO Secretariat.

Title 20: Education

Section 226: encourages state governments, universities, colleges and businesses to establish scholarships for students from the Caribbean and Central America. The goal of the scholarships is to assist in the development of the eligible countries.

Title 22: Foreign Relations and Intercourse

Sect Cooperation. The purpose of the Institute is to encourage research on the problems of development in developing countries and to facilitate scientific and technological cooperation. Section 3503 defines the functions of the Institute, which include supporting U.S. research on critical development problems, encouraging the exchange of scientists and experts and fostering the involvement of U.S. enterprises in scientific and technology cooperation with the developing countries.

Section 4703: provides scholarships for undergraduate studies at U.S. schools for nationals of developing countries to assist in the economic development of the countries.

Chapter 63 (Sections 5401-5495): establishes the Support for East European Democracy (SEED) Programme. The activities of the SEED Programme include agricultural assistance, grants to support "Enterprise Funds," which provide technical assistance and training, and programmes to provide technical skills to assist in the development of the economy. See sections 5401(c), 5421, 5422 and 5423. The SEED Programme also establishes scholarships to enable students from Poland and Hungary to study at U.S. universities, colleges or businesses. See section 5442. Additionally, the statute authorizes the Environmental Protection Agency (EPA) to provide education, training and research to Hungary and Poland. See section 5452.

Section 5821: creates American Business Centres in the independent states of the former Soviet Union. The centres may facilitate in the demonstration and use of U.S. agricultural equipment and technology. The Centres also serve as a repository of technical information.

Section 5861: establishes a research and development foundation, created by the Director of the National Science Foundation in consultation with the Director of the National Institute of Standards and Technology. The Foundation partially funds joint research, development and demonstration ventures between U.S. business and scientists and engineers and entrepreneurs of the independent states.

Title 26: Internal Revenue Code

Section 501: provides a tax credit for qualified organizations (see subparagraph (A) and (B) of section 41(e)(6) as redesignated by section 231(d)(2)) of the Internal Revenue Code of 1986) that operate exclusively in reviewing technology disclosures, obtaining protection and licensing technology or providing research grants. This law is not limited to organizations that provide technology transfer to developing countries.

Sections 951, 955, 956, 959 and 1248: concerns a U.S. shareholder's tax liability in a foreign corporation that invests in a less developed country. There is no direct mention of technology in any of the sections.

Title 42: The Public Health and Welfare

Section 7671b: requires the Administrator to submit to Congress a report identifying technology transfer programmes that could promote methane emissions reductions in lesser developed countries. See Methane Studies Act, subsection (c)(2).

Section 13316: creates a technology transfer programme which assists U.S. firms to transfer renewable energy technologies to foreign countries. The programme establishes a financial assistance to encourage U.S. companies to participate in energy projects in developing countries. See subsections (b)(7), (b)(9) and (d)(1)(A).

Section 13362: creates a technology transfer programme which assists U.S. firms to transfer clean coal technologies to foreign countries. The programme establishes a financial assistance to encourage U.S. companies to participate in energy projects in developing countries. See subsections (b)(7), (b)(9) and (d)(1)(A).

Section 13387: establishes a technology transfer programme concerning environmental technologies. The programme creates a financial mechanism to encourage U.S. enterprises in energy projects that substantially reduce environmental pollutants in developing countries. ion 2151: declares a policy of providing support for the people of developing countries to acquire knowledge and resources. Also known as the Foreign Assistance Act of 1961.

Section 2151d: authorizes the President to furnish assistance by providing data collection and analysis, the training of skilled personnel, research and development of energy sources and pilot programs to test new methods of energy production to developing countries. See sub-sections (b) and (d).

Section 2182: encourages the use of solar technology in worldwide housing projects. The legislation is unclear if it is explicitly encouraging the transfer of solar technology.

Sections 2191 and 2194: creates the Overseas Private Investment Corporation to mobilize and facilitate U.S. private capital and skills to improve development in less developed countries.

Section 2293: establishes a development fund to encourage the private sector to promote development in the Sub-Saharan Africa. One type of assistance is providing research on agricultural

practices. See sub-section (I)(1)(A). Other assistance methods include providing technical support, training and education to improve the use of natural resources. See sub-sections (I)(1)(B)(ii-iii).

Sections 2295, 2295a and 2295b: authorizes the President to provide a variety of assistance to the independent states of the former Soviet Union. Under subsection (7), the President can authorize assistance in providing appropriate telecommunications technologies and training to develop skills necessary to produce educational television. Under sub-section (10), the President can promote environmental technology, education, research and training by U.S. businesses and universities.

Section 2351: encourages U.S. enterprises to contribute to the economic strength of less developed friendly countries by the exchange of ideas and technical information.

Section 2421a: establishes a capital projects office within the Agency for International Development (AID). The purpose of the office is to assist in the growth of a developing country's infrastructure. Subsection (c)(6)(B) encourages U.S. high technology firms to help develop a technological infrastructure.

Section 3262: creates a programme to assist in the energy development of developing countries. The programme provides for the development of energy resources, the application of suitable energy technologies and an exchange of scientists, technicians and energy experts.

Chapter 50 (sections 3501-3513): establishes the Institute for Scientific and Technological

(Brazil) With regard to para. 180 (page 75), in what cases and how can a patent protection be extended? Please explain.

Answer:

Pursuant to section 154(b) of Title 35, United States Code, a patent's term can be adjusted to compensate for loss of patent term resulting from delays due to failure of the U.S. Patent and Trademark Office to prosecute an application expeditiously or resulting from interferences or decisions of the Office reversed on appeal. A patent's term can be extended, pursuant to sections 155, 155A, and 156 of Title 35, United States Code, to compensate for loss of patent term resulting from the regulatory review by the Federal Food and Drug Administration

(Brazil) Concerning para. 181, please indicate if there is any case of compulsory license of patents under Section 203, 204 or 209 of Chapter 18, Part II, Title 35 of the US Code. If not, please explain how it would be implemented.

Answer:

Section 204 concerns the grant of a voluntary license. Since, with respect to section 209, a U.S. government agency is the patentee, licensing also would be voluntary. With respect to section 203, U.S. Government agencies responsible for the largest portion of funding agreements to small businesses and non-profit organizations report that they have not had to exercise rights under the cited sections. The section spells out the circumstances under which a U.S. Government agency might exercise march-in rights and the appeal process available to a contractor dissatisfied with an agency's determination. The procedures individual agencies might use to exercise their march-in rights are spelled out in their regulations, which are consistent with the U.S. Administrative Procedure Act. Agency regulations and the Administrative Procedure Act are publicly available.

(Brazil) Regarding para. 199 (page 80), please give more details about the meaning of the sentence “(...) registration at the Copyright Office is not required before an infringement suit can be brought (...)” referring to non-US works.

Answer:

Section 411 of the U.S. Copyright Law precludes the filing of a suit for infringement of any U.S. work until registration of that work has been obtained. Registration for non-US works, therefore, is not required.

(Brazil) Please give more details about compulsory license for making phono records of published musical works, as indicated in para. 203 of page 80.

Answer:

Section 115 of the U.S. Copyright Law contains a compulsory license, permitted under Berne Article 13(1), for the production and distribution of phonorecords of a nondramatic musical work. This license is available only after the owner of copyright has first authorized the distribution of phonorecords embodying the work.

(Brazil) Concerning para. 208 (page 81), please describe how Section 110(05) of Title of the US Copyright Act now implements Article 13 of the TRIPS Agreement.

Answer:

Please see response to Japan's question (regarding U.S. Copyright Act, Section 110(5)).

(EU) The US is party to the Berne Convention for the Protection of Literary and Artistic Works (1971). However, despite the unequivocal obligation to make “moral rights” available for authors, the US has never introduced such rights and has repeatedly announced that it has no intention to do so in the future. Whilst US authors continue to benefit fully from moral rights in the EU, the converse is not. Could the US please indicate if it intends to grant the same treatment to other Berne Convention members as is granted to itself?

Answer:

In our view, the EU's question fails to reflect accurately U.S. implementation of “moral rights” or statements made by the United States regarding such implementation. As the United States noted in response to a question from Japan regarding moral rights during the last TPR, moral rights are protected in the United States not under a single law, but rather through the exercise of provisions in the copyright law, the common law and other Federal and state laws. Many aspects of moral rights, however, are intimately associated with rights protected under the copyright law. For instance, the protection of the right of integrity will almost always implicate the author's (or other copyright owner's) right to reproduce the work or to prepare a derivative work. The United States, therefore, does not need to enact special legislation regarding moral rights because the required protection already exists.

(EU) Advertising low price perfumes imitating famous European brands and thus benefiting from the well-known reputation of the European brands is not prohibited. This practice may violate the Paris Convention for the Protection of Industrial Property, as incorporated into the TRIPs Agreement. Does the US have any plans to assure its compliance with the Paris Convention?

Answer:

The United States fully complies with its obligations under the Paris Convention and under the TRIPs Agreement.

(EU) Under US law (28 US Code Section 1498) a patent owner may not enjoin or recover damages on the basis of his patent for infringements due to the manufacture or use of goods by or for the US government authorities. This practice is apparently extremely widespread in all government departments. Could the US please explain if it considers that this practice is in conformity with the TRIPs Agreement that introduces a requirement to inform promptly a right holder about government use of his patent?

Answer:

The E.C.'s question fails to reflect accurately the legal effect of section 1498 of title 28, United States Code. Article 44.2 of the TRIPS Agreement authorizes Members to limit the remedies available against non-commercial use of a right by the government to payment of remuneration in accordance with paragraph (h) of Article 31. The United States does limit remedies in this manner; however, the section does provide for reasonable compensation for use or manufacture of a patented invention by or for the United States

(India) Intellectual Property Rights Violation: It has been noted that the piracy of Indian video films and music CDs and cassettes is on the rise and as a result, the Indian entertainment (film and music) industry is being deprived of royalties. We would request the US authorities to ensure stricter enforcement of Intellectual property rights for Indian music CDs and cassettes?

Answer:

India's statement is not a question or a request for information and does not provide information sufficient to identify the piracy alluded. It is not, therefore, possible to respond to India's statement other than by noting that all required civil, criminal and border enforcement measures are available under U.S. law to enable India's right holders to enforce their copyrighted works in the United States

10. Standards, Sanitary Requirements and Environmental Regulations

(Bangladesh) Article 9 of the SPS Agreement contains the commitment to provide technical assistance to developing country Members either bilaterally or through the appropriate international organizations, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies. Similarly, Article 11 of the TBT Agreement contains a provision for providing technical assistance to developing country Members on the preparation of technical regulations, establishment of national standardizing bodies, and participation in the international standardizing bodies. Could the U.S. delegation please inform us about the implementation status of these commitments by the US?

Answer:

The United States recently provided \$640,000 to the World Bank to assist African countries to help find ways to participate in the development of standards and to disseminate information on standards to facilitate their market access. For information on U.S. technical assistance on SPS issues, please refer to reports G/SPS/GEN/181 from June 15, 2000, and G/SPS/GEN/181.Add1 from July 9, 2001.

Technical Barriers to Trade

(Canada) (para 85) According to para 85, a new strategy could increase the rate of transposition of ISO and IEC standards in the United States, which has been described as low by several trading partners. Approximately what percentage of United States standards and technical regulations make use of international standards?

Answer:

The U.S. government does not centrally compile statistics on the relationship between standards and technical regulations to international standards. As a matter of practice and law (see G/TBT/2/Add.2), however, U.S. standardizing bodies and agencies review existing standards and consider whether international standards (if relevant ones exist) are appropriate and effective for meeting domestic needs. The United States does not agree with the assertion that there is a low level of use of international standards in the United States and we are unaware of any quantitative data that would support such an assertion. Furthermore, we question whether the rate of transposition of ISO and IEC standards would be meaningful as "transposition" is not necessarily an indicator of use, and there are a number of bodies, other than ISO and IEC, that develop international standards which could be of relevance to TBT implementation.

(Canada) (para 85) In a May 24, 2001 press release of the American National Standards Institute (ANSI) regarding the National Standards Strategy ("NIST Grant Will Help Advance National Standards Strategy" @ http://www.ansi.org/public/news/2001may/nist_grant.html), it appears that the primary focus of the strategy will be the objective of promoting U.S. technology, standards and standards-development processes internationally rather than on the goal of increased adoption and use of existing international standards by U.S. standardising bodies and agencies, including those developed by the ISO and IEC. Please explain how the National Standards Strategy will effectively address the latter goal.

Answer:

In its Statement on Implementation required under Article 15.2 of the Agreement on Technical Barriers to Trade (G/TBT/2/Add.2), the United States provided information on legislation and policies it has in place to implement the TBT Agreement, including its obligation to use relevant international standards as a basis for technical regulations, when they are an effective and appropriate means for the fulfilment of legitimate objectives. The National Standards Strategy was developed through the American National Standards Institute – a private, non-profit organization, that is the U.S. member body to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC). While a number of U.S. government agencies participated in the development of the National Standards Strategy, it does not represent official U.S. government policy and it is the laws and policies identified in G/TBT/2/Add.2 which are relevant and legally binding on U.S. agencies.

(Canada) (para 85) Please explain the relationship between the National Standards Strategy and policies and procedures of regulatory agencies with respect to the use of international standards as a basis for their technical regulations.

Answer:

Please see answer above.

(Canada) (para 86) According to para 86, the Department of Agriculture has proposed new national standards for organic products, as well as rules for the labelling ("grading") of imported meat. With respect to the issue of the labelling of imported meat, as an example, please explain the approach and criteria the United States uses to ensure that a labelling requirement represents the least trade restrictive action.

Answer:

The development and application of labelling requirements, like other technical regulations, is generally subject to the requirements of the U.S. Administrative Procedure Act (5 U.S.C. section 551 et seq.) which is a standardized system of consultations with the public as rules are developed and revised. Specific agency statutes may also apply. The APA specifies requirements for rule making, i.e., the process by which Federal agencies formulate, propose, establish, amend, or repeal a regulation. The transparency provisions of the APA exceed WTO requirements in a number of ways, e.g., it contains provisions regarding the solicitation of public comment on preliminary notices of proposed rules, and obligations for agencies to make public and respond to comments received on proposals upon their adoption as final. Transparency, along with guidance provided to agencies by the Office of Management and Budget (Executive Order 12866) on Regulatory Planning and Review, which includes provisions for regulatory impact analysis, are but two of the key institutional underpinnings to ensure that U.S. regulations (including labelling requirements), are not more trade restrictive than necessary to fulfill legitimate objectives, as defined in the WTO. These are in addition to requirements contained in the Uruguay Round Agreements Act (Public Law 103-465) and other legislation and statutory requirements.

(Canada) (para 88) According to para 88, no notifications of proposed U.S. sub-national measures have been received by the WTO related to the Technical Barriers to Trade (TBT) Agreement. When does the United States expect there to be a system in place to meet its obligations under the TBT Agreement with respect to the notification of technical regulations? Please explain how the U.S. government intends to notify technical regulations prepared or adopted by local government bodies, in particular the level directly below the national level.

Answer:

The United States has in place a system to identify trade-significant proposed technical regulations and conformity assessment procedures of state governments in the United States. The U.S. inquiry point, operated by the Department of Commerce, National Institute of Standards and Technology, has assumed the responsibility for notification of state proposals on their behalf. Notification involves a review of state publications to ascertain whether proposals fall within the requirements of the TBT Agreement. The United States has no obligation under the WTO to notify regulations proposed by local governments and has no plans to implement such a system.

(Canada) (para 89) According to para 89, the United States supports reliance on the supplier's declaration of conformity (with or without accreditation) and considers that national treatment could be achieved through cooperative arrangements between national conformity assessment bodies, instead of focussing on mutual recognition agreements (MRAs). Please provide examples of

cooperative arrangements between national conformity assessment bodies, other than mutual recognition agreements or similar arrangements, which would prevent and/or resolve technical trade barriers.

Answer:

The question appears to misstate the U.S. position. The U.S. position is to recognize that conformity assessment procedures, and the approach taken to assure product conformity, need to be consistent with good regulatory practice. The United States recognizes there are a variety of approaches to conformity assurance and confidence in procedures (or national treatment) conducted by bodies in foreign countries need not depend on a negotiated agreement.

The U.S. Occupational Safety and Health Administration (OSHA) has a cooperative agreement with the Standards Council of Canada (SCC) for exchange of test results. It is not required to recognize or accept the results of the other party, but a party can accept the test results after review without re-testing on its own if it chooses.

The U.S. regulatory agencies such as USDA's Food Safety and Inspection Service have been willing to enter into technical agreements with public sector organizations in order to provide services such as a laboratory certification to perform specific food safety tests, and the private certification of food processing and production practices to substantiate claims on labeling and to show conformance with national and international requirements. For example, third-party certifying entities are used to certify animal breeds and other animal production practices, such as "no hormones added", and "no antibiotics administered" to facilitate international trade.

(Canada) (general question) In regard to the adoption of international standards, the United States stated in its submission under its 2000 APEC Individual Action Plan on Standards and Conformance that its government's policy "is to adopt international standards whenever possible and appropriate". Further, in WT/TPR/M/56/Add.1, in response to Question 10.1, the United States stated that "as a matter of practice and law, U.S. standardizing bodies and agencies review existing standards and consider whether international standards (if relevant ones exist) are appropriate and effective for meeting domestic needs". What review mechanisms exist for the United States to determine that its standardising bodies and agencies are meeting its policy and legal requirements?

Answer:

The United States government has in place a number of requirements to ensure that technical regulations do not create unnecessary barriers to trade and otherwise comply with WTO requirements. Relevant legislation on transparency and regulatory planning and review have been noted above and in information provided to the Committee on Technical Barriers to Trade (G/TBT/2/Add.2). The United States government does not attempt to direct the activity of private bodies' use of international standards beyond making them aware of the rights and obligations under the WTO and responding to perceived violations. Similarly, there is no specific program to monitor exclusively whether a regulatory agency has used a particular international standard; however, there are various mechanisms for regulatory oversight more generally and, as noted above, detailed and stringent requirements for transparency which call for public input in the development of technical regulations. As part of the National Technology Transfer and Advancement Act (NTTA) of 1995 and guidance issued by the Office of Management and Budget (OMB) pursuant to that Law directs Federal agencies to participate in voluntary standards development activities and to use voluntary consensus standards in lieu of government standards except where inconsistent with law or otherwise impractical. If agencies do not adopt a voluntary standard (which includes international standards), they must justify why and indicate this in its annual report to the OMB (Annual Reports to OMB on Implementation of the NTTA are available at <http://ts.nist.gov/ts/htdocs/210/nttaa/pubs.htm>).

(Japan) (page 47, para 83, Standards required by private insurance companies) Japan would like to know what kinds of standards are required by private insurance companies to qualify for product liability and health insurance, as well as to what kind of goods such standards apply? We would also like to know upon which laws, etc., these requirements are based.

Answer:

Could Japan be more specific regarding the above question on product liability and health insurance? It is likely that the “standards” or conditions for product liability insurance depend upon the nature of the product involved. It is not clear what products are of interest to Japan and difficult to answer the question in the absence of this information.

(Japan) (page 47, para 85) (New National Standards Strategy) Please explain the effects of the new National Standards Strategy, which started in September 2000, including that on the rate of the transposition of international standards into domestic standards.

Answer:

The U.S. government has not attempted to assess the effects of the National Standards Strategy, which, as noted above, was developed by a private, non-profit federation.

(Japan) (page 48, para 86, Organic products) The Report says, the Department of Agriculture has proposed new national standards for organic products, as well as rules for the labeling ("grading") of imported meat. Could the United States explain the outline for these new standards and rules?

Answer:

In order to facilitate trade in organic products the USDA National Organic Program Internet website provides detailed information at <http://www.ams.usda.gov/nop> on the implementation of the new rule including the entire rule translated into Japanese and Spanish. Other Federal websites that provide comprehensive information on grading of U.S. imported meat are as follows: <http://www.fsis.usda.gov/OPPDE/arc/Claims.htm>; <http://www.ams.usda.gov/lsg/lsg-mg.htm> and for notice of proposed rules the U.S. Federal Register at http://www.access.gpo.gov/nara/cfr_retrieve.html.

(Japan) (page 48, para 88, Sub-federal technical regulations) As for sub-federal technical regulations, the Government of Japan requests the Government of the United States to take appropriate action, in accordance with Article 3 of the TBT Agreement, including notification of such regulations to the WTO.

Answer:

The Uruguay Round Agreements Act included U.S. obligations with respect to coverage of the WTO Agreement on TBT of state and local government activities. The United States is unaware of any sub-federal technical regulation which it has failed to notify in accordance with the TBT Agreement.

(Switzerland) The U.S. applies many complex technical regulations to a large number of products, for health and safety purposes. Is irradiated/ionized food in the U.S. subject to mandatory declaration?

-- If so, does the U.S. consider irradiation to be a production and processing method which alters the nature/character of the product in the light of Article III GATT 1994 (« like product »)?

-- If so, what is the difference, in terms of human health implications, between irradiated and non_irradiated food?

-- If not, does the U.S. consider irradiation to be different, again in the light of Article III GATT 1994, from other production methods such as biotechnological methods?

Answer:

To ensure that the consumer is informed that irradiation has been used, the FDA requires that foods that have been irradiated bear both a logo and a statement that the food was irradiated.

(Korea) (pages 48-49, para. 89) In order to reduce technical trade barriers, the United States considers that national treatment could be achieved through cooperative arrangements between national conformity assessment bodies, instead of focusing on mutual recognition agreements (MRAs). What does "cooperative arrangements between national conformity assessment bodies" mean in detail, and what is the difference with mutual recognition agreement?

Answer:

Conformity assessment agreements can take different forms, and need not be reciprocal ("mutual"). See also response to Canada.

(EU) Procedures exist at both at Federal and State level, for the approval of wine labels. Names and descriptive material that may pass off U.S. wine as possessing characteristics or qualities of EU wine are often approved, undermining the reputation of the EU product and displacing potential sales. Can the U.S. give assurances that the approval procedures will be improved so that this will not occur in the future?

Answer:

The Bureau of Alcohol, Tobacco, and Firearms (BATF) is responsible for wine labelling in the United States. It has not received any official complaints from the European Union on wine labelling. The United States has no current plans to change the wine labelling regulations. If the European Union chooses to pursue changes to the U.S. regulations, it can submit a petition to the BATF, detailing suggested changes.

(EU) In many areas state and local authorities are free to set their own technical regulations, even when federal regulations exist. This leads in some cases to a very complicated regulatory environment. At the same time the National Technology Transfer and Advancement Act (NTTAA) of 1995 aims at promoting the use of voluntary standards by federal agencies and to co-ordinate their standards activities. Therefore, firstly, we would be interested to know if the US is considering extending the NTTAA to state and local authorities, and if not, what co-ordination activities do take place to ensure that Article 3 of WTO/TBT Agreement is implemented? Secondly, does the NTTAA require federal agencies to review international standards when developing regulations? If not, how is the application of Article 2(4) of the WTO/TBT Agreement ensured by federal agencies? And thirdly, if a federal agency does not examine an existing international standard as a basis for a technical regulation, would this constitute an infringement of the Administrative Procedures Act, with regard to failure to consider reasonable alternatives or failure to explain reasons for rejecting them?

Answer:

The Uruguay Round Agreements Act (see G/TBT/2/Add.2) is the primary implementing legislation for the United States WTO obligations, including obligations under the TBT Agreement.

The NTTA was developed for other domestic purposes but we believe it complements TBT implementation. Both the URAA and NTTA require the consideration of relevant international standards. We do not believe the failure of an agency to consider the use of an international standard would be an infringement of the Administrative Procedures Act – that Act addresses procedural issues of transparency in the development and application of regulations.

(EU) In certain sectors, for example pressure vessels and in relation to building codes, private sector standards bodies basically develop the technical regulations which are used by state and local authorities in their regulations. Could the US please explain how transparency and public comment is ensured since the Administrative Procedures Act does not apply to state and local authorities?

Answer:

States have adopted legislation similar to the Administrative Procedures Act which, among other things, ensures publication of notices of proposed regulations for comment. If the underlying standard is an American National Standard developed by an ANSI-accredited standards developer, the standard will have met the requirements set forth in the ANSI Procedures for the Development and Coordination of American National Standards (the “ANSI Procedures”). These requirements are based on due process principles and include several required public announcements regarding the status of the standard as it undergoes development. One such announcement is a public call for comments, pursuant to which all comments received must be reviewed and responded to. These public announcements are reflected in ANSI’s Standards Action publication which is forwarded to and included in the ISONET reporting system in conformance with the requirements set forth in the Code of Good Practice.

(EU) Electrical and electronic equipment amounts to 6% of total EU export to the US. However, this trade is impeded by obstacles such as US standards diverging from the international standard (IEC) and onerous conformity assessment requirements. Although the Occupational Safety and Health Administration (OSHA) regulations (29 CFR 1910) do not explicitly rule out international standards as a basis for the testing and certification to be done by NRTLs, so far only US standards (UL and ASTM standards mostly) are accepted by OSHA. In addition, the Annex on Electrical Safety to the EU-US Mutual Recognition Agreement (MRA), negotiated in accordance with Article 6 Of the WTO/TBT Agreement, is not yet implemented correctly on the US side. Under the MRA, European designated laboratories should certify equipment according to US regulations. However, OSHA continues to deny European authorities the right to designate European laboratories to operate under the Annex on Electrical Safety. The behaviour of this Agency renders void the signature of the MRA by the US Government. 1) Has OSHA examined the technical content of relevant ISO and IEC standards to ensure that they, or their relevant parts, are not an appropriate or effective means of fulfilling the legitimate objectives set in US law? If not, how does OSHA, as a central government body, intend to ensure that Article 2(4) of the WTO/TBT Agreement is adhered to in terms of its regulations? 2) Can the US give any indication that it will follow the practice adopted by most other countries in the world with regard to reverting to suppliers self-declaration instead of third party certification for electrical and electronic products? 3) Will the US also confirm that it will comply fully with the provisions of the MRA?

Answer:

OSHA recognizes NRTLs to test and certify products using “appropriate test standards.” Under the NRTL Program regulations, 29 CFR 1910.7, as clarified by OSHA’s rule promulgating Section 1910.7, an appropriate test standard must be a U.S. consensus_based product safety test standard. OSHA does allow NRTLs to use appropriate U.S. “harmonized” international safety test standards. For example, the UL 1950 test standard is a U.S. harmonized version of the IEC 950 (international) test standard. Any country must harmonize, i.e., adapt, international test standards to make sure they conform to that country’s national codes and statutory or regulatory requirements. Allowing general acceptance of an international test standard without harmonization would be unsafe if it were incompatible with the U.S. system.

The NRTL Program regulations, 29 CFR 1910.7, set forth the requirements for NRTL recognition by OSHA. As allowed under these regulations, OSHA uses general criteria of relevant ISO and IEC guides for purposes of evaluating an organization for recognition. However, the criteria in these guides are not substitutes for the requirements of the regulations, which in some cases exceed the provisions of the guides. Therefore, they do not necessarily provide the appropriate and effective means of fulfilling legitimate objectives in U.S. law. OSHA must change its requirements through a public rule making process and, as an initial matter, must have adequate justification and resources to propose any changes. Currently, OSHA has no changes to the NRTL Program regulations under consideration.

OSHA’s current statutory mandate allows it to regulate employers in protecting workplace safety. In contrast to European laws, this mandate does not allow OSHA to regulate manufacturers or to perform surveillance of manufacturers in regulating employers. Regulation and surveillance of manufacturers are absolutely essential to ensure the safety of products under the supplier’s declaration scheme. Congress must substantially revise OSHA’s current statutory mandate before OSHA could consider permitting supplier’s declaration. The Agency’s mandate would need to be broadened to regulate manufacturers and products in the general marketplace. To our knowledge, such revisions to expand OSHA’s authority are not currently under consideration by Congress. Unless properly regulated, supplier’s declaration by less-than-reputable manufactures would potentially expose all users of products to great safety risks. Also, OSHA permits a feasible alternative to supplier’s declaration since qualified NRTLs may use manufacturers testing in approving products.

Regarding the Annex on Electrical Safety to the EU_US Mutual Recognition Agreement (MRA), only one EU_based laboratory, TUV Product Services of Germany, has submitted a complete application to OSHA, and OSHA has recognized this laboratory following the requirements of the NRTL Program, which included an on_site assessment of the lab by OSHA. The Annex on Electrical Safety of MRA clearly states that the NRTL Program requirements for processing will be followed, and therefore OSHA has correctly implemented the Annex. The Annex gives European authorities the right to designate, i.e., identify, laboratories in the European Member States to be considered for recognition by OSHA under the NRTL Program. These countries, or the European Commission, may undertake whatever analyses or assessments they consider appropriate to make this identification. If the information is provided to OSHA with the application, OSHA will rely on it as we evaluate the laboratory, and adjust our own activities accordingly. As already stated, OSHA has complied with the provisions of the Annex on Electrical Safety.

(EU) The EU has previously asserted that US track record in implementing ISO and IEC standard is poor. Previous questions from other WTO Members have related to the rate of US transposition of international standards as national standards. The US has responded that the US government did not collect comprehensive data on the number of standards in existence and that there is no data that would support the assertion of a poor transposition rate. We would like to know what data exists to

support a high transposition rate of ISO and IEC standards as US national standards? Does ANSI and/or its accredited standards development organisation have such data and what are the results?

Answer:

The U.S. government does not centrally compile statistics on the relationship between standards and technical regulations to international standards. As a matter of practice and law (see G/TBT/2/Add.2), however, U.S. standardizing bodies and agencies review existing standards and consider whether international standards (if relevant ones exist) are appropriate and effective for meeting domestic needs. The United States does not agree with the assertion that there is a low level of use of international standards in the United States and we are unaware of any quantitative data that would support such an assertion. Furthermore, we question whether the rate of transposition of ISO and IEC standards would be meaningful as ‘transposition’ is not necessarily an indicator of use, and there are a number of bodies, other than ISO and IEC, that develop international standards which could be of relevance to TBT implementation. We note that ANSI has begun to attempt to track this information as part of our “Project Initiation Notification System” forms, but we do not yet have comprehensive data.

(EU) The Secretariat’s report states that ANSI has developed a “National Standards Strategy for the United States” and that this new strategy could increase the rate of transposition of ISO and IEC standards in the US. However, the transposition of ISO and IEC standards and the withdrawal of conflicting national standards seems to play a subordinate or even non-existing role in the strategy. The strategy paper itself states in its strategic vision that for only some technology sectors ISO and IEC are the preferred organizations within which to achieve one global standard. Could the Government inform us what commitments and/or obligations, if any, do the standards bodies accredited by ANSI and ANSI itself have to transpose ISO and IEC standards as US national standards and withdraw conflicting national standards, in particular when the US has actively participated in their development? Furthermore, please indicate for which sectors are ISO and IEC the preferred organizations? And why are ISO and IEC not suitable for other sectors?

Answer:

The National Standards Strategy for the United States states that “[t]he strength of standardization in the United States is a sectoral focus supported by a dynamic infrastructure. The sectoral focus comes from the participants – companies, government agencies, public interest organizations, talented individuals – who understand what is needed in their sector, and the standards developers through which they work to meet those customer needs This allows efficient standards development and fosters innovation and competition.” ANSI accreditation of a standards developer is not contingent on the developer’s agreement to transpose ISO and IEC standards and withdraw any conflicting national standards. ANSI-accredited standards developers do transpose ISO and IEC standards whenever those standards are accepted by, and meet the needs of, the relevant sector. Some sectors (e.g., Heavy Equipment) rely extensively on such transposed standards to meet their standards requirements. In other sectors (e.g., Medical Devices) the ISO standards in large measure are based upon American National Standards. Please be advised that the National Standards Strategy also provides that the ANSI community “need[s] to guard against duplication of efforts and results where it does not add value” to address the need for a coherent set of national standards.

(EU) The Secretariat’s report states that in relation to standards the US conformity assessment system largely rests on supplier’s self declaration. However, most of the larger standards organizations (UL, ASTM, ASME etc.) provide third party product certification and marking schemes for a large number of sectors as well. It seems that these schemes have a very large impact on market access almost to the point of constituting de facto technical regulations. Even state and local authorities will refer not only to the standards of these organizations but also to their approvals

and/or markings as a prerequisite for approval, use and/or installation. Could the US please indicate us the sectors covered by “voluntary” third party marking schemes? And inform to what extent and in which sectors federal, state and local authorities rely on private certification and marking schemes in relation to their regulations?

Answer:

The United States questions the assertion that a large impact on market access is the factor determining what constitutes a technical regulation. The EU may want to consult the Directory of U.S. Private Sector Product Certification Programs (NIST SP 903, 2001 Edition) which is accessible at <http://ts.nist.gov/ts/htdocs/210/217/osc.htm>. We have not undertaken surveys on the extent to which federal, state and local authorities rely on private certification and marking schemes in their regulations. If there is a specific area of interest, the U.S. inquiry point could provide information.

(Brazil) Concerning para. 83 (page 47) which are the measures adopted by the US Government in order to comply with Article 3 of the TBT Agreement with respect to the use of standards such as those mentioned in this paragraph?

Answer:

TBT Article 3 concerns the preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies. The United States is unaware of any non-governmental bodies in the United States with authority for technical regulations. (If a non-governmental body develops a standard that is subsequently referenced or used as a basis for a technical regulation, it is done so under the authority of a government authority.)

States have adopted legislation similar to the Administrative Procedures Act which guides the preparation, adoption and application of technical regulations by federal government agencies (see G/TBT/2/Add.2). Among other things, these procedures ensure publication of notices of proposed regulations for comment by any interested party.

The United States has in place a system to identify trade-significant proposed technical regulations and conformity assessment procedures of state governments in the United States. The U.S. inquiry point, operated by the Department of Commerce, National Institute of Standards and Technology, has assumed the responsibility for notification of state proposals on their behalf. Notification involves a review of state publications to ascertain whether proposals fall within the requirements of the TBT Agreement.

(Brazil) Regarding para. 84, which are the measures adopted by the US government aiming at assuring that the technical requirements embodied in technical regulations are in accordance with existing international standards? Is there any effort to change those technical regulations that are older than the TBT Agreement?

Answer:

In its Statement on Implementation required under Article 15.2 of the Agreement on Technical Barriers to Trade (G/TBT/2/Add.2), the United States provided information on legislation and policies it has in place to implement the TBT Agreement, including its obligation to use relevant international standards as a basis for technical regulations, when they are an effective and appropriate means for the fulfillment of legitimate objectives. As a matter of practice and law (see G/TBT/2/Add.2), U.S. standardizing bodies and agencies review existing standards and consider whether international standards (if relevant ones exist) are appropriate and effective for meeting domestic needs. At the time we implemented the WTO, U.S. agencies were asked to review and

identify any technical regulations under their authority that might be incompatible with the WTO obligations (including the TBT obligations). Procedures are in place to ensure periodic review of regulations, though none of these procedures are linked to implementation of the TBT Agreement. It should also be noted that the United States was a signatory to the Tokyo Round TBT Agreement.

(Brazil) Concerning para. 85 and considering that the US is the most represented country in international standards bodies (such as ISO), which are the measures adopted by the US governments for:

- a. helping ANSI and US Standardizing Bodies to improve the use of international standards in order to avoid practical technical barriers to US market access by foreign suppliers*
- b. adopting these international standards or relevant parts of them, as a basis for technical regulations (both in case of new and revised ones)?*

Answer:

The adoption of international standards as a basis for technical regulations is addressed in the response to the preceding question. The use of international standards by U.S. standardizing bodies will be a function of market forces and needs. The U.S. government does not attempt to direct the activity of private bodies' use of international standards beyond making them aware of the rights and obligations under the WTO and responding to perceived violations.

