

Trade Policy Review Body
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TRADE POLICY REVIEW

UNITED STATES

MINUTES OF MEETING

Addendum

Answers to Written Questions

The following communication was received on 15 February 1997 from the Delegation of the United States responding to questions raised by delegations and the discussants during the review.

QUESTIONS FROM ARGENTINA

1. Re: Report from the Secretariat, Section II, para. 58.

Certain bilateral agreements signed with Japan have not been notified to the WTO, even when they appear to relate to areas within the jurisdiction of that organization, such as construction services, cellular telephony, etc. Could you provide more information on the provisions of these agreements? In particular, could you tell us what incentives to direct foreign investment are contained in the agreement with Japan of June 20, 1995?

The U.S. has notified agreements consistent with its WTO obligations, and has also provided information about specific agreements, including the agreement of June 20, 1995, to WTO members on request.

2. Re: Report from the Secretariat, Section III, para. 22.

We read in para. 22 that the "United States Treasury Department is considering the adoption of uniform rules of origin; nevertheless...that initiative has not received the support of the Congress or the various sectors of industry. In this regard, we would like to know whether the Treasury Department is still considering the adoption of uniform rules of origin, and what were the reasons why Congress and industry did not support this initiative?

The quotation from para. 22 of the Secretariat's report is from an ITC report ("Country-of-Origin Marking: Review of Laws, Regulations and Practices, Investigation No. 332-366, USITC Publication 2975, July, Washington, D.C.) which explains the debate in more detail. Although several industries have expressed support for this project, changes to the rules will not be made unless and until there have been consultations with the relevant Congressional committees.

3. Re: Report from the Secretariat, Section III, para. 25.

Para. 25 of the report indicates that the request to initiate an anti-dumping investigation or an investigation into subsidies can be submitted by "associations of workers who are representative of the industry affected." What is the legal justification for this in terms of the WTO agreements?

4. Re: Report from the Secretariat, Section III, para. 29.

According to para. 29, U.S. legislation would only seem to contain the two-percent rule for determining the "de minimus" margin of dumping, but would not seem to include the rule for volume (three percent of the imports of a similar product). Could you clarify this situation for us?

Along the same lines, we would appreciate having more information on the standards with regard to the minimum permissible volume of subsidized imports from developing countries, which is four percent of the total imports of a similar product, and does not appear to have been covered in U.S. legislation.

The "three-percent" de minimus, or negligible, volume of imports requirement is addressed in 19 U.S.C. sec. 1677(24) of the U.S. Code, which also addresses the "four percent" rule for imports from certain developing countries. Other statutory provisions, 19 U.S.C. secs. 1671b(a)(1), 1673b(a)(1), 1671d(b)(1) and 1673d(b)(1) require that investigations be terminated if imports from a particular country are "negligible" as defined in sec. 1677(24).

5. Re: Report from the Secretariat, Section IV, para. 22.

Could you specify the stage of the Congressional approval process of the bill under which the U.S. International Trade Commission would be asked to examine the possibility of defining the national industry on the basis of seasonal competition? In practical terms, what would the adoption of such a definition signify?

The bill did not pass; assessment of its practical implications would therefore be a matter of speculation.

6. Re: Report from the Secretariat, Section III, para. 71. Marketing Report.

Could the U.S. authorities explain in detail the scope of the "National Support Strategy" announced by the President in September 1993 as a broad government export promotion plan? This program is part of the 1988 Export Enhancement Act, intended to promote and "protect" U.S. trade interests abroad.

The United States would like to refer you to the "National Export Strategy: the Fourth Annual Report to the United States Congress," October, 1996, which is available from the U.S. Government Printing Office (ISBN 0-16-048825-7) and at http://www.ita.doc.gov/ita_home/itahot.html.

7. Re: Report from the Secretariat, Section III, para. 86. Public Contracting.

(a) The United States is a member of the GPA. It is estimated that government procurement contracts are worth approximately 68 billion dollars (Table III.9), not including set asides for small and minority-owned businesses. Almost 13 percent of U.S. government procurement contracts are included as set asides. What is the possibility of this practice coming to an end when the three-year moratorium ends on March 8, 1996, as announced by the President. Could it end sooner? Footnote 109, p. 88.

