

## **FIVE-YEAR REVIEW OF EXEMPTION PROVIDED UNDER PARAGRAPH 3 OF THE GATT 1994**

### Communication from Japan

The following communication, dated 4 October 1999, has been received from the delegation of Japan with the request that it be circulated to Members.

In the meeting of the General Council on 15 July, the United States insisted on explaining that the conditions which had created the need for the use of this exemption by the United States still existed. The reason being that there have been no amendments, legislative changes, or measures adopted by the United States that would alter the US position of conforming or not to coverage under the exemption.

Japan, however, cannot accept the US view. Our understanding of paragraph 3(a) of the GATT 1994 is the following. All Members, except the US, accepted that grandfathering, having been admitted by the Protocol of Provisional Application of GATT 1947, was not succeeded by GATT 1994. Only the US maintained that this exemption be introduced with a view to protecting domestic laws, such as the Jones Act. The exemption was subsequently admitted through negotiation only for the purpose of the US, but an introduction of the review was decided at the same time. Thus, this paragraph did not automatically succeed grandfathering. The decision was made only after careful examination of the necessity of the exemption, taking into account the reasons explained by the US referring to "national defense purposes" (last paragraph of the US submission, WT/GC/W/228). Based upon this understanding and for the purpose of the review, a comment should be provided by the US to explain, besides statistics, how relevant the US domestic laws concerned are in terms of national defense purposes and whether this effect is sufficiently important compared to the significance of the GATT principles.

As exemption under paragraph 3 of the GATT 1994 allows a serious deviation from the fundamental GATT disciplines, it is clear that it be inappropriate to only point out that there exist domestic laws in the US, with a view to examining "whether the conditions which created the need for the exemption still prevail".

The General Council is required to examine through substantial discussions whether such serious deviation from the fundamental GATT disciplines is necessary or not. This point is extremely important in the course of liberalization of trade by the WTO.

Considering these circumstances, Japan would like to contribute to the review process of the General Council on this issue by providing the following comments and questions.

- (a) What is the current situation of the U.S. industry's capability of producing ships, which has been protected by the relevant legislation under exemption through Paragraph 3 of the GATT 1994. Please explain precisely how such legislation meets the U.S. national defense purposes.
  - (b) Statistic shows that 70% of ships built in the U.S., that is 20% of the gross tonnage, cover the small-sized fishery ships. Please explain the linkage with national defense.
  - (c) Please provide information on how ships can be considered as U.S.-built under the Jones Act and what kind of rules of origin are used for that purpose?
  - (d) Are ships that are built by a foreign capital company in the U.S. considered as a "U.S.-built"?
  - (e) Please provide a list of the number of companies producing "U.S.- built ships" in the U.S. and the total amount of production per year.
  - (f) The paper (WT/GC/W/228) states, "The domestic-build requirement provides an essential element of [the] US maritime policy by assuring the maintenance of an industrial shipbuilding base for national defense purposes". Does the US have any quantitative figures of industrial shipbuilding (and maintenance) capabilities which are "essential" to meet naval requirements?
  - (g) Please provide the information on the amount of ships which have been delivered to U.S. Navy in recent years.
  - (h) Please indicate the statistics showing a decline in the budget of U.S. Navy.
  - (i) What is the percentage of ships purchased by U.S. Navy out of the total domestic demand per year?
  - (j) Has the U.S. ever considered any alternative options which are less trade restrictive, such as subsidy measures, to take over the existing legislation that strictly ban the ship imports to the U.S.?
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