(Brazil) Regarding para. 89, considering that the "US conformity assessment system is unique in that conformity assessment in the area of standards largely rests on supplier's self-declaration, and is to a large extent enforced through product-liability laws" and also the positions expressed by US representatives at the WTO TBT Committee during last years proposing a wider use of declaration as a cheaper and time-saving way for conformity assessment, which are the rules for acceptance of such declarations from foreign suppliers?

Answer:

The United States does not have a single or monolithic approach to conformity assurance. Supplier's declaration of conformity is frequently used for voluntary standards. Some U.S. regulatory agencies also rely on supplier's declaration of conformity. Whenever that approach is used, there is no distinction the rules between foreign and domestic suppliers, though foreign suppliers generally have to have an importer or agent domiciled in the United States.

(India) Caution label on natural rubber gloves: The US law requires natural rubber gloves to carry caution label that the natural rubber latex can give allergic reaction in some individuals. We would request the US to clarify the basis of imposition of such a standard and provide details of the data collected in this regard.

Answer:

The advent of the HIV/AIDS epidemic resulted in major changes in protective practices for health care workers, especially regarding the use of latex gloves. During recent years FDA received increasing numbers of reports of adverse reactions, including deaths, that seemed to be related to the use of latex gloves. Careful investigation established that increased exposure to natural latex can trigger severe allergic reactions in some sensitive people. The labeling requirement is a response to this finding. A discussion of the research leading FDA to require this label can be found on the FDA website www.fda.gov under the topic of Medical Devices.

(India) Pharmaceutical drug approval procedures: Such procedures pose difficulties for non-US based firms, including those from India as the US Food and Drug Administration has to approve any new medicinal product before it can be put on sale. It has been represented that for non-US medicinal products, this procedure takes significantly longer than for those developed locally. We would request the US authorities to look into the matter and ensure that non-US based firms are not placed at a disadvantage.

Answer:

FDA's policy is to deal with all applicants on a non-discriminatory basis. Time to process the application is effected by the category of the drug (certain drugs that appear likely to contribute significant medical advances for a serious disease receive priority review) and the completeness of the application. We have no information to suggest that these factors impact on foreign applicants differently than on domestic firms

Sanitary and Phytosanitary Measures (SPS)

(Canada) (para 91) According to para 91, the FDA has primary responsibility for the safety of foods, with the exception of meat, poultry, and certain egg products, which FSIS regulates. Please explain how the FDA is attempting to facilitate trade in these products. Does the FDA intend to expand these activities that help facilitate in the near or medium term?

Answer:

Last year, FDA and CFIA finalized an "Action Plan on Food Safety" that focused on how entry of fresh Canadian produce into the United States could be facilitated while maintaining FDA's ability to ensure product safety. As a part of the "Action Plan," the two agencies have engaged in an exchange of technical information about each country's respective food safety programs for fresh produce regarding microbial contaminants, pesticide residues, tracebacks, good agricultural practices, recalls, and food irradiation. We are very encouraged by the progress that has been made in the area of microbial contaminants and look forward to reaching agreement on a similar action plan covering chemical contaminants and pesticide residues in fruits and vegetable commodities.

(Japan) (page 47, para 82, Meat and poultry) The Secretariat Report says, most products other than meat and poultry do not require determination of equivalence or an export certificate to enter the U.S. Could the United States explain the reason why these measures are applied only for meat and poultry?

Answer:

Please refer to the document G/SPS/GEN/212 submitted on November 7, 2000 for the explanation.

(Japan) (page 49, para 93) Japan has regained FMD free status since 26th of September, 2000 by OIE. We have already provided the report on the eradication of FMD and the on-site investigation conducted by USDA officers have been concluded, nevertheless we have not received the permission to re-export meat and meat products derived from cloven-hoofed animal to the United States. Therefore, we would like to know when the ban for the export of the said items will be lifted.

Answer:

The Technical APHIS regulatory process will require a proposed declaration of Japan as FMD-free as a formality before final declaration of Japan as FMD-free. This normally takes 60 to 90 days.

(Korea) (page 49, para. 90) Although the U.S. government permitted the import of Korean mandarin oranges in August 1995, five major producing states (California, Louisiana, Texas, Florida and Arizona) still prohibit the import of this product due to concerns related to the citrus canker disease. However, the phytosanitary concerns were effectively addressed through a risk assessment process completed in June 2001. Therefore, the U.S. needs to revise federal regulation (7 CFR 319.28) as soon as possible so that the aforementioned states open their markets to Korean mandarin oranges. Korea would appreciate it if the U.S. could express its views on this issue.

Answer:

USDA's Animal and Plant Health Inspection Service (APHIS) has completed its risk assessment. No proposed rule change has been drafted yet for publication, but the rule_making process has begun.

(EU) (para 91) The "Code of Federal Regulations of 1996, Title 7, Subtitle B, Ch.III, §319-56-2r" provide for a pre-clearance inspection programme of apples and pears with the aim of guaranteeing, prior to shipment, that consignments are free from certain specified insect pests and from "other insect pests that do not exist in the U.S. or that are not widespread in the US." Operating on the basis of an open list of unspecified pests is not scientific and is contrary to the spirit of transparency as provided for in the International Plant Protection Convention and to the requirement of pest risk analysis and transparency laid down in the WTO Sanitary and Phytosanitary Agreement (SPS). The system increases costs and has had a negative effect on EU exports of apples and pears to the US. We would like to know if the U.S. has intentions to re-evaluate the procedure with a mind to following more closely the International Plant Protection Convention and the WTO SPS?

Answer:

APHIS will manage their commodity preclearance programs in a safeguarding context with specific treatment and/or treatment schedules utilized to mitigate target pests of concern. This risk management strategy is certainly consistent with the purposes of the IPPC.

(Brazil) Secretariat Report, Summary Observations, para. 22. The US government has, for alleged sanitary and phytosanitary reasons, prohibited imports of meat from Brazil originating from areas declared free from Foot and Mouth Disease by the International Office of Epizootics. In light of the concept of pest-or disease-free areas enshrined in the IOE, please explain what is the rationale for maintaining these measures when the exporting country complies with all the other sanitary and phytosanitary requirements?

Answer:

The United States is within compliance with the guidelines set out in the OIE Chapter of the Animal Health Code when it prohibits imports of ruminant products from Brazil.

(EU) The EC is operating a policy of regionalism where restrictions are applied in zones affected by certain animal diseases, with free movement of animals and products outside the affected zones. Furthermore, the same principle as an effective means of controlling animal disease has now been incorporated into the US Tariff Act 1930 by the NAFTA and is part of the WTO SPS Agreement.

However, US import administrative rules concerning Foot and Mouth Disease (FMD), Rinderpest and other relevant diseases have still not been amended to reflect this change in legislation, despite a clear commitment in the EU-US Agreement on Application of the Third Country Meat Directive, reached in 1992. Imports into the US of uncooked meat products such as San Daniele ham, German sausage, Ardennes ham, are still the subject to a long-standing prohibition despite the fact that meat products may come from disease free regions and that the processing involved should render any risk negligible. Could the US could further elaborate on how it intends to meet its international obligations concerning regionalisation?

Answer:

The Regionalisation policy has been finalized and is in effect.

(India) Import alert on Fresh, Frozen and Cooked shrimp from India: The US FDA has been operating an Automatic Import Alert (automatic detention and testing) in respect of Indian Fresh (Raw) and Frozen Shrimps since 1979. In 1995, the FDA extended the Automatic Import Alert to cover cooked shrimp export from India. Some Indian exporters are exempt from such Automatic Import Alert and are only subject to random checks. It may be noted that the processing technology in India has been upgraded with modern facilities, and 103 processing establishments have been approved by the European Commission for exports to the European Union. Many other processors exporting to the US have implemented HACCP (Hazard Analysis and Critical Control Points) principles. We would request the US FDA to consider according similar approval after inspection of the exporting units. Taking into consideration the developments in the Indian seafood industry, we would also request the FDA to lift the import restrictions such as detention of Indian shrimps imposed vide Import Alert IA#1635. Further, it is noted that while the US FDA publishes the details of detained consignments and give wide publicity, it does not publish the results of examination subsequently. We feel that this is not fair as such publicity concerning detained consignments would create a bad impression concerning the exporters in question in the minds of the US seafood importers. We would therefore request the US authorities to consider giving adequate publicity concerning clearance given to such detained goods upon physical, chemical and bacteriological examination.

Answer:

The cited Import Alert was imposed on Indian shrimp after FDA found pervasive decomposition problems, sanitation violations and contamination with pathogenic microorganisms. Individual shipping firms can request an exemption from this detention after they have had five consecutive non-violative shipments. This FDA policy recognizes that it is the responsibility of the individual shipper to present safe and wholesome food products for marketing in the U.S.

Approximately 7 million shipments of FDA-regulated products enter the U.S. each year. The vast majority of those shipments enter the U.S. market without problems. It is not FDA's responsibility to publicize the safety of imported or domestic food. FDA does, however, believe that the public has a right to know when we find unsafe products.

(India) Ban on mango exports to US: It has been reported that the US has imposed a ban on import of Indian mangoes on account of the problem of stone weevil and occurrence of oriental fruit fly. This was in spite of the fact that the problem was restricted to a small belt of the mango producing area and was being addressed through new technologies for detection (like x-ray radiography technique) and control (like Hot Water Dip Treatment, Integrated Pest Management System and Vapour Heat Treatment). In such circumstances, we would request the US authorities to lift the continued ban on import of mangoes from India.

Answer:

The USDA still has legitimate concerns on mango seed weevil in India and will evaluate any new technologies that India has developed to mitigate oriental fruit fly and mango seed weevil pests.

(India). Strict and burdensome sanitary and phyto-sanitary requirements: All imports of fresh fruits and vegetables into the US require clearance by the US Department of Agriculture. Such clearance is often given only after extensive tests and inspection of the areas where the items have been grown. The US requirements are sometimes quite unreasonable and take excessively longer time. We would request the US authorities to consider this matter and take steps to streamline the procedure.

Answer:

The United States receives an extraordinary volume of import requests. As recently as June 19, 2001 in the Federal Register the United States asked for public comment on how to streamline this entire process.

(India) Meat and milk products: It has been represented that the US does not allow import of meat and milk products from India on the ground of presence of foot and mouth disease in the animals. Since it has now been proved that these are now free from BSE (Bovine Spongiform Encephalopathy)/scrapie, it is requested that the ban in question may be removed.

Answer:

FMD is still present in India and independent of BSE and Scrapie-free, which prohibits India's meat and milk imports to the United States.

(New Zealand) The Secretariat report notes that "Most products other than meat and poultry do not require a prior determination of equivalence or an export certificate to enter the United States." (S/III, para 82, page 47) We would note, however that the US has an explicit prohibition on the entry of plants, plant products and honey bees from all countries except for those recognized 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 application. 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 as a final rule. These facts give rise to a number of questions:

What is the United States doing to address the backlog of applications for pest risk assessments?

Answer:

As recently as June 19, 2001 in the Federal Register the United States asked for public comment on how to streamline this entire process. APHIS has also added additional personnel.

(New Zealand) Can the United States explain why it is necessary to maintain measures more restrictive than identified by their risk assessments for extended periods after such risk assessments have been consulted upon and finalised?

Answer:

Risk assessment only provides the basis for a regulation. A federal regulation must then be published in order to be legal.

(New Zealand) How does the United States justify the longstanding delay in resolving New Zealand's request for access to the United States for live honey bee and honey bee semen, when, in view of New Zealand's superior honey bee health status, there is no scientific basis for denying such access on SPS grounds?

Answer:

APHIS is working to address this situation.

(New Zealand) When will USDA publish the Proposed Rule and associated Risk Assessment for New Zealand honey bees?

Answer:

APHIS is currently in the process of drafting a proposed rule.

PART 2

(New Zealand) The concepts of equivalence, transparency and international harmonisation are three of the foundations of the WTO SPS agreement (discussed at S/III, paras 90-94, page 42 and 43). Can the U.S. provide specific comment on efforts being made by its Food and Drug Agency (FDA) to ensure that both the statutes which it administers, as well as the associated regulations, policies and guides explicitly reflect the international commitment the US government has made in this regard.

Specific comments would be especially appreciated with respect to:

The consistency of the equivalence concept with the Federal Food Drug and Cosmetics Act, noting that the FDA is yet to finalise and publish guidance in this area.

The consistency of both the amending process and standards contained within the Pasturised Milk Ordinance (PMO) and the National Shellfish Sanitation Program (NSSP) standards with the above.

The assessment of risk and determination of the appropriate level of sanitary or phytosanitary protection (ALOP) is another key concept of the WTO SPS agreement. Can the US specifically comment on:

How both risk assessment and the objective of minimising negative trade effects have been mutually and consistently applied in the development and amendment of the PMO.

Why the measures mandated for products covered by the PMO are more trade restrictive than those for similar products which can contain the same hazard profiles and which are either directly consumed or made into products consumed by the same population.

[Answer to be supplied]**Environmental issues**

(EU) (para 83) How does the U.S. see the role of international, as opposed to purely national, environmental policies in complementing international trade?

Answer:

International environmental policies are an important means of addressing environmental concerns that have an international dimension, though the particular means to address an environmental problem will vary from case to case. The United States believes that international environmental and trade policies can and should be mutually reinforcing. To that end, the United States believes that it is important for environment and trade officials to work closely together and respect each others' expertise in the development of both environmental and trade policy.

(EU) (para 85) The EU shares the U.S.' belief that it is important to identify and pursue area where trade liberalisation holds particular promise for yielding both trade and environmental benefits. An area which the EU considers worth examining in this respect is that of energy subsidies, including pricing and taxation systems which effectively amount to subsidisation by avoiding that the true environmental costs of energy use are reflected in the price of energy. To what extent does the U.S. share this view and is open to examine and review its own policies in this area?

Answer:

The United States agrees that energy development and use should be economically and environmentally sustainable. The United States is interested in exploring market-distorting and environmentally harmful subsidies across sectors more generally, recognizing that the issues are complex.

(EU) (para 87) The U.S. has stated that it will conduct an environmental review of the negotiations on services and agriculture; why has the U.S. chosen to carry out only an environmental review as opposed to a broader review taking into account all three pillars of sustainable development?

Answer:

The U.S. already considers many social and economic factors relevant to a sustainability assessment when developing trade policy. An environmental review, however, is useful in highlighting environmental factors for consideration and allows for a targeted analytical focus on these factors. Now that the Doha agenda has been launched, the United States intends to fold the environmental review of the services and agriculture negotiations into a review of the broader agenda.

(Japan) (page 16, para.16, Trade Measures and MEAs) It is stated in the Report that the Government of the United States considers that WTO provisions are sufficient to accommodate trade restrictive measures contained in multilateral environmental agreements (MEAs). What conditions does the Government of the United States consider necessary for trade restrictive measures contained in MEAs to be consistent with the WTO provisions? Please provide concrete examples of trade restrictive measures contained in MEAs that are considered to be consistent with the WTO provisions. Does the Government of the United States consider that relevant U.S. domestic laws fulfill such conditions?

Answer:

Few MEAs contain specific trade measures. Those that do – for example, the Convention on Trade in Endangered Species (CITES) and the Montreal Protocol on Ozone-Depleting Substances – have been in place for some time, and the United States is unaware of any potential inconsistency with WTO rules. The United States believes that trade restrictions in its domestic environmental measures are also consistent with WTO rules. In this connection, the WTO Appellate Body recently found that the U.S. shrimp-turtle and its implementing measures fully complied with WTO requirements.

(Korea) (page 16, para 15) Paragraph 15 of page 16 of the Secretariat's report indicates that the U.S. has demanded the reduction of environmentally harmful and trade distorting fisheries subsidies. However, the recent reports of OECD and FAO (i.e., OECD (2000)--Government Financial Transfers and Resource Sustainability, and FAO (2001)--Report on the Export Consultation on Economic Incentives and Responsible Fisheries) did not find any objective evidences on the relationship between fisheries subsidies and fisheries resources. What is the basis for the U.S. to argue that fisheries subsidies are environmentally harmful?

Answer:

Representatives from the United States participated in the preparation of both the OECD "The Impact on Fisheries Resource Sustainability of Government Financial Transfers (GFT)" and the FAO "Report of the Expert Consultation on Economic Incentives and Responsible Fisheries" referred to by the ROK. While noting the "difficulties in isolating the impact on fisheries sustainability of government financial transfers," the OECD Secretariat acknowledged that "[s]ome revenue enhancing and cost reducing transfers, however, may have a negative impact on the governance of fisheries. Transfers can embed expectations about capacity and activity levels that can be expensive and costly for governments to remove. Excess capacity, primarily due to the lack of appropriate management and transfer policies, can lead to increased pressures on fisheries management decisions that favor short term requirements at the expense of long term sustainability" (AGR/FI(99)3/REV3 pg. 6).

The OECD Committee for Fisheries continues to seek clarification of the effects of government financial transfers on governance, coastal management, economic efficiency and ultimately on the fisheries resource. But the existence of \$1.6 billion in revenue enhancing or cost reducing transfers, as identified in the OECD GFT report, undeniably distorts trade and skews the allocation of scarce resources, creates political pressure on domestic fisheries managers, and limits the export potential of developing countries.

The FAO "Report on the Expert Consultation on Economic Incentives and Responsible Fisheries" summarizes the work of an experts' consultation held in late 2000. While the report found that there are few empirical studies of the relationship between subsidies and resource sustainability, the experts did not conclude that there is no objective evidence that this relationship exists. To the contrary, the experts found that a relationship between subsidies and the sustainability of the resource does exist, although the extent of that relationship depends on the control of effort.

(Japan) (page 20, para.85, Fisheries matters) The elimination of subsidies that contribute to over-fishing is shown as one of three important areas where trade liberalization holds particular promise. Could the United States inform us of fisheries subsidies which contribute to over-fishing within any situation regardless of its fisheries management?

Answer:

The United States believes that subsidies to the fisheries sector can have a number of perverse effects. Government-provided subsidies contribute to an inefficient allocation of scarce resources in the domestic market and trade distortions in international markets. Subsidies to the fisheries sector lower fixed and/or variable costs to fishers and put pressure on the resource, thereby contributing to overfishing. The nature of the management system affects the dispersion of payment and, to some extent, the magnitude of its impact but does not mitigate the resulting decline in fish stocks.

The fact that many of the world's fisheries are under distress confirms that effective management systems are either not in place or not working as intended. Illegal, unreported and unregulated (IUU) fishing persists, affecting the resources on the high seas and in the EEZs of those countries that, for whatever reason, cannot control it. Japan, the United States, and other FAO countries have committed themselves to eliminate this practice. In addition, the United States and Japan have endorsed international studies that conclude that sound management systems are essential to healthy stocks and can lessen the effects subsidies can have on stocks. However, while the United States acknowledges that subsidies are only one of the problems affecting the resource, that is not a reason not to tackle subsidies – the aspect of the problem within the WTO's competence. The existence of \$12-15 billion in circulation from governments to industry distorts trade and the allocation of scarce resources, creates political pressures on domestic fisheries managers, and limits the export potential of developing countries.

(Japan) (Fisheries matters) Although this is not mentioned in the Report, the United States recently prohibited the landing of shark fins by foreign fishing boats, while commercial vessels are not prohibited to land shark fins. What is the reason for prohibiting the landing of shark fins by foreign fishing boats and treating them differently from other commercial vessels?

Answer:

In December 2000, the U.S. Congress passed the Shark Finning Prohibition Act, which prohibits the landing of shark fins without the accompanying carcass (the rest of the shark). The practice by fishermen of cutting off the fins and discarding the rest of the shark in the ocean was deemed wasteful. Therefore, all landings of shark fins in the United States must now include the carcass. The National Marine Fisheries Service (NMFS/NOAA), which will implement the regulation, issued a call for public comments in the U.S. "Federal Register" in June 2001. The comment period ended in July. Presently, NMFS is finalizing the regulation which will apply to both domestic and foreign commercial fishing vessels.

(Switzerland) The U.S. did not ratify the CBD (Convention on Biodiversity). Could the U.S. explain the reasons for this non ratification?

Answer:

The U.S. Senate must give its advice and consent in order to ratify the Convention on Biological Diversity. The U.S. position on the CBD is under review by the current Administration.

(Canada) Canada continues to agree with the 1999 U.S. Congressional Research Service report which found that the Marine Mammal Protection Act (MMPA) appears to be inconsistent with the U.S.' WTO obligations. On the occasion of the last WTO Review of U.S. Trade Policy, the U.S. delegation, in a written response, cited in defence of the MMPA the fact that a waiver is available, subject to certain conditions, to allow imports of marine mammal products. However, due to the U.S. certification of Canada under the Pelly Amendment in 1996, U.S. officials since that time have not been allowed to consider any MMPA waiver request from Canada. (1) Is this certification still in

effect? (2) Please provide details of such waivers currently in effect under the MMPA allowing the import of seal products, including:

- o supplier countries holding the waivers;*
- o specific products covered by the waivers, by tariff item and by country;*
- o values and volumes of such products imported in the past three years;*
- o names of all countries which U.S. Government Departments are currently barred from considering for the granting of a waiver under the MMPA; and*
- o reasons for which those countries are barred from such consideration.*

Answer:

The U.S. certification of Canada under the Pelly Amendment in 1996 was based on the Secretary of Commerce's determination that Canada had diminished the effectiveness of the International Whaling Commission (IWC) on the basis of its aboriginal whaling activities involving the eastern Arctic stock of bowhead whales. While no trade sanctions were imposed on Canada as a result of this 1996 certification, the President instructed the Department of Commerce to withhold consideration of any Canadian requests for waivers to the existing moratorium under the MMPA on importation of seals and/or seal products into the United States. In addition, the Departments of Commerce and State were instructed to keep this situation under close review.

Currently, as a result of the Pelly certification, Canada is the only country barred from applying for a waiver under the MMPA. A determination to issue or deny a waiver on the moratorium to import seals and seal products into the U.S. from any country must take into consideration all of the following: 1) whether the taking of such marine mammals is in accord with sound principles of resource protection and conservation; 2) whether the marine mammal or marine mammal product was taken in violation of the MMPA or taken in another country in violation of the law of that country; and 3) whether the sale in commerce of the marine mammal product is illegal in the country of origin. Under the MMPA, a denial of a waiver for import into the United States for any purpose implies a denial of import for processing for exportation. The Office of Protected Resources (the office of the National Marine Fisheries Service that implements the MMPA) has not received an application for an import waiver on seal products since 1975.

11. Government Procurement

(Chile) (Sub-Federal Measures) According to the Uruguay Round Agreements Implementing Act, Section 102, letter (b), number (2), no State law, or the application of such a State law may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for the purposes of declaring such law or application invalid. The foregoing rule recognizes the Federal Law "Preemption Doctrine" regarding State law but does not implement an automatic preemption mechanism. Therefore if another WTO member or one of its constituents estimates a sub-federal measure to be in violation of a U.S. international trade obligation, the national denies it any cause of action before a Federal Court. The implementing law only entitles the Government of the United States with such an action. Furthermore, a report of a dispute settlement panel or the Appellate Body convened under the DSU regarding the State law, of the law of any political subdivision thereof, is not considered as binding under U.S. national law. This preemption system, in practice, does not secure to WTO members that the concessions granted internationally will be effectively applied at the State level. How does the United States intend to address this preemption

mechanism so as to afford other WTO Members the opportunity to effectively challenge the consistency of sub-federal measures? Would the United States consider the possibility of addressing this issue by granting such an opportunity, for example, if a report adopted under the DSU declares a sub-federal measure inconsistent?

Answer:

The United States is committed to full implementation of its WTO obligations, and our domestic laws provide for their full enforcement. The pre-emption system has no effect on the ability of a Member to challenge U.S. laws in the proper forum - the WTO. We are not aware that pre-emption is a common practice within the WTO Membership.

(Japan) (page 43, para 66, WTO Agreement on Government Procurement (GPA)) The GPA is applied to only 37 States. Is there a substantial difference between the 37 States and other states in their government procurement policies/practices?

Answer:

The government procurement policies and practices of each state are governed by that state's laws and regulations. The procurement policies and practices of all 50 states require high levels of transparency, due process and accountability in tendering procedures. Detailed information on the procurement policies and practices of individual states is available through the Internet site of the National Association of State Procurement Officials (www.naspo.org) and the Internet sites of the individual states.

(Japan) (page 44, para 69, Construction Industry Payment Protection Act) Has the large amount of bond required by the Construction Industry Payment Protection Act increased the burden of main contractors? Considering that, in general, procuring entity payment to main contractor is made on a monthly basis based on the progress of the work, in which case would the penal sum that is as high as 100 % of the contract price be necessary to protect sub-contractors and suppliers?

[Answer to be supplied]

(Japan) (page 45, paras 74-75, The Buy American Act) From the viewpoint of fully applying the principle of non-discriminatory treatment in government procurement, the Government of Japan requests the Government of the United States to abolish Buy American Act, which accords a favourable treatment to U.S. products, for the Federal Government procurement not covered by the GPA, in order to ensure equal business opportunities for both the United States and foreign enterprises. As for local government procurement, the Government of Japan requests the Government of the United States to take necessary measures as the Federal Government to ensure the principle of non-discriminatory treatment and equal business opportunities for both the U.S. and foreign enterprises. The Government of Japan also requests the Government of the United States to abolish the provisions which require the use of U.S. products as a condition for receiving a grant from the Federal Government in such projects as mass transit and highway construction. The U.S. view on this matter would be appreciated.

Answer:

The provisions cited above are not applied to any procurement contract that is subject to current WTO commitments. The United States is prepared to consider expansion of WTO obligations in this area on the basis of comparable commitments from its trading partners

(Japan) (p. xiv, para.24) Does the Federal Government have a list showing all the Buy-In-State regulations enforced in some States? If so, has it been published?

Answer:

Detailed information on the procurement policies and practices of individual states is available through the Internet site of the National Association of State Procurement Officials (www.naspo.org) and the Internet sites of the individual states.

(Norway) According to the GPA-agreement, Article XIII 4b, the contracting authority entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which is determined to be the most advantageous. As far as the Norwegian Government understands, the Federal Acquisition Streamlining Act of 1994 requires public authorities to use "past performance" as the second most important criteria, after criteria. Can the U.S. explain how the "past performance" is evaluated? How do public authorities ensure that the use of this criteria in practice does not lead to discrimination of foreign tenders?

Answer:

Federal regulations relating to the evaluation of past performance are contained in FAR Part 9.104-3(b). This evaluation is conducted for the purpose of determining that suppliers are "responsible prospective contractors," and is based on any evidence that a supplier has been "seriously deficient" in performing previous contracts. The information that may be used, specified in FAR Part 9.105-1, is not related to performance in any specific geographic area and does not lead to discrimination against new to market suppliers, including foreign suppliers.

(EU) (para 65) Could the U.S. please confirm whether or not any special conditions are offered to small businesses, as implied by the Preference Programme referred to in the Federal Procurement Report?

Answer:

The U.S. Small Business Act (SBA) requires that certain contracts be set aside for small businesses, minority-owned businesses and disadvantaged businesses. The SBA is implemented by the Federal Government through sub-chapter D (Socioeconomic Programs) of the Federal Acquisition Regulation (FAR). The FAR allows for contracts to be set aside for competition among small businesses, which are defined by the FAR in part 19. Such set asides are excluded from the negotiated coverage of the GPA.

(EU) (para 68, Institutional and legal framework) The Burma/Massachusetts dispute in the WTO has lapsed. Nevertheless, the EC remains concerned about the wider issue of sub-federal selective purchasing measures, which continue to exist. What measures is the U.S. preparing to ensure that Supreme Court judgement on Burma/Massachusetts case is being respected, and what consultation is going on with sub-federal entities in relation to both the GPA review and the transparency exercise?

Answer:

The Administration consults regularly with the states regarding the implementation of WTO obligations, through the mechanism established under the Uruguay Round Agreements Act and other procedures. To our knowledge, the Massachusetts legislation is no longer in effect.

(EU)(para 69, Institutional and legal framework) A number of changes to the Federal Acquisition Regulation (FAR) have been introduced since 1999 related to the bidding process. Could the U.S. provide the WTO Secretariat with more details?

Answer:

Information on all changes to the FAR are posted on the FAR Internet site (www.arnet.gov/far/).

(EU) (Institutional and legal framework) New legislation also includes the Construction Industry Payment Protection Act of 1999. Could the U.S. authorities explain how it might affect procurement?

Answer:

This Act addresses payment bonds required of successful contractors on major construction contracts. Prior to the implementation of this Act, payment bonds were artificially capped at \$2.5 million, regardless of the size of the project. This resulted in situations where, when a major project went bankrupt, sub-contractors could not be reimbursed and, in some cases, were forced into bankruptcy themselves. The Payment Protection Act is intended to prevent this from happening. The Act allows Federal contracting officers to reduce the payment bond where the public interest can be protected with lower amounts. These provisions are applied on a non-discriminatory basis with respect to all contractors.

(EU) (para 71, Institutional and legal framework) Federal government agencies may use positive list of U.S. suppliers that include also potential EU suppliers. On the grounds of which documents or certifications can EU companies be included in this positive list?

Answer:

We are not certain we understand the meaning of “positive lists,” as used in this question. The term may relate to U.S. regulations that provide for the establishment of “qualified bidders lists” (QBL) and “qualified manufacturers lists” (QML). The Federal regulatory requirements for the use of such lists are provided in FAR Part 9.2. In accordance with the FAR, the specific requirements for qualification of particular bidders or manufacturers are established by individual agencies, depending on the characteristics of the products and the government’s procurement needs. FAR Part 9.202 requires any agency that wishes to establish a qualification requirement to prepare a written justification of the need for such a requirement.

(EU) (Institutional and legal framework) What are the criteria used by the General Services Administration (GSA) to draw up a negative list of non eligible suppliers? What are the information sources used to exclude non U.S. suppliers in general and EU companies in particular.

Answer:

The General Services Administration is responsible for compiling the list and publishing it for use by agencies. The names on the list are supplied by agencies which make the determination that a certain individual or supplier should be barred or temporarily suspended from government

contracting. The information upon which an agency can act may be obtained from a variety of sources. It can be formal - such as indictments, convictions - or informal such as information publicly available in newspaper articles. The agency uses a process based heavily on due process considerations, providing the supplier an opportunity to respond to this information and present reasons why it should not be barred from government contracting.

(EU) (para 74, Institutional and legal framework) The Buy American Act (BAA) and other similar rules cover a number of discriminatory measures which apply to government-funded purchases. These exceptions have trade distorting effects on a free and efficient market, reducing the opportunities for EU exports, but also discouraging U.S. bidders from using European products or services. Is the U.S. prepared to review and roll back "Buy American" restrictions in the context of further negotiations?

Answer:

The measures cited above are not applied to any procurement contract that is subject to current WTO commitments. The United States is prepared to consider expansion of WTO obligations in this area on the basis of comparable commitments from its trading partners.

(EU) (para 78, Institutional and legal framework) The PRO-Net is an interesting tool for tendering opportunities. Is the Small Business Administration (SBA) intending to open this register to small foreign companies?

Answer:

There are no plans underway to use the PRO-Net as a tendering device. You can, however, register on www.ccr.2000.com.

(EU) (para 81, Institutional and legal framework) The U.S. maintains sanctions against some EU member states under Title VII of the 1988 Omnibus Trade and Competitiveness Act. The sanctions were imposed following the adoption of the EC's "Utilities Directive" in 1993 on the grounds that it discriminated against U.S. suppliers. Now that the EC telecoms sector has been liberalised (the Directive is to be amended accordingly), what is the rationale for continuing these sanctions? Could the United States indicate when it will lift them? As soon as the U.S. takes steps to repeal the sanctions, the EC will lift its own countermeasures.

Answer:

The United States is studying the possible continued effect of discriminatory provisions of the EU Utilities Directive in EU Member state markets, especially in light of recent liberalization in the telecommunications sector. On the basis of this review, the United States will consider whether elimination of the sanctions would be appropriate.

(Canada) (para 65) According to para 65, no statistical information has been provided by the United States to the WTO under Article XIX:5 of the GPA. The GPA went into effect five years ago, and many members have submitted at least some annual statistical reports. When does the United States plan to submit its statistics?

(Switzerland) (para 65) When do the United States foresee to submit statistical information to the WTO under Art. XIX:5 of the GPA ?

Answer: (For both questions)

The United States is currently preparing GPA statistical reports. As has been discussed in the GPA Committee, the United States agrees with many other GPA Parties, including others who have not submitted reports to date, that the statistical reporting requirements of the GPA should be reviewed and simplified.

(Switzerland (para 65) What is the relative share of the main tender procedures for Annex 1, 2 and 3 entities: open, selective and limited ? For limited tendering procedure, what is the importance of follow-up purchases (Art. XV, d) ?

Statistics corresponding to the lists of entities and thresholds in Annexes 1, 2 and 3 of the GPA are currently not available. The United States is in the process of preparing statistical reports relating to GPA Article XIX:5.

Answer:

For the year 1997, statistics for a list of Federal entities comparable to those covered under GPA Annex 1 show that contracts awarded under open and selective tendering procedures accounted for 90% and contracts awarded under limited tendering procedures accounted for 10% of the value of all contracts awarded (using thresholds that are significantly lower than the current GPA thresholds). The comparable statistics for a smaller list of Annex 3-type entities were 96% for open and selective tendering and 4% for limited tendering. U.S. entities do not make frequent use of “selective tendering,” and disaggregated statistics on procurement contracts awarded through selective tendering procedures are not available.

(Switzerland) (para 70) How do the proposed US modifications to the GPA achieve the same level of transparency and of competition as the present regime ? How do the new information technologies and forms of contracts impact on tendering procedures and offers ?

Answer:

The United States has stressed that its proposals for streamlining the procedural provisions of the GPA are intended to achieve the same or a higher level of transparency and competition as the Agreement's existing provisions. We consider that, by clarifying the text and making it more understandable, the Parties may be able to promote more effective implementation of the Agreement's substantive transparency and competition requirements.

Many governments, including the GPA Parties, are taking advantage of emerging computer and telecommunications technologies to significantly improve the efficiency and effectiveness of their procurement systems. In our view, governments, their taxpayers, and their suppliers can all benefit tremendously from the appropriate use of these technologies. At the same time, adoption of these or any other technologies is not a value in its own right, but must depend on the contribution that it makes to governments' overall procurement objectives and responsibilities.

It is not clear that the adoption of new information and communications technologies in government procurement systems requires significant changes in specific GPA provisions. However, the United States is prepared to consider whether some modifications may be useful in order to ensure that the application of GPA requirements to the use of such technologies is clear and understandable, and to ensure effective implementation of those requirements. These considerations may also apply to recent innovations in contracting modalities.

(Canada) Please indicate the total value of GPA-covered procurement at the federal level and the total value of procurement set-aside under the small and minority business set-aside programs that would otherwise have been covered by the AGP? Also, please indicate the same information for GPA-covered procurement at the State level.

Answer:

In 2000, the value of Federal government procurement covered by the GPA is estimated to have been \$197 billion. The value of Federal contracts of greater than \$25,000 that were awarded under set aside programs in that year, much of which would not otherwise fall within the scope of GPA coverage commitments, is estimated to have been \$17 billion.

(Canada) (para 66) United States legislation and regulations require the provision of subcontracting plans for United States small business in GPA-covered contracts. Please explain how these provisions are consistent with Article III of the GATT 1994 and with Article III (Non-discrimination) and Article XVI (Offsets) of the WTO Agreement on Government Procurement. Please address this issue both with respect to: 1) foreign suppliers who are providing goods and services that are not of United States origin; and 2) foreign suppliers providing goods and services that are partially of United States origin.

Answer:

Small and minority business set-asides are excluded from the coverage of the GPA under General Note 1 to the U.S. Appendix 1. We note that, under the Federal Acquisition Regulation (FAR 19.702(a)), sub-contracting plans are requirements that apply only to "apparently successful offerors" and "bidders selected for award;" they are not factors that influence the initial competitive selection of the "apparently successful offeror."