The United States has negotiated exceptions to the GPA and NAFTA for small and minority-owned business (SMB) set-asides and has no plans to phase-out these set-asides. As exceptions to the GPA, U.S. legislation on set-asides is compatible with its obligations. Set-asides serve an important socio-economic function while being limited in scope to a relatively small portion of contracts. Historically, they have affected between six and seven percent of the total value of U.S. coverage under the Tokyo Round GPA. It is too early to tell whether the impact may be increased as the result of coverage of services, including construction, under the WTO GPA, since statistics have yet to be reported under the new agreement. Despite the fact that the United States has negotiated exceptions, it has always sought to apply them on a transparent, predictable basis. The United States expects to continue to discuss with other GPA signatories how transparency and predictability associated with set asides can be enhanced. However, one aspect of awards made to SMBs should not be overlooked. Many of these awards are made through a full and open competitive procurement process and not through set asides.

(b) Do you have any data on the participation of developing countries in the government procurement scheme? Could you provide such data in writing later?

There is no readily accessible and reliable data on involvement in U.S. Federal or subcentral procurement by developing countries.

8. Services

The list of U.S. concessions is broad in terms of its coverage, yet some of its horizontal provisions, e.g., those relating to restrictions on the temporary movement of professionals, diminish the effect and the practical value of the concessions. We would appreciate your comments in this regard.

U.S. commitments on services are broad in coverage. The horizontal commitments on temporary movement of persons provide the basis for admission of thousands of foreign professionals into the United States from most of the nations of the world. These are quite broad compared to the commitments of other countries and apply fairly liberal treatment of professionals and others that enter under those provisions. We are not aware of any complaints that specific commitments on professionals are being undercut by limitations on temporary movement.

QUESTIONS FROM ASEAN

Textiles and Clothing: Rules of Origin

1. Noting that Article 2.b of the ARO provides that rules of origin not be used as instrument to pursue trade policy objectives directly or indirectly, we wonder whether a trade policy objective motivated the changes in the rules of origin on textiles and apparel?

The objective of the amended rules of origin was to aid the United States in combating illegal transshipment. In large part, the rules also help bring U.S. origin rules in this sector into line with those of other major trading importing countries. The Administration's statement of Administrative Action specifically defines the intent as follows:

- (i) *the rules of origin are to reflect the important role assembly plays in the manufacture of apparel products*
- (ii) *help combat transshipments by*

- (a) *lessening confusion resulting from differences between U.S. practices and the practices of other major trading countries;*
 - (b) *facilitating the use of more effective labelling requirements; and*
 - (c) *focusing on practices more easily subject to inspection by the U.S. Customs Service;*
- (iii) *bring the U.S. rules of origin in line with rules employed by other major importing countries, such as the European Union and Canada*

2. Noting that one of the accomplishments of the UR Agreements was a decision to harmonize all the international rules of origin to ensure that countries cannot use special rules of origin as protectionist barriers to trade, this raises concerns about: how can the US reconcile its new rules with the rest of the world, taking into account that it so far has not put forward a harmonization proposal on textiles and apparel in Brussels?

As noted, the amended rules to a large extent more closely align U.S. rules with other major importers. Obviously, harmonization of rules on textiles, as with other product sectors, will require a consensus of the interested parties. The ARO provides a process and schedule for discussing and examining the proposals of Members before any harmonization of rules is adopted.

3. In view of the fact that the US has refused to discuss textile rules of origin in Brussels, do the US negotiators have the authority to make any changes to Section 334 of the Uruguay Round Agreements Act (URAA)?

The U.S. has not refused to discuss textile rules of origin; In addition, we have held consultations with 12 countries on the rules of origin, where applicable, also in accordance with the procedures in the Uruguay Round Agreement on Textiles and Clothing. U.S. negotiators may discuss various approaches, but do not currently have the authority to negotiate changes to provisions embodied in U.S. law.

4. Does the US Administration have Congressional Fast Track Authority to negotiate and make necessary changes in the US rules of origin on textiles and apparel?