(Canada) (para 66) According to para 66, there is legislation at the State level for the implementation of the GPA in 37 States in the United States. Does the United States Federal Government monitor the adherence and implementation of the GPA by these 37 States that are covered?

Answer:

The Administration (particularly through the Office of the United States Trade Representative), has established regular consultative procedures with a number of national associations of state representatives. Specifically, it has coordinated with the National Association of State Procurement Officials (NASPO) in producing and disseminating a "Guide for State Procurement Officials Application of the WTO Agreement on Government Procurement". NASPO is also consulted in relation to issues raised by the Committee and issues that arise in relation to the implementation of the GPA. Also, the U.S. Federal Government communicate with individual states as needed on either proposed state level legislation or questions relating to other governments' coverage under the GPA.

(Canada) (para 68) Para 68 notes, "In some cases, where procurement is funded by federal money, States must comply with certain federal statutory requirements." Please list these federal statutory requirements. During FY2000, what was the total value of procurement at the State level that were funded by federal money?

Answer:

As stated in Note 5, Annex 2 of the GPA, Federal statutory requirements are attached to Federal funds used in state governments' procurement for mass transit and highway projects. For the Federal Transit Administration, the statutory requirements are in 49 C.F.R Part 661. For the Federal Highway Administration, they are in 23 C.F.R. 635.410. Statistics on the total value of state government procurement funded by the Federal government are not available. Frequently, projects are jointly funded by the Federal and state governments, and only some portions of the Federal grants are subject to statutory restrictions.

(Canada) (paras 74 to 80) Paras 74 through 80 provide information on the Buy America Act and set-aside schemes. Set-aside provisions may have a significant impact on the scope and predictability of coverage under the GPA. During the 1996 TPR of the United States, Canada suggested that the United States give further consideration to the elimination and circumscription of these exclusions and exemptions. What progress has the United States made in eliminating or circumscribing exclusions to the GPA, such as the small and minority set-aside programs?

Answer:

The provisions of the Buy America Act and small- and minority-business set-aside programs are not included in the negotiated coverage of the GPA.

(Canada) (para 74) Para 74 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?

Answer:

Statistics on the percentage of contracts for which BAA restrictions have been waived are not available. Since BAA restrictions are waived for all contracts covered by the GPA and other international agreements, the waiver authority referred to in this question would not be relevant to the suppliers of other Parties to those agreements when competing for covered contracts.

(Canada) (para 78) According to para 78, for FY2000, the value of contracts awarded through set-aside programmes was 8% of total federal procurement awards. It is also noted that the proportion has been declining in recent years. Has the proportion of contracts that have been set aside but would otherwise have been covered by the GPA also declined? What is the proportion and value of such contracts in comparison with total GPA-covered procurement?

Answer:

The more detailed statistics requested are not available.

(Canada) (para 80) According to para 80, the Small Business Competitiveness Demonstration Program, under the Small Business Demonstration Program Act of 1988 has implemented a pilot programme to evaluate the effect of removing set-asides for the procurement of goods included in ten Targeted Industry Categories. What are the ten targeted industries that form the basis for this pilot program? What is the forecasted timeline for completion of the pilot program and evaluation of results?

Answer:

Detailed information on this program, including the list of targeted industries and the Small Business Administration's annual reports to Congress, are available on SBA's Internet site, at <http://www.sba.gov/size/CompDemo.html>. The 2000 Report to Congress is anticipated to be available close to January 1, 2002.

(Korea) (page.43, para.65) No statistical information had been provided up to May 2001 by the United States to the WTO under Article XIX:5 of GPA.

a. What is the main reason not to provide information?

b. What percentage of the total amount of the US government procurement is open to GPA signatories? What percentage of US government procurement do foreign companies represent?

Answer:

Statistics on the percentage of total government procurement open to GPA Parties are not available, and are not required under Article XIX:5. Statistics on government procurement by country of origin also are not required under the GPA.

(Korea) (pages 44-45, para 71) The U.S. GSA maintains a negative list of suppliers, domestic and foreign, which must be excluded from federal procurement. What are the criteria used when drawing this list? How can listed suppliers be excluded from the list?

Answer:

The General Services Administration is responsible for compiling the list and publishing it for use by agencies. The names on the list are supplied by agencies which make the determination that a certain individual or supplier should be barred or temporarily suspended from government contracting. The information upon which an agency can act may be obtained from a variety of sources. It can be formal - such as indictments, convictions - or informal such as information publicly available in newspaper articles. The agency uses a process based heavily on due process considerations, providing the supplier an opportunity to respond to this information and present reasons why it should not be barred from government contracting.

(Korea) Articles 210.21 (d)(2)(i) and (ii) of the National School Lunch Act, which were revised in 1998 but are not explicitly mentioned in the Secretariat's report, stipulate that "the Department of Agriculture shall require that a school food authority purchase, to maximum extent practicable, domestic commodities or products." This language contrasts with the language used in the pre-1998 NSLA which simply stipulated that DOA should provide only domestic agricultural products to those school authorities. Such procurement of domestic agricultural products by DOA for those programmes is exempted from national treatment obligations of GPA, as mentioned in Annex I.1 of the US GPA schedule. However, if the US government obliges school food authorities to buy only domestic commodities, this raises question as to whether the new NSLA violates GATT 1994 Article III. What is the US view on this matter?

Answer:

Paragraph 8 of Article III of GATT 1994 specifies that Article III does not apply to government procurement.

(Australia) The US government procurement market is severely restricted by bilateral and plurilateral trade agreements and by the Buy-America Act. What measures does the US envisage adopting to improve access to, and increase the competitiveness of, this important market segment?

Answer:

The bilateral and plurilateral trade agreements covering government procurement, to which the United States is a Party provide full national treatment to suppliers of all countries or territories that are parties to those agreements. The United States waives the application of Buy America Act price preference and other restrictions on all procurement contracts covered by those agreements. Those agreements do not in any way restrict access to U.S. procurement markets.

The U.S. Trade Agreements Act of 1979, as amended, authorizes the President to waive the application of Buy America Act restrictions to the suppliers of any country or territory that agrees to provide “appropriate reciprocal competitive government procurement opportunities” to U.S. products and suppliers of such products. The United States is ready to work with any WTO Member to expand international competitive opportunities in government procurement markets on a reciprocal and mutually beneficial basis.

(Brazil) Secretariat Report, para.71, page 44. Is there a possibility for potential foreign suppliers from countries that are not party to the GPA to be included in the positive lists of suppliers used by federal government agencies to invite for bidding process? If affirmative, how should those suppliers proceed to be included? Which are the requirements to be qualified in those lists? Would suppliers from countries part of other commercial agreements in which the US is signatory have a preferential treatment in this regard?

Answer:

U.S. procurement entities do not make frequent use of permanent lists of pre-qualified suppliers. In most situations, procurement must be conducted through fully open and competitive tendering procedures in which any interested supplier may seek to participate. An exception to this general requirement is the “purchasing prohibition” established in Section 302 of the Trade Agreements Act of 1979, as amended, which prohibits Federal agencies from procuring goods or services of “non-designated” countries or territories for all contracts that are covered by the WTO Government Procurement Agreement (GPA). As is explained in the Secretariat’s report, “designated countries or territories” are countries or territories that are party to the GPA or the NAFTA, that provide “appropriate reciprocal competitive government procurement opportunities” to U.S. products and suppliers of such products, or that are least developed countries.

(Brazil) Secretariat Report, pages 45-46. What is the criteria used to characterize a small business? It is mentioned, in paragraph 76, that small business are excluded from the GPA. What is the reason for this exclusion?

Answer:

The criteria used to characterize a small business are available on the internet website for the Federal Acquisition Regulations (FAR) in FAR Part 19.1.01. The FAR website address is www.arnet.gov.

(Brazil) Secretariat Report, para. 77. The HUB Zone (Historically Under-utilized Business Zone) foresees preferential treatment to qualified small business located in historically under-utilized business zones. What characterizes an HUB zone?

Answer:

The criteria used to characterize a HUB Zone are available on the internet website for the Federal Acquisition Regulations (FAR), in FAR Part 19.1303. The FAR website address is www.arnet.gov.

(Brazil) Regarding the principle of national treatment that may exist in other commercial agreements of which the US is a Party, do small business from countries Parties in those agreements have equal treatment (with preferential access conditions) in US government procurement?

Answer:

All suppliers of countries and territories that are party to international procurement agreements with the United States, including their small businesses, are provided full national treatment for all U.S. procurement covered by those agreements.

(Brazil) Is there any other entity, besides the Department of Defense, excluded from entities coverage in commercial agreements of which the US is a Party?

Answer:

Subject to restrictions related to U.S. essential security interests and the negotiated scope of coverage, the U.S. Department of Defense is covered by both the GPA and the NAFTA. All major Federal agencies are covered by both these agreements, with the exception of the Federal Aviation Administration.

(Brazil) Regarding government procurement, are there federal government entities that cannot start an international bidding process? Which are they?

Answer:

There are no such restrictions.

(Brazil) Is the Built Operate Transfer (BOT) included in the coverage of commercial agreements, such as GPA, NAFTA and others?

Answer:

The GPA and the NAFTA cover procurement “by all contractual means,” including procurement through build operate transfer contracts. The plurilateral Government Procurement Committee is currently considering possible clarification of this issue.

(Brazil) Which are the offsets allowed in the US bidding process?

Answer:

The United States has a longstanding policy of strongly discouraging the use of offsets in Federal and international government procurement. Offsets are prohibited for all procurement covered under international procurement obligations.

(Brazil) Are there any eco-labeling or eco-audit offsets in the US government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.

Answer:

We are not familiar with use of the term “offsets” in reference to government procurement requirements addressing environmental issues. U.S. Federal government agencies are required to purchase certain recycled content products, provided such products are price-competitive, reasonably available, and meet agencies’ performance requirements. These products include office supplies, construction and landscaping products, vehicle lubricating oil and tires, and park and recreation equipment. Some sub-Federal governments have similar provisions. Federal government agencies also are required to purchase alternative fuel vehicles, energy-efficient and water-efficient products, and substitutes to ozone-depleting substances. Examples of energy-efficient products include Energy Star computers and printers, chillers, and refrigerators. These requirements are based on the Resource Conservation and Recovery Act, the Energy Policy Act, and several presidential Executive Orders. In addition, Federal government agencies are encouraged to purchase other environmentally preferable products.

(Brazil) Are there any social clause requirements in the US government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.

Answer:

We are not certain what is meant by “social clause requirements?” Part 19 of the Federal Acquisition Regulation (FAR) describes Federal programs that encourage procurement of products offered by small and disadvantaged businesses. The FAR can be found on the internet at www.arnet.gov.

(Brazil) What is the application of the reciprocity principle in government procurement agreements maintained by the US? Please mention examples regarding entities coverage within the scope of NAFTA.

Answer:

The U.S. Trade Agreements Act of 1979, as amended, authorizes the President to waive Buy America Act and other procurement restrictions, inter alia, for countries and territories that agree to provide “appropriate reciprocal competitive government procurement opportunities” to U.S. products and suppliers. In this context, the United States waives those restrictions under international agreements that ensure: (1) transparency, due process, accountability and predictability in covered government procurement opportunities; and (2) broad and balanced market access commitments. For example, under the NAFTA, the United States, Canada and Mexico cover a broad and balanced range of Federal government entities in each country. For procurement by those entities that is covered by NAFTA, Chapter 10 of the NAFTA requires that tendering procedures be consistent with the principles listed above. NAFTA provisions are consistent with U.S. domestic requirements for fully open and competitive tendering.

(India) Buy America Act: It is noted that this act covers a number of discriminatory measures, which apply to government-funded purchases. It has been pointed out that some of its provisions prohibit public sector bodies from purchasing goods and services from foreign sources; some establish local content requirements while some others still extend preferential price terms to domestic suppliers. Products covered by this law include the manhole covers, rings, frames, catch basin frames and grates etc. We would like to know if the US Government has any proposal to modify this law so as to improve market access for developing countries. Furthermore, it is noted that affirmative action for small business and minority protection schemes are also being widely employed in many US states. Under the “Berry Amendment”, the concept of national security has been used to restrict purchases

by the Department of Defence to US sources. We would like to know if the US has any proposal to improve market access for its trading partners in this regard.

Answer:

As noted above, the United States waives Buy America Act and other domestic procurement restrictions under international agreements in which our trading partners agree to provide “appropriate reciprocal competitive government procurement opportunities” to U.S. products and suppliers. Under these agreements, U.S. Government entities provide full national treatment to suppliers of products of other countries and territories that are party to those agreements. The United States is ready to work with other WTO Members to expand international competitive opportunities in government procurement markets on a reciprocal and mutually beneficial basis. Under the Trade Agreements Act of 1979, as amended, the United States provides national treatment to suppliers of all least developed countries for all contracts covered by the WTO Government Procurement Agreement.

(New Zealand) The Secretariat Report states that “the policy of the United States in respect to government procurement is to grant national treatment to any country willing to grant reciprocal treatment” (S/III, para 73, page 45). To our understanding New Zealand gives the United States national treatment rights with respect to government procurement but does not receive the same treatment in return.

Answer:

Please refer to our answer to the next question.

(New Zealand) What criteria does the United States use to assess whether a country accords it national treatment and therefore should be granted reciprocity vis-a-vis government procurement?

Answer:

As noted above, the U.S. Trade Agreements Act of 1979, as amended, authorizes the President to provide national treatment to suppliers of, inter alia, countries and territories that agree to provide “appropriate reciprocal competitive government procurement opportunities” to U.S. products and suppliers. In this context, the United States seeks international commitments that ensure: (1) transparency, due process, accountability and predictability in covered government procurement; and (2) broad and balanced international market access opportunities. The United States is ready to work with New Zealand and other WTO Members to expand competitive opportunities in government procurement markets on the basis of international commitments consistent with these objectives.

12. Competition Policies

(Hong Kong) (page 73-74, para. 176) We note that the Department of Justice regularly expresses its view on the appropriateness of antitrust exemptions, and seeks the elimination of antitrust exemptions where warranted. We are interested to know more details in this regard, including the reasons for maintaining the existing antitrust exemptions as well as the amount and nature of the antitrust exemptions that have been eliminated in recent years.

Answer:

The vast majority of the U.S. economy is subject to standard antitrust scrutiny. Any existing exceptions to the application of the antitrust laws are narrow and strictly construed, exempting specific activities or entities for important public policy or constitutional reasons. In addition, in some cases, specialized regulatory agencies with sector-specific responsibilities apply competition rules

analogous to the federal antitrust laws, and the antitrust agencies retain an advisory, competition-advocacy role. There is a wealth of public information available relating to antitrust exemptions and the reasons for maintaining them. See e.g., ABA Section of Antitrust Law, *Antitrust Law Developments* (4th ed. 1997). The United States has relatively few exemptions from its antitrust regime, and there have been no further revisions to such exemptions since the last trade policy review of the United States in 1999.

(Japan) (pages.70-71, paras 165-168, Competition laws) Japan has already abolished or limited the scope of numerous exemptions from the application of its Anti-monopoly Act. Likewise, Japan would like to urge the United States to reduce the number of exemptions applied under the U.S. Anti-trust laws, both at federal and state levels. Please explain the rationale of the exemptions applied in the area of agriculture, referred to in para.166.

Answer:

Please refer to response given above to Hong Kong's question on exemptions.

(Thailand) Is there any type of anti-competitive practices which is exempted from the US Antitrust Legislation?

Answer:

Please refer to response given above to Hong Kong's question on exemptions.

(Japan) (pages 71-74, paras 169-176, Enforcement of competition law) It is the understanding of Japan that the policy of the U.S. Department of Justice applies U.S. Anti-trust laws to even those practices performed outside the United States. However, it is more than likely that the application, or any related enforcement activities, can be considered as an extra-territorial application of the U.S. Anti-trust laws, or even as infringement of the sovereignty, of a foreign country, both of which are not permitted according to international law. Japan hopes, therefore, that the U.S. will enforce its Anti-trust laws with both deliberation and care. Japan is interested in knowing how successful the United States is in the collecting fines that are imposed on foreign companies or foreign nationals. What is the percentage of the fines imposed that are actually collected? Does the United States have any intention of taking action to collect unpaid fines?

Answer:

To date, the United States has not had any problems collecting the fines that have been imposed on foreign companies and foreign nationals for violating U.S. antitrust laws.

(Japan) (page 17, para 21) It is our understanding that the United States has recently become more open towards the negotiations on competition policy. However, it is stated in the paragraph 21 of the Report that the United States as also questioned whether the WTO was the appropriate institution in which to initiate the development of rules on competition in a multilateral context at this time We would appreciate having the U.S. current position on the matter.

Answer:

Like other WTO Members, the United States continues to be actively engaged in an examination of the relevance of competition policy to the trading system, and is actively working with other Members in determining the best way forward in terms of future WTO work in this area.

(Switzerland) The Government report remains silent on the current position regarding negotiations on a multilateral competition agreement under the auspices of the WTO, while the Secretariat's report mentions that the U.S. questions whether the WTO is, at this time the appropriate institution to develop such rules. What is the position of the new Administration on that issue?

Answer:

Please refer to response given above to Japan's question on the WTO.

(Thailand) (page 17, para 21) In the U.S. remarks delivered by Deputy U.S. Trade Representative Peter Allgeier at the WTO General Council Meeting on 30 July 2001, it was stated that "With respect to competition policy, the U.S. sees merit in a modest negotiating agenda of core competition principles of transparency, non-discrimination, and procedural fairness. We also can support consultative and capacity-building efforts to help countries develop modern competition policies that promote efficient and dynamic markets....."

- Does this mean that the U.S. views now that the WTO was the appropriate institution in which to initiate the development of rules on competition in a multilateral context?

Answer:

Please refer to response given above to Japan's question on the WTO.

13. Textiles

(Bangladesh) Decisions on measures in favor of Least-Developed Countries adopted at the Uruguay Round Trade Negotiations provide that the specific needs of the Least-Developed Countries will be taken into account facilitating the expansion of trading opportunities in favor of these countries. There is an apprehension that the final phasing out of the MFA after 31-12-2004 may adversely impact textile and apparel exports of the LDCs. Does the U.S. have any programme to adopt positive measures in favor of LDCs in the above circumstances?

Answer:

The final integration of textile and apparel trade into the GATT 1994 and WTO rules was strongly supported by least developed countries in the Uruguay Round negotiations, and the phase out is being implemented according to the agreed schedule by the United States. Industries in the United States, and in other countries, will all face tremendous challenges as a result of the changes in international trade patterns in this sector under the WTO's Agreement on Textiles and Clothing.

(Bangladesh) How many anti-dumping and safeguard actions have been initiated by the U.S. against textile and clothing exports from LDCs since 1 January, 1995? Given the special and differential treatment provisions of the ATC, can LDCs and small suppliers expect an exemption from anti-dumping and safeguard actions in the future?

Answer:

There have been no antidumping or countervailing duty orders imposed on textile/apparel products from WTO-member LDCs as a result of investigations initiated since 1995. Currently, there are only two U.S. AD/CVD orders on textile/apparel products from WTO-member LDCs - an AD order on shop towels from Bangladesh and a CVD order on shop towels from Pakistan. These were the result of cases initiated prior to 1995.

As under the ATC, least developed countries and small suppliers will benefit from applicable provisions of the Anti-dumping Agreement and Safeguards Agreement in respect of any potential action under those agreements.

(Hong Kong) We note with great disappointment that insofar as the US ATC integration programme is concerned, phasing out of the bulk of textile quotas has been left until 2005. In the case of HKC, as much as 84% of the value of our imports into the US in 2000 will not be liberalized until 2005. Where the US integration programme may have complied with the letter of the ATC, it has fallen far short of honouring its spirit. Being the world's leading importer of textiles and clothing, does the US Government have any plan to further liberalize the textile and clothing sector before 2005 by making use of the flexibility available under Articles 2.10 and 2.15 of the ATC? If so, what are the details?

Answer:

The ATC represents a careful balance of the interests of textile importing and exporting countries. The United States has faithfully implemented the terms of the ATC. Exporting countries have benefitted greatly from the increased market access the United States has provided through the ATC. From 1994 through 2000, U.S. imports of textiles and apparel from WTO member countries increased 108 percent by volume. Changes to the U.S. integration schedule would require legislation, as our current integration commitments are written into the "The Uruguay Round Agreements Act".

(Hong Kong) To prepare for the eventual integration of the textiles and clothing sector into GATT 1994, Article 1.5 of the Agreement on Textiles and Clothing provides that members should allow for continuous autonomous competition in their markets. Can the US share with members the measures it has put in place to implement this particular provision, particularly in view of the fact that the vast majority of its textiles and clothing imports will not be liberalised until 2005?

Answer:

The United States has allowed continuous autonomous competition in its market for textiles and apparel. This has resulted in the painful structural adjustment process underway in the U.S. industry. The U.S. textile and apparel sector has lost over 600,000 jobs, 36 percent of its total workforce, since 1994. Over that period, over 260 textile plants have shut down, at least 85 have shut down so far this year. Last year was the first year in fifty years that the U.S. textile industry as a whole incurred a net financial loss, and conditions have worsened this year.

(India) It is understood that the US is imposing quota restrictions on plastic woven sacks and bags and fabrics made out of polyethylene or polypropylene on the grounds that they are classified as textile articles (under chapter 63) and are consumer items. However, it is pointed out that these items are only used for industrial application like packing PP Fibre, multifilament yarn, sand, salt, seeds, chemicals, etc. Further, it may be noted that these items are being exported to Europe without any quota restriction. We would, therefore, request the US delegation to clarify the rationale for continuing quota restrictions on these items.

Answer:

Polyethylene and polypropylene bags and sacks are products of textile materials covered under the Agreement on Textiles and Clothing and are included in the Annex to this agreement. These bags and sacks will remain subject to visa and quota requirements until January 1, 2002, when the United States will integrate these products, thus removing bags and sacks from quantitative restrictions.

(India) Integration of textile sector under ATC by U.S. It is noted that the 1st and 2nd stage integration and the schedule finalised for the 3rd stage integration makes it clear that the US has implemented the provisions of ATC in letter but not in spirit. The main apparel items, that are going to be integrated in the 3rd stage, are gloves, men's and women's nightwears, underwears, hosiery, silk and silk blended garments. 80% of trade in textiles and clothing covered by bilateral restraints would still remain to be integrated by 1 January 2005. For apparel, the final percentage to be integrated would be even higher, at 89%. For India, as Floor Coverings and Silk Garments are already exempted and outside quotas, at the end of the tenth year, 96.64% of India's apparel trade would remain to be integrated. Similarly, 95.83% of India's yarn trade and 98.88% of fabric trade would also remain to be integrated. In view of the fact that so far the integration by US has not really been progressive in nature, we would request the US to accelerate the integration process in keeping with the spirit of the ATC Agreement and also given the fact that these products are of great interest to the developing countries.

Answer:

The integration of textiles products into GATT 1994, implemented by the United States in 1995, 1998, and on schedule for 2002, is completely consistent with the ATC. The ATC, including the integration process, reflects a careful balance of the interests of importing and exporting countries. In essence, the spirit of the agreement was reflected in the precise terms which were negotiated, reflecting the diverse interests of the signatories. Integration is also being implemented consistent with United States implementing legislation, the "Uruguay Round Trade Agreements Act of 1994." The list of products to be integrated in each stage set out in the ATC was published in 1995, and may not be changed unless otherwise required by statute or the international obligations of the United States, to correct technical errors, or to reflect reclassifications.

(India) Changes in the US Rules of Origin: As was also highlighted in the last TPR of the US, the revised US Rules of Origin on textiles which entered into force on July 1, 1996 have adversely affected the exports by its trading partners. It has also resulted in a situation of double jeopardy as Indian exports to the European Union are debited to our fabric quota for the EU and if they are converted into made ups such as bed sheets or scarves, and exported to the US, the US would debit India's textile quota again, thus leading to India's quota being debited twice for the same exports. It is observed that such unilateral changes in the Rules of Origin are in violation of Articles 2.4 and 4.2 of the Agreement on Textiles and Clothing and of Article 2 of the Agreement on Rules of Origin. The problem has been further exacerbated as, consequent upon the agreement with the EU, the US amended its Rules of Origin as notified through Trade and Development Act, 2000 under which origin of dyed silk fabric would be the country where the silk fabric is dyed and printed. However, strangely, this rule does not apply in the case of fabric containing more than 16% cotton. Such an arbitrary rule of origin has adversely affected the market access of cotton producing countries. We would request the US authorities to take steps to rectify this situation

Answer:

On July 1, 1996, modified rules of origin went into effect pursuant to Section 334 of the Uruguay Round Agreements Act. The United States notified its trading partners of these new rules well in advance of their implementation and offered to consult with countries that requested such meetings. The United States held consultations with India in April, 1996. The United States asked India to provide information substantiating its claim that its textile and apparel trade would be adversely impacted. India never submitted such evidence. In November, 1999, the United States again held consultations with India during which this issue was discussed. India stated that the rule had not affected its apparel trade and indicated that the non-apparel trade affected amounted to \$1 million. The United States responded that it would consider adjustments once India submitted evidence of the trade disruption. Again, India failed to provide such information. India's cotton

non-apparel exports to the United States have done well. Since the implementation of the WTO, such imports from India have increased 95 percent.

India had joined the EU in a WTO dispute against the United States involving textile products dyed and printed in the EU from imported fabric. The agreement reached and implemented by the Trade and Development Act of 2000 results in the rules of origin reverting, for those named products, to the rules in effect prior to the implementation of the Section 334 rules. This change provides that fabrics and certain made-up products originate in the country where the fabric is both dyed and printed when accompanied by 2 or more finishing operations. The fabrics included are those of silk, cotton, man-made fiber or vegetable fiber. The made-up products included are scarves, handkerchiefs, bed linens and other products, except for goods classified under such headings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton. This modification eliminates the double debiting of quota that was of concern to India. As a party to the WTO dispute, India must have been aware of the settlement reached to resolve the case. The United States would review any evidence that India submitted to substantiate its claim that it continues to be adversely impacted by the U.S. rules of origin.

(India) Holding up of consignments of 'India Items': Under the provisions of the Indo-US Textile Agreement, 'India Items' are exempt from quota restrictions. The Development Commissioner (Handicrafts), is the authority designated by Government of India for certification of 'India Item' consignments. However, lately, there has been an increase in the number of held up consignments at various ports as it has been reported that the US customs often disregard the certification issued by the DC (Handicrafts). As exporters have to clear their consignments to meet the delivery schedules, such consignments are often cleared under the visa waiver provisions by issuing visa in the re-classified categories. This results in debiting of quotas. The Agreement does not permit unilateral modification of definitions contained in the Agreement. Hence, we would request the US authorities to reconsider the matter and honour the certification by the DC (Handicrafts)

Answer:

"India items" are exempted from quota under the "Certified Handloomed, Folklore provision" of the U.S./India agreement, notified to the TMB under Article 2 of the ATC. This agreement does not allow for unilateral modifications of the definitions, as contained in the agreement. These items are quota free only if such products conform to the descriptions in the agreement and are certified by the Government of India in accordance with the provisions of the agreed visa and certification systems. The United States maintains the right to inspect all cargo entering its borders and determine if the certification of the product is in accordance with the U.S./India agreement. If U.S. Customs determines products do not qualify for the exemption, entry is denied. India can choose to permit entry of the goods by authorizing entry of the goods and the charging of quota, through the visa waiver process.

(India) The tariff rate on garments in the US is between 17.5% and 22.5% with an average tariff rate of 18.3%. We would request the US to consider reduction in such peak tariff rates.

Answer:

It is premature to consider the potential for tariff reductions in particular sectors. As part of the new negotiations on non-agricultural market access, the United States will give careful consideration to the tariff requests of our trading partners.

(India) Differential Treatment to cotton producing countries under ATC: As per Article 1.3 of the ATC, the cotton producing countries were to be given a special treatment. However, no additional

quota access has been granted to cotton producing countries like India. We would request the US to take positive action in this regard.

Answer:

High limits and growth rates that were established prior to 1995 have been continued with the acceleration allowed under the ATC. This has allowed major cotton producing and textile exporting countries huge growth in their exports to the United States.

(India) Subsidies in textile industry: It is learnt that the US has been giving large amounts of direct and indirect subsidies to the cotton farmers. According to a study commissioned by one of our NGOs, the Consumer Unity and Trust Society (CUTS), Jaipur, the direct and indirect subsidy given to the US cotton farmer is US\$2.5 for each pound of cotton. This is based on the calculation of total subsidy bill (excluding exclusive export subsidies) in 1997 amounting to around US\$ 1.6 billion. We would request the US authorities to consider plans for reducing the extent of this subsidy.

[Answer to be supplied]

(India) Continuation of visa requirements for integrated products: In certain categories like 369 (O), visa continued to be issued even though this item was integrated in 1995. It is reported that in actual practice, all restricted and non-restricted items to the US require visa. Similarly, the US customs is insisting on visa for export of jute bags, which are not covered under quota. This is a restrictive measure and increases the transaction cost and adds to administrative burden. We would request the US authorities to address this issue. We would also request the US delegation to clarify whether, with the elimination of quotas, the US would do away with such procedural requirements/documentation formalities like issuance of visas, certification aimed at prevention of circumvention of quota or trans shipments etc.

(Hong Kong) Up till now, the US Government has yet to announce the details of the outstanding implementation arrangements, including the visa requirement for integrated products. Bearing in mind that commencement of Stage 3 integration is only three months down the road, could the US Government announce such arrangements, including confirming that the visa arrangement for products integrated under Stage 3 will be eliminated with effect from 2002, as was the case with Stage 2?

Answer: (For both questions)

For all WTO countries with which the United States maintains visa requirements, including India, no items that were integrated in 1995 require a visa, and no items that were integrated in Stage 2 have required a visa since January 1, 1999. Most of the United States' visa arrangements are comprehensive in coverage, and do include some items that are not subject to quota, as well as those that are. The visa requirement is part of an administrative arrangement, and helps to avoid the entry of goods that are mis-classified or transshipped, in addition to the benefit of helping exporting countries to control their exports. If there is no import restraint limit on a product, and no "quota charges" incurred in the exporting country, the cost of the visa cannot be termed a "restrictive measure." For goods that are now subject to visa requirement, and that are integrated in Stage 3, effective on January 1, 2002, a visa will continue to be required until further notice.

(India) High conversion factor for socks: Presently, a high conversion factor is being applied by the concerned US authorities in respect of socks for debiting quotas under Cat. 332 Group-II. The CITA is correlating the conversion factor for Cat. 332 with HS No. 61.15, which covers, besides socks, items like Panty Hose, Tights and Stockings. In this situation, a high conversion factor of 3.80 SME per dozen pairs gets applied to socks, +resulting in higher debittance of quotas under Cat. 332

Group II. The technical study conducted by the Office of the Textile Commissioner has shown that the average requirement for manufacturing 1 dozen pair of socks is about 1.22 Sq. mtr. Hence, it would be seen that the US is applying disproportionately higher conversion factor as compared to the actual consumption norm. We would request the US authorities to correct the situation

Answer:

All countries that have category 332 in a group limit are charged at the same square meter equivalent (sme) factor of 3.8 square meters equivalent per dozen pair. The same factors in Annex A of our agreement, and the category system itself, were developed in close consultation with our industry, are standard in our textile agreements, and have been notified and continued under the WTO Agreement on Textiles and Clothing (ATC).

The factors do not change if a country is shipping goods within a category that use MORE fabric per category unit than the Annex A sme factor, nor if it is shipping goods that use less fabric than the sme factor.

14. Agriculture

(EU) (Government Report, para 4) The Report states that "Agricultural export subsidies impose especially unfair burdens on farmers in the poorest countries." Could the U.S. please explain the continued use of export enhancing instruments, such as export credits, P.L. 480 and the EEP, in the light of such a statement and in the light of the comprehensive framework proposal submitted to the WTO Committee on Agriculture?

Answer:

The major objective of the U.S. Export Enhancement Program (EEP) is to challenge unfair trade practices. Since fiscal year 1999, the EEP program has been made operational only for frozen poultry (not for grains and rice). The program was last made operational for barley in fiscal year 1998.

The export credit programs were distinguished from direct export subsidies for a reason in the Uruguay Round -- both in the Agreement on Agriculture and the Decision on the Possible Negative Effects of the Reform Program on Net Food Importing and Least Developed Countries. They were addressed separately because they have a different impact on the market than direct export subsidies, and they serve a legitimate function in food security.

As we discuss the various components of export competition, we must keep in mind their impact on global markets. The United States believes export credit guarantee programs create additional purchasing capacity for importing countries that might not otherwise exist because of a lack of liquidity in the importing country's market. This assumption was also supported in the OECD study.

The United States sees multilateral negotiations as the route to more open and competitive markets.

(EU) (Government Report, para 16) The Report states that it is implementing its UR commitments on time and in full. Could the U.S. please elaborate on the delays in notifying the domestic support levels for 1998 to the WTO Secretariat?

Answer:

The United States submitted its domestic support notification for marketing year (MY) 1998/99 in June 2001. The MY 1998/99 notification was more data intensive than relative to previous submissions. Given our resource constraints and our strong commitment to making sure the notification was done correctly, we needed additional time to complete the notification.

(EU) (Government Report, para 30, Built-in-Agenda Negotiations in Agriculture and Services) The Report states that the U.S. comprehensive framework proposal “sets out clear, attainable goals for far-reaching, ambitious reforms”. In the light of the continued need for additional subsidies for U.S. farmers and exporters, and the discussion on which U.S. policies should be classified as Amber Box, is the U.S. ready to stand by proposals which would seem particularly difficult for its own agricultural production base?

Answer:

The U.S. program is WTO consistent and will continue to abide by international commitments in the future.

(EU) (Government Report, para 31) The U.S. proposes to eliminate the current three classifications of domestic support and replace them by trade distorting and non-trade distorting support. However, it is clear that the 1996 Farm Bill, combined with almost assured annual emergency payments, has led to surplus production in some cases. This has led to increased government use of export measures. These would also include food aid programs, whereby the aid consists of commodities rather than financial aid to buy the necessary commodities on the world market. In fact, disposing of surplus stocks is a stated objective of U.S. food aid. Aside from the implied need for Blue Box policies, this unintended effect of surplus stocks on world markets caused by current farm legislation should be taken into account. Is the U.S. preparing a new Farm Bill that takes the effects on international trade of domestic support fully into account? Are countercyclical payments also viewed as having an impact on international trade?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Canada) (para 4, Agri-Food Activities) According to para 4, imports of softwood lumber from Canada, have been restrained by a system similar to a tariff quota. This section does not mention that imports of Canadian softwood lumber into the United States have been affected by a 19.31% preliminary countervailing duty determination from the U.S. Department of Commerce as of August 10, and further affected by a positive preliminary critical circumstances determination made on the same date. The Atlantic provinces have been excluded from the investigation. Canada is currently requesting WTO consultations on these two determinations. The U.S. should follow-up with the WTO Secretariat to ensure that the Secretariat report includes, and accurately describes, these actions by the U.S.

Answer:

The U.S. agrees that the sentence at issue in paragraph 4 (“In addition, imports of softwood lumber from Canada, the main exporter of this product to the United States, have been restrained by a system similar to a tariff quota.”) should be revised and updated. We suggest the WTO replace the sentence at issue with the following:

“In addition, until March 2001 imports of softwood lumber from Canada, the main exporter of this product to the United States, were subject to a bilateral agreement that operated in a manner similar to that of a tariff quota. Subsequent to the expiration of this agreement, the U.S. lumber industry filed antidumping and countervailing duty actions against Canadian lumber imports. The August 10, 2001 preliminary determination in the CVD case resulted in provisional measures being imposed at a rate of 19.31 percent, and the United States also preliminarily found that critical circumstances exist. Canada is currently requesting WTO consultations regarding the preliminary CVD determination. The October 31, 2001 preliminary determination in the antidumping case resulted in provisional measures being imposed at a rate of 5.94 to 19.24 percent. Certain lumber produced in the Atlantic provinces has been excluded from the CVD investigation.”

(Canada) Since the last TPR of the United States, there has been an increasing trend by State governments to propose or initiate measures, primarily in the agriculture sector, which are inconsistent with U.S. international trade obligations, and have significant impacts on Canada's exports to the United States (e.g., measures proposed in North Dakota and Montana). Please explain what measures the U.S. is taking to ensure compliance with its WTO obligations.

Answer:

Domestic support provided through federal and state measures is reported in U.S. notifications to the WTO Committee on Agriculture. USDA reviews state-level domestic support data reported in national statistics and surveys states annually to ensure that U.S. domestic support notifications provide comprehensive coverage of state-level programs.

(Canada) While it is not mentioned in the Secretariat Report, the U.S. Department of Agriculture is developing proposals for the labelling of domestically-produced beef. Will the criteria for the use of any U.S.-produced beef be consistent with U.S. international trade obligations, including with respect to rules of origin?

Answer:

Yes. FSIS has published an advance notice of proposed rulemaking to get input on the need for such regulations. This is in response to Congressional direction. Comments on the advanced notice were accepted until Oct. 9. FSIS will then develop a regulatory proposal, which will be published for public comment. After all comments are considered, the Agency will determine the appropriate response, which generally results in publishing of a final regulation.

(Canada) The U.S. Department of Agriculture announced in July 2000 that it would propose to discontinue grading of imported meat. Please indicate the status of this proposal. How would the proposal be consistent with U.S. WTO obligations?

Answer:

Refer to <http://www.usda.gov/news/releases/2000/07/0246.htm> for a USDA news release on this topic. The proposed rule to stop grading imported meat was never published in the Federal Register.

(Canada) In the current Farm Bill debate in the United States, the House of Representatives Agriculture Committee has proposed replacing the current high levels of support for peanut production with counter-cyclical payments and marketing loans / loan deficiency payments. If these proposals were to be accepted, please explain how they would alter your trade regime with respect to the import and export of peanuts. Does the United States envisage any similar reform of its support applicable to sugar? Would such a reform also affect the intense import restrictions and export incentives on sugar and sugar-containing products?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Canada) The U.S. Administration is pursuing tariff reclassification of certain sugar syrups from an unrestricted item into a tariff item with a highly restrictive tariff rate quota. What are the anticipated consequences of this tariff reclassification on trade? When will the United States be notifying WTO members about the reclassification of sugar syrups?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

Biotechnology

(Japan) (pages 14-15, para 10, Biotechnology-related food) Last year, the export of a genetically modified (GM) corn "Starlink", whose safety as food has not been approved in the United States, gave rise to public fear in many importing countries including Japan. The Government of the United States should take necessary measures for preventing exports of not only GM foods whose safety has not been approved in the United States, but also of GM foods/feeds for livestock which have not passed the safety assessment processes in importing countries.

Answer:

The United States has a well-coordinated and rigorous system for regulating products of biotechnology. This regulatory process sets the standard of safety for human health, animals and the environment. Products of biotechnology commercially produced in the United States are reviewed under this process for particular uses. The Environmental Protection Agency has announced that it will not approve a biotechnology product for feed use until it also has an approval for food use.

(Japan) (page 15, paras 10-11, Cartagena Protocol) Since the United States is the largest producer and exporter of GMOs in the world, its influence on international trade is quite significant, given the fact that it has not ratified the Cartagena Protocol. Does the United States consider ratifying the Convention on Biological Diversity (CBD) and the Cartagena Protocol in the future? If not, why?

Answer:

The U.S. Senate must give its advice and consent in order to ratify the Convention on Biological Diversity. The U.S. position on the CBD is under review by the current Administration. The United States cannot sign or ratify the Cartagena Protocol as we are non-parties to the CBD.

(Japan) In case the Cartagena Protocol does take effect without ratification of the United States, how will the United States cope with the following issues concerning Article 24 on non-Parties:

To conform with the advance informed agreement procedures (AIA) by the importing Parties based on the Protocol;

Answer:

As a non-party to the Cartagena Protocol, the United States will have no rights or obligations under the Protocol. However, U.S. exporters will be subject to the rules under the Protocol when exporting to Parties to the Protocol. Importers of products to the United States, as now, will be required to conform with U.S. domestic requirements.

(Japan) To conclude bilateral or multilateral agreements with individual Parties; and

Answer:

The United States will continue to negotiate bilateral or multilateral agreements as necessary with other countries in order to best facilitate trade.

(Japan) To contribute appropriate information to the Biosafety Clearing-House (BCH) on living modified organisms released in, or moved into or out of, areas within the United States.

Answer:

The Biosafety Protocol Secretariat has created a Biosafety Toolkit - a guide describing how countries can make their national information regarding the regulation and risk assessments for living modified organisms available on the Biosafety Clearing House. The United States believes that this information is critical for facilitation of transboundary movement of LMOs and is committed to making this information available through the Biosafety Clearinghouse mechanism.

Market Access

(Japan) (Report by the Government--page 5, para 4; page 6, para 8; and page 10, para 31, Liberalization of agricultural products) Food security should be achieved by adequately combining domestic production, import and stock holding in accordance with agricultural situations of each country, and we think there is a problem in the U.S. idea that only liberalization of agricultural products can ensure food security. As the U.S. President Bush said, can you imagine a country that was unable to grow enough food to feed the people? (excerpt from the transcript of the remarks by the President to future farmers of America on July 27th 2001 in Washington D.C.), the U.S. recognises the importance of domestic production. Moreover, although the Report says, trade liberalization supports the protection of the environment agriculture has a multifunctionality including protection of the environment and this cannot be achieved only through trade liberalization.

Answer:

The United States recognises that there is a balance between domestic production and imports in achieving food security. However, we believe that trade liberalisation plays an important role in ensuring food security.

(Japan) (page 14, para 10, Agri-food trade negotiations--new technologies) What kinds of technologies are included in "new technologies" other than genetic modification as indicated in the first sentence of the same paragraph?

Answer:

There are a number of new technologies that will be commercialized over the next ten years, and we need to look beyond the current emotionally sensitive biotechnology debate in order to create rules that will work for various new technologies in the future. One example of a new technology that is widely accepted is using genetically modified enzymes to produce wine and cheese. Other technologies that the United States considers new technologies are food irradiation and ozone treatments.

(Japan) (page 26, paras 8-12, tariff quotas) We hear that the United States is examining a bill to amend tariff lines and apply tariff quotas, in order to control the rapidly increased import of Milk Protein Concentrates (MPC) into the United States. We don't think this is coherent with the U.S. proposal, which insists on developing disciplines for importing countries in order not to administrate their TRQs for the purpose of hampering trade. What does the United States think of this matter?

Answer:

On October 3, 2001, The United States Customs Service proposed the revocation of ruling letters and treatment related to the classification of milk protein concentrates. Before taking this action, consideration will be given to any written comments timely received. Comments on this proposal must be received by November 2, 2001.

In November 1998, the classification of a product commonly referred to as milk protein concentrate was determined to be in heading 0404.90.1000, HTSUS, which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included, other, milk protein concentrates. Since the issuance of those rulings, the U.S. Customs Service has reviewed the classification of this merchandise and has determined that the classification set forth is in error. It is now the position of the Customs Service that, because of their composition, the milk protein concentrates described in these rulings are classified in subheading

0404.90.3000, HTSUS, which provides for dairy products described in additional U.S. note 1 to chapter 4, further described in additional note 10 to chapter and entered pursuant to its provisions.

(Japan) (page 26, para.9, tariff quotas) The Report says, in general, access to tariff quotas is provided on a first-come first-served basis. Exceptions include certain dairy products and sugar. Certain dairy products require import licences and for sugar, export certificates are issued. What is the reason for the exceptions provide regarding certain dairy products and sugar? Could the United States provide more concrete ways by which the TRQ is administrated for these products?

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1.

(Japan) (page 26, para.10, tariff quotas) It is pointed out that some quotas including beef, dairy product and peanuts were allocated to selected countries. What are the standards for selecting these countries? Also, what is the past record as to the imports of these products?

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1.

(Japan) (page 26, para.12, tariff quotas) The Report says, tariff quotas for products such as olives, dried cream, certain cotton articles, low-fat chocolate crumb, and mixed condiments and seasoning were not used at all or filled at very low levels. Is there any reason for this null or very low fill rate besides supply- demand conditions?

Answer:

No, this is because of market conditions.

(Japan) (tariff quotas) What is a reason to maintain tariff quotas that were not used at all or filled with at very low levels, for example, olives, dried cream, certain cotton articles?

Answer:

TRQs exist for these products because of the process of tariffication during the Uruguay Round. The U.S. negotiation proposal offers suggestions for dealing with low fill TRQs.

(Thailand) (pages 25-7, paras 8-10, Measures Directly Affecting Imports) The United States's fill rate of imported tobacco under the TRQ is only 48.8% and the out of quota tariff rate is very high at the level of 350%. Considering that global quota allocation could enhance the competition among suppliers and thus improve the fill rate under TRQ, does U.S. have any plan to improve the fill rate of tobacco TRQ through a change of the present allocation method?

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1. Any changes to U.S. tariff rate quotas should be discussed in the context of negotiations.

***Thailand)** (page 49, paras 92) Please explain the process of an equivalent determination for poultry products and how a country could be granted an equivalent status.*

Answer:

Please refer to the document “FSIS Process for Evaluating the Equivalence of Foreign Meat and Poultry Food Regulatory Systems”, at the web site www.fsis.usda.gov/oa/programs/equiv.pdf

***(EU)** (Government Report, para 8, Tariff quotas) The division of quotas for certain cheeses into Tokyo Round quantities and Uruguay Round quantities, complicates license applications by traders, and should be eliminated. A single quota for each cheese group would be more transparent, comprehensible and accessible (and is particularly needed for the NSPF (not specifically provided for) group). Could the U.S. confirm that it will introduce such a system and take notice of the April 2001 study by the USDA's Economic Research Service which identified inefficiencies in current quota administration?*

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1. Any changes to U.S. tariff rate quotas should be discussed in the context of negotiations.

***(Chile)** (Check-Off Programs) For the last years, the United States has been enacting and implementing several Information Research and Promotion acts regarding some agricultural products by which it has imposed the collection of mandatory assessments (internal taxes) to locally promote those products, leaving the total control over the spending of the assessments to the domestic producers and creating some considerable advantages in the internal treatment they receive as compared with producers from abroad.*

How would the United States explain its Check-Off Programs in terms of their consistency concerning its international obligations under the WTO and its applicable agreements?

Answer:

The United States undertakes to write its Check-Off Programs so that they are consistent with U.S. WTO obligations.

***(Chile)** How would the United States justify the legitimacy of its Check-Off Programs under U.S. law considering the recent Supreme Court ruling on the subject? Specifically, how would the United States explain the constitutionality of the mandatory assessments these programs impose for promotion purposes?*

Answer:

The United States undertakes to write its Check-Off Programs so that they are consistent with U.S. WTO obligations.

***(Chile)** The Check-Off Programs and mandatory assessments are constitutional. Taking into consideration that the U.S. Supreme Court ruling is a mandatory rule of law for every executive agency, among them the USDA, is the executive branch adopting and implementing any measure to put the Check-Off Programs in conformity with this ruling? And is so, what sort of measures is the U.S. Government adopting and implementing and what are the Check-Off Programs and subject matters within them that are being modified?*

Answer:

The United States undertakes to write its Check-Off Programs so that they are consistent with U.S. WTO obligations.

(Chile) How can the United States explain the differences between promotion, information and research under the U.S. Constitutional concept of Freedom of Speech so as to exclude the last two areas from the imposition of voluntary assessments?

Answer:

The United States undertakes to write its Check-Off Programs so that they are consistent with U.S. WTO obligations.

(Chile) (The Hass Avocado Promotion Research and Information Act (HAPRI)) Considering the Supreme Court ruling in the Mushroom Check-Off Program case is a mandatory law for the USDA and that the Implementing Order is not yet in force is this Agency going to limit the mandatory assessments only for information and research activities leaving promotion assessments as voluntary?

Answer:

The United States undertakes to write its Check-Off Programs so that they are consistent with U.S. WTO obligations.

(Chile) The HAPRI and the Proposed Order, through the assessment collection method, establishes a difference between the timing and. The conditions of collection. While the domestic producers would be allowed to pay the assessment within 30 days after the end of the month in which the sale or non-sale transfer has been made, the importers whether their avocados are sold or not, have to unconditionally pay the assessment at the time of importation into the United States. What is the reason behind this?

Answer:

The United States undertakes to write its Check-Off Programs so that they are consistent with U.S. WTO obligations.

(Chile) Another aspect is the assessment refund system. While the state associations, in fact, the California Avocado Commission ("C.A.C."), will receive 85% of the funds generated by all the assessments attributable to California's total production of avocados, the importers associations will only receive 85% of the funds generated by assessments paid by the members of these associations without regard of the fact that almost 90% of the importers are Californian producers and that there is no clear mechanism to compel any importer to join an importer association. What is the reason behind this?

Answer:

The Statute does not provide for importers to be compelled to join an importer association, and we have no authority to require it.

(Chile) Why does the HAPRI not involve other domestically produced avocados such as Fuerte, Zutano, Bacon, Pinckerton, etc., that are "like" Hass avocados and, in any case, are directly competitive or substitutable products of the latter, and therefore affords protection to domestic producers and discriminates exporters?

Answer:

The Statute provides for the inclusion of “like” Hass avocados.

Export Subsidies

(Japan) (page 52, paras 104-106, Export subsidies) Although the funding level of export subsidies based on the Export Enhancement Programme (EEP) is decreasing, the Dairy Export Incentive Program (DEIP) is utilized actively as was previously. The United States says, the stated purpose of the program is to enable the U.S. exporters to meet prices that are being subsidized by other governments into the world markets. Does the United States consider that the program would act as a negative influence on the prices of agricultural products worldwide, since the government can grant export subsidies freely when exporting to specific countries?

Answer:

The major objective of the U.S. Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP) is to challenge unfair trade practices. Since fiscal year 1999, the EEP program has been made operational only for frozen poultry (not for grains and rice). The program was last made operational for barley in fiscal year 1998. The levels of programming under DEIP have been reduced consistent with U.S. reduction commitments under the Uruguay Round. The DEIP is designed not to set world prices but to meet distorted world prices.

(Japan) (page 53, paras 107-110, Export credit guarantee) Japan is continuously concerned with this program's trade distorting effect, because it tends to make U.S. agricultural products advantageous while competing with other exporting countries. The Commodity Credit Corporation (CCC) collects claims in case of default. Does the United States consider that this program comprises a characteristic similarly to the circumvention of export subsidies? It is also a serious problem when the program makes it possible to export specific agricultural products to selected markets, where financing resources are provided by the CCC, and also when enhancing a strategic export promotion.

Answer:

The export credit programs were distinguished from direct export subsidies for a reason in the Uruguay Round – both in the Agreement on Agriculture and the Decision on the Possible Negative Effects of the Reform Program on Net Food Importing and Least Developed Countries. They were addressed separately because they have a different impact on the market than direct export subsidies, and they serve a legitimate function in food security. As we discuss the various components of export competition we must keep in mind their impact on global markets. The United States believes export credit guarantee programs create additional purchasing capacity for importing countries that might not otherwise exist because of a lack of liquidity in the importing country's market.

(Thailand) (page 52, paras 105, Export Subsidies) Please specify the markets to which the U.S. exports the products under the Export Enhancement Program (EEP).

Answer:

Please refer to the press release on this on the USDA/FAS home page, http://www.FAS.USDA.GOV/scriptsw/PressRelease/pressrel_dout.asp?PrNum=0265-00

For July 2000 through June 2001 EEP was available for Egypt, Jordan, Lebanon, Oman, United Arab Emirates, and Yemen for frozen poultry.

(EU) (para 105, Export subsidies, Measures related to agri-food exporters) Could the U.S. clarify the purpose of its export subsidy regime which operates for certain grains and rice? Whilst the stated purpose of the regime is to “enable U.S. exporters to meet prices that are being subsidised by other governments into the world market”, para 102 notes the central objective of U.S. trade policy is to “open markets to U.S. exporters” to which end export assistance measures are utilised.

Answer:

The Export Enhancement Program (EEP) helps products produced by U.S. farmers to meet competition from subsidizing countries. The United States remains committed to the elimination of export subsidies in the agriculture negotiations.

(EU) (para 106, Export subsidies) The EU is concerned to note that the latest WTO notification by the U.S. shows values for export subsidies and subsidised export volumes exceeding those specified in the U.S. Schedule of WTO commitments for dairy products. What is the justification for U.S. export subsidies and subsidised export volumes exceeding those specified in the U.S. schedule of WTO commitments for dairy products?

Answer:

In 1999/2000, the United States employed the flexibility provision in Article 9.2(b) of the Agreement on Agriculture and remained within its Uruguay Round export subsidy commitment. The United States remains committed to the elimination of export subsidies in the agriculture negotiations.

(EU) (para 108, Export finance, insurance, and guarantees Does the U.S. intend to share its estimates of total budgetary outlays for 1990-2000 under subsidised export credits and guarantee programs with the Secretariat?

Answer:

As stated in paragraph 108, the estimates of total budgetary outlays for 1990-2000 under subsidized export credits and guarantee programs are not available.

(EU) (para 110) Other forms of export enhancements are the use of credit facilities which have been recognized as trade distorting. Discussions in the OECD are ongoing with a view to establishing an acceptable Agreement on the use of credits as an export enhancement tool. U.S. suggest that the use of export credits can be beneficial in that importing countries might otherwise lack financial “liquidity”. However, in the recent OECD report “An Analysis of Officially Supported Export Credits in Agriculture” it is suggested that export credits might actually create demand under certain circumstances. It notes in particular that “the U.S. export credits are calculated to be almost twice as distorting on a per unit basis as any other countries’ and, given the USA’s relatively large programme, account for the majority of the distortions in world markets caused by officially supported export credits.”

Answer:

No question was asked. We provide the following comment: The OECD study concludes that the level of export credits relative to world trade was small and the estimated impact on aggregate world markets is small, e.g., export credits facilitated only 5.2 percent of world trade in 1998 and of these only a portion were estimated to have distortionary market effects.

Domestic support of agricultural products

(Japan) (page 64, para 147, Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act) and its successor legislation) In the debate of the successor legislation, resurrection of the Deficiency Payment System abolished by the FAIR Act is proposed by the Parliament. How does the United States evaluate the "abolishment of the Deficiency Payment System" by the FAIR Act, which caused invocation of Emergency Farm Relief?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Switzerland) (para 147, Government support to business) What are the main changes expected from the new FAIR act?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Switzerland) (para 148, Government support to business) Direct government assistance nearly tripled between 1997 and 2000. This is mainly due to natural disasters and falling prices for agricultural products. It allowed to maintain the net farm income above its lowest level since 1983. Does this amount of emergency assistance depend more on the natural disasters or on falling prices? Is the emergency assistance being used as compensation for the price fall?

Answer:

The United States notified its emergency payments in accordance with WTO criteria. Please see G/AG/N/USA/36 for our most current notification.

(Canada) (Government Support to Business; Chart III.5) Chart III.5 shows the value of agricultural support rising in every year since 1995, even without the "emergency payments" being factored in. Please indicate what the proportion of market returns was relative to FAIR Act payments and to total farm payments for the years since 1995.

Answer:

Production Flexibility Contract payments under the FAIR Act began in fiscal year 1996. For fiscal years 1996 through 2000, the proportion of cash farm receipts to Production Flexibility Contract

payments was, respectively, 39:1, 33:1, 34:1, 34:1, and 38:1. In fiscal years 1995 through 2000, the proportion of cash farm receipts to total direct government payments was, respectively, 26:1, 27:1, 28:1, 16:1, 9:1, and 8:1.

(Canada) (Government Support to Business; Chart III.5) Chart III.5 shows that a significant portion of farm support is in programs that fall in the WTO's "amber" category. Given this trend, and considering the testimony by a wide variety of U.S. agricultural groups to the House of Representatives Agriculture Committee in the first half of 2001 requesting additional spending beyond current levels, how does the U.S. assess the prospects for spending in future years?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Canada) (Government Support to Business; Chart III.5) Does the U.S. Government anticipate that the nature of the programs in support of U.S. agriculture will continue to move away from "green" towards "amber" programs?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Canada) Para 88 refers to the lack of WTO notifications about proposed State technical regulations. The para does not mention, however, that estimates of domestic support for agriculture try to include State programs, but the data are based on a survey of States that was conducted in 1993. Does the U.S. propose to update the basis on which it notifies State support to agriculture? Would it plan to conduct an annual survey of the State departments of agriculture?

Answer:

Domestic support provided through federal and state measures is reported in U.S. notifications to the WTO Committee on Agriculture. USDA reviews state-level domestic support data reported in national statistics and surveys states annually to ensure that U.S. domestic support notifications provide comprehensive coverage of state-level programs.

(Canada) Will the United States notify to the WTO the federal grants to the states of \$159 million in support of agriculture promotion and "specialty agriculture" as part of the "emergency" support voted by Congress earlier this year? Please provide information on the actual amounts and activities that these funds are supporting.

Answer:

“The Crop Year 2001 Agricultural Economic Assistance Act” signed by President Bush on August 13, 2001 includes a provision for Specialty Crops Assistance. Under the Specialty Crops Assistance provision, \$26 million in grants are provided to states to support activities that promote agriculture with \$500,000 for each state and \$1 million for Puerto Rico. An additional \$133 million in grants are provided to states in amounts that represent the proportional value of specialty crop production. Domestic support provided through federal and state measures is reported in U.S. notifications to the WTO Committee on Agriculture. USDA reviews state-level domestic support data reported in national statistics and surveys states annually to ensure that U.S. domestic support notifications provide comprehensive coverage of state-level programs.

(Japan) (page 67, para 152, Emergency farm relief policy) The United States has implemented a farm relief policy four times. What is the political background as well as the direction aimed by this emergency farm relief policy.

Answer:

The current U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

Japan (page 67, para 153, Emergency market loss payments) In the U.S. notification to the WTO on domestic support measures for the period of October 1998-September 1999, the Emergency Market Loss Payments (ELPs) is notified as a non-product-specific AMS. Could the United States explain the meaning of non-product-specificity?

Answer:

The United States has notified the World Trade Organization (WTO) that \$2.8 billion in 1998 Market Loss Assistance (MLA) payments (so-called AMTA supplemental payments) are classified as trade-distorting or “Amber Box” support. This decision was not taken lightly. MLA payments are paid in the same manner to the same producers as Production Flexibility Contract (PFC) payments which will continue to be notified as non-trade-distorting or “Green Box” support.

MLA payments are considered non-product specific support because they are based on historical production. Similar to the “Green Box” PFC payments, MLA payment recipients are under no obligation to produce a specific crop or to produce any crop at all. Under WTO de minimis rules, non-product specific support is not added to the total level of trade-distorting support unless all non-product specific support exceeds 5 percent of the value of total U.S. agricultural production. Total non-product specific support did not exceed the de minimis threshold in 1998/99.

(Japan) (page 68, para 157, Domestic support measures of dairy products) The United States proposes in the comprehensive proposal (G/AG/NG/W/15) that domestic supports should be non-exemptive, if they have none or least distortive effects on trade or production. On the other hand, the United States took a measure to increase the purchasing price of butter last May. How does the United States consider the coherence between this measure and the U.S. proposal on domestic support?

Answer:

The United States is currently consistent with its WTO commitments, including the May price increase. Future changes in commitments will be decided in negotiations.

(Japan) (page 69, para 158, Two-tier price support program of peanuts) Since this program provides a high support rate on peanuts for domestic food use and a much lower rate for peanuts grown for export or for crushing, we consider it similar to the special milk system in Canada, which was ruled adversely by the WTO Panel and Appellate Body. Could the United States show us where it stands in this issue?

Answer:

Market price support for U.S. peanut producers is classified and reported under WTO rules as domestic support. The United States recognized that such domestic support can be trade distorting and notifies peanut support measures accordingly within the Amber Box of our notifications to the WTO Committee on Agriculture. No support provided under the peanut program is contingent in any way upon a requirement to export and, therefore, the program is not in any way considered an export subsidy.

(EU) (para 162, Assistance to the agri-food sector) Risk management policy: It is said that these insurance programs have been notified to the WTO as Amber Box, under de minimis provisions. Could the U.S. please specify whether this includes the crop insurance premiums as well, or just the coverage against non-catastrophic events such as price declines?

Answer:

Catastrophic and non-catastrophic crop and revenue insurance is covered by the U.S. notification to the WTO on Domestic Support (Supporting Table DS: 9). The net insurance benefits to producers referred to as "total non-product-specific support" reflects the fact that producers pay premiums for insurance at a subsidized rate. The net benefit is the value of the indemnities received by farmers less the actual premiums paid by producers.

(Hong Kong) (page 9, para 30) It is noted that the U.S. proposals for the mandated negotiations on Agriculture include the progressive elimination of export subsidies over a fixed period of time. We are interested in the current level of export subsidies the U.S. provides for its agricultural sector, and further details on the pace and timeframe of its proposal in the agricultural negotiations to eliminate export subsidies.

Answer:

Please refer to the U.S. ES:1 notification for current levels of export subsidies. The pace and timeframe of elimination of export subsidies is subject to negotiation, but the United States is hoping for bold action on this topic.

(Chile) Considering the latest supplemental subsidies to US domestic agriculture recently signed into law. In the opinion of the U.S., what is the level of consistency with the WTO of this law, and does the U.S. intend to notify the WTO?

Answer:

The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net,

must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Chile) How can the United States explain the consistency of the fact that part of the above mentioned supplemental subsidies maybe be directed towards financing cases against trade partners including accusations of subsidizing?

Answer:

The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Chile) On various occasions the United States has proposed to lowering subsidies in all sectors and has urged the European Community to do so itself. How can the United States justify the fact that year after year it increments its subsidies towards its domestic industry, concentrating a great part in the agricultural sector?

Answer:

The United States is currently within its WTO commitments, and hopes for all members to reduce trade distortions in the next agreement.

Food Aid

(Switzerland) (para 103, Measures related to agri-food exports) It is mentioned in 103 that in the 1999-2000 period, there was a reduction in the use of export subsidies and of export credit guarantees. However, in the same period, there was a large increase in food aid volumes, and domestic support to producers went up as well. Given the fact the U.S. is the world's largest food aid supplier, accounting for 64 (by volume) of food aid delivered in 2000 (para 111) and that volumes of food aid and world cereal prices are negatively correlated, developing countries could be induced to further benefit from the food aid instead of developing their own cereal production. How does the U.S. view this assumption?

Answer:

We seriously question the assumption in this question. The correlation between food aid and commodity prices is not conclusive, debatable and far from proven or agreed. That said, US food aid supports the agriculture development efforts in the recipient countries. All programs follow internationally agreed upon standards and are required to have an analysis conducted on the potential market impacts, including commercial imports and prices. The majority of US programs are targeted to specific vulnerable groups, such as feeding programs for women and children.

(Thailand) (page 54, paras 111, Food aid) Please specify the countries to which the U.S. exports rice as food aid in the past five years.

Answer:

The United States has exported rice under food aid programs to the following countries over the last five years:

1997	1998	1999	2000	2001 (thru May)
Angola	Angola	Angola	Albania	Albania
Armenia	Armenia	Armenia	Angola	Angola
Azerbaijan	Azerbaijan	Azerbaijan	Armenia	Armenia
	Benin		Azerbaijan	Azerbaijan
				Benin
			Bolivia	Bhutan
Bosnia-Herzegovina				Bolivia
Burkina Faso	Bulgaria	Burkina Faso	Bulgaria	Bulgaria
	Burkina Faso		Burkina Faso	Burkina Faso
		Cameroon	Cambodia	Cambodia
Cape Verde	Cape Verde		Cameroon	Cameroon
Islands	Islands			
Congo			Congo	Congo
				Congo, Dem.
Cote D'Ivoire	Cote D'Ivoire	Cote D'Ivoire	Cote D'Ivoire	Cote D'Ivoire
		Dominican Republic	Dominican Republic	Dominican Republic
			Djibouti	Djibouti
			E. Timor	E. Timor
		Ecuador	Ecuador	Ecuador
Equatorial Guinea	El Salvador	El Salvador	El Salvador	El Salvador
Ethiopia	Equatorial Guinea	Equatorial Guinea	Equatorial Guinea	Equatorial Guinea
	Ethiopia	Ethiopia	Ethiopia	Ethiopia
	Georgia	Georgia	Gambia	Gambia
Ghana	Ghana	Ghana	Georgia	Georgia
Guatemala	Guatemala	Guatemala	Ghana	Ghana
			Guatemala	Guatemala
Guinea Bissau				Guinea
Haiti	Haiti	Haiti	Haiti	Haiti
Honduras	Honduras	Honduras	Honduras	Honduras
			India	India
	Indonesia	Indonesia	Indonesia	Indonesia
Jamaica	Jamaica	Jamaica	Jamaica	Jamaica
Jordan				
Korea, North	Korea, North	Korea, North	Korea, North	Korea, North
Kyrgyzstan	Kyrgyzstan	Kyrgyzstan	Kyrgyzstan	Kyrgyzstan
				Laos
				Lebanon
Madagascar	Madagascar	Madagascar	Madagascar	Madagascar
Mauritania	Mauritania		Mauritania	Mauritania

1997	1998	1999	2000	2001 (thru May)
Moldova	Moldova	Moldova	Moldova	Moldova
			Mozambique	Mozambique
	Nicaragua	Nicaragua	Nicaragua	Nicaragua
			Niger	Niger
Peru	Peru	Peru	Peru	Peru
Philippines		Philippines	Philippines	Philippines
Russia	Russia	Russia	Russia	Russia
		Senegal	Senegal	Senegal
		Sri Lanka	Sri Lanka	Sri Lanka
Tajikistan	Tajikistan	Tajikistan	Tajikistan	Tajikistan
		Togo	Togo	Togo
		Turkmenistan	Turkmenistan	Turkmenistan
				Uganda
Ukraine	Ukraine			Uzbekistan
			Yemen	Yemen
	Yugoslavia (Serbia)	Yugoslavia (Serbia)		Yugoslavia (Serbia)

(EU) (para 111, Food aid) The report notes that the U.S. is the largest food aid supplier in the world and that food aid volumes are “negatively correlated” with world cereals prices, i.e. when prices are high, food aid shipments go down. Part of the stated purpose of the U.S. food aid programme is to “stabilise U.S. farm incomes by disposing of surplus stock.” In effect therefore, the use of food aid could be construed as another form of subsidy

Answer:

As by far the largest provider of food aid, the United States undertakes careful analysis to ensure that normal commercial trade within recipient countries is not unduly disrupted by food aid shipments. Our food aid is provided in accordance with rules under the Food Aid Organization (FAO) of the United Nations, which provide for consultations with trading partners to ensure that commercial export trade is not disrupted by food aid shipments. This is accomplished through calculation of the Usual Marketing Requirement (UMR), which helps determine the appropriate level of food aid programming. Specific country needs and World Food Program (WFP) appeals drive our decisions to provide food aid, which is targeted to those most in need of assistance.

(Australia) US Farm Bill: Can the United States confirm its commitment in future farm legislation to a movement of domestic support mechanisms away from "amber" into the "green" box as was the original intent of the FAIR Act?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Australia) Agriculture Domestic Support Arrangements: We note that since 1998 Congress has approved annual multi-billion dollar payments to farmers in the form of additional Agriculture Market Transition Act (AMTA) payments, as a response to low commodity prices. The United States has recognized that these payments were linked to commodity prices. In June 2001 the United States notified USD 10.4 billion in payments for the 1998/99 marketing year as trade-distorting "amber" box payments to the WTO. When will the United States notify the WTO that the payments made in 1999, 2000 and this year were "amber" box payments?

Answer:

The domestic support notification the United States submitted for marketing year 1998/99 has already identified Market Loss Assistance payments as Amber Box payments.

(Australia) Food Aid: While food aid for genuine humanitarian assistance is widely supported, food aid donations can be contentious and the United States has been criticised by its export competitors for many donations. In its food aid decision-making, does the United States take account of exports by a recipient country of the commodity in question, given the requirement that the recipient country does not export the same or like commodity during the supply and use period?

Answer:

As by far the largest provider of food aid, the United States undertakes careful analysis to ensure that normal commercial trade within recipient countries is not unduly disrupted by food aid shipments. Our food aid is provided in accordance with rules under the Food Aid Organization (FAO) of the United Nations, which provide for consultations with trading partners to ensure that commercial export trade is not disrupted by food aid shipments. This is accomplished through calculation of the Usual Marketing Requirement (UMR), which helps determine the appropriate level of food aid programming. Moreover, the U.S. Government takes steps to ensure that our food assistance does not undercut local producers in recipient countries, which is in fact required by U.S. food aid law. Specific country needs and World Food Program (WFP) appeals drive our decisions to provide food aid, which is targeted to those most in need of assistance.

(Australia) Sugar: We note that access to the US market for raw sugar, governed by a tariff rate quota, is now at near record low levels, and in the current year only just exceeds the US's WTO minimum access commitment. We note also that the differential between the world market price for sugar and the US price is now at near record levels, with the US price nearly three times the world market price. The sugar program is continuing to send the wrong market signals to US producers who are expanding production at a time of low world prices. Given the sugar program has moved into surplus (with the Government not only stockpiling, but also selling sugar back to its own producers and requiring them not to produce), what plans does the United States have to bring the sugar program back into balance, to make it more liberal and market oriented and to progressively liberalise market access?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(Australia) When will the United States be rectifying its Harmonized Tariff Schedule to take account of the long acknowledged necessary polarity adjustment for raw sugar? (The polarity adjustment would mean the base tariff equivalent to be applied to raw sugar imports entering the United States under the second tier of the tariff rate quota would be 17 cents per pound instead of 18 cents per pound.)

Answer:

We are mindful of the issue and intend to comply with this commitment.

(Brazil): What is, and how does the FAIR Act affect the net income of American farmers?

Answer:

Net farm income statistics including direct government payments provided to producers through FAIR Act programs are available at: <http://www.ers.usda.gov/Briefing/FarmIncome/>

(Brazil) Secretariat Report, page 69, paras. 160-161. What is the US government's assessment of the effects of the Loan Deficiency Payments on international prices, particularly in the case of soy beans?

Answer:

The U.S. Government has only done preliminary review of this topic, the result of which is published on the USDA web site at www.ers.usda.gov/publications/agoutlook/oct2000/ao275e.pdf.

(Brazil) Secretariat Report, para. 154, page 68. Please explain in more detail how PFC and ELP affect agricultural investment and production.

Answer:

The U.S. Government has only done a preliminary review of this topic, the result of which is published on the USDA web site at www.ers.usda.gov/publications/agoutlook/oct2000/ao275e.pdf.

(Brazil) Secretariat Report, para. 1, page 85. The report states that the US has justified the large amounts of government support to the agri-food sector by its inherent volatility and by the support and protection afforded to agri-food by its main trading partners. Please explain the role played by these programmes in the sectors volatility, particularly with regard to the recent decreases in international prices of agri-food products. Additionally, please clarify what would be the volatility without recourse to these programmes.

Answer:

The U.S. Government has only done a preliminary review of this topic, the result of which is published on the USDA web site at www.ers.usda.gov/publications/agoutlook/oct2000/ao275e.pdf.

(Brazil): *What are the views of United States on tariff quotas and on their administration methods?*

Answer:

Views of the United States are presented in the U.S. comprehensive proposal for the WTO agricultural negotiations.