As noted, the U.S. Administration does not currently have Congressional Fast Track Authority.

5. What are the US views and expectations regarding the impact of these rules on various products and processes?

The U.S. has been engaged in discussions with a number of countries on their assessment of the potential impact of the amended rules on their trade. The U.S. is not in a position to independently assess any such impact without the participation of, and input from, those countries.

6. If a finished product was considered made in Country A because it was printed, dyed, finished and sewn there, but the fabric is coming from Country B, won't the importer be required under the new rules to present a Country B visa? How will Country B be able to control this trade when the product that left that country was unfinished fabric?

Yes, under the new rules the importer will be required to present a country B visa. The U.S. bilateral agreements state that quota is charged to the country of origin. As such exporting countries are responsible for ensuring that they know the ultimate destination of their textile exports whether finished or unfinished. A visa arrangement helps to prevent illegal transshipments and quota fraud

by providing an effective means of controlling textile and apparel exports. The licensing authority in each foreign government is responsible for issuing visas and is also aware of the final destination of the goods covered by the textile visa. Under a visa arrangement, goods will not be permitted into the United States without a valid visa. In conjunction with a visa arrangement, the United States and many exporting countries, have developed the Electronic Visa Information System (ELVIS), an additional means to control the exportation of textiles and apparel to the United States. ELVIS allows countries to electronically transmit information on textile and apparel shipments, which may be subject to quantitative restrictions, to U.S. Customs, and therefore provides a means to verify that shipments have been authorized for export by a certain country. ELVIS will assist both the U.S. Government and the exporting government by detecting and preventing fraudulent use of the bilateral quotas by verifying shipments at the point of entry.

7. In a Federal Register notice published on 12 February 1995, the Federal Trade Commission has asked for comments on how to address the "apparent conflict" between its Rule 33, which permits a product made in the US of imported fabric to be labelled "Made in the USA of Imported Fabric" and Section 334 of the URAA under which the country of origin for certain categories of textile products "will be the country where the fabric was produced not the country where the item was finished." In view of such contradiction in the US own laws, how does the US think this issue should be resolved?

Since July 1, 1996 U.S. Customs has required that all imported textile and apparel merchandise be marked in accordance with section 334 and as such the Federal Trade Commission will enforce the section 334 labelling requirements on imported merchandise. We understand that Rule 33 applies to final products sold in the United States that were not imported but manufactured here, albeit from foreign fabric.

8. The ability of these changes to help combat transshipment is difficult to understand. All WTO Members are fully committed to cooperate in the prevention of circumvention. Please provide further clarification on the US claim that the new rules were developed to combat illegal transshipments and other circumvention of textile and apparel quotas.

The assembly rule of origin enhances the ability of Customs authorities to detect and prevent illegal transshipment. For example, consider a scenario where goods enter country B from country A, marked as made in a country other than B. Previously Customs authorities could not be certain of the origin of that shipment. Now such a shipment would clearly suggest an illegal transshipment

9. There have been significant delays in the issuance of binding rulings on the rules of origin change, including Customs' original failure to meet the 1 July 1996 statutory deadline for promulgating regulations. We request the US to provide information with regard to measures and steps which it has undertaken to avoid or prevent disruption to legitimate trade resulting from the introduction of these new rules.

Very few ruling requests have had a significant delay. Most rulings have been issued within 30 days of receipt by the Customs Service.

The Uruguay Round Agreements Act was signed into law on December 8, 1994 providing the trade with more than 18 months to adjust before the implementation of the textile origin rules on July 1, 1996. The delay in the promulgation of the regulations insured that concerns of all interested parties could be taken into account. That 18 month delay was specifically included in the statute to address the requests from the U.S. importing community. The only ASEAN country to submit comments was the Republic of Singapore. These comments were submitted on July 11, 1995 after the original deadline, but within the extended period. The United States started accepting requests for binding rulings on October 5, 1995. Since that time more than 250 origin rulings have been issued.

10. What is the status of "appropriate and equitable adjustments" requested by all affected Members?

The U.S. has consulted with each of the 12 countries which have requested talks. These consultations are ongoing. As a result of these consultations, countries are already realizing that their initial estimates of adverse affect were unfounded and adjusted their assertions accordingly.

11. Will these rules have an impact on products that are not currently subject to quotas, such as products from Europe or even Canada? Has the US held consultations and successfully settled with such industrialized countries who do not have quotas on their products regarding the rules change?

The United States has held several rounds of consultations on the rules of origin with the European Union, Switzerland and Canada. Additional rounds of consultations are scheduled for November and December.

Agriculture

12. Despite the rise in the world agricultural prices (Table IV.3 of Secretariat Report), the US continues the use of export subsidies as marked by the growth in sales of subsidized exports. Can the US provide further clarification on its underlying reasons in having high out-quota tariff, the allocation of quotas to selected trading partners and the underutilization of tariff quotas ?

The United States negotiated its tariff rate quotas (trqs) and their allocation during the Uruguay Round, and has subsequently submitted all required trq notifications to the Agriculture Committee. The U.S. is committed to its World Trade Organization (WTO) obligations, and will continue to abide by all its commitments. With regard to underutilization of tariff quotas, the trq for dairy products was not filled in 1995, because low U.S. dairy prices discouraged imports of the products into the United States.

Contingency Trade Measures

13. ASEAN take note of the US contingent trade measures such as antidumping and countervailing duties and safeguard measures, and call on the US to exercise due restraint in the use of these measures, (Paragraph 40, page 65 of the Secretariat report indicates the number of such cases that are outstanding). In the face of improving economic conditions, recourse to these contingent measures will be easier to minimize.

U.S. antidumping and countervailing duty laws are administered in an open and impartial manner, in accordance with our obligations under the World Trade Organization (WTO). Providing domestic industries with a remedy against injurious unfair trade practices is integral to the balance of legal rights and obligations embodied in the WTO and is an essential element in maintaining the public consensus in favour of continued of trade liberalization. In general, as long as trade remedies are not abused -- for which there is in any case a reliable recourse in the WTO's dispute settlement mechanism -- they correct distortions which disadvantage truly competitive enterprises in both the importing market and in other exporting markets. To exercise (i.e., exert) restraint beyond that required by the WTO would prejudice the impartiality of the process, which would be to the ultimate detriment of all potentially interested parties.

14. ASEAN also take note of the report of the US International Trade Commission on the economic effects of anti-dumping and countervailing duty orders (see Box III. 1, page 68 of the Secretariat Report). Although ITC Commissioners did not agree among themselves on the results of the study, the study did indicate, among others, that a removal of outstanding anti-dumping and countervailing duty orders can result in net welfare gains.

U.S. antidumping and countervailing duty laws and practices are consistent with the WTO. As explained in the response to question 13, these provisions (and their fair and impartial enforcement) are very important to the maintenance of support for the multilateral trading system --which is one of the reasons the United States so strongly supports their existence and use.

The ITC study examined, as requested, the economic effects of enforcement of our antidumping and countervailing duty laws. That there are costs associated with maintaining these provisions is hardly surprising. As a matter of transparency and public information, however, the U.S. government was interested to improve its understanding of such costs and effects. Neither the findings nor the study itself call into question our commitment to these provisions and their implementation, for the reasons set forth above. We would invite other WTO members who are interested in this issue to conduct similar studies of their own regimes, both for reasons of transparency and for the analytical results.

Regional Trade Agreements

15. We note that, like the US-Canada FTA, the NAFTA provides that in the event of conflict between NAFTA and GATT/WTO provisions, NAFTA provisions prevail (para 37, page 31 of Secretariat report). ASEAN calls on the US to implement its various RTAs in accordance with the provisions of the WTO, and reaffirm the primacy of the multilateral trading system. ASEAN calls on the US to avoid the negative effects of economic integration, such as trade and investment diversion.

We have implemented, and will continue to implement, our regional trade agreements consistent with the WTO.

QUESTIONS FROM AUSTRALIA

1. We note, and welcome, the reiteration in the report by the U.S. Government of the United States' commitment to, and support from, the multilateral trading system. We also note the U.S. Government's recognition of the increasing internationalisation of the U.S. economy and the rising importance of trade to the U.S. economy and employment creation. In this context we further note that the U.S. refers to "fairly traded imports likewise benefitting the United States..."