(Hungary) *We note with some concern that, although partly due to natural disasters, direct government assistance to the agri-food sector nearly tripled between 1997 and 2000, and currently amounts to over one half of new farm income. Significant tariff barriers, peak tariffs and tariff escalation are present in the agri-food sector as well as in other sensitive areas. Tariff quotas remain to be one of the main instruments of protection for some important agricultural products, including in the dairy sector, and act as a de facto quantitative restrictions for a number of them, where the out-of-quota tariff rates are prohibitive. Such high rates effectively prevent the out-of-quota exports of certain types of cheese from Hungary. In addition, for certain dairy products, including cheese, partner governments have to designate preferred importers two months before the start of the quota year and there is no possibility to reallocate quota shares during the year. This inflexibility, at times, results in an underfill of TRQ's, even if the demand is there. We would like to know if the U.S. government would be willing to relax these regulations, making possible at least the reallocation of quota shares during the year.*

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1. Any changes to U.S. tariff rate quotas should be discussed in the context of negotiations.

(Hungary) *As the Secretariat report points out the United States maintains import prohibitions for sanitary and phytosanitary reasons. Although the Animal and Plant Inspection Service of the USDA found Hungary to be free from Foot and Mouth Disease (FMD) on May 2000, referring to Hungary's common borders with regions designated as infected with the disease, we were put into a special category of FMD free countries from additional conditions. Unfortunately, when inquiring about if Hungary is allowed to export chilled and frozen meat of swine and other ruminants to the US, we received differing information in the WTO and through bilateral channels. While in the SPS Committee the US delegation confirmed that we can export fresh, chilled and frozen products of Hungarian origin, the Animal and Plant Inspection Service informed us that we could not.*

We would appreciate if the US delegation could clarify the situation, especially in light of the fact that in May 2001 the USDA lifted the import ban for 10 EU countries, where no cases of the disease have been found.

Answer:

Please consult the web page <http://www.aphis.usda.gov/ppd/rad/> for detailed explanations of APHIS procedures.

(India) *Dairy products: It has been represented that the export subsidy given by the USA on Skimmed Milk Powder (SMP) is around US\$900 per metric tonne, which works out to about 60% of the international price of SMP. The average subsidy on dairy products mainly on SMP by the US Department of Agriculture during 1999-2000 worked out to US\$1101 per metric tonne. Such a heavy*

subsidy results in the fall in international prices of dairy products, which, in turn, when imported in India tend to destabilise the prices and adversely affect the dairy farmers of the country. We would request the US authorities to consider phasing out all direct and indirect subsidies in this sector.

Answer:

The United States is currently within its WTO commitments, and hopes for all members to reduce trade distortions in the next agreement.

(India) TRQ on Tobacco: It is understood that the base period for working out total quota for tobacco import was taken as 1992-1994. We would like to know from the US delegation the basis for selecting this base period. We would also like to know the major suppliers under the existing TRQ regime, the fill rate of the Quota and the methodology of reallocation of unfilled TRQ. Despite the fact that India is the world's second largest producer of tobacco and has one of the largest shares in the export of FCV tobacco, its present quota for export to US is very small. India seeks to have a TRQ of at least 10,000 tonnes per annum. Taking into account these factors, we would request the US authorities to consider allocating unfilled TRQs to the developing countries like India.

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1. Any changes to U.S. tariff rate quotas should be discussed in the context of negotiations.

(India) Need for increase in sugar quota: India's quota for export of sugar to the US has remained at around 0.8% of the total quota since 1982. One of the criteria for allocation of quotas to various countries is the share of the individual countries in the total import into the US market during the period 1975-81. The economic situation has changed considerably since then and in several countries, the production capacity and marketable surplus have increased whereas for the others, though they have high quota available, their own production and consumption of sugar hardly leaves them with any marketable surplus. We would therefore request the US authorities to change their quota allocation policy with a view to allocating a higher quota to some countries commensurate with their production and export potential. We would also request the US to review its sugar policy in view of the US International Trade Commission's estimate that repeal of the Federal Sugar Programme would add nearly US\$1bn to national welfare and cut domestic sugar prices by 8.6%.

Answer:

The U.S. quota allocation policy is consistent with WTO regulations. All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1. Any changes to U.S. tariff rate quotas should be discussed in the context of negotiations.

(New Zealand) Despite the fact that the value of the sales supported by agricultural export credits fell between 1998 and 2000 (Secretariat Report para 107-108) 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?

Answer:

The export credit programs were distinguished from direct export subsidies for a reason in the Uruguay Round – both in the Agreement on Agriculture and the Decision on the Possible Negative Effects of the Reform Program on Net Food Importing and Least Developed Countries. They were addressed separately because they have a different impact on the market than direct export subsidies, and they serve a legitimate function in food security. As we discuss the various components of export competition we must keep in mind their impact on global markets. The United States believes export credit guarantee programs create additional purchasing capacity for importing countries that might not otherwise exist because of a lack of liquidity in the importing country's market.

(New Zealand) New Zealand welcomes the confirmation in the US Government's statement on the United States Economic and Trade Environment that "open, competitive markets - both internationally and at the border - have contributed to our economic efficiency and prosperity" (G/II, para 25, p 8). However, certain US industries, such as dairy, with its complex systems of import licensing and quota administration regulating dairy imports, dairy compacts, exports subsidies, price supports and milk marketing orders, appear not to be so open and competitive.

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

Answer:

All information on U.S. tariff rate quotas can be found in our MA:1 notifications. The documents are G/AG/N/USA/2/Add.3 and G/AG/N/USA/34/Add.1. Any changes to U.S. tariff rate quotas should be discussed in the context of negotiations.

(New Zealand) 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 already depressed global commodity market, and which are contradictory to the US' declared objective of the elimination of export subsidies in a new round of agriculture negotiations?

Answer:

The Dairy Export Incentive Program (DEIP) helps products produced by U.S. farmers meet competition from subsidizing countries, especially the European Union. The United States remains committed to the elimination of export subsidies in the agriculture negotiations.

(New Zealand) What measures are envisaged to reform the US dairy industry to make it more open and competitive by submitting it to the same market disciplines as other industries?

Answer:

The United States sees multilateral negotiations as the route to more open and competitive markets.

(New Zealand) Current draft legislation before the House seeks to place tariff rate quotas (TRQs) on milk protein concentrate and casein (including caseinate) at severely restrictive levels is of concern to New Zealand as it would contravene the bound rates and product descriptions in the United States' WTO schedules. The House Agriculture Committee's new Farm Bill does nothing to reduce the US Government's subsidies for agriculture production. The Bill, in fact, includes many worrying aspects, such as increased spending on conservation programs, greater provision for subsidizing exports, the re-instatement of production-linked income protection through a counter-cyclical payment program

and extending the milk price support program through to 2011. Section 146 of the draft Farm Bill would also expand the dairy "check off" levy to include all imported dairy product.

While these pieces of legislation are not yet law, they appear to contradict the United States' statements in support of open markets and the direction of US domestic agriculture policy. How does the United States reconcile the draft legislation mentioned above with its commitment to "the maintenance of an open, competitive market at home" (G/I, para 3, p 5)?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

(New Zealand) The Secretariat report notes the ongoing high level of US food aid and the negative correlation between world cereal prices and volumes of US donations (S/III paras 111 and 112, page 54) While the report also notes US attempts to donate food aid in a way that limits disruption of commercial sales in markets, we would question the ongoing high volumes of US food aid, given the rationale would appear to be disposal of surplus production which is caused by domestic support in the United States, for example donations of Skim Milk Powder. To what extent do USDA expect food aid donations to continue? And at what volume? Which markets are likely to be targeted? Is USDA notifying these donations through the CSSD mechanism of the FAO?

Answer:

Please refer to the U.S. NF:1 notification for details on our Food Aid programs. The Uruguay Round Agreement on Agriculture requires that food aid be provided in accordance with the rules of the U.N. Food and Agriculture Organization, and the United States carefully adheres to these guidelines, including an analysis of a recipient country's so-called Usual Marketing Requirements.

(New Zealand) The Secretariat Report notes that "direct government assistance to the agri-food sector nearly tripled during 1997 and 2000 and currently amounts to over one half of net farm income." (S/III, para 148, page 64) In dollar terms, direct government payments to US farmers increased from around US\$7.5 billion in fiscal year 1997 to a record US\$28 billion in fiscal year 2000. One of the main causes of this increase is the so-called "emergency assistance" programmes. This would appear to be in contradiction to US statements in support of "the maintenance of an open, competitive market at home" (G/I, para 3, p 5) or its proposals to the mandated agriculture negotiations which have the objective to "substantially reduce high levels of protection and trade-distorting support that disadvantage competitive farmers, ranchers and processors and that distort international markets" (G/III, para 30, p 9). How will the United States address its dramatic increase in domestic support levels (much of which is classified as Amber box) at a time when it is proposing that domestic support levels should be cut? How does the United States justify domestic support of historic magnitude (\$US28 billion direct and US \$60 billion total), particularly as it is the United States itself that, in many cases, accounts for a significant share of world agriculture output and has a direct effect on the volatility of world markets and prices? What measures are the United States taking to reduce direct government assistance to the agri-food sector?

Answer:

An answer at this time would be premature, given that the Farm Bill is still under discussion. The U.S. administration outlined its principles on farm policy in a September 2001 report released by Secretary Veneman. The report stated that farm policy, including providing a safety net, must promote more sustainable prosperity for farmers through market orientation without engendering long-term dependence on government support. This does not rule out helping farmers and ranchers when unexpected events beyond their control occur and cause output or income to plummet. Trade policy must focus on opening markets through tariff reductions and the elimination of trade distorting subsidies, and be supported by domestic policies that meet our existing international obligations.

15. Steel

(Japan) (Pages 91-92, paras 27-30) Protectionist bills in the steel sector have been introduced in the U.S. Congress which include a bill that aims to relax the criteria to impose safeguard measures and a bill that calls for import quotas programs. Also in June 2001, Bush administration initiated investigation based on Section 201 at the request of the U.S. steel industry. Apparently, these are increased tendency toward protectionism in the U.S. steel sector. The Government of Japan considers the multilateral initiative by President Bush aiming at reducing inefficient excessive capacities and market distorted subsidies in the steel industries to be useful. However, in light of the fact that the true issue lies in improving competitiveness of the U.S. steel industry, we are of the view that what is important is to proceed with structural reforms rather than depend on protectionist measures. We expect that U.S. authorities will understand this situation accurately and pursue their Section 201 investigation in a fair and impartial manner, without any political distortions and consistent with the WTO Agreement on Safeguards. We would appreciate the U.S. views on this matter.

(EU) (paras 27-30, Cost Competitiveness) Given the importance of the steel industry in U.S. trade policy, the EU would like to have seen discussion of a wider variety of factors that may contribute to the industry's problems. For example, whilst imports are emphasised as the main cause of difficulties, other factors such as lack of cost competitiveness have not been mentioned.

Answer: (For both questions)

The United States has one of the most competitive steel industries in the world. In the past 20 years the industry has invested billions of dollars in plant modernization, closed dozens of inefficient mills, eliminated 25 million tons of steelmaking capacity, raised productivity by more than 300 percent, eliminated 330,000 jobs, and invested billions of dollars in environmental controls, cutting pollution emissions by 90 percent. Despite these efficiencies, the U.S. steel industry has encountered very difficult market conditions in recent years.

Because it has a large and open market for steel, the United States has been the destination of choice for much of the world's exported steel production. Steel imports into the United States surged in 1998 after the financial crises dried up demand for steel in other world markets. Steel imports continued at very high levels in 1999 and 2000, leaving the U.S. steel industry extremely vulnerable.

In response to the developing crisis in the steel industry, President Bush directed the United States Trade Representative to request the U.S. International Trade Commission (USITC) to initiate a Section 201 safeguard investigation to determine whether certain steel products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing like or directly competitive products

We are aware of concerns about the potential imposition of a safeguard on steel. However, these concerns are speculative given the range of potential remedies available to the Administration following the USITC injury finding to the U.S. steel industry. It is the Administration's intention that

any remedy following the USITC's affirmative injury determination be consistent with our WTO obligations.

By remedying injurious and unfair trade, WTO-sanctioned trade remedies, such as those on steel, play an important role in the trading system. The existence of trade remedies have enabled the United States to make strong commitments to open its markets in trade negotiations by helping persuade U.S. industry to accept significant cuts in U.S. tariffs and other market opening efforts.

But we also recognize that the problems in steel are global, and require a global solution. That is why we are implementing the President's proposal of June 5 for negotiations seeking the elimination of inefficient excess capacity in the steel industry worldwide and establishing new disciplines on subsidies and other market-distorting practices in the global steel trade. This initiative was launched at a special high level OECD steel meeting on September 17 and 18.

(India) Proposed Steel Revitalisation Act, 2001: It is understood that this act has been designed to provide certain safeguards to the US steel industry by empowering the US President to take necessary steps by imposing quotas, tariff surcharges, negotiated and forcible voluntary restraint agreements or other measures on steel import in USA. It is further learnt that the aim of this act would be to ensure that the imports of iron and steel products into USA during any month do not exceed the average tonnage of each such product imported monthly into the USA during the 36 month period preceding July 1997 and that the share of domestic consumption of such imported steel products does not exceed the average monthly share of domestic consumption of that steel product in the past 36 months. We request the US to explain the rationale for this Act and its consistency with the WTO rules.

Answer:

The Steel Revitalization Act is a legislative proposal that has not been enacted to law. The U.S. Administration has not expressed a position on this legislation. In April 2001, the legislation was referred to several congressional committees for consideration, but no further legislative action has been taken.

(India) Steel Import Notification and Monitoring Programme: It is learnt that this programme shall include a requirement that any person importing a product classified under chapter 72 or 73 of Harmonized Tariff Schedule of the USA has to obtain an Import Notification Certificate before such products entered the US. The application for import certification would have to contain importer's name and address, country of origin, port of entry, description of goods, quantity and CIF value of goods to be imported etc. It is also learnt that the import certificate would be valid only for 30 days. We would request the US authorities to explain the rationale for such a requirement which, given the limited period of validity of the Certificate, would act as a non-tariff barrier.

Answer:

The "Steel Import Notification and Monitoring Programme" that this question refers to has been proposed in legislation that has not been enacted to law. The U.S. Administration has not expressed a position on this proposal. Proponents of the monitoring program contend that it is modelled upon an import licensing program that has been administered by the Government of Canada since the 1980s.

(India) Multilateral initiative on steel: On June 4, 2001, the US President in a statement on multilateral initiative on steel, has indicated intention to initiate discussions to eliminate the excess capacity of steel in the world, to eliminate subsidies and to make rules of trade as per US trade laws. In paragraph 5 of its report, the Secretariat has also referred to this initiative concerning

negotiations on elimination of global excess capacity of steel and development of rules to govern steel trade. We would like to hear from the US delegation more details regarding this initiative including the present stage and also on how inefficient production capacity would be defined. We would also like to know the compatibility of this initiative with WTO obligations.

Answer:

The multilateral initiative on steel was launched at a special high-level OECD meeting on steel of September 17-18, 2001. At that meeting, government representatives from 39 countries including India agreed upon a plan of action contained in a statement of conclusions. The text of the conclusions from that meeting can be obtained from the OECD website.

16 Financial Services

(Canada) (para 70, The Gramm-Leach-Bliley Act (GLB) Paragraph 70 in the Secretariat Report states that although broad banking is permitted by the GLB Act introduced in 1999, U.S. banks continue to have little freedom to own and be owned by non-financial companies. Does the United States foresee more liberalization of the banking sector to permit banks to be owned and to own non-financial companies?

Answer:

Given the substantial liberalization of the banking sector in 1999 with the passage of the Gramm-Leach-Bliley Act, there is nothing currently pending that would allow banks to 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.

(Canada) (The Gramm-Leach-Bliley Act (GLB) Has the structure of the financial services industry changed since the introduction of the GLB Act? If yes, please explain how. What, if any, additional changes are expected over the next few years?

Answer:

Many bank holding companies and foreign banks have become financial holding companies and have established full scope securities subsidiaries. Several foreign banks have acquired major U.S. investment banks (UBS purchased Paine Webber and Credit Suisse purchased Donaldson, Lufkin & Jenrette). One major U.S. securities company bought a large U.S. bank (Charles Schwab, Inc. purchased U.S. Trust). Many financial holding companies, including foreign banks, have commenced insurance operations, mostly through insurance agencies. There has not yet been a broad movement by insurance companies into banking. One major insurance company (Mass Mutual) has bought a bank.

(Canada) (para 71, The Gramm-Leach-Bliley Act (GLB)) According to para 71, a U.S. bank wishing to affiliate with insurance or other financial services companies must first set up a bank holding company under the Bank Holding Company Act; foreign banks are not required to set up holding companies. Please explain the differences between the requirements imposed on U.S. and foreign banks, and explain how the treatment accorded foreign banks is equivalent to that accorded to U.S. banks.

Answer:

The United States has recognized in its laws that foreign banks that engage in banking in the United States may not have the same holding company structures as U.S. banks. Consequently, for purposes of a foreign bank acquiring a company in the United States, a foreign bank is generally treated as a bank holding company. This treatment is designed to allow the foreign bank to gain access to the U.S. market and compete in financial services on a national treatment basis. If the foreign bank were treated as a U.S. bank (and not as a bank holding company), the foreign bank would be precluded from engaging in the same range of activities permitted to a bank holding company. Therefore, under the GLB Act, a foreign bank is treated as a bank holding company and is eligible to become a financial holding company.

The Gramm-Leach-Bliley Act provides that a bank holding company may become a financial holding company and engage in a broad range of financial services if the company's subsidiary banks are, among other things, well-capitalized and well-managed.

The GLB Act also provides that a foreign bank that does not own a subsidiary bank but engages in banking in the United States through a branch, agency or commercial lending company will be allowed to become a financial holding company. The Federal Reserve, however, must and has adopted regulations that require a foreign bank to meet capital and management standards comparable to those of a U.S. bank. Thus, the GLB Act sets a framework that allows for equivalent treatment between the U.S. and foreign banking organizations.

(Canada) (para 80, Banking Services) According to para 80, although financial services are highly liberalized, there are still a few restrictions to foreign market access and national treatment in the financial sector. For example, a majority of directors of national banks must be U.S. citizens; and approximately one half of the States require all or the majority of the board of directors of depository financial institutions to be U.S. citizens. Are there intentions to remove these restrictions at either the national or state level?

Answer:

We do not accept the premise that such restrictions are a violation of national treatment or market access.

A statute permits the Comptroller to waive the citizenship requirement for not more than a minority of the total number of directors. The current statute reflects a number of amendments that have liberalized this requirement. Prior to December 27, 2000 the Comptroller could waive the requirement only for a national bank that is a subsidiary or affiliate of a foreign bank. Prior to 1978, the Comptroller had no waiver authority. We are not aware of any efforts at this time to further remove these restrictions.

The purpose of the citizenship requirement, which has been in effect since the 19th century, is to restrict management to persons more likely to know the trustworthiness of the officers of the bank and the character and financial ability of prospective borrowers. Arguably, the requirement is prudential in nature. The Comptroller, however, grants the vast majority of citizenship waiver requests.

We are unable to comment on intentions of the States to remove citizenship restrictions for directors of State-chartered banks without consulting the States.

(Canada)(para 82, Banking Services) Para 82 states that a domestic bank subsidiary of a foreign firm is provided national treatment based on its "home" State of incorporation. It is our understanding that states remain free to discriminate on the basis of state incorporation and therefore

foreign institutions can encounter discrimination based on their home state of incorporation. Is this understanding correct? If not, please explain.

Answer:

A U.S. bank that is owned by a foreign firm has the same rights and privileges as a U.S. bank owned by a domestic firm. A state cannot discriminate against an out-of-home state bank on the basis of its foreign ownership.

(Japan) (page 103, para 75, Discriminatory measures against foreign banks in obtaining the status of financial holding companies) In order for banks to enter securities business through affiliates, it is necessary for such banks to obtain the status of Financial Holding Companies (FHCs), based on the Gramm-Leach-Bliley-Act enacted in November 1999. In this regard, whereas U.S. banks may "automatically" become FHCs as long as they meet certain requirements, it is provided that 'foreign banks are required to meet the same level of necessary capital requirement as U.S. banks affiliated to the FHCs Japan thinks that this gives too much discretion to the FRB in making the 'well capitalized' judgement. Therefore, Japan requests the United States to clarify the criteria of FRB judgement regarding this well-capitalized requirement. Also, when making judgements on capital adequacy, the FRB seems to consider whether or not foreign banks rely on public funds for their capital. However, this practice does not conform to the principle of the Basle Accord, which does not discriminate capital according to the nature of the shareholders. Accordingly, Japan requests the United States to eliminate unfavorable treatment of foreign banks branches on the ground of reliance on public funds. What are the U.S. views on these points?

Answer:

U.S. banks do not "automatically" become FHCs. U.S. banks' capital is evaluated on a quarterly basis. Any failure to meet the numerical capital requirements, including a five percent leverage ratio which does not apply to foreign banks, results in the FHC potentially losing its status if the capital shortfall is not remedied. In addition, U.S. banks are examined on-site every year (every 18 months in the case of very small banks) and management is separately evaluated at that time. U.S. banks are subject to the discretionary judgment of their supervisors formally once a year and informally throughout the year, when management could be downgraded as a result of events occurring in between examinations. There is nothing automatic about U.S. bank holding company qualification for FHC status.

The final rule essentially retains the provisions contained in the interim rule that relate to the factors the Board may consider in making a comparability finding. The board does not believe that these discretionary factors are either vague or overbroad. Rather, they are factors that allow a decision on comparability of capital to be made. All U.S. banks are subject to essentially the same regulatory framework, which includes frequent examinations and extensive quarterly reporting. Foreign banks, on the other hand, operate under supervisory and accounting systems that can differ significantly from U.S. systems and do not (and should not) report to U.S. authorities as extensively as U.S. banks. Under these circumstances, it is reasonable for the Board to retain the ability to evaluate these differences in deciding whether a foreign bank's capital meets the requirements of the FHC regulations.

Additionally, applying these factors enables the Board to ensure that the minimum capital levels specified for foreign banks do not unfairly exclude them from FHC status because of their differing operating structures and conditions. Moreover, almost all foreign banks electing FHC status have had their election become effective within the 30 day period applicable to U.S. banks, notwithstanding the existence of these discretionary factors.

The Board takes into account a foreign bank's reliance on government support to meet capital requirements in determining whether the foreign bank is well capitalized. The final rule retains this factor in the list of factors for determinations of capital and management comparability. In order to assure equality of competitive opportunity, the Board must be able to consider the impact of any assistance a foreign banking organizations receives from its home country for purposes of meeting capital requirements. A bank operating with government assistance is not competing on market terms.

(Japan) (page 104, para 79, Discriminatory measures against foreign banks in raising funds within the United States) 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. This causes a substantial opportunity cost in complying with the requirement, 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 'fund collateral posting by foreign banks' be abolished, or if not possible, qualifications for eligible collateral should be expanded to include, for example, standard loan assets in order to provide flexibility for foreign banks. What are the U.S. views on these points?

Answer:

The asset pledge is a prudential measure designed to ensure money is available if liquidation is necessary. The New York State Banking Department (the "Department") has had several meetings with foreign banks, including Japanese banks, to discuss their concerns and has taken action to alleviate those concerns. For example, repurchase agreements are now excluded from the liabilities against which assets must be pledged. The Department has asked foreign banks to identify other instruments that share characteristics of repurchase agreements and therefore can be excluded from the liabilities against which assets must be pledged. The issue remains under review. Additionally, many countries require endowment capital or impose asset maintenance requirements.

(Japan) (page 105, para 88, Regulations under the Investment Company Act of 1940) 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 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 by their business practice, are recognized as investment companies under the Act, and therefore required to comply with relevant regulations. Although there are exemption clauses in the Act, Article 3 (b) 2 that stipulates companies applying for such exemption should be declared by the SEC to be primarily engaged in other businesses, this gives a room for discretion by the SEC. Japan therefore requests the United States to clarify and relax the criteria of 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?

Answer:

It is true that the Investment Company Act may include some operating companies in the definition of investment company. The Act's drafters anticipated this problem, providing both statutory exclusions and giving the Securities and Exchange Commission administrative authority to exempt companies. Over the past 60 years, the Commission has developed extensive administrative experience in providing appropriate relief to operating companies, even as new industries and business models emerged. The Commission has addressed status issues faced by companies from around the world, including Europe, South America, Canada, South Africa, Australia and Hong Kong. In 1993, the Commission specifically addressed issues faced by biotechnology companies. In the past several years, the Commission also has addressed issues faced by Internet and high technology companies. The Commission is willing to work with Japanese companies to ensure that operating companies are not hindered in their operations by the Investment Company Act while making sure that those companies that engage in the types of activities designed to be regulated under the Act are so regulated.

Background: The Investment Company Act defines an investment company as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading securities and has more than 40% of the value of its total assets (other than Government securities and cash items) invested in "investment securities." Investment securities generally consist of all securities other than Government securities and securities of majority-owned subsidiaries that are not themselves investment companies. Japanese and American companies alike may meet this definition if they own significant but not majority, interests in other companies.

Section 3(b)(2) of the Act authorizes the Commission to declare by order upon application that an issuer is primarily engaged in a non-investment business either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. The Commission uses objective and subjective criteria when analyzing the status of companies under Section 3(b)(2). For purposes of evaluating the primary business of an issuer the Commission generally uses the following five factor test, with the fourth and fifth accorded the most weight: (1) the company's historical development; (2) its public representations of policy; (3) the activities of its officers and directors; (4) the nature of its present assets; and (5) the source of its present income. The Commission also, however, has proposed and adopted Rule 3a-1 under the Act, which is a self-operating exemption from the definition of investment company in the Act for certain operating companies. Rule 3a-1 is based on the above standards, but focuses on the objective, statistical tests relating to the nature of a company's assets and income.

While the relief available under Section 3(b)(2) and Rule 3a-1 are sufficient for most foreign and domestic operating companies wishing to offer their securities in the United States, the Commission has worked with operating companies for whom these standards are inappropriate. For example, if a company can demonstrate that it is a bona fide research and development company, the Commission will consider the use, rather than simply the composition, of its assets and income. The Commission is willing to explore with Japanese companies whether an alternative test is necessary and, if so, to develop appropriate standards that balance the needs of issuers seeking to access the U.S. markets with the Commission's mandate of protecting investors.

(EU) (ii) Banking services

Interstate branching by de novo establishment is still limited (in 17 States). Could the US please inform if other States plan to allow it? What are the reasons for their reluctance? Does the federal State contemplate to do anything to prompt them to do so?

Answer:

With regard to de novo branching, legislation has been passed in a number of states (plus Puerto Rico and the District of Columbia) permitting some form (mostly on a reciprocal basis) of de novo interstate branching. We do not have further information as to when other states might move to permit this type of interstate branching. Federal authorities do not plan to compel acceptance of de novo interstate banking by the remaining States. Of greater potential consequence, we would note that interstate merger transactions are now permitted in all 50 states

(EU) Many banks are concerned over the requirement of the Office of the Comptroller of the currency and of some State banking supervisors to maintain 'asset pledges' in addition to the paid-up capital they maintain in their home country. Do the US have any plans to ensure the elimination of this requirement?

Answer:

The asset pledge is a prudential measure designed to ensure money is available if liquidation is necessary. The New York State Banking Department (the "Department") has had several meetings with foreign banks, including Japanese banks, to discuss their concerns and has taken action to alleviate those concerns. For example, repurchase agreements are now excluded from the liabilities against which assets must be pledged. The Department has asked foreign banks to identify other instruments that share characteristics of repurchase agreements and therefore can be excluded from the liabilities against which assets must be pledged. The OCC is also receptive to discussions with foreign banks about ways to minimize regulatory burden of its capital equivalency deposit (CED) within the scope of the current law. In addition, over two years ago the Comptroller of the Currency requested an amendment to the U.S. law that would give the OCC more flexibility in setting the CED for Federal branches and agencies. This amendment would provide the OCC with more discretion to adjust the CED requirement to be consistent with the OCC's philosophy of supervision by risk and the principle of national treatment. In addition, the amendment would afford the OCC similar discretion to adjust the CED requirement by regulation that State regulators of key States have today under State law. While to date Congress has not amended the law, the OCC has been discussing this issue on an ongoing basis with Congressional staff, other Federal banking agencies, and some State banking departments in an effort to find language that is generally acceptable to the various groups. We would also note that many countries require endowment capital or impose asset maintenance requirements.

(EU) (iii) Security services

The market is de facto almost closed for foreign investment funds willing to offer their shares. What is the rationale of this policy? Is any remedy contemplated?

Answer:

The United States approach to foreign investment funds is to provide national treatment. Generally, foreign and domestic investment companies must register with the SEC in order to publicly offer securities to US investors, unless an exemption applies. A foreign investment company must obtain an order from the SEC under Section 7(d) of the Investment Company Act of 1940 in order to register. Section 7(d) is a prudential standard that ensures that US investors receive the same essential investor protections whether they acquire shares in a non-US fund or in a US-based fund. Alternative mechanisms for accessing US markets include establishing and registering mirror funds in the United States, or conducting a private placement.

(EU) There is concern over the impracticability to establish a branch in the US by foreign securities firms in broker-dealer activities, since registration as a broker-dealer means that the foreign firm

establishing the branch has to register and become itself subject to SEC regulations. Is there anything contemplated to eliminate this barrier?

Answer:

Foreign broker-dealers that wish to operate branches or subsidiaries in the United States are provided national treatment; there are no discriminatory barriers. Foreign broker-dealers wishing to branch into the US would be subject to the SEC's registration and other requirements on the same basis as domestic branches, including having the entire entity be subject to regulation such as the SEC's capital and other requirements. Foreign broker-dealers, of course, can avoid subjecting the entire firm to SEC oversight by establishing a US subsidiary that registers as a broker-dealer. In addition, under Exchange Act Rule 15a-6, foreign broker-dealers may engage in certain limited US broker-dealer activities without registration, so long as the conditions specified in the applicable exemption are met. Commission staff is working on a proposal to modify Rule 15a-6 that, among other things, would streamline one of the more frequently used exemptions.

(EU) A market access restriction not mentioned in the Report pertains to foreign electronic securities markets providing to remote access facilities ('screens') to brokers-dealers in the US, so that they can those markets on a remote basis. Could the US explain the rationale of this policy? Is any remedy contemplated?

Answer:

The United States provides national treatment to foreign exchanges that wish to operate in the United States. Currently, all exchanges, whether domestic or foreign, are subject to the SEC's registration and other requirements, unless exempted.

The issue of whether the SEC should allow foreign exchanges access to the US market through the placement of screens without complying with the SEC's registration requirements raises investor protection, market integrity, and fair competition concerns. The Commission staff is working on the issue of foreign market access and the possibility of offering additional regulatory options to foreign markets. A number of issues must be addressed when considering these options. US law imposes significant responsibilities on US markets to carry out effectively their self-regulatory obligations, such as surveillance for and enforcement against violations of the federal securities laws. In considering greater access to US markets by foreign markets, the Commission would need to consider the competitive impact on US markets, and how access could be provided without impairing US market integrity or investor protection. In addition, US federal law requires that all securities traded on an exchange in the United States be registered with the Commission. This requirement must also be addressed in considering allowing access to US markets by foreign exchanges.

(EU) (iv) Insurance services

Many States have no mechanism for licensing initial entry of non-US insurance companies. What is contemplated to remedy this problem?

Answer:

Please see answer below.

A branch of a foreign company may write premiums based only on its US situs capital, whereas all its assets in the world are subject to liability to policyholders. How does the US explain the contradiction between those two rules?

Answer:

Please see answer below.

Some States have regulations that imply direct discrimination for foreign for foreign firms, such as the requirement to buy reinsurance from State-licensed companies, or the need of companies that specialize in the 'surplus lines' market to be 'white-listed' by the National Association of Insurance Commissioners. Could the US please clarify how it intends to bring such legislation into line with its international obligations?

Answer:

Please see answer below.

Given the slow pace of harmonization of legislation between States, what are the subjects that the Federal State contemplates to pre-empt to ease the process?

Answer:

We note the EU's first three questions and the possibility that the EU may choose to raise them at an appropriate point in the GATS negotiations. Regarding the EU's fourth question, the United States continues to have authority to regulate insurance.

17. Telecommunications

(Canada) (paras 110 and 118, Licensing and Competition-U.S. commitments to foreign satellite operators) What effect does Federal Communications Commission (FCC) deference to the Executive Branch on matters of national security and law enforcement (paragraph 110) have on U.S. commitments to allow foreign satellite operators to provide satellite services to points in the U.S. from gateways outside the U.S. (paragraph 118)?

Answer:

FCC deference to the Executive Branch on matters of national security and law enforcement has no effect on U.S. WTO commitments. Such deference is clearly within the scope of U.S. WTO commitments.

(Canada) (para 112, Licensing and Competition-Removal of Barriers to Investment) In para 112, the U.S. provides examples to show that WTO Members are in practice able to invest in the U.S. telecom services market despite the fact that existing legislation prohibits investments greater than 20%. Does the U.S. intend to legislate to reflect in law the "practical" removal of barriers to investment by WTO Members, thus providing the full security of law to foreign firms of WTO Member-countries?

Answer:

This question wrongly assumes that this limitation applies to all foreign investment. As the U.S. WTO schedule makes clear, the limitation applies only to direct investment in the ownership of a common carrier radio license by a U.S. corporation of which more than 20 percent of the capital stock is owned or voted by a foreign government or its representative, non-U.S. citizens or their representative, or a corporation not organized under the laws of the United States. Members may be interested to know that notwithstanding this limitation, there are few if any Members that enjoy a level of foreign participation in their wireless market comparable to the United States, now home to tens of billions of dollars in foreign investment.

(Japan) (page 111, para 107, Harmonization of state-level regulations) Telecommunications services are regulated at both federal and state level. Japan is concerned that each State not only has different procedures, but also has different terms and conditions for certification and that applicants must adapt themselves to the regulations at federal level, as well as those of each State, where they wish to provide services. Such differences have caused serious burdens upon those operators. The Government of the United States should, therefore, resolve the current situation, which could constitute a market entry barrier for carriers wishing to enter the U.S. telecommunications market, and should take a positive position towards harmonizing the state-level regulations in response to the trend of liberalization and internationalization of the telecommunications business. Does the Government of the United States have a plan to standardize application forms, and contents and forms for licenses' report? If so, please explain its outline and current status.

Answer:

Licensing and reporting requirements of different states are generally speaking not a federal matter. It is the right of each state to determine specific requirements. As a practical matter, variations in licensing and reporting requirements tend to be minor, and the burden such requirements pose is substantially less than that typically found in other countries.

(Japan) (page 111, para 108, Implementation of Section 1377 of the Omnibus Trade and Competitiveness Act of 1988) The Government of the United States should refrain from adopting the approach of exercising pressure upon trading partners by using the threat of resorting to unilateral sanctions under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Please comment on this point.

Answer:

Section 1377 provides a means of monitoring the operation and effectiveness of telecommunications trade agreements to which the United States is a party, including telecommunications services commitments in the WTO. There is little need for bilateral pressure when countries are fully abiding by their WTO commitments.

(Japan) (Page 111, Para 109, Regulations on "Dominant Carriers") a Foreign Carrier Providing International Telecommunications Services, Which Has "Market Power" in its Own Market, Is More Regulated than Other Carriers. 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. Applied According to U.s. Domestic Law, These Regulations, Which Have No Basis under the Wto Agreement, May Be Inconsistent and Should Therefore Be Revised. What Is the U.s. View on the Matter?

Answer:

These regulations are consistent with U.S. WTO commitments and there is little evidence that they have deterred foreign direct investment in the U.S. market, given the hundreds of international licenses issued over the past several years. For a greater discussion of the rationale for these safeguards, see *Foreign Participation Order*, 12 FCC Rcd 23,891.