- Can the U.S. comment on why it describes imports in this way?
- What does the U.S. mean by the term fairly traded in this context?

The support of participants in any rules-based commercial system depends in part on their sense that the rules are being fairly applied, and that, when violated, legal recourse is available. Maintaining public support for the multilateral trading system is of great importance in the United States as in other member countries as well. The WTO itself defines cases when exports may be traded unfairly, as in dumped or subsidized exports. Our reference to the benefits to the U.S. economy of fairly traded imports reflects our concern that unfairly traded products tend to erode public confidence in the fairness of the system and thus in support for the multilateral system itself.

2. In past negotiations fast-track negotiating authority has helped the U.S. achieve its negotiating objectives, while at the same time allowing the U.S. to demonstrate leadership and providing confidence to trading partners.

- Can the U.S. confirm that the new administration will seek, as a priority, comprehensive fast-track negotiating authority from Congress?

While the President has standing authority under the Constitution to negotiate agreements, the Administration recognizes the importance of Congressionally agreed procedures to consider and implement agreements given our system of government and the respective roles of the President and the Congress on issues of commerce. We recognize that to have such agreed procedures helps to ensure that the Congress is willing to address trade agreements, which sends an important signal to our trading partners. We will take this matter up with the incoming Congress.

3. What plans does the U.S. have to recommence negotiations on the MSA or Multilateral Specialty Steel Agreement?

The USG remains very interested in an MSA which, by establishing tough disciplines on subsidies and other trade-distortive practices, would benefit the entire world steel community. However, at this point, it appears that significant policy differences remain which would prevent us from moving this initiative forward. The situation on specialty steel is different. Here, US and EU industry organizations have resolved most of their differences and developed joint recommendations for a Multilateral Specialty Steel Agreement (MSSA). The USG and EU Commission have been consulting on the possible establishment of an MSSA; we believe the prospects are favourable. Other countries and industries also appear positively disposed to this initiative, which was discussed at the OECD Steel Committee meeting in October. We plan to follow this meeting up with informal discussions between interested countries early next year with the hope of concluding negotiations on an MSSA in the near future.

4. We note that there was some movement toward maritime reform earlier this year, in particular, the proposed Ocean Shipping Reform Act (H.R. 2149) which would have partially deregulated international shipping in the United States.

- Can the U.S. comment on the likely future direction of maritime reform and whether such reform may be extended to changes in the so-called Jones Act, which prevents foreign built vessels operating in coastwise trade?

The last Congress considered substantial changes to the Shipping Act of 1984 (1984 Act), including the closing of the Federal Maritime Commission (FMC or Commission), which administers the 1984 Act. This was in response to a compromise worked out by shippers and U.S.-flag carriers. Among other things, this proposal maintained the carriers' antitrust immunity, ended tariff filing, and permitted negotiation of confidential agreements between shippers and carriers. With the closing of the FMC, its residual functions would have been continued in the Department of Transportation or some other government organization.

If the compromise proposal is reintroduced in the new Congress in substantially the same form and eventually incorporated into the 1984 Shipping Act, the international shipping trades in and out of the U.S. would be dramatically deregulated. Regarding the likely future direction of maritime reform, there are a range of views on the proposed legislation. The Administration is ready to work with the new Congress on this matter. The reform of the Shipping Act of 1984 does not extend to changes in the Jones Act or U.S. cabotage laws in proposals made in the last Congress to modify or repeal the Jones Act. Two of these proposals called for the grant of reciprocal domestic trading privileges for carriers of other countries, but there were other concerns that were not addressed, such as foreign subsidies, tax incentives, lower safety standards and national security. No proposals were enacted, and the Administration reaffirmed its strong support of the Jones Act.

5. Also in regard to the Jones Act we would note that it is contrary to the general thrust of U.S. policies as described in the government report aimed at improving the competitiveness and efficiency of domestic industry. Studies carried out by the U.S. International Trade Commission (IT) have estimated that the Jones Act imposes significant costs on the U.S. economy.

- Can the U.S. provide an explanation of the continuing justification for this import prohibition?

The Administration has taken the position that the U.S. coastwise laws, including the domestic build requirement, are an essential element of U.S. maritime policy and our national and economic security. Further, any encroachment on the Jones Act, as part of the coastwise laws, could jeopardize the stable shipping service is currently being supplied by dedicated U.S.-flag carriers to local economies and strategically located military installations in the non-contiguous communities. The Administration does not support legislative proposals that would weaken the Jones Act. The U.S. coastwise laws promote the highest standards of marine safety and environmental protection in U.S. ports and waterway, ensuring that vessels moving between U.S. ports comply with the full range of applicable environmental and safety laws.

6. Can the U.S. comment on its intentions to negotiate the liberalization of maritime services and, in particular, whether it considers it necessary to retain the authority, under Section 19 of the 1920 Merchant Marine Act, to take unilateral action to address foreign shipping practices affecting U.S. carriers?

These subjects will both be addressed in the comprehensive service negotiations scheduled to commence in the year 2000.

DISCRIMINATORY APPLICATION OF WINE AND BEER EXCISE AND OTHER MEASURES

7. We refer the U.S. delegation to the outcome of the GATT panel ruling on a complaint brought by Canada against the U.S. on measures affecting alcohol and alcoholic beverages in 1991 and on which Australia made a third party submission. In delivering its decision in April 1992, the GATT panel ruled that a preferential federal tax on beer and wine and numerous tax and distribution practices in 41 states and Puerto Rico were “inconsistent” with multilateral trade rules. We note also the statement of the representative of the U.S. delegation on 19 July 1992, that “the U.S. would not oppose the adoption of the panel report” and that “we will make serious efforts to achieve “prompt conformity with the report within the confines of our constitutional system?”

- What actions have been taken by the United States to achieve prompt conformity with the conclusions of the panel report (adopted in July 1992), including:
 - (i) at the federal level, to remove differential excise treatment of beer and wine produced by foreign and certain domestic producers?
 - (ii) at the state level, to promote the removal of a range of discriminatory measures adversely affecting foreign wine and beer producers?

With regard to the state measures implicated in the GATT panel ruling, the Administration worked to educate state officials on the GATT and on the meaning of the panel report. The Federal government suggested methods of compliance, answered questions, and requested status reports from the states. There has been some progress to date. Six states passed legislation addressing the panel's recommendations and others have made regulatory changes.

It is important to note that foreign beer and wine have relatively unfettered access to the U.S. market on terms comparable to U.S. beer and wine, and the state practices cited in the panel report have minor trade effects. Additionally, a number of state statutes cited in the panel report are simply not being enforced by state authorities.

8. The U.S. has a long-standing trade policy that discriminates against wool textiles and apparel - especially vis-a-vis cotton. We are concerned that the product definitions applied, and the disparity between the duties applied to wool fabrics and cotton fabrics by the U.S. discriminate against wool. For example, duties on pure wool fabrics are 33.9 per cent while duties on cotton fabrics are 4.8. - 9.6 per cent. Wool is defined as greater than 36 per cent wool for woven products, greater than 23 for knitted products and 17 per cent for certain blended products, with wool products attracting higher tariff rates than products defined as cotton.

- What are the prospects for achieving parity in the tariff treatment of wool and cotton fabrics in the near future?

The wool product sector has long been considered a particularly sensitive sector in the United States, particularly with respect to its vulnerability to low cost imports. This sensitivity is reflected in the historical treatment of wool products both under the MFA and the WTO Agreement on Textiles and Clothing (ATC), as well as under the U.S. tariff schedule.

It bears noting that the average U.S. tariff on imports of textiles and clothing was 12.5 per cent in 1995, a lower average or absolute rate than that of most of our trading partners, including Australia. Moreover, the U.S. did agree in the Uruguay Round to reduce its maximum tariffs on wool products to 25 per cent, down from a starting point in some instances of 40 per cent.

9. When does the U.S. expect to be in a position to allow foreign users access to satellite links to Inmarsat and Intelsat?