(Japan) (page 112, para 110, Certification and licensing criteria for foreign carriers' entry into the U.S. telecommunications market) Regarding the certification and licensing criteria for foreign carriers' entry into the U.S. telecommunications market, the Government of the United States retains discretionary criteria concerning the "public interest" factors, such as "trade concerns" and "foreign policy", and a "very high risk to competition". The existence of such criteria is regarded by foreign carriers, including those from Japan, as a concern lasting into the future. The Government of Japan

considers that the criteria of "trade concerns" and "foreign policy" should be abolished as these could be invoked for refusing the issuance of a certification or license for reasons irrelevant to the telecommunications policy. Please explain the position of the Government of the United States in this regard. The Government of Japan further considers that the Government of the United States should clarify and publish some guidelines under which the criteria of a "very high risk to competition" would be invoked. Is there any plan to do so? If not, then why?

Answer:

The large amount of foreign investment in the U.S. telecommunications sector, more than any other WTO Member, demonstrates that the main intended beneficiaries of the WTO commitments--investors--have few of these theoretical qualms. Please consult the FCC's Foreign Participation Order for details on these issues.

(Japan) (page 112, para 111, Restriction of foreign investment on the licensing of radio stations) The Government of Japan abolished the restriction of foreign investment on the licensing of radio stations for the purpose of conducting telecommunications activities, and thus, has been requesting the Government of the United States to take the same action on the restriction of foreign investment stipulated in Section 310 of the Communications Act 1934. In addition, the Fourth Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy states that, "[t]he United States Government will continue a dialogue on this issue with the Government of Japan". On the other hand, however, the Report states that, "[t]here are no plans to abolish the restrictions on direct ownership of a common carrier radio license". Please explain the position of the Government of the United States with regard to these restrictions. In particular, please explain the grounds for maintaining the restrictions on direct investment, despite the fact that indirect investment itself has been fully liberalized.

Answer:

Please consult the response to the similar question on licensing from Canada, above.

(Japan) (Inter-state access charge) Regarding the inter-state access charge, the Government of Japan has been requesting the Government of the United States to establish the legal foundation for the LRIC model adopted in the U.S. Please provide information on the progress in this regard. In addition, the Government of Japan recognizes that different methods, such as the "Bill and Keep" method, are being considered. Please also explain about any progress regarding such consideration.

Answer:

The United States does not use or plan to use a LRIC-based model to determine or set inter-state access charges. Nevertheless, rates currently in effect, typically as low as 55 cents per minute, are less than one-half rates of countries such as Japan which purport to use a LRIC-based methodology.

The FCC is currently involved in a proceeding examining the possibility of replacing certain inter-carrier compensation arrangements with a "bill and keep" system. WTO Members, including Japan, are welcome to participate in this proceeding, details of which are available at http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2001/nrcc0113.html

(Norway) (Satellite services) Under Telecommunication Services, paragraphs 199-123 describe the opening of the U.S. market to direct access to the INTELSAT satellite system, including access to INMARSAT services. Norway welcomes this development which was overdue. The former U.S.

restrictions have impeded on the development of INTELSAT and INMARSAT. This has slowed down the worldwide.

Answer:

See responses below on various satellite questions

(EU) (para 108) In 1997, the Federal Communications Commission adopted two rulings to implement U.S. commitments in the Basic Telecoms Agreement. However, despite some improvements, it retained the very unclear "public interest" criteria which can be invoked to deny a licence to a foreign operator for various motives, such as "trade concerns", "foreign policy concerns" and "very high risk to competition". Can the U.S. give any assurances that the "public interest" criteria will be revoked, or at least clarified?

Answer:

The United States has no plans to revoke the public interest test or the FCC's deference to the Executive Branch in areas of national security, law enforcement, foreign policy and trade policy. It is clear that these elements have not deterred foreign investment in the United States, given that the United States has hosted more foreign investment in its telecommunications sector than any other WTO Member.

(EU) (Licensing and competition) Also foreign investors in the communications sector still face a degree of uncertainty and lengthy procedures (in particular, the uncertainty of leaving the implementation of U.S. commitments to suppress restrictions to indirect investment to FCC waivers, in the absence of any specific legislation in this regard). Could the U.S. confirm that it is willing to introduce more certainty in procedures relating to foreign investment in the U.S. communications sector?

Answer:

Please consult the response to the similar question on licensing from Canada, above. Based on the number of foreign investors in the U.S. telecommunications market, many investors and carriers do not find the procedures so uncertain as to act as a deterrent to investing in the U.S. market.

(EU) (para 112) The report notes that it took more than seven months for a European company to get approval. This is much longer than what happens in the EU for a similar case. The report does not mention in that respect that the company had to go through two procedures in parallel (those of the FCC and the DOJ) and that the second one was much quicker to assess the same issues. Do the U.S. authorities have any plans to suppress duplication and speed up the process?

Answer:

The FCC's review and DOJ review operate independently from each other, and each regulatory agency operates under different statutory obligations. There are many reasons why any company – whether U.S. or foreign – including a large European company, may require an extensive review.

(EU) (para 112) The report also does not mention that the U.S. Congress considered during the year 2000 legislation that would have severely limited the ability of foreign govt-owned companies to invest in U.S. telecommunications companies. In particular, one piece of legislation would have, if adopted, constituted a clear violation of U.S. commitments in the WTO on foreign investment and would have affected the interests of European companies. Such initiatives are affecting the climate for

foreign investment in the sector and bringing uncertainty to the procedures above-mentioned, in contradiction with the objectives of the WTO.

Answer:

In the U.S. system of government, the U.S. Congress is able to consider and debate any legislative initiative proposed by any Member of Congress. Consideration of all legislative proposals contributes to the vigor and dynamism of the U.S. democracy.

(EU) (para 115, International Internet charging arrangements) Could the U.S. please explain how it defines a “public telecommunications service”?

Answer:

For the United States, a public telecommunications service means a telecommunications service required to be offered to the public generally. Internet services do not meet this definition.

(EU) (Satellite services) The EU notes that it takes a long time for foreign operators to get an unconditional license: what does the U.S. intend to do to remedy this situation which tilts the balance in favor of US-based operators?

Answer:

FCC licenses for both U.S. and foreign operators routinely include conditions. In fact, certain conditions are required by statute to be included in each license. (See Section 309(h) of the Communications Act). We also note that the use of conditions appears to be a routine practice among other national regulatory authorities. Concerning the speed of action by regulatory authorities, the FCC has undertaken a number of initiatives to improve the time taken to process applications, regardless of whether the satellite operator is U.S. or foreign.

(EU) (Satellite services) (para 120) The ORBIT act imposes criteria on entry into the US market of Inmarsat and New Skies, in particular statutory privatization 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 US 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 company⁵ even for WTO members' territories : can the U.S. explain how this conforms with its WTO obligations on market access, Most Favored Nation (MFN) and National Treatment?

Answer:

The licensing criteria of the ORBIT Act apply both to U.S. or non-U.S. satellite systems that are the progeny of the intergovernmental satellite organizations (IGOs) – INTELSAT and Inmarsat. The purpose of the licensing criteria is to ensure that the competitive advantages formerly enjoyed by the IGOs have not been passed on to the newly privatized companies. The United States has

⁵ “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.”

previously made clear to its negotiating partners in the WTO that it not grant market access to a privatized IGO that would likely lead to anti-competitive results. In applying the licensing criteria, the ORBIT Act directs the FCC to construe the Act's provisions in a manner consistent with U.S. obligations and commitments for satellite services under the Fourth Protocol of the General Agreement on Trade in Services.

The FCC has granted New Skies full access to the U.S. market, as it has done for Intelsat LLC, -- an FCC licensee. The FCC has recently granted applications giving Inmarsat full access to the U.S. market for mobile satellite services. It should be noted that Inmarsat has and continues to provide service in the U.S. market for many years including maritime, aeronautical and international mobile satellite services.

(EU) (Satellite services) (para 122, 123) New Skies and Inmarsat are EU-based companies. According to the US commitments in the WTO, market access should not be limited for companies constituted and registered in an EU member state (thus intending to provide a cross-border service to the US) or for companies constituted in the US that European companies own or control in the sense of the GATS (thus having a commercial presence in the US). Can the US explain thus why it takes so long for those companies to get full and unconditional market access in the US? What is the rationale of requiring these companies to conduct IPOs and how does it conform to the US WTO obligations? In particular, why is there a need for a « substantial dilution of Intelsat signatories » as mentioned in paragraph 122 and how is it consistent with US WTO obligations?

Answer:

The status of New Skies and Inmarsat's access to the U.S. market is described in response to the question above. The need for privatized IGOs to conduct an IPO to dilute former signatory ownership was part of the arrangements agreed upon in privatizing the IGOs. The concept, as provided for in the ORBIT Act, is intended as one means to assure that privatized IGOs become independent of former signatories and do not receive preferential treatment as a result of their former ownership structure. The ORBIT Act additionally, however, recognizes that market conditions and business factors are considerations in the timing of an IPO and therefore gives the FCC flexibility, in carrying out this part of the Act's criteria. The FCC has exercised this flexibility by (1) determining that the Act permits it to grant full market access to privatized IGOs prior to their IPO, and (2) granting requests of both New Skies and Inmarsat to extend the period under the Act to conduct an IPO.

(EU) Following a US decision to allocate to second generation systems the frequency bands which had been identified for third generation systems by the ITU, there is a lack of availability of frequencies in the US that restricts access of 3G mobile communication systems to the US market. Could the US explain the efforts and progress it has made in ensuring future availability of frequencies for foreign 3G mobile communication systems in the US?

Answer:

The US is still in the process of developing a plan for the selection of 3G spectrum. For additional information on this process, please visit the Department of Commerce's website at "www.ntia.doc.gov/ntiahome/threeg/index.html" and the FCC's website at "www.fcc.gov/3G/".

(EU) Can the US explain how current universal service is defined and financed? In particular can it give assurances that foreign consumers are not subsidizing universal service obligations in the US?

Answer:

For a detailed explanation of the U.S. universal service regime, please review the FCC website at www.FCC.gov. All FCC Orders related to Universal Service are posted.

(EU) For digital terrestrial television, the US has mandated an exclusive transmission standard in the US (the ATSC developed in the U.S.), which prevents a technology (DVB-T) developed in Europe and being adopted in several countries around the world from entering into the US market. Can the US explain why it does not let the market choose which technology is working best?

Answer:

The United States, like all countries, mandates a national television broadcast standard because such a policy is appropriate given the unique technical and economic requirements of the broadcasting industry. For digital television, the U.S. adopted a standard that had been developed by the private sector under the auspices of a special FCC Advisory Committee established for that purpose.

The EU has established a policy that effectively mandates a supranational, EU-wide digital television standard. In particular, Directive 95/47/EC, dated 24 October 1995 ("On the use of standards for the transmission of television signals"), specifies in Article 2(c) that "All television services transmitted to viewers in the Community whether by cable, satellite or terrestrial means shall ... use a transmission system which has been standardized by a recognized European standardization body." However, the only standard recognized by a European standardization body is the DVB standard mandated by ETSI. Therefore, the result of this decree is a single standard for digital television broadcasting.

E Commerce

(Japan) (page 15, para 13, Electronic commerce) What is the United States view on the imposition of customs duties on digital products delivered through the Internet?

Answer:

The United States believes the current moratorium on such customs duties should be made binding and permanent and invites Japan to actively support this position.

(Norway) (Electronic commerce) On the subject commerce, paragraph 14 gives a short presentation of what seems to be an array of different taxation systems in different states within the United States. We will not raise the issue of international harmonization of taxation of trade, which does not belong to this forum, but would like to express interest for our U.S. colleagues to share with us their experience with the apparently wildly different systems within their own boundaries. This could shed some interesting light on the issue of when harmonization is needed and when different systems can coexist without creating distortions."

Answer:

The U.S. Congress recently extended the moratorium on Internet taxes for two years. The bill has been forwarded to the President. Congress passed the original ban on Internet taxes to prevent states and local governments from imposing new taxes that might discourage the growth of e-commerce, which still accounts for a small percent of all retail sales.

(Brazil) How does the U.S. analyze the issue of taxation in electronic commerce? Does the U.S. fully agree with the views raised in OECD documents such as, for instance, the Taxation Framework Conditions?

Answer:

The first question is not clear. There are many interested parties that analyze the issue of taxation in electronic commerce.

See above answer to Norway's question.

(Brazil) Does the US maintain the position stated in document S/C/W/81, that "software" is classified as a service under computer and related services of the W/120 under CPC 842 (software implementation services)?

Answer:

There are software services, as identified in the CPC. These generally refer to software provided on a customized basis. This does not mean that all software is a service, and we would reject any assertion that this classification applies to all software.

(Brazil) Does the U.S. consider that, addressing electronic transmissions as its similar tangible goods might have trade-distortive effects? Is it possible that electronic commerce brings negative outcomes to traditional exporters of equivalent physical products?

Answer:

The U.S. supports a liberalized trade environment for digital products, therefore we examine these issues not in the context of trade distortions, rather we explore ways that foster a liberal trade environment. On the second question, it's not clear what Brazil is asking, but in the U.S., e-commerce can bring benefits to traditional exporters of all products, be they physical or electronic.

(Brazil) The US Technology Transfer Commercialization Act of 2000 includes provisions for a federal agency to grant licenses for federally owned inventions only to licensees agreeing to manufacture substantially the license-related products within the United States (WT/TPR/S/88 § 183). Electronic Commerce is supposed to have positive effects on competition, for instance, by allowing SME's to have access to the global market and by possibly reducing the economic gap between Developed and Developing Countries since location is no longer important. In this sense, is the working requirement embodied in the condition of manufacturing substantially license-related products within the US compatible with articles 7 and 27(1) of the TRIPS Agreement? Is it possible that US legislation such as this Act hinder transfer and dissemination of technology and, thus, harm the benefits of e-commerce for the developing countries?

Answer:

This provision is not a local working requirement, thus it is entirely consistent with articles 7 and 27.1 of the TRIPS Agreement. The provision relates to situations where the United States is simply a patent owner. Consistent with the TRIPS Agreement, all patent owners have the right to conclude licensing contracts. In this provision, the United States is not conditioning the enjoyment of patent rights on a working requirement, as Brazil does in Article 68 of its patent law.

Moreover, this provision does not "hinder transfer and dissemination of technology." Nothing in this provision prevents the publication of a patent in order to disclose the technology so that others can learn of it. Indeed, the U.S. Patent and Trademark Office makes the full text and drawings of all patents granted by the United States since 1790 available on its web site without charge so that all countries may obtain access to the information.

(Brazil) The US has highlighted its regional initiatives toward liberalization in its document WT/TPR/G/88 (§44). How is the US approach in those fora such as NAFTA, FTAA and the Transatlantic Economic Partnership (TEP), on matters related to Electronic Commerce?

Answer:

E-commerce is not explicitly covered by the NAFTA. The US participates in the FTAA Joint Government-Private Sector Committee of Experts on Electronic Commerce in accordance with the Committee's mandate to increase and broaden the benefits of electronic commerce. E-commerce is not explicitly being discussed in TEP.

18. Transportation Services

Maritime Transport and Related Services

(Canada) (para 40, Maritime Transport and Related Services--Cargo preference) Para 40 notes that international cargo under the preference system accounts for 29% of international cargoes carried by U.S. flag vessels in FY 1997. Cargo preference is made up of agricultural, military, and exports of Alaskan crude oil. Please provide a breakdown of the 29% between agricultural, military, and crude oil. Also, if possible, please provide more recent figures. Are agricultural and military cargoes diminishing in recent years?

Answer:

Based on preliminary trade data for CY 2000, preference cargoes accounted for 44 percent of the total U.S.-flag share, or 11.9 million tons. Of this amount, agricultural commodities, including relief aid and government food assistance, accounted for about 50 percent of the total U.S.-flag carriage of preference cargoes, followed by Alaskan crude oil, at about 10 percent, with military cargoes accounting for about 5 percent.

(Canada) (para 42, Maritime Transport and Related Services--Maritime Security Program) According to para 42, subsidy outlays for the Maritime Security Program (MSP) were US\$38 million in 1997, while funding in 1999 was US\$94. Please explain the rationale for this sharp increase from 1997 to 1999. Para 42 also states that funding of up to US\$100 million is authorized through 2005 for MSP. Does this mean US\$100 million will be provided on an annual basis until 2005; or does this mean a total of US\$100 million is being provided over the six year period (from 2000-2005 inclusive)? If it is the latter, what is reason for the decrease in subsidy outlays?

Answer:

The Maritime Security Act of 1996 provides that funding may not exceed US\$100million per year. Funding is subject to annual appropriation limits set by the Congress each year.

(Hong Kong) (page 96, para.43, Maritime Transport, Jones Act) We are concerned that the Jones Act limits cargo and domestic passenger service between ports in the U.S. to ships that are registered under the U.S. flag, U.S. crewed, and built in the US. That poses a major barrier for market access to the U.S. market. Could the U.S. explain whether the conditions which created the need for such protection still prevail; and if so, provide the details of such conditions?

Answer:

There are about forty maritime nations that have cabotage regimes that reserve the domestic trade to national-flag vessels. There has been no change in the Administration's support for U.S. cabotage provisions as they apply to the movement of passengers and cargo in the U.S. domestic trades.

(Switzerland) (Maritime Transport and Related Services-- GATS 2000 negotiations) What are the objectives of the United States in the current GATS 2000 negotiations on maritime transport services?

Answer:

We would like to see verifiable liberalization of maritime transport services in the GATS services negotiations.

(Japan) (page 94, para 36, Maritime transport and related service--Retaliatory Action Taken by the FMC) Japan is of the view that before resuming the Negotiations on Maritime Transport, any retaliatory action taken by the FMC can become consistent with the DSU. Please provide the U.S. view on this point.

Answer:

Please clarify the question.

(Japan) (page 94, para 36, Maritime transport and related service--Retaliatory Action Taken by the FMC) Regarding FMC sanctions in 1997 that imposed fees against Japanese ocean carriers on the grounds of allegations with regard to Japan port practices, Japan would like to stress again its view that the sanctions violate the MFN and national treatment clause of the Treaty of Friendship, Commerce and Navigation between the U.S. and Japan. The sanctions were suspended in 1997, and withdrawn in May 1999 as a result of bilateral talks. The description in this paragraph is not appropriate, because it can be construed as ending. Despite the situation of the port transport sector in Japan remarkably improved, there still remains the action by the revised order dated 9 August 2001 that requires the United States, Japan and third countries carriers to file reports. In this regard, Japan would like to point out that the revised order imposes submission of documents beyond the carriers responsibilities such as copies of any cabinet order, ministerial ordinance or notification implementing or interpreting the revised Port Transportation Business Law. We would like to seek the U.S. views on this matter.*

** The improved situation is as follows;*

- As for the previous consultation system its procedure has been facilitated significantly since shipping companies and port transporters reached an agreement in October 1997.

- *Japan amended the Port Transportation Business Law and abolished the economic needs test requirement at the major 12 ports (Chiba, Tokyo, Yokohama, Kawasaki, Shimizu, Nagoya, Yokkaichi, Osaka, Kobe, Shimonoseki, Kitakyushu and Hakata) last year, as a result there actually appeared to be new participation in the port transport business.*

- *Port terminal services have steadily progressed toward 24-hour/day operation.*

Answer:

In light of the FMC's ongoing orders and expressions of continuing concern made in its proceeding, we do not understand what the GOJ refers to as the "description in this paragraph [being] inappropriate because it can be construed as ending." With regard to the FMC's May 28, 1999 decision, the FMC expressed disappointment with the pace and degree of proposed reform in Japan's port transportation sector, compared to the 1997 commitments of the GOJ to market opening and increased accountability. The FMC nevertheless withdrew the final rule, including the sanctions, when it concluded that its record regarding the effects of GOJ laws and regulations on the port transportation sector had or was likely to become stale and needed to be refreshed in order "to continue its review of this matter and to update its record in this proceeding." Port Restrictions and Requirements in the United States/Japan Trade, 28 S.R.R. 822 (FMC, 1999), 64 FR 30245 (June 7, 1999). U. S. law authorizes the Commission to "require, by order, any . . . carrier to file . . . a report . . . [and] documentary material" as considered necessary by the Commission. 46 U.S.C. app. 876(1)(f). The FMC's semiannual reporting requirement imposed in May 1999 on Japanese and United States carriers, was entered pursuant to this authority, and was replaced by the FMC's August 9, 2001 order to the same carriers to file information and documents relating to the changes in laws and regulations of the GOJ. The FMC concluded that "it is necessary to gather further information and to update the record in this proceeding" in light of recent legislative and ministerial enactments of the GOJ. Responding on the separate issue raised in the Japanese comment about an "improved situation" in the port transport system, we note that port operations in Japan continue to be controlled by the stevedoring cartel, the Japan Harbor Transport Association (JHTA), with support from the Japanese government. The new law that took effect on November 1, 2000 imposes additional government controls on users of stevedoring services. A sampling of the practices that continue to impair access and competition at Japanese ports are "prior consultation," enforced by the JHTA, which limits what carriers can and cannot do on the docks; restrictive government stevedoring permission requirements, administered by MLIT; and mandatory manning and equipment levels at Japanese ports enforced by MLIT. With respect to the latter practice, mandatory manning levels have, in fact, been raised under the new law.

(Japan) (page 95, para 40, Maritime transport and related service--Cargo preference measure) At the last review, the United States replied take note to the comment by Japan regarding the abolishment of the Cargo Preference Measures and the disclosure of information concerning cargoes subject to cargo preference requirements and those actually carried on US-flag vessels. Please give details on progress of the U.S. consideration on the abolishment of the above Measures, as well as on the disclosure of the information concerned.

Answer:

Please clarify this question.

(Japan) (pages 95-6, paras 41-2, Maritime transport and related service--MSP) There are 3 classes of shipping company: rusts who own U.S.-flag vessels; .S.-owned ship-management companies who charter those vessels; and foreign-owned carriers such as APL, Maersk-Sea-Land, who time-charter those vessels. Which of these 3 classes can directly benefit from MSP subsidies? In this regard, please indicate to which class the following words used in this report belong.

- 1) *U.S. shipping companies on 5th line in paragraph 36, p.94*
- 2) *U.S. companies on 3rd line in paragraph 37, p.94*
- 3) *U.S.-flag vessel operators on 2nd line in paragraph 42, p.96*

Answer:

Please clarify this question.

(Japan) (page 96, paras 42, Maritime transport and related service–MSP) Please provide the results so far of vessels commandeered under the MSP scheme. It appears that the MSP has the same effect as direct support measures for maritime industries, since despite aiming at national securities, subsidies are supplied for the time corresponding to ordinal commercial operation and consequently distort free and fair competition. Please provide the U.S. view on this point.

Answer:

Please clarify this question.

(Japan) (page 96, paras 44, Maritime transport and related service--Foreign vessels for cruises) The paragraph mentions that, recently, a number of legislative proposals have been made for a relaxation of restrictions on the use of foreign vessels for cruises in the United States Please explain the prospect of enacting such legislation.

Answer:

We do not know what the prospects are for enacting these legislative proposals.

(Japan) (page 96, paras 45, Maritime transport and related service--Longshore work by crew) Please provide:

- 1) the list of countries permitted to carry out longshore work by the crews of vessels registered in and owned by the nationals of those some countries on the basis of reciprocity;*
- 2) the names of organization referred to in the wording the authorities in the first line.*

Answer:

See attached list of countries. For additional information see Federal Register Notice: June 13,1996 (Volume 61, Number 115), pages 29941-29949.

Countries that do not permit longshore work by crewmembers aboard U.S-flag vessels:

Algeria, Angola, Argentina, Australia, Bahamas, Bangladesh, Belgium, Belize, Benin, Bermuda, Brazil, Burma, Cameroon, Canada, Cape Verde, China, Colombia, Comoros, Costa Rica, Cote d'Ivoire, Croatia, Cyprus Djibouti, Dominica, Dominican Republic, Ecuador , Egypt, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hong Kong, Iceland , India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Korea, Kuwait, Liberia, Lithuania, Madagascar, Malaysia, Maldive Islands, Malta, Mauritania, Mauritius, Mexico, Micronesia, Morocco, Mozambique, Namibia, Nauru, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal (including Azores), Qatar, Romania, St. Lucia, St. Vincent & the

Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sweden, Taiwan, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Uruguay, Vanuatu, Venezuela, Western Samoa, Yemen, Zaire.

(EU) (para 40, Maritime Transports And Related Services--International shipping services) Could the U.S. please give updated figures concerning the value/volume of the international cargo carried out under each of the cargo preference instruments mentioned?

Answer:

See response to Canadian question, above. Updated information is not available at this time. The Maritime Administration's web site will have updates (www.marad.gov)

(EU) (para 43-44, Maritime Transports And Related Services--International shipping services) No foreign-built vessel can be documented and registered for dredging, towing or salvaging in the U.S. despite the fact that part of the U.S. fleet needs renewing and many U.S. ports are in need of dredging. Could the U.S. confirm whether there are any initiatives to relax these restrictions?

Answer:

There are no such initiatives that we are aware of.

(EU) (para 48 Maritime Transports And Related Services--International shipping services) Progress on the U.S. Administration's efforts to obtain implementing legislation for the OECD Shipbuilding Agreement is unclear. Could the U.S. give an indication of how close it is to achieving this?

Answer:

At present, no guidance has been received from the new U.S. Administration on the subject of shipbuilding because key members of the new Administration have not yet been appointed at several agencies, and many officials who have been appointed have only recently assumed their new responsibilities. In recent months, we have continued our consultations with Members of Congress and representatives of the U.S. shipbuilding industry. In those consultations we have received no indication that there is sufficient support in the industry or Congress for the near-term implementation of the OECD Shipbuilding Agreement by the United States. Our consultations indicate that, while some Members of Congress and some segments of the U.S. industry remain interested in U.S. ratification of the Agreement, there remains significant opposition to U.S. participation in the Agreement. We will continue to inform the OECD Council Working Party on Shipbuilding of any further developments concerning the prospects for U.S. ratification.

(Norway) According to available information, the US controls the fourth largest fleet in the world (01.01.2001: 855 vessels, 41.6 mill. dwt). It would be of interest to have more information on the size of the maritime sector in the US and the economic activity which this fleet create in terms of turn over and employment on board and ashore.

Answer:

We are not aware of the information referred to. Information on the U.S.-flag fleet is available from the Maritime Administration's web site: www.marad.dot.gov.

(Norway) In paragraph 37 it is stated that "virtually all U.S. international ocean-borne trade is carried by foreign flag vessels". Does this imply that the impact of the US cargo preference schemes as described in paragraph 40, and the subsidy scheme (amounting to USD 94 mill in 1999) as

described in paragraph 42 is negligible? Would it be possible to give figures on the share of U.S. international ocean-borne trade, which is carried by US owned vessels under foreign flags ?

Answer:

We would agree that the amount of preference cargoes carried by U.S-flag vessels is negligible. Concerning the question of the amount of subsidy provided to operators under the MSP program, there is considerable opinion that the amount is barely sufficient to provide adequate marine transportation assets in time of war or national emergency. With respect to participation of U.S-owned vessels in U.S. international trades, this information is not collected.

(Norway) As regards the Ocean Shipping Reform Act (OSRA 1998) described in paragraph 38, the Federal Maritime Commission (FMC) is about to finish an "Impact Study Report" covering the two first years of this act. Finalization and presentation of the findings of the study has, however, been delayed, and will probably take place at a later stage. Could the US give an overview of the most significant findings of the report, and indicate whether any adjustments of the US regulatory regime covering the container liner industry can be expected?

Answer:

The FMC has announced that the report was released to the public on September 26, 2001; please check the FMC website: www.fmc.gov.

(Norway) With reference to paragraph 40, Norway and other countries have previously addressed the reservation of exports of Alaskan crude oil to US flagged vessels in the WTO context. We maintain the position that this reservation is not in the conformity with the standstill clause contained in paragraph 7 in the Decision on negotiations on maritime transport services annexed to the GATS agreement. We would be interested to have figures on the volumes of this trade in terms of annual export volume and number of shipments.

Answer:

As of September 21, 2001, there have been no export shipments of Alaskan crude oil since April of last year. For CY 2000, export shipments were approximately 1.5 million tons. The volume of shipments per vessel have ranged from about 100,000 to 180,000 tons.

(Norway) To the description of the Jones Act can be commented that a maritime bill is proceeding in Congress that would, if enacted, enhance US cabotage laws relating to cable laying and vessel escort and towing operations. Extending the scope of the Jones Act would be regrettable as seen from a Norwegian point of view, both as a matter of principle and because this particular bill can hurt Norwegian interests in the US. We would be happy to be informed on the position of the administration on these proposals which we by the way question whether are in accordance with the standstill commitment contained in the Decision regarding maritime transport services made by the Council for Trade in Services on 28 June 1996.

Answer:

The legislative bill in question would extend certain cable laying activities in U.S. waters to U.S.-flag vessels. These activities are not related to cabotage. The towing and escort provisions were enacted into law last year under 46 App. U.S.C., SEC.119. The legislative proposal for cable laying activities is contained in a House of Representative's bill (HR 8421). The Administration has made no comment on this latter proposal.

(Australia -- maritime) US laws governing coastal shipping, the 1920 Merchant Marine Act and the 1885 Passenger Services Act, effectively preclude foreign involvement in the US maritime sector. How does the US intend to liberalize the unusually restrictive laws on the provision of maritime services?

[Answer to be supplied]

Air Transport Services

(Switzerland) (GATS Air Transport Annex) Would the United States support a clarification by the Council for Trade in Services of the effective scope of the GATS Air Transport Services in the context of the current review of this Annex? What is the United States' view on the possible extension of the coverage of the GATS Air Transport Annex?

Answer:

The United States believes that a Council clarification of the effective scope of the Annex is unnecessary. The meaning of the Annex can be understood by reading its terms and definitions, and by understanding that the intent of the drafters was not to duplicate or disrupt the longstanding bilateral air transport services agreements on which the sector has relied for over half a century.

(Hong Kong) (para 57) We note that the U.S. maintains MFN exemptions with regard to the selling and marketing of air transportation services as well as the operation and regulation of computer reservation system (CRS). Would the U.S. withdraw its exemptions upon expiry of 10 years in accordance with the relevant GATS provisions?

Answer:

The GATS does not contain an obligation to withdraw exemption at the end of ten years' time. Moreover, the conditions creating the need for the exemption still exist.

(EU) (para 52, Recent developments) It is stated in the report that, by including beyond rights (or the "fifth freedom"), the Open Skies agreements have "greatly enhanced" market access for U.S. carriers and their foreign counterparts in the geographic areas covered. How many foreign carriers are currently taking advantage of their rights under such agreements to fly fifth freedom flights in between the U.S. and other Open Skies countries, which countries are these airlines from and which routes do they operate?

Answer:

This question suggests a misunderstanding of the Fifth Freedom provisions of open-skies agreements; open skies agreements afford far greater Fifth Freedom rights than the question implies. The open-skies rights to serve third countries are granted, regardless of whether or not those third countries also are open-skies partners of either of the first two. Moreover, the rights can be exercised via cooperative services arrangements like code sharing. The benefitting carrier need not fly the routes itself. The United States does not require the filing of carriers' routings, which change at airline managers' discretion, and the United States does not otherwise compile this information.

(EU) (para 53, Recent developments) In the context of the "multilateral" Open Skies agreement, the U.S. has sought to maintain a tight control on foreign investments by U.S. carriers - why is it not considered beneficial or appropriate for U.S. companies to make international investments in the aviation sector in the same way that they do in other industries?

Answer:

There is historical basis for concern about the utilization of aviation "flags-of-convenience." The United States imposes the least economic regulation on its flag carriers of any country in the world, but imposes probably the most stringent safety, environmental, and consumer-protection rules, in most cases substantially exceeding the ICAO benchmark standards. While the original four partners in the multilateral agreement present no concern in this regard, the agreement is intended to be available for ready accession by other states. The agreement should not become a means by which an air carrier actually owned or controlled by U.S. interests serves the United States under a foreign flag, thereby evading U.S. operating standards.

(EU) (para 53, Recent developments) Under what exact circumstances would the U.S. Government make use of the provision in the "multilateral" Open Skies agreement that allows it to cancel the traffic rights of an airline based in one of the parties, but controlled by American nationals?

Answer:

Please see the preceding answer.

(EU) (para 56, Recent developments) Given that in several EU/U.S. transatlantic markets, the market share of carriers, in particular U.S. carriers, from outside the principle alliance appears to have fallen considerably, is there evidence to show that the combination of an Open Skies agreement and anti-trust immunity for an alliance maintains enough choice in those markets for time sensitive passengers?

Answer:

In any given market, time-sensitive passengers have as much choice as their number and affluence command in a market economy. In a mature, deregulated, open-skies market, actual and potential competitors apply continuous pressure to this effect.

(EU) (para 57, Further liberalization of air transport services) Are there any plans to bring air transport into the NAFTA agreement and thereby adopt a more liberal regime on a regional basis?

Answer:

No.

(EU) (para 57, Further liberalization of air transport services) There appears to be little envisaged by the U.S. in the way of further liberalization of air transport services. Given the general benefits of liberalization and increased competition in all service industries, in particular for consumers, does the U.S. see any scope at all for further liberalizing measures providing for market access by foreign carriers into the U.S. market or relaxation of foreign investment rules?

Answer:

The United States foresees substantial continuing liberalization of air transport services under reciprocal aviation agreements, including bilateral, plurilateral, regional, and multilateral agreements among committed countries.

(EU) (para 62, Conditions affecting foreign competition, Foreign ownership and cabotage) The U.S. rules on "wet" leasing prevent any lease of non-U.S. registered aircraft by U.S. carriers. No Community-registered aircraft with Community flight crew can thus be leased to U.S. companies. Does the U.S. Administration intend to eliminate this restriction as a result of further GATS negotiations?

Answer:

Wet leasing, like other exercises of traffic rights, is excluded from the GATS by the Annex on Air Transport Services. Excluded services are not negotiable under GATS.

(EU) (para 68, Conditions affecting foreign competition, Airport and other services) There is concern on the FAA re-authorization bill (AIR-21) of April 2000, which directs the Administrator to establish an aircraft repair and maintenance advisory panel, and also directs the Secretary of Transportation to request information from foreign air carriers in order to assess balance of trade issues. How is the U.S. Administration going to ensure that this bill does not conflict with the GATS-specific commitments undertaken by the U.S. regarding aircraft repair and maintenance services?

Answer:

The work of the Aircraft Repair and Maintenance Advisory Committee is ongoing. Carrying out this legislative mandate need not compromise U.S. specific commitments under GATS.

(Brazil – air service) para. 58. In the context of the review of the GATS Annex on Air Transport Services there are U.S. statements regarding the opportunity of adding new services under the coverage of the GATS. In the view of the U.S., which are the services that could/would be part of this coverage, since document S/C/M/50 do not clarify this point.

Answer:

During the period of the meeting reported in S/C/M/50 and the preparation of the TPR report, the Air Annex review was at a relatively early stage. At that time, it would have been premature to rule out any possible changes.

Now, however, the United States has concluded that there should not be any expansion of GATS coverage of air transport or related services. The U.S. views are set forth in more detail in its paper, S/C/W/198, October 02, 2001. Neither the Secretariat papers distributed in August nor any member contribution has presented any substantive justification for further application of the Agreement to air transport traffic rights or to related services.

(Brazil – air services) para. 66. Could more information be provided on the Federal Aviation Administration AIR-21, adopted in April 2000, mainly regarding questions as aircraft repair and maintenance advisory panel and request of information to assess balance of trade issues vis-à-vis the U.S. commitments on aircraft repair and maintenance services?

Answer:

The work of the Aircraft Repair and Maintenance Advisory Committee is ongoing. Carrying out this legislative mandate need not compromise U.S. specific commitments under GATS.

19 Services—general and Professional**General Services Issues**

(EU) (para, 64, 66) To what extent do the bilateral FTA negotiations with Chile and Singapore address trade in services? What are the U.S. objectives?

Answer:

The United States seeks a comprehensive arrangement for trade in services with both Chile and Singapore in the context of negotiations of free trade arrangements with both countries. In both cases, it has been decided to use a "negative list" approach to the negotiations.

(Switzerland) Do the United States intend to submit further negotiating proposal in the services sector? If this is the case, in which sectors?

Answer:

The United States does not currently have plans to submit negotiating proposals for other service sectors or topics. Nevertheless, we reserve the right to do so.

(EU) (para 74) What are the services aspects of the bilateral Trade Agreements with Jordan, Vietnam and Laos?

Answer:

The Jordan FTA includes a comprehensive approach to services liberalization. The chapter addresses all modes of supply and includes a broad sectoral coverage.

The U.S.-Vietnam Bilateral Trade Agreement (BTA) includes provisions pertaining to trade in services. Vietnam has committed to uphold WTO rules – such as MFN, national treatment and disciplines on domestic regulations. In addition, Vietnam has agreed to allow U.S. companies and individuals to in markets in a wide range of services sectors. Most sector-specific commitments are phased-in over three to five years.

The U.S.-Laos BTA includes provisions pertaining to trade in services. Laos has made market access and national treatment commitments in a significant range of services sectors.

(EU) Are there any measures or programs specifically designed to support U.S. services exports, or is information available to what extent general export measures benefit services exports?

Answer:

There are no particular U.S. export assistance programs that specifically focus on U.S. services exports. Export-Import Bank and OPIC assistance are project-based and, if a project in an emerging/developing market involves services, it would receive assistance as would any other project.

(EU) (para 35, Liberalization of Services) Could the U.S. please provide more information on the liberalization of services they have undertaken beyond U.S. commitments under the GATS?

Answer:

The United States is currently assessing liberalization undertaken since previous GATS negotiations and will be prepared to provide such information, as appropriate, in the future

(EU) (para 29, Balance of Payments—trade in services) With regard to Table A-I.5, would it be possible to have a breakdown of Business, professional, and technical services?

Answer:

Data that provide a breakdown of business, professional, and technical services for 2000 is not currently available. The annual article on U.S. international services, which covers both cross-border trade and sales through affiliates, will be published in the November 2001 Survey.

(EU) (para 31-33 Balance of Payments—trade in services) Could the U.S. please provide some more complete analysis on the development of their trade through commercial presence, in particular on the main sectors on the import side?

Answer:

In 1998 (the most recent year applicable data are available), sales to U.S. customers by majority-owned affiliates of foreign companies in the United States (U.S. imports of affiliate services) totaled \$255 billion. Of this, financial services (except depository institutions) and insurance accounted for 31%, information services (e.g.; publishing, motion pictures and sound recordings, and broadcasting and telecommunications) 17%, manufacturing services 10%, transportation and warehousing services 6%, real estate and rental and leasing services 6%, professional, scientific, and technical services 6%, and utilities 5%.

(EU) (Construction and other services) As a general remark, the EU would like to express its regrets that the report could not include the sub-sectors of construction, engineering and computer and management consulting services, which account for large shares of the U.S. trade in services, as indicated by table AI-5.

Answer:

This is not a question for the United States.

(Bangladesh) (Article IV of GATS) With the objective of enhancing the participation of developing countries in global trade in services, Article IV of the GATS spells out specific commitments for developed Member states in three areas: (a) strengthening domestic services capacity of developing countries through providing access to technology; (b) improving access to distribution channels and information networks; and (c) liberalization of market access in sectors and modes of supply of export interest to developing countries. The above Article further lays down that special priority shall be given to LDC Members in the implementation of the above. Could the U.S. delegation please throw some light on the implementation status of Article IV of GATS by the US, particularly the provisions of movement of natural persons?

Answer:

Pursuant to GATS Article IV, WTO Members should facilitate increasing participation of developing country WTO Members in world trade through negotiated specific commitments in three areas: (a) strengthening of developing country Members' domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis; (b) improvement of their access to distribution channels and information networks; and (c) liberalization of market access in sectors and modes of supply of export interest to them. Article IV further states that special priority shall be given to least-developed country Members in the implementation of the above.

The United States has welcomed statements by developing and least-developed country Members of their export interests in the negotiations, including specific negotiating proposals from some of these countries. The United States looks forward to further specific statements of objectives in the negotiations. The United States also believes developing and least-developed countries have benefitted from their GATS commitments in areas such as telecommunications, financial services, distribution, and other infrastructural services, which have enabled these countries to improve their access to global distribution channels and information networks, to the benefit of their exporters and business and individual consumers.

U.S. commitments in GATS mode 4 have provided concrete benefits to developing countries, the nationals of which are among the top entrants under the committed categories.

Professional Services

(EU, Canada) (Para 129, Selected Professional Services) The horizontal commitments on mode 4 are only part of the existing temporary entry picture. Please elaborate briefly on the existing U.S. measures in immigration laws, regulations, procedures or programs, not bound in the GATS schedule, that facilitate the temporary entry and stay for certain types of foreign workers.

Answer:

The commitments also include temporary admission for "Fashion Models and Specialty Occupations" who perform their services for a specific employer in the United States. The original paragraph appears to omit U.S. admission commitments for "Fashion Models and Specialty Occupations." Generally, professional services may be performed by the Intra-company Transferee Specialist or the Specialty Occupation alien, if these services are performed in a manner that complies with U.S. law.

(EU, Canada) (Para 129, Selected Professional Services) In para 129, reference is made only to the category of intra- corporate transferees, including specialists, some of who could be licensed professionals. Please describe the other horizontal commitment and any existing measures not in the GATS on specialty occupations, which could also include Certain Professionals.

Answer:

The regulations of the U.S. Immigration and Naturalization Services (INS) controlling specialty occupations under the H-1B program require a U.S. employer. The INS regulations define at 8 CFR 214.2(h)(2)(ii) the term "United States employer." United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which: (1) engages a person to work within the United States; (2) has an employer- employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and (3) has an Internal Revenue Service Tax

identification number. Additionally, the INS regulations provide that in certain circumstances agents may be permissible, provided they meet the definition of a U.S. employer.

(EU, Canada) (Para 129, Selected Professional Services) According to para 129, "in practice, foreign professional service suppliers may only enter the United States to perform a professional service if employed by a company that is either established in the United States or affiliated to one such company." It appears that this statement refers only to intra-corporate transferees. Please confirm that certain professionals under the specialty occupations category (i.e., professionals who are independent or on contract) may also qualify for entry to the U.S. to perform a professional service, subject to meeting other immigration requirements.

Answer:

See preceding answer.

(EU, Canada) (Para 129, Selected Professional Services) The commitment on specialty occupations is limited by a quota of 65,000 persons annually; however, several years ago, Congress authorized annual increases over several years. Please provide details on that, and if possible, recent statistics on the number and type of entrants under the specialty occupation category.

Answer:

In 1998 and 2000, the United States amended its immigration law to increase the number of H1-B visas for specialty occupations. The current annual limit of 195,000 is effective for three years beginning FY2001. In addition to increasing the number of visas available, the law also exempts certain H-1B workers from the numerical limit. Specifically, the law exempts workers employed by colleges, universities, their affiliated non-profits, and other non-profit and government research organizations. On a related matter, U.S. immigration law was also amended in November 1999 to create a new nonimmigrant visa classification (H-1C) for up to 500 registered nurses per year who will work in facilities located in medically underserved areas. We are checking the relevant statistics.

(Hong Kong) (pages 115-116, paras 125 - 129, Professional Services--Harmonization of Regulations among States) The absence of uniform regulatory regimes and requirements among States constitutes barriers to the entry of foreign services suppliers. We would like to know if the U.S. has any plan to ensure harmonization of regulations among States in this respect.

Answer:

Divergent state requirements and practices do not constitute barriers to access, and the U.S. system does not discriminate against foreign service suppliers. Moreover, there is a great deal of commonality in state requirements for licensing. National associations of regulatory officials and professional societies have developed model codes or model rules for regulation. They are engaged in continuing efforts to obtain state legislation which conforms to the codes. This provides impetus for harmonization. As stated above, there already is a great deal of commonality in state regulation of the professions.

(Japan) (page 117, paras 134-135, Professional services--Accounting services regulation)

--(i) We understand that the SEC intends to accept financial statements from foreign private issuers which are already prepared by using the International Accounting Standards for the purpose of raising funds in the United States. Please confirm our understanding.

--(ii) *What level of reconciliation would the SEC require when permitting the use of IAS in the United States?*

--(iii) *What is the schedule for accepting IAS in the United States?*

Answer:

The SEC already allows foreign issuers to use International Accounting Standards Committee (IASC) standards, subject to reconciliation to U.S. Generally Accepted Accounting Principles (GAAP). In fact, all issuers seeking to list their public shares on U.S. markets must prepare their financial statements either: 1) in accordance with U.S. GAAP; or 2) in accordance with a comprehensive set of national accounting standards or IASC standards, subject to reconciliation to U.S. GAAP. Thus, U.S. and foreign issuers are subject to comparable requirements.

(Japan) (page 118, paras 141-2, Acceptance of Foreign Legal Consultants (FLC)) (i) It is stated in the para.141 that in jurisdictions require in-state offices for licensing, and 16 jurisdictions maintain in-state or U.S. residency requirements, please specify those states which maintain such regulations.

Answer:

As specified in the U.S. schedule of commitments: "An in-state office must be maintained for licensure in: District of Columbia, Indiana (or an affiliate with an office and with other attorneys in the state), Michigan, Minnesota (or maintain individual residency in Minnesota), Mississippi, New Jersey, Ohio, South Dakota and Tennessee." "In-state or U.S. residency is required for licensure in: Hawaii, Iowa, Kansas, Massachusetts, Michigan, Minnesota (or maintain an office in Minnesota), Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, Wyoming."

(Japan) (ii) In the United States, 23 States, as well as the District of Columbia, have regulations regarding foreign legal consultants (FLC). The period of practicing experience which is required to be eligible as a FLC under these regulations varies from 3 to 5 years among those States and the District. For the purpose of promoting international business, all States should accept foreign qualified lawyers as FLC and should reduce the period of the practicing experience requirement down to three years. It would be appreciated if the Government of the United States would explain the results of its consultations with the American Bar Association regarding the acceptance of foreign qualified lawyers.

Answer:

The Office of the U.S. Trade Representative consults periodically with representatives of the American Bar Association. It is the official policy of the American Bar Association (a 400,000+-member body) that states should adopt the ABA model rule for the licensing of legal consultants. From the ABA perspective, it seems irrelevant to emphasize which states do not have FLC statutes. Those that do not yet provide for FLC licensure don't do so because there is no demand for such licensure. The fact is that, with very narrow exceptions, foreign lawyers can obtain licensed FLC status in the principal commercial U.S. states where they wish to practice.

(EU) (para 41, Regulation of Professions at the State Level) The Report states that the U.S. Federal system reserves the governance of professions to individual U.S. states. Does this principle not also apply to other services sectors (see U.S. GATS schedules)? Which measures in the sense of Article I para 3 of the GATS will the U.S. take for ongoing GATS negotiations to ensure the observance and improvement of U.S. obligations and commitments by regional and local governments and authorities and non-governmental bodies within U.S. territory?

Answer:

In addition to professional services, insurance is regulated by the states. Some services are regulated by both the states and the federal government (e.g., financial services, telecommunications). The second part of the question is unclear, but if it means what is being done to make state regulations more uniform, we can report that the major professions, such as accounting, law, architecture and engineering have developed model codes or model rules, which are used to by state governments as guidance in drafting regulations with respect to the professions. Thus, there is much commonality in state regulation of the professions.

(EU) (Regulation of Professions at the State Level) The Report discusses at length the problem of regulation of professions at the state level which severely impacts on the ability of foreign (and domestic) professionals to supply their services across the US. What does the U.S. envisage to remedy this?

Insurance

(Japan) (pages 106-7, para 92-97, Different insurance regulatory regimes in States) Since regimes of insurance supervision and regulation differ from one State to another, in order for insurance companies to engage in inter-state business, they need to apply for a license in each State, as well as to comply with supervisory regulations set by each State authorities. While Japan takes note of the NAIC effort to achieve uniformity among States regulatory regimes, it requests further deregulation regarding inter-state insurance business. What are the U.S. views on this point?

Answer:

The U.S. States are planning to develop further uniformity for regulation of certain insurance sectors in an effort to respond to the needs of the U.S. market. Please see the NAIC website, www.naic.org, for more information.

(e) (Japan) Discriminatory measures against foreign insurers. Japan requests the elimination of discriminatory regulations as mentioned below. What are the U.S. views on these points?

(i) Requirements for foreign insurers to trust funds or to submit a letter of credit issued by primary insurers in reinsurance business. (p.108, para.100)

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 L/C by the original underwriter. Japan requests the elimination of this system, since it discriminates against foreign insurers.

(ii) Compulsory trust of assets for foreign insurers (p.108, para.99)

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 investment with flexibility, and they thus may miss investment opportunities, Japan requests the elimination of this system, since it discriminates against foreign insurers.

(iii) Tax on cross-border insurance transaction (p.110, para.102)

When a foreign insurer undertakes to cover risks within the United States, it is liable to a federal tax whose rate is 4% of premiums for non-life insurance and 1% of premiums for life insurance and reinsurance. Japan requests the elimination of this system, since it discriminates against foreign insurers.

(iv) Citizenship requirement for foreign insurance companies (p.108, paras.88-89) 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.

[Answer to be supplied]

(Japan) (p.47, para.83, Standards required by private insurance companies) Japan would like to know what kinds of standards are required by private insurance companies to qualify for product liability and health insurance, as well as to what kind of goods such standards apply? We would also like to know upon which laws, etc., these requirements are based.

Answer:

The standards or conditions for product liability insurance would likely depend upon the nature of the product involved.

(Canada) (para 133, Professional Services) According to para 133, a set of joint recommendations by the NASBA and the AICPA, sought to reduce some of the most significant barriers linked with the sector's decentralized regulatory system. The two bodies recommended, in particular, that licensed CPAs in public practice be authorized to operate across State lines, in person or electronically, to service clients outside their State of licensure. This is just one example of measures that could be taken to increase inter-state mobility to eliminate the necessity of licencing in every state in many professions. Have federal and state governments announced their intention to implement these recommendations? If so, how many state governments have announced their intention to enact legislation to implement the recommendations? Has the federal government drafted, or tabled a new Uniform Accountancy Act? If no, when does the federal government anticipate drafting and tabling this legislation?

(Canada) Does the U.S. Government plan to play a role in state regulatory reform not only in the accounting profession but in other professions as well?

Answer: (For both questions)

Since 1998, the Uniform Accountancy Act, which is published by the AICPA and NASBA has included the provision referenced in the question. The AICPA and NASBA work to promote the UAA provisions. In the past three years, several states have enacted legislation similar to the UAA provision and many others are considering the measure. In the U.S. professional licensing is a state, not federal, function.

(Canada) (para. 134, Professional Services) According to para 134, the Securities and Exchange Commission (SEC) launched an enquiry in 1999 regarding the possible acceptance of financial statements of foreign private issuers that are prepared using the standards promulgated by the International Accounting Standards Committee ("IASC"). We understand that the SEC issued a concept release entitled "International Accounting Standards" on 16 February 2000. This release sought comments on the conditions under which the SEC should accept financial statements of foreign

private issuers that are prepared using the IASC standards. Has the SEC issued a further release or proposed rules on this issue? If no, do they intend to?

Answer:

In February 2000, the SEC issued a concept release seeking public comment on questions relating to accounting, auditing and regulatory issues that impact the effectiveness of financial reporting in a global environment. The SEC received over 90 comment letters that reflect a wide variety of views. European commenters, including European issuers and the European Commission (EC), favored reducing or eliminating reconciliation requirements. The EC, however, also recognized that "the adoption of [IASC standards] will improve the functioning of the securities markets only when they are properly and rigorously enforced." It further acknowledged that a comprehensive infrastructure is essential for high quality, global accounting standards to be interpreted, applied, and enforced consistently throughout the world.

Most US commenters urged that present reconciliation requirements be retained. A number of prominent U.S. based multinational companies, as well as the Business Roundtable, the Securities Industry Association, and several industry and professional organizations noted that IASC standards are not yet of sufficient quality, are still too general, and are not yet being consistently applied, audited and enforced. These commenters recognized that the strength and liquidity of the U.S. capital markets are due in no small part to the high quality of investor information provided in the United States. The SEC is currently evaluating alternatives for action.

(Canada) (para. 143, Professional Services) Para 143 states that foreign law firms can establish subsidiaries in the United States. Are these law firms restricted to only providing advice on foreign and international legal issues or, if these law firms hire U.S. qualified lawyers, can these law firms also advise on U.S. law issues? Please explain.

Answer:

Foreign law firms can provide advice on U.S. law if their lawyers are licensed in the United States.

(EU) (para. 47, Asia Pacific Economic Partnership (APEC)) Could the Government inform what will be the impact of the APEC work program on trade in services on GATS negotiations?

Answer:

From the U.S. perspective, the APEC work program on trade in services, through the Menu of Options, may be expected to further GATS services negotiations in several ways:

-- First, discussion on the Menu of Options will first help to clarify for representatives of member economies the GATS principles underlying the Menu's objectives of Liberalization, Facilitation, and Promotion of Economic and Technical Cooperation in services (Ecotech).

-- Second, work on the Menu of Options, which is intended to be developed taking into account APEC member economies, will focus discussion on APEC-specific ramifications of these principles.

-- Third, discussion on the Menu of Options, which separates GATS principles into the three areas of Liberalization, Facilitation and Ecotech, will help to underscore that effective trade liberalization cannot be defined in terms of a single principle, such as national treatment or market access. Indeed, without transparency, national treatment can lose much of its liberalizing impact. And

in the services area, where so many service activities are regulated, domestic regulation, which is closely related to principle of transparency, becomes an integral part of the liberalization process.

-- Finally, the Menu of Options, by presenting the trade principles in discreet steps, provides a context for member economies to begin the liberalization process and test its impact on their economy before binding themselves in the WTO services negotiations.

(Australia) What measures or reforms does the US envisage to ensure that state-level regulation, e.g. skill and residency requirement) does not create unnecessary impediments to market access for business and professional service providers, particularly in accountancy, law, engineering and architecture?

Answer:

Divergent state requirements and practices do not constitute barriers to access, and the U.S. system does not discriminate against foreign service suppliers. Moreover, there is a great deal of commonality in state requirements for licensing. National associations of regulatory officials and professional societies have developed model codes or model rules for regulation. They are engaged in continuing efforts to obtain state legislation which conforms to the codes. This provides impetus for harmonization. As stated above, there already is a great deal of commonality in state regulation of the professions.

(Brazil) (para. 127) Is there any ongoing negotiation under GATS Article VII.4 (Recognition)?

Answer:

The U.S. has negotiated several mutual recognition agreements under Article VII.4. These include MRAs with Canadian and Australian accountants, an MRA with Canadian architects, and recognition of fundamental engineering education with Canada, Australia, New Zealand, the United Kingdom, and Iceland.

(Brazil) (para. 133) The recommendations that licensed certified public accountants (CPAs) in public practice be authorized to operate across State lines, in person or electronically, to service clients outside their State of licensure require the passage of a new Uniform Accountancy Act. What is the current status of this measure?

Answer:

Since 1998, the Uniform Accountancy Act, a model law published by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA), has included the provision referenced in the question. The AICPA and NASBA work to promote the UAA provisions to state CPA associations and state boards of accountancy. The UAA does not have the force of law. In the United States, professional licensing is a state not a federal function. State legislatures enact the laws that regulate CPAs. All states allow for interstate reciprocal licensing for CPAs. The UAA provision would allow CPAs who meet the requirements in the relevant UAA provision to operate interstate or electronically without the need to obtain a reciprocal CPA license. In the past three years, several states have enacted legislation similar to the provision in the UAA and many other states are considering the measure.

(Brazil) Which States have adopted the current Uniform Accountancy Act?

Answer:

Many State governments consider provisions similar to those in the Uniform Accountancy Act when considering pertinent legislation related to the accounting profession. The UAA is generally not adopted in its entirety, but rather provisions in the UAA are adapted to the needs of the state.

(Brazil) (para. 137) The proposal to liberalize trade in accounting services in WTO negotiations lists obstacles identified in this sector. As some of these obstacles exist in the U.S., particularly with regard to US citizenship requirements (Alabama and North Carolina), does the US plan to eliminate those in the negotiations?

[Answer to be supplied]

(Brazil) (para. 139) Regarding the U.S. negotiating proposal in the WTO on legal services, please provide examples of the measures sought from trading partners in the current negotiations that are schedulable under Articles XVI and XVII of the GATS.

Answer:

Citizenship and residence requirements for licensing; restrictions on ownership of law firms by foreign lawyers; and restrictions on association with local lawyers (hiring or working for them).

(Brazil) (para. 142) In 1993 the American Bar Association adopted a proposed Model Rule for the Licensing of Foreign Legal Consultants to encourage the States to liberalize regulations concerning foreign lawyers in a standardized manner. Until 1999 twelve States had adopted it. Have other States adopted the Model Rule? If so, was the adoption integral or did it suffer any modifications?

Answer:

Twenty-three states (including New York, California, Illinois, Texas, and Florida) and the District of Columbia now have provisions for foreign legal consultants. U.S. commitments in GATS and NAFTA specifically list fifteen of these states and the District of Columbia. The provisions of state laws on foreign legal consultants are similar, but not necessarily identical.

(Brazil) Has there been any progress on the July 1998 joint recommendations for the recognition of foreign legal consultants in the NAFTA context? (WT/TPR/S/56 p. 216)

Answer:

There has been no further progress.

(Brazil) What is the current status of the negotiations on mutual recognition regarding professional services with the European Union? The WT/TPR/S/56 document acknowledges the possibility of establishing mutual recognition agreements in "other services". Which are they? (WT/TPR/S/56 p. 213)

Answer:

The United States and the EU have discussed the possibility of establishing a framework for the negotiation of recognition agreements in professional services, namely architectural and engineering services. There have been no meetings since April 2000.

(Brazil) Article V of the GATS establishes that bilateral or regional agreements liberalizing trade in services must have substantial sectoral coverage. In order to meet this condition, agreements should not provide for the “a priori” exclusion of any mode of supply. How does the US find the NAFTA Services Chapter to be consistent with that condition?

Answer:

Chapter 12 of the Nafta establishes binding obligations for what the GATS defines as modes 1, 2, and 4. Chapter 11 of the Nafta establishes binding obligations for what the GATS defines as mode 3. The Nafta therefore does not exclude a priori any mode of supply.

(Brazil) Para 14, page 15. Please provide in more detail a definition of the term “substantial nexus” and how it is assessed for purposes of taxation.

[Answer to be supplied]

(Brazil) Para 128, page 115. Please clarify whether and how the US negotiating proposal on mode 4 (S/CSS/W/29) includes regulation at the sub-federal levels.

Answer:

Temporary entry is not regulated at the subfederal level in the United States. But to the extent temporary entry is regulated at the subfederal level in other WTO Members, then consistent with Article I of the GATS, the U.S. would be interested in applying the concepts contained in the negotiating proposal at those levels.

(India) In Paragraph 41 of its summary observations, the Secretariat has observed that ‘in the case of professional services, the US federal system reserves the governance of professions to individual states, each state has its own licensing regulations and licensing board to administer the regulations. The absence of a uniform national regulatory regime, and divergent market access conditions across States complicate inter-State supply and foreign market access’. We would like to hear the response from the US delegation. Further, we would like to know if the Federal Government could give some guidance to the States in the matter of having certain minimum uniform national regulatory regime for professional services.

Answer:

The questions above relate to what is being done to make state regulations more uniform. We can report that the major professions, such as accounting, law, architecture and engineering have developed model codes or model rules, which are used to by state governments as guidance in drafting regulations with respect to the professions. Contrary to popular belief, there is much commonality in state regulation of the professions.

(India): Problem relating to social security taxes for Indian professionals working in USA. It is noted that Indian professionals employed in India and deputed temporarily in USA for rendering software consultancy and development services are being made to pay social security taxes under Federal Insurance Contribution Act (FICA) (12.4%), MEDICARE (2.9%) and Federal Unemployment Tax Act (FUTA) (6.2%). This works out to a total of 21.5% of the total wages. It has been pointed out that since the Indian employees are only deputed for a temporary period and the services rendered by them are only sporadic and temporary in nature, this deputation does not constitute any form of ‘employment’ for the purpose of levy of Social Security Taxes by the US. The Indian professionals continue to get their wages in India in Indian rupees and they are only paid ‘away from home’ living expenses in USA within the per diem rates published by the US Internal Revenue Service. At the same

time, their provident fund contributions and other social security taxes are also deducted at source in India. Moreover, according to the US laws, a person has to work in USA for 40 quarters or 10 years to claim any social security benefit whereas the maximum period of stay allowed under H-1B visa (under which the professionals mostly work in USA) is 6 years. As such, the Indian software professionals pay social security in USA for which they neither get any refund nor any benefit. Given the genuineness of the problems, we would request the US authorities to remove this anomaly.

Answer:

The United States has addressed such issues through negotiation of bilateral "totalization agreements."

(India) Wage parity: The US Department of Labor has stipulated Wage Parity on foreign skilled manpower working in the US for short-term duration. However Indian software professionals, who go to the US for short duration, are paid salaries in India. The company concerned also spends the amount on the airfare of these professionals. It is therefore noted that insistence on wage parity by the US is to be seen as a kind of non-tariff barrier. With a view to facilitating better movement of professionals, it would be appropriate that wage parity is not insisted upon in the H-1B category visas. We would request the US authorities to consider removal of this stipulation. We would also request the US authorities to put in place more transparent procedures for locational changes during the validity period of H1-B visas.

Answer:

The United States requires that the employer of an H-1B Specialty Occupation Alien attest that the alien for whom admission is sought is paid the prevailing U.S. wage for that occupation. Generally, when professionals enter the United States, and are paid from a foreign source, they are classified as Visitors for Business and these rules do not apply.

(India) Locational Issues of H-1B visas: An Indian professional going to US on H-1B visa is allowed to work only in a particular State of the US. If during the maximum six years-period for which the H-1B visa is valid, a professional has to go to another State on account of change of assignment, he is required to take specific permission from the US INS for change of location. It has been represented that this procedure is a time consuming one and thus acts as a non-tariff barrier. We would suggest to the US authorities to consider making the H1-B visa valid for working throughout the US and in any State of the US without any requirement for a specific permission to move from one State to another.

Answer:

Rules concerning employment of H-1B aliens and the Labor Condition Application, with which U.S. employers of these persons must comply, are found in the U.S. Immigration and Nationality Act. Specific cases of employer assignment are administered by the United States Immigration and Naturalization Service. Employer issues arising from the Labor Condition Application are administered by the U.S. Department of Labor, Employment Training Administration and the Employment Standards Administration according to regulations published by those agencies. Interested parties may contact these agencies directly.

(India) Increase in world-wide H-1B visa cap: It is learnt that the US continues to suffer from domestic shortage of IT professionals. According to Information Technology Association of America (ITAA), the US faces a shortage of 300,000 IT professionals in the next three years. It would be highly appreciated if we could be informed of the steps being taken by the US in order to meet this

shortfall. We would also request the US authorities to consider increasing the visa cap for H-1B for the next three years.

Answer:

The numerical ceiling on admission of H-1B Specialty Occupation Aliens has been temporarily increased to admit more of these persons in the coming years.

PART 3

2. Miscellaneous Issues

(Japan) (Re-export control) The U.S. Export Administration Regulations mandate firms located outside the U.S. to obtain authorization from the Government of the United States when it is necessary to re-export certain goods. Such a requirement apparently constitutes an extraterritorial application of the U.S. laws and thus should be abolished. Furthermore, until its abolishment, the following transitional measures should be taken into consideration:

(i) in light of the fact it is difficult that for non-U.S. companies to obtain information on re-export regulations, the United States should strengthen its efforts to publicize such information, and in case where a company cannot be expected to know a specific requirement, it must not be held liable;

(ii) the United States should publicize as a guideline the methodology used by the DOC when calculating the ratio of software and technology incorporated in a product;

(iii) companies should be allowed to resort to a de minimus level, according to their own judgement, by making use of the above guidelines.

Answer:

These issues have been discussed bilaterally in the Deregulation and Competition Policy working group of the Enhanced Initiative on Deregulation and Competition Policy as well as in other fora. The U.S. Government recognizes the Government of Japan's point of view, but does not agree U.S. re-export control constitute the extra-territorial application of domestic law. In an effort to respond to Japan's concerns, Bureau of Export Administration (BXA) in the U.S. Department of Commerce has developed guidance on its website specifically to address reexport requirements. This guidance is available at www.bxa.doc.gov/factsheets/ExportGuidance.html. In addition, the U.S. Government is developing Japanese-language information on U.S. reexport controls and hopes to be able to forward it to Japan soon. The U.S. Government has also sponsored seminars in Japan on U.S. export controls and is contemplating another for Spring, 2002.

(EU) Each year, the U.S. fixes the total allowable level of foreign fishing (TALFF) and accordingly makes allocations to foreign fishing fleets. Mackerel migrating off the East coast is the only stock currently identified as being in surplus in the U.S. Exclusive Economic Zone. However, the U.S. authorities have set a zero TALFF since 1990 for this stock, following pressure from its domestic industry. The EU believes that this line neither corresponds to the provisions and intentions of the Magnuson-Stevens Fishery Conservation and Management Act or to the provisions of Article 62 of the UN Convention on the Law of the Sea.

Answer:

We do not consider that the issue of foreign fishing fleet access to U.S. fisheries is a trade policy question. The U.S. market is open to EU fish exports on an MFN basis, and on relatively liberal terms when compared to the access allowed by other trade regimes. If the EU will identify a trade policy issue to be addressed, we will be pleased to respond.

10. Standards, Sanitary Requirements and Environmental Regulations

(Brazil) Secretariat Report, Summary Observations, para. 22. The US government has, for alleged sanitary and phytosanitary reasons, prohibited imports of meat from Brazil originating from areas declared free from Foot and Mouth Disease by the International Office of Epizootics. In light of the concept of pest-or disease-free areas enshrined in the IOE, please explain what is the rationale for maintaining these measures when the exporting country complies with all the other sanitary and phytosanitary requirements?

Answer:

The United States is within compliance with the guidelines set out in the OIE Chapter of the Animal Health Code when it prohibits imports of ruminant products from Brazil. The United States does not recognize the OIE status of FMD-freedom with vaccination. The United States does not recognize countries as FMD-free if they continue to vaccinate for the disease - as is the case in Brazil.

(New Zealand) The concepts of equivalence, transparency and international harmonisation are three of the foundations of the WTO SPS agreement (discussed at S/III, paras 90-94, page 42 and 43). Can the US provide specific comment on efforts being made by its Food and Drug Agency (FDA) to ensure that both the statutes which it administers, as well as the associated regulations, policies and guides explicitly reflect the international commitment the US government has made in this regard.

Specific comments would be especially appreciated with respect to:

The consistency of the equivalence concept with the Federal Food Drug and Cosmetics Act, noting that the FDA is yet to finalise and publish guidance in this area.

The consistency of both the amending process and standards contained within the Pasturised Milk Ordinance (PMO) and the National Shellfish Sanitation Program (NSSP) standards with the above.

The assessment of risk and determination of the appropriate level of sanitary or phytosanitary protection (ALOP) is another key concept of the WTO SPS agreement. Can the US specifically comment on:

How both risk assessment and the objective of minimising negative trade effects have been mutually and consistently applied in the development and amendment of the PMO.

Why the measures mandated for products covered by the PMO are more trade restrictive than those for similar products which can contain the same hazard profiles and which are either directly consumed or made into products consumed by the same population.

[Answer to supplied]

11. Government Procurement

(Japan) (page 44, para. 69, Construction Industry Payment Protection Act) Has the large amount of bond required by the Construction Industry Payment Protection Act increased the burden of main contractors? Considering that, in general, procuring entity payment to main contractor is made on a monthly basis based on the progress of the work, in which case would the penal sum that is as high as 100 % of the contract price be necessary to protect sub-contractors and suppliers?

Answer:

Prior to the implementation of the Construction Industry Payment Protection Act, payment bonds were artificially capped at \$2.5 million, regardless of the size of the project. This resulted in situations where, when a major project went bankrupt, sub-contractors could not be reimbursed and, in some cases, were forced into bankruptcy themselves. The Payment Protection Act is intended to prevent this from happening. The Act allows contracting officers to reduce the payment bond where the public interest can be protected with lower amounts. These provisions are applied on a non-discriminatory basis with respect to all contractors.

13. Textiles

(India) Subsidies in textile industry: It is learnt that the US has been giving large amounts of direct and indirect subsidies to the cotton farmers. According to a study commissioned by one of our NGOs, the Consumer Unity and Trust Society (CUTS), Jaipur, the direct and indirect subsidy given to the US cotton farmer is US\$2.5 for each pound of cotton. This is based on the calculation of total subsidy bill (excluding exclusive export subsidies) in 1997 amounting to around US\$ 1.6 billion. We would request the US authorities to consider plans for reducing the extent of this subsidy.

Answer:

As notified in G/AG/N/USA/27 for 1997, total subsidies for cotton were \$465.62 million. This translates to a \$0.05 per pound subsidy for cotton in the United States. In 1998, total subsidies for cotton were \$934.68 million, which translates to a \$0.14 per pound subsidy for cotton. The U.S. program is WTO consistent, and we will continue to abide by international commitments in the future.

18. Transportation Services

Maritime Transport and Related Services

(Australia -- maritime) US laws governing coastal shipping, the 1920 Merchant Marine Act and the 1885 Passenger Services Act, effectively preclude foreign involvement in the US maritime sector. How does the US intend to liberalize the unusually restrictive laws on the provision of maritime services?

Answer:

There are about forty maritime nations that have cabotage regimes that reserve the domestic trade to national-flag vessels. There has been no change in the Administration's support for U.S. cabotage provisions as they apply to the movement of passengers and cargo in the U.S. domestic trades.

19. Services—general and Professional

(e) (Japan) Discriminatory measures against foreign insurers. Japan requests the elimination of discriminatory regulations as mentioned below. What are the U.S. views on these points?

(i) Requirements for foreign insurers to trust funds or to submit a letter of credit issued by primary insurers in reinsurance business. (p.108, para.100)

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 L/C by the original underwriter. Japan requests the elimination of this system, since it discriminates against foreign insurers.

(ii) Compulsory trust of assets for foreign insurers (p.108, para.99)

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 investment with flexibility, and they thus may miss investment opportunities, Japan requests the elimination of this system, since it discriminates against foreign insurers.

(iii) Tax on cross-border insurance transaction (p.110, para.102)

When a foreign insurer undertakes to cover risks within the United States, it is liable to a federal tax whose rate is 4% of premiums for non-life insurance and 1% of premiums for life insurance and reinsurance. Japan requests the elimination of this system, since it discriminates against foreign insurers.

(iv) Citizenship requirement for foreign insurance companies (p.108, paras.88-89) 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.

Answer:

Without prejudice to whether the measures listed by Japan are discriminatory, we are aware that Japan may choose to raise them at an appropriate point in the GATS negotiations.

(Brazil) (para. 137) The proposal to liberalize trade in accounting services in WTO negotiations lists obstacles identified in this sector. As some of these obstacles exist in the U.S., particularly with regard to US citizenship requirements (Alabama and North Carolina), does the US plan to eliminate those in the negotiations?

[Answer to be supplied]

(Brazil) (para. 14, page 15) Please provide in more detail a definition of the term “substantial nexus” and how it is assessed for purposes of taxation.

[Answer to be supplied]

PART 4

(Brazil) para. 137. The proposal to liberalize trade in accounting services in WTO negotiations lists obstacles identified in this sector. As some of these obstacles exist in the U.S., particularly with

regard to US citizenship requirements (Alabama and North Carolina), does the US plan to eliminate those in the negotiations?

Answer:

With respect to U.S. citizenship requirements in Alabama and North Carolina, we understand that there are alternatives that can be used by foreign practitioners. For example, intent to become a citizen may be acceptable and possession of a "green card" may be sufficient to demonstrate intent to become a citizen. Alabama law provides authority for the licensing board to permit registration of any person with good moral character who holds a certificate, license or degree in a foreign country, which constitutes a recognized qualification for the practice of public accounting in such country.

RESPONSES TO ISSUES RAISED IN THE COURSE OF THE REVIEW MEETING

Mr. Chairman, I would like to express my thanks to you and the Secretariat for preparing the list of themes that will serve as the focus of today's discussion. We found it very helpful in preparing for this second stage of our review.

At the same time, I would note that we received over 400 written questions from Members prior to our first meeting. Many additional issues were raised during the first day of the Review and many of the questions ask for detailed and quite technical information. Given the number of written questions, the technical level of detail of many of them and the events of the last several days we are not in a position to respond to all of the questions that have been put to us. However I will respond to each of the themes you have identified and endeavour to respond to as many of the issues raised as possible. We will also provide written responses covering all the questions in a timely manner.

One overarching point raised by a number of delegations on Friday was the importance of U.S. leadership to the multilateral trading system. In this regard, I would like to read to you a statement that was issued on Friday by United States Trade Representative Robert Zoellick:

"America has been attacked by those who want us to retreat from world leadership. Let there be no misunderstanding: the United States will continue to advance the values that define this nation - openness, opportunity, democracy and compassion. Trade reinforces these values, serving as an engine of growth and a source of hope for workers and families in the United States and the world. Trade is particularly vital today for developing nations that are increasingly relying on the international economy to overcome poverty and create opportunity. While we will take every possible step to ensure security, it is important that the World Trade Organization meeting in Doha proceed so that the world trading system can continue to promote international growth, development, and openness."

Mr. Chairman, I would also like to reiterate the deep U.S. commitment to open markets and the further expansion of the rules-based multilateral trading system under the WTO. We believe that our own prosperity has been based on open, competitive markets, both internally and at the border. We also believe that open markets and free trade are critically important to resolving the problems of global poverty and the creation of economic opportunity for all. Our unstinting commitment to the GATT and the WTO for the past 54 years reflects the view that the reduction of distortions and barriers to international commerce offers the best hope for economic betterment to low, middle and high income countries alike. Under the period of review 1999-2000, I would simply note, as a reflection of our openness, that U.S. imports grew by \$340 billion, accounting for nearly one-third of global import growth and contributing importantly to the recovery of other WTO members from financial crisis. It is against this background of firm commitment to open markets and appreciation for the WTO's central role in the global trading system that the United States embarks on this second and final day of the U. S. Trade Policy Review.

I. ECONOMIC ENVIRONMENT AND THE TRADE POLICY REGIME

Let me turn first to the economic environment and the trade policy regime.

Macroeconomic situation: Some delegations raised concerns about the slowdown of the U.S. economy and the prospects for the future. The current slowdown of the U.S. economy reflects several quarters of reductions in business inventories and declines in non-residential business investment. On an annualized rate, the U.S. GDP rose at just 0.2% in this year's second quarter. The Administration, however, expects a pick-up in economic activity in the second half of the year, supported by the fiscal

stimulus of the recent tax cut and the Federal Reserve's reductions in interest rates. The Administration estimates that the tax cut alone will add roughly one percentage point to economic growth in the second half of 2001 and early in 2002. For 2002, the latest Administration forecast is for U. S. real GDP growth of 3.2%. Any possible effects of the tragic events of last week on the macro economy are far too uncertain to speculate upon at the present time.

Domestic taxation: (electronic commerce, luxury tax)

A few delegations expressed interest on the United States view on the imposition of customs duties on digital products delivered through the Internet. The United States believes the current moratorium on such customs duties should be made binding and permanent and invites others to actively support this approach.

Some delegations expressed their opinion that the luxury tax discriminates against imports because there are a greater proportion of expensive cars. We do not believe that the luxury tax is discriminatory. It was the subject of dispute at one time under the GATT, and that panel reached the correct conclusion. I note that many countries tax luxury goods at higher rates than other goods.

Environment and labour issues

Environmental Reviews: Some delegations asked about the environmental reviews. The United States has found environmental reviews of trade agreements helpful in identifying and addressing both the positive and negative effects of such agreements. In addition, the review process is a useful avenue for public input and public understanding of the trade agreements we negotiate. We are committed to pursuing an environmental review policy and have underway reviews of the FTAA, the FTAs with Singapore and Chile, and the built-in agenda negotiations on services and agriculture. We welcome the offer of some delegations to share their environmental reviews with us. We are more than willing to share the results of our environmental reviews with other Members. As a general practice, we make the results of all environmental reviews available to all Members through the Secretariat.

Fish Subsidies: The United States believes that the depleted state of the world's fisheries has become a major economic and environmental concern. Subsidies that contribute to overcapacity or over fishing, or have other trade-distorting effects, are a significant part of the problem, and should be addressed in the WTO, which has competence in this area. The WTO fish subsidies initiative is win-win-win, that is an initiative that advances trade liberalization, environmental protection, and development goals, all at the same time and in a very concrete way. In looking toward, Doha, we see the fish subsidies initiative as presenting a golden opportunity to demonstrate to the outside world that the WTO can advance its trade agenda in a way that is good for the environment and for developing country interests. We therefore support negotiations on fish subsidies. Some delegations have suggested that there is a need to focus on the role of effective fisheries management. We do not disagree. We do not agree, however, that this is a reason not to tackle fish subsidies in the WTO, since this is an area within the WTO's competence.

Multilateral Environmental Agreements: Several delegations asked about our views on the relationship between multilateral environmental agreements and WTO rules. Given differences in the environmental matters at issue in environmental agreements, it is not surprising, and it is indeed quite logical, that there are differences among MEAs in the compliance, enforcement and dispute settlement mechanisms. For this reason, we think the most productive way to look at these items is on a case-by-case basis. In general, we believe that strengthened implementation of MEA obligations depends upon domestic measures taken by Parties to a given MEA, not necessarily upon strengthening the international compliance/dispute settlement provisions included in an international agreement. We think that we can all agree on the objective of sustainable development and mutually supportive trade

and environmental policies. To obtain this objective, we think it is best to focus on practical steps, such as coordination and communication between MEAs and the WTO Secretariat and enhanced efforts toward domestic policy coordination on trade and environment issues in capitals and in MEA and trade negotiations. We are not convinced that efforts to clarify the legal relationship between MEAs and WTO rules would add value and are concerned that efforts in this regard would divert discussion on trade and environment issues away from the positive of mutually supportive efforts and toward the negative of possible theoretical conflicts.

Competition policy and international agreements: Some delegations have inquired about our position on negotiations on trade and investment and trade and competition. We are aware of the importance that many members attach to these two items. For both, we are currently exploring what kind of approach would make sense, in the context of preparing for the Doha Ministerial Conference.

Multilateral/WTO: new round, trade promotion authority; regional and bilateral agreements and negotiations

New Round: A few delegations expressed interest in the U.S. position regarding the launch of a new round of multilateral trade negotiations. As I indicated in my initial remarks on Friday the United States is committed to a successful launch of a new Round at the Doha Ministerial. To be successful, we will need an agenda that addresses the concerns of all members. At meetings of the General Council in June and July we laid out our ambitions for the Round in considerable detail. I will not repeat what we said at those meetings since we are at a point in time where what is needed is not a reiteration of positions but rather a commitment to find common ground. Clearly, we are an advocate in a number of areas, including the need for ambitious negotiating objectives for agriculture. In other areas we may not necessarily be an advocate but we are prepared to work with all Members to see that their interests are reflected. As noted in my opening statement, we also recognize the importance of the implementation issue to success at Doha and are making every effort to achieve positive results.

Encouraging public comment on the new round: The issue of how we seek private sector advice on negotiating objectives was also raised during the Friday's discussions. As discussed in Paragraph 95 of the Government report we regularly solicit public comment on trade issues and have issued Federal Register notices seeking public comment on the mandated negotiations on agriculture, services, the priorities for future market access negotiations on industrial goods, institutional improvements to the WTO particularly with respect to the transparency of its operations and outreach, and preparations for the WTO Fourth Ministerial Conference, including the possibility of launching a new round of multilateral trade negotiations. The responses have been distributed to the relevant USG agencies and are also available in the USTR reading room which is open to the public and many foreign country's Embassy and trade officials have taken advantage of this to examine them. In addition the private sector advisory committee system established by law in 1974, with as many as 1,000 private sector advisors, has provided an important avenue for gathering input on a new round and the Doha Ministerial.

Trade Promotion Authority: Several delegations asked the Administration's views on obtaining Trade Promotion Authority (TPA). President Bush has placed enactment of TPA at the top of his trade legislative agenda. The formal legislative process has begun with the introduction of a bill in Congress for such authority. TPA would allow the President to have any negotiated agreements, covered by the 2001 International Trade Legislative Agenda, considered legislatively as a package, without change or amendment.

The present economic slowdown highlights the importance of pro-trade initiatives for economic recovery. Earlier this month, Ambassador Zoellick noted the key role that trade can play in stimulating our economy, observing that TPA is an important part of President Bush's plan for

opening markets and promoting American and global economic prosperity. He said that he looked forward to continuing to work with Congress to get TPA enacted this fall. The current global economic slowdown makes it all the more essential that we press forward in pursuit of open markets and that the rules-based trading system of the World Trade Organization is strengthened and expanded.

Regional and Bilateral Initiatives: Several delegations questioned the role of regional trade agreements in United States trade policy. The trade policy of the United States reflects our fundamental interest in open markets and free trade, and we are pursuing these objectives through bilateral, regional and full multilateral agreements under the WTO. We believe that regional agreements, consistent with WTO obligations, can be building blocks, rather than stumbling blocks to the multilateral trading system. We view our involvement in such agreements and initiatives as complementary to our commitments to the WTO. However, we also believe it would be most unfortunate if the WTO stood still, while regional trade liberalization moved forward.

We appreciate the interest expressed by WTO Members to review the CBI and AGOA acts. The United States has informed the Secretariat about the Caribbean Basin Trade Partnership Act and the African Growth and Opportunity Act (AGOA) and is evaluating what sort of waiver it needs for these programs and intends to submit its waiver request soon.

Regional initiatives relation to new round: The discussant asked what complementarities the United States saw between the FTAA and the shape of the future WTO agenda. We believe that there are complementarities, and that they are positive. The negotiation of the North American Free-Trade Agreement and the broad scope of its disciplines helped inform final outcomes in the Uruguay Round. Also, cooperation developed in the APEC process likewise contributed to reaching the WTO Agreement on the Information Technology. Regional agreements and for a in other words can act as laboratories for finding solutions to specific problems in the international trade arena that can later become fully multilateralized. They can also help in building constituencies in support of trade liberalization and assist governments in developing their expertise in various areas covered by the agreements. I expect that current negotiation of the FTAA agreement will play a similar role.

Dispute Settlement (sufficient prior consultation): Some interest was expressed in the possible overuse of the WTO dispute settlement mechanism because of inadequate informal consultation. The vast majority of U.S. trade takes place without recourse to dispute settlement. When a problem does arise the USG consults with foreign governments before going to formal dispute settlement. There are many channels for such consultations, and we are constantly looking for opportunities to expand and improve these channels.

Dispute Settlement (number of cases): There was some speculation among members about the number of dispute settlement cases brought against the United States and the implications of these numbers. In fact, there is rough balance in the number of cases brought by and against the United States, the substantial number undoubtedly related to the large volume of U.S. trade. With respect to recent increases in cases brought against the United States, the United States considers that this more likely reflects the asymmetries in market share between the United States and all but its largest trade partners rather than any broader systemic issues in the United States. Cases that the United States might not bring against another Member, because of the relatively small volume of trade concerned for the United States, might be brought against the United States because of the relatively greater importance of our import markets for other Members.

Unilateral Preferences: A few delegations expressed interest in learning about the experience the U.S. has had to date from linking unilateral trade preferences to progress on domestic reforms. According to the report submitted in May 2001 by the President to the Congress on the Implementation of the African Growth and Opportunity Act (AGOA), many countries implemented

or strengthened economic or political reforms and committed to improving labour or human rights situations during the AGOA country eligibility process and the ensuing bilateral consultations. The report can be found on the USTR web site. As of July 1, 2001, 35 of Africa's 48 sub-Saharan countries had been designated as AGOA beneficiary countries. We are coordinating country eligibility reviews based on current conditions, events and commitments occurring since the October 2, 2000 country eligibility designations, and we are working to increase the level of participation in the program.

II. TRADE POLICIES AND PRACTICES BY MEASURE

Registration, customs procedures, fees and other charges

Customs Procedures: We noted the question from the European Communities regarding customs procedures that are applied to its, individual member states, rather than the Community as a whole. As is the case for numerous WTO Members, however, many of the trade laws of the United States are written in terms of country of origin, and do not contemplate a "customs union of origin". We note that each Member of the European Community is a WTO Member in its own right.

Merchandise Processing Fee: Several delegations have asked about the extension of the Merchandise Processing Fee. Use of the fee remains restricted to customs clearance operations for goods upon which the fee is levied. The inclusion of the Merchandise Processing Fee in the Patients Protection Act does not alter how the fee is calculated or applied, nor how the revenues of the fee are used. None of the provisions of the Merchandise Processing Fee have changed with its extension, and it remains consistent with the WTO Agreement.

Customs formalities for imports of textiles: A few delegations asked about customs formalities for textiles. The U.S. Customs Service is required to determine the proper classification of goods under the U.S. Harmonized System Tariff Schedule and to determine the proper country of origin of goods which are imported into the United States. To do this, Customs will occasionally request specific information from importers, which is additional to that provided in the entry documentation.

Tariffs and tariff quotas

Some WTO Members have identified particular interests or concerns with the level or type of U.S. tariff on particular products or groups of products. We have listened carefully to the comments concerning the structure of our tariffs. As I mentioned in my statement on Friday the current U.S. trade-weighted average tariff is just under 3% on a legally bound basis under the WTO and will continue to fall with the full implementation of Uruguay Round commitments.

With respect to concerns about levels and structures of tariffs, we believe that a new round of multilateral negotiations will afford the best means to address such issues. In the agriculture negotiations, the United States has proposed that all WTO Members should reduce substantially, or eliminate, all tariffs. This includes substantial reduction or elimination of tariff disparities. Furthermore, the United States has indicated a willingness to engage in comprehensive market access negotiations on goods to complement the negotiations on agriculture and services mandated in the WTO's built-in-agenda. As we have indicated we plan to work towards the objective of duty-free and quota-free market access for all LDC imports as stated at the Third United Nations Conference on the Least Developed Countries.

Contingency measures

Increase in Such Measures: There was substantial interest among Members in U.S. contingency measures. First, let me remark that, in light of the many factors that influence the level of antidumping cases brought from year to year, we cannot predict the number of antidumping petitions that will be filed in the future, nor the number of cases that we will initiate. The increase in cases brought during the late 1990s was due largely to the massive increase in low-priced steel imports into the United States during this time, which was itself related to significant structural problems within the global steel industry. Prior to the steel crisis, the number of antidumping cases initiated by the United States had actually fallen off significantly, from an average of 57 initiations in 1992-1994 to an average of 17 initiations from 1995-1997. [See Table IIL4 of the WTO Trade Policy Review.] With due respect, the fact that 40% of cases result in negative preliminary determinations is a reflection of the stringent procedures in place that the ITA and ITC must follow prior to imposing provisional measures. We intend to maintain these procedural protections for foreign firms involved in U.S. antidumping proceedings and to work to ensure that U.S. exporters involved in foreign antidumping actions are afforded similar protections. As for the pre-initiation process itself, the current procedures are fully WTO-consistent and there are no plans to revise these.

With regard to U.S. exporters, the United States seeks to ensure that they are treated fairly when made subject to foreign country antidumping laws. We are currently working toward this goal within the WTO Committee on Anti-dumping Practices and in other venues. At the same time, it is important to put the statistics cited above in perspective. The questioner mentioned a 41% increase in the number of antidumping measures in force against U.S. firms from the 1991-1995 period to 1996-2000. The data were cited to the Cato Institute in the United States. The strong increase, however, is, in part, a reflection of the large number of cases brought in the early 1990s. Since then, according to the Cato Institute work, the total stock of anti-dumping orders against the United States has increased only slightly, from 60 in 1995 to 62 in 2000. During this period, the share of worldwide antidumping orders that concern U.S. exporters actually declined, from 6.8% in 1995 to 5.2% in 2000. To put this into perspective, the United States accounts for 15% of global exports but only a 5.2% share of the total worldwide stock of antidumping orders in 2000.

With regard to the simultaneous subjection of imports to both antidumping and safeguard action. Safeguard measures and antidumping measures are separate remedies for distinct trade-distorting situations. As such, there is no reason measures cannot apply simultaneously to the same merchandise.

Byrd Amendment: Several delegations asked about the Byrd Amendment. First, the United States does not agree that the Continued Dumping and Subsidy Offset Act of 2000 has any particular relevance to U.S. anti-dumping and countervailing legislation. Although the Act was enacted as part of Title VII, which also contains the antidumping and countervailing duty laws, it does not have any impact on how the AD/CVD laws operate, either substantively or procedurally. Duties collected under antidumping and countervailing duty legislation merely serve as the source of funding for distributions made under the Act.

Second, the purpose of the Act is to distribute money to certain persons insofar as they meet the requirements of the statute. Beyond what is contained in the statute itself, we cannot speculate on Congress' intent. The Act only addresses internal government distribution of revenues which is not the subject of any of the WTO Agreements, except the disciplines on subsidies. Each member must decide how to utilize such revenues. No assistance has been distributed under the Act. Until final regulations are adopted, and distributions are made, the United States cannot determine whether notification under Article 25.2 will be required. The Act is consistent with the Anti-Dumping Agreement, which does not address the internal government distribution of revenues. The Agreement on Subsidies and Countervailing Measures prohibits two types of subsidies: export subsidies and import substitution subsidies; the Act is neither.

Technical Barriers to Trade/Sanitary and Phyto-Sanitary

TBT (Complexity): Several delegations expressed concern about the complexity of technical regulations. The United States government has in place a number of requirements to ensure that technical regulations do not create unnecessary barriers to trade and otherwise comply with WTO requirements. Relevant legislation on transparency and regulatory planning and review has been noted in information provided to the Committee on Technical Barriers to Trade (GfTBT/2/Add.2). The United States Government does not attempt to direct the activity of private bodies' use of international standards beyond making them aware of the rights and obligations under the WTO and responding to perceived violations. Similarly, there is no specific program to monitor whether a regulatory agency has used a particular international standard; however, there are various mechanisms for regulatory oversight more generally and, as noted above, detailed and stringent requirements for transparency which call for public input in the development of technical regulations.

Use of International Standards: A number of delegations asked about the use of international standards in the United States. The United States does not believe that there is a basis for the assertion that there is a low level of use of international standards in the United States because of the lack of data to conduct such a measurement. The U.S. Government does not centrally compile statistics on the relationship of standards and technical regulations to international standards, and we are unaware of any quantitative data that would support such an assertion. As a matter of practice and law, however, U.S. standardizing bodies and agencies review existing standards and consider whether international standards (if relevant ones exist) are appropriate and effective for meeting domestic needs.

National Standards Strategy: A number of countries also asked questions about a U.S. national standards strategy. The National Standards Strategy was developed by a private, non-profit federation. While a number of U. S. government agencies participated in the development of the National Standards Strategy, it does not represent official U.S. government policy and is not legally binding. The U.S. Government has not attempted to assess the effects of the National Standards Strategy.

TBT (Sub federal measures including WTO notifications): Some delegations inquired about technical regulations at the sub-federal level. The Uruguay Round Agreements Act included the U.S. obligations with respect to coverage of state and local government activities. The United States is not aware of any sub-federal technical regulations that it has failed to notify in accordance with the TBT requirements. The United States has in place a system to identify trade-significant proposed technical regulations and conformity assessment procedures of state governments in the United States. The U.S. inquiry point, the National Institute of Standards and Technology or NIST, operated by the U.S. Department of Commerce, has assumed the responsibility for notification of state proposals on their behalf. Notification involves a review of state publications to ascertain whether proposals fall within the requirements of the TBT Agreement. The United States has no obligation under the WTO to notify regulations proposed by local governments, and has no plans to implement such a system.

The U.S. Metric Program: Some Members asked about metrification in the United States. The U.S. Metric Program, located at the NIST in the Department of Commerce, is undertaking renewed *efforts* to provide leadership, example and model initiatives in the United States for building awareness of the metric system's widespread presence, its relative ease to learn and use as a language of measurement, and its vital role in an increasingly global marketplace. The U.S. Metric Program Office plans to take the lead to promote changes in the U.S. Fair Packaging and Labeling Act to permit metric-only declarations on U.S. consumer products.

TBT/SPS (Technical Assistance): Several delegates asked about technical assistance in the TBT and SPS areas. According to preliminary figures from a new USG survey on technical

assistance, the United States provided \$13 million for technical assistance for SPS and \$6.5 million for TBT from 1999 to 2001. In addition, the United States recently provided \$640,000 to the World Bank to assist African countries to help find ways to participate in the development of standards and disseminate information on standards to facilitate their market access.

Government procurement

Buy America Provisions: A number of delegations have raised questions about the "Buy American Act" trade restrictions. It is very important to note, as is pointed out in the Secretariat's report, that the United States fully waives these restrictions for all procurements that are covered by Government Procurement Agreement and our other relevant international commitments. Our policy is that we are prepared to provide full national treatment to our trading partners in covered government procurement markets, provided that our trading partners will provide comparable treatment to U.S. suppliers in their own procurement markets through adherence to the GPA or a bilateral agreement containing comparable commitments. In addition, we unilaterally waive the "Buy American Act" restrictions for all suppliers from least developed countries.

Purchasing restrictions: A number of questions also focus on programs that the United States uses to facilitate the participation of small- and minority-owned businesses in government procurement. We view these programs as important elements of our broader economic policy of ensuring a high level of competition for government contracts, fostering small scale entrepreneurship, and creating jobs. The vast majority of Federal government business that goes to small- and minority-owned firms is awarded through fully open and competitive tendering procedures. As the Secretariat's report notes, about 9% of Federal contracts are awarded under tendering procedures "set aside" for competition among small- and minority-owned companies.

Federal Measures: With regard to Federal procurement, the United States is strongly committed to ensuring the highest possible level of transparency, due process and accountability in government procurement. This is of critical importance, not just because it facilitates trade, but because it ensures the government uses taxpayers' money as efficiently as possible and because it bolsters confidence in democratic governance, the predictability of the commercial environment, and the stability of the national economy. The other most fundamental principle of the U.S. procurement system is "full and open competition". The USG procurement markets are among the most open and competitive in the world.

U.S. State Procurement: Some Members raised questions about state government procurement in the United States. In that regard, I would note that the government procurement policies and practices of each state are governed by the state's laws and regulations. The procurement policies of all 50 States require high levels of transparency, due process and accountability in tendering procedures. Detailed information on the procurement policies and practices of individual states is available through the U.S. National Association of State Procurement Officials.

Trade measures

Iran/Libya Sanctions Act: A few delegates asked about the Iran/Libya Sanctions Act. We appreciate the views of all our trading partners in this matter. The Iran and Libya Sanctions Act (ILA) remains U.S. law. In August 2001, the Act was extended for a further five years, until 2006, with amendments. The re-authorizing legislation includes a provision calling for a report by the President to Congress on the impact of certain actions taken pursuant to the Act. The President is invited to include in that report a recommendation on whether the Act should be terminated or modified. In his statement upon signing the legislation, the President welcomed this provision, emphasized our continuing concerns about Iran and Libya, and noted that we are strengthening our cooperative efforts with other countries to pursue effective approaches to the problems of proliferation and terrorism that are key ILA concerns. By its terms, ILA applies to those who engage in activities covered by the statute, without distinction by nationality. The legislative history of the Act indicates a concern by Congress that the law be applied in a manner consistent with the international obligations of the United States.

Helms-Burton: A few delegations have asked about the Helms-Burton Act. The Cuban Liberty and Democratic Solidarity (LIBERAL) Act is consistent with U.S. obligations under the GATT and the GATS. Since the enactment of the LIBERAL Act, the President has exercised his authority under Title III of the Act to suspend the right of U.S. nationals to file suit against persons who are trafficking in confiscated property in Cuba. That suspension remains in effect.

Section 301

With respect to Member references to the Section 301 provisions in our trade law, I would note that the U.S. Trade Representative decides what actions, if any, are taken as a result of an investigation under sections 301-309 of the Trade Act of 1974. The United States is committed to complying with U.S. obligations under the WTO Agreement.

Intellectual property rights

International rules: A few delegations asked about the U.S. first-to-invent system for patent registration. The United States has followed the first-to-invent system throughout the history of our patent law. The first-to-invent system is in full conformity with U.S. obligations under the TRIPS Agreement, as is the rest of the U.S. patent law. The United States amended its patent law in November 1999 to address a number of issues. This new law contains a provision to publish, within 18 months, most patent applications filed in the United States. The law also adds new opportunities for third parties to participate in reexaminations, including determinations made by the patent examiner to the Board of Patent Appeals and Interferences, in accordance with the understanding reached as part of the Framework talks.

Enforcement: Several delegations asked about U.S. policy with regard to parallel imports. U.S. Customs provides parallel import protection to certain foreign manufactured products bearing trademarks which have been recorded with Customs, and where the U.S. trademark owner does not own the foreign mark and no common ownership control exists between the U.S. trademark owner and a foreign trademark owner. Additionally, parallel import protection can be provided with regard to trademarks where a request for protection is made and Customs determines that the U.S. goods are physically and materially different from the foreign product. Customs also provides gray market protection pursuant to exclusion orders issued by the U.S. International Trade Commission (ITC). Exclusion orders may be issued by the ITC, which would result in the denial of entry of goods involving the infringement of all forms of intellectual property rights, including situation involving parallel imports.

Special 301: Several Members asked about the compatibility of U.S. Special 301 provisions dealing with intellectual property rights protection and our WTO obligations. The "Special 301" provisions of the Trade Act of 1974, as amended, require the U.S. Trade Representative, in consultation with other government agencies, to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. To ensure transparency in the Special 301 process, the public is invited to comment and such comments are part of the record during the annual review. Many foreign governments have taken the opportunity during the annual review to provide comments that have received consideration during the review. The Special 301 provisions of U.S. law are in full conformity with U.S. obligations under the WTO agreements.

III. DEVELOPMENTS IN SELECTED SECTORS

Agriculture and fisheries

Several delegations have asked what is the objective of recent U.S. agricultural policy, particularly in light of increased domestic support. The underlying thrust of U.S. farm policy as expressed in the FAIR Act of 1996 is to de-link previously regimented production from government limitations and support in favor of more flexible, market-oriented decisions by producers. Let me reconfirm our commitments to obligations undertaken in the UR, and highlight as an example the recent notification of U.S. domestic support payments for the 1998/99 marketing year. The U.S. Government took the politically difficult, but correct, decision to notify Market Loss Assistance payments in the Amber Box, setting a precedent for other nations in the way they classify their own trade distorting subsidies and setting an open and above-board tone as we move toward a challenging new round of trade negotiations in the WTO.

President Bush has also outlined this Administration's objectives for a sound agricultural policy. They include:

1. Pursuing an aggressive trade policy, resolving trade conflicts, and aggressively monitoring policies that distort trade;
2. Reducing tax and regulatory burden on farmers and ranchers while continuing to protect America's natural resources;
3. Conducting research addressing food safety, the environment, biotechnology, energy, and new uses for agricultural products;
4. Providing a safety net for farmers and ranchers that is consistent with the free market, and that gives them the opportunity to prosper in an evolving and dynamic global marketplace.

Regarding agricultural domestic support, the difficulty of being able to classify all agricultural support measures within the context of the ongoing agricultural negotiations as either trade-distorting or non-trade distorting was raised. Quite frankly, the U.S. never indicated this would be an easy task. We see it as a necessary task and one to be best achieved in a cooperative, mutual effort with the view of significantly reducing trade barriers and improving global trade benefits.

And finally, a number of countries have noted significant levels of tariff or quota protection for certain U.S. agricultural imports. The U.S. recognizes that these issues would be part of the overall discussion in a new, comprehensive round.

The U.S. proposal on agriculture, submitted in June of 2001, is a framework for substantial reductions in agricultural trade-distorting policies and practices. This proposal, when combined with

additional proposals submitted by the U.S. government to date and further proposals that will be submitted, provide 'a roadmap for substantial reform of agricultural trade policy and demonstrate the U.S. commitment to reform.

Softwood lumber

One delegation was concerned that the Secretariat report did not have most recent information on the August imposition of preliminary countervailing duties in the case concerning imports of softwood lumber from Canada. We would certainly assist Secretariat in updating any information, if so desired, and note that the final determination is not due until next spring.

Textiles and clothing: market access

Questions about implementation of U.S. commitments under the Agreement on Textiles and Clothing (ATC) were raised by a few delegations. Quite simply, the U.S. is fully and faithfully implementing its obligations under the ATC and is committed to continuing to do so. As I noted on Friday, U.S. imports of textiles and apparel increased by 90.2% overall since the WTO entered into force, or by an average rate of 11.3% each year (in square meters equivalent). In value terms, imports of textiles and apparel increased absolutely by 79.4% or by an average rate of 10.2% each year since the WTO has entered into force. The implementation of U.S. commitments will remain on schedule in years ahead. Developing country exports of textiles and apparel to the United States have grown 72% since 1994, reaching a value of \$42 billion in 2000.

As anticipated in the ATC, liberalization is occurring through the ATC's accelerated growth provisions, on top of the growth rates already mandated by the bilateral agreements notified under the AT. The United States textile and apparel industries have continued their adjustment efforts, in the face of significantly deteriorating economic conditions, in recent years. Job losses have been significant: the industries have lost 534,000 jobs, which is equivalent to approximately 89,000 jobs per year since the WTO came into effect, or, in total, nearly one-third of the work force. This has had a particular impact on the apparel sector. Textile and apparel plants have closed or announced closings at a rapid rate. Since the beginning of 1998, in excess of 150 plants have closed.

Steel: competitiveness, contingency measures

Competitiveness, contingency measures: Some delegations have raised questions about trade remedies on steel products. The United States has one of the most competitive steel industries in the world. In the past 20 years the industry has invested billions of dollars in plant modernization, closed dozens of inefficient mills, eliminated 25 million tons of steelmaking capacity, raised productivity by more than 300%, eliminated 330,000 jobs, and invested billions of dollars in environmental controls, cutting pollution emissions by 90%. Despite these efficiencies, the U.S. steel industry has encountered very difficult market conditions in recent years. Because it has a large and open market for steel, the United States has been the destination of choice for much of the world's exported steel production. Steel imports into the United States surged in 1998 after the financial crises dried up demand for steel in other world markets. Steel imports continued at very high levels in 1999 and 2000, leaving the U.S. steel industry extremely vulnerable.

In response to the developing crisis in the steel industry, President Bush directed the United States Trade Representative to request the U.S. International Trade Commission to initiate a Section 201 safeguard investigation to determine whether certain steel products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing like or directly competitive products.

We are aware of concerns about the potential imposition of safeguard measures on steel. However, these concerns are speculative. Before there can be any safeguard measure, the U.S. International Trade Commission must determine that increased imports have caused serious injury or threat of serious injury to a domestic industry. The ITC is an independent agency, and we cannot predict the outcome of the steel 201 investigation. If the ITC does make an affirmative determination, the United States may apply a range of potential remedies. It is the Administration's intention to ensure that any remedy considered is consistent with our WTO obligations.

By remedying injurious and unfair trade, WTO-sanctioned trade remedies, such as those on steel, play an important role in the trading system. The existence of trade remedies have enabled the United States to make strong commitments to open its markets in trade negotiations by helping persuade U.S. industry to accept significant cuts in U.S. tariffs and other market opening efforts.

But we also recognize that the problems in steel are global, and require a global solution. That is why we are implementing the President's proposal of June 5 for negotiations seeking the elimination of inefficient excess capacity in the steel industry worldwide and establishing new disciplines on subsidies and other market-distorting practices in the global steel trade. This initiative is being launched at a special high level OECD steel meeting on September 17 and 18.

Transport

Maritime and Air Transport: Specific questions were raised about maritime. With respect to U.S. cabotage practices in maritime transport (the Jones Act), the Administration supports the Jones Act as an essential element of our Nation's maritime policy, and will not be proposing changes to the Act. We have responded in great detail in other forums about the Jones Act. The United States is among the more than 40 maritime nations that reserve their domestic trade to national flag vessels. The terms of reference governing the extended maritime negotiations following the Uruguay Round excluded cabotage from the negotiations. The United States supported this position due to the essential link that the Jones Act provides in our national transportation network and readiness capability. This point has been repeatedly noted by our Department of Defense. Indeed, over 75% of the ocean going vessels in the Jones Act fleet have military utility. The Jones Act assures U.S. control of essential transportation assets (including vessels, shipyards, and parts and equipment suppliers) and related infrastructure in both peacetime and wartime.

Financial services

Banking Insurance and securities: foreign participation: Several delegations have raised questions about the Gramm-Leach-Bliley Act. The Gramm-Leach-Bliley Act provides that a bank holding company may become a financial holding company and engage in a broad range of financial services, if the company's subsidiary banks are, among other things, well-capitalized and well-managed. The GLB Act also provides that a foreign bank that does not own a subsidiary bank, but engages in banking in the United States through a branch, agency or commercial lending company will be allowed to become a financial holding company. The Federal Reserve, however, must and has adopted regulations that require a foreign bank to meet capital and management standards comparable to those of a U.S. bank. Thus, the GLB Act sets a framework that allows for equivalent treatment between the US and foreign banking organizations. Given the substantial liberalization of the banking sector, in 1999 with the passage of the Gramm-Leach-Bliley Act, there is nothing currently pending that would allow banks to 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.

Telecommunications: FDI restrictions, satellite, Internet

Investment restriction: One concern raised was that a percent ownership restriction in the U.S. telecom services market might act as an impediment to foreign investment. The limitation does not apply to all foreign investment. As the U.S. WTO schedule makes clear, this limitation applies only to direct investment in the ownership of a common carrier radio license by a U.S. corporation of which more than 20% of the capital is owned or voted by a foreign government or its representative, non-U. S. citizen or their representative, or a corporation not organized under the laws of the United States. Members may be interested to know that notwithstanding this limitation, there are few if any Members that enjoyed a level of foreign participation in their wireless market comparable to the United States, now home to tens of billions of dollars in foreign investment.

Satellite: One delegation inquired about the effect the Federal Communications Commission (FCC) deference to the Executive Branch on matters of national security and law enforcement have on U.S. commitments to allow foreign satellite operators to provide satellite services to points in the United States from gateways outside the United States. FCC deference to the Executive Branch on matters of national security and law enforcement has no effect on U.S. WTO commitments. Such deference is clearly within the scope of U.S. WTO commitments.

Internet: U.S. views were sought on the imposition of customs duties on digital products through the internet. The United States believes the current moratorium on such customs duties should be made binding and permanent and invites other delegations to support this position.

Professional Services and Movement of Natural Persons

Movement of Natural Persons: One delegation asked whether U.S. visa requirements and sub-federal professional certification requirements served to unduly restrict access to the U.S. market for foreign professionals. No country allows free flow of persons, particularly those wishing to work in a foreign country. United States regulations in this area address, among other things, legitimate law enforcement concerns about individuals improperly using a temporary visa to secure permanent residence. With respect to professional certification requirements, there is nothing discriminatory about U.S. regulatory requirements. United States and foreign professionals must meet the same sub-federal requirements. There are many professions, such as accounting and architecture, where the essential qualification requirements are harmonized, even though administered by states.