Direct access to Inmarsat and Intelsat in the United States is the monopoly of Comsat. This is not a matter of denial of national treatment, insofar as AT&T is Comsat's largest customer. Comsat's monopoly is not under review at the present time.

U.S. UNILATERALISM, INCLUDING SANCTIONS

Continued threatened use of Section, Special and Super 301

10. We note the United States' apparent confidence in the operation to date of the WTO dispute settlement mechanism, evidenced by its resort to formal procedures on more than 20 occasions since January 1995. We note, in this regard, the statement of acting USTR Barshefsky (to a Congressional hearing on 11 September) that the DSU was 'proving to be a very effective tool to open other nations' markets'.

In the light of USTR Barshefsky's statement, what is the role of S. 301 actions, particularly where the issue falls within the ambit of rules and obligations covered by the WTO Agreement?

The United States made it clear to the Congress when it submitted legislation implementing the results of the Uruguay Round how section 301 would be used in regard to practices covered by the WTO. At that time the Administration said with respect to investigations that involve an alleged violation of a Uruguay Round agreement or the impairment of U.S. benefits under such an agreement, that the Trade Representative will:

- *invoke dispute settlement procedures, as required under current law;*
- *base any section 301 determination that there has been a violation or denial of U.S. rights under the relevant agreement on the panel or Appellate Body findings adopted by the DSB;*

- following adoption of a favourable panel or Appellate Body report, allow the defending party a reasonable period of time to implement the report's recommendations; and
- if the matter cannot be resolved during that period, seek authority from the DSB to retaliate.

Can the U.S. explain the unreasonable action provision of section 301 which implies that acts may be actionable under section 301 even though not necessarily in violation of U.S. international legal rights?

We all recognize that there are practices of foreign governments that unfairly restrict our countries exports to foreign markets and that are not covered by WTO agreements. Unlike some other countries, the United States has provided in its domestic laws for a transparent process whereby its companies can ask the government to try to obtain the elimination of those barriers through negotiations and whatever leverage may be available. The important point is that as the WTO agreements now cover more types of barriers than before, the U.S. expects that section 301 will be a more effective tool than in the past.

Does the U.S. delegation believe the U.S. would be justified in taking unilateral action against a particular policy practice even if it is within coverage of relevant WTO rules and disciplines and consistent with them?

Section 301 requires the Trade Representative to use a trade agreement's dispute settlement procedures if an investigation involves a trade agreement. Thus, if an investigation involves whether certain practices are consistent with a country's obligations under the WTO, the Trade Representative must resort to the DSU procedure to resolve that question if consultations fail. However, as the U.S. said in the statement submitted to the Congress along with the Uruguay Round agreements implementing legislation:

... the mere fact that the Uruguay Round agreements treat a particular subject matter --such as intellectual property rights --does not mean that the Trade Representative must initiate DSU proceedings in every section 301 investigation involving that subject matter. In the event that the actions of the foreign government in question fall outside the disciplines of those agreements, the section 301 investigation would proceed without recourse to DSU procedures.

How would the U.S. view such action in relation to its obligation under article 23 of the DSU?

Article 23 of the DSU requires that "When Members seek redress of a violation of obligation or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objectives of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding."

If the Trade Representative decides that a section 301 investigation does not involve a violation of the WTO or another situation covered by Article 23, then there is no requirement under Section 301 and no point in resorting to WTO dispute settlement procedures. There have been occasions when, after conducting an investigation, the USTR has decided that there were practices that the U.S. considers are covered by WTO agreements and, in those instances, we have at that time resorted to WTO dispute settlement procedures.

11. We refer to the 1 May 1996 unilateral embargo on the import of wild caught shrimp from countries that do not require the use of turtle and excluder devices (TEDS).

- How does the U.S. see this embargo attaining the purported environmental goal of sea turtle protection?

- What account does this embargo take of other measures for the protection of sea turtles in shrimp exporting countries, and other factors affecting sea turtle populations in these countries?

A 1990 National Research Council study, "The Decline of the Sea Turtles: Causes and Prevention," concluded that incidental capture in shrimp trawl nets was the principal human cause of sea turtle mortality in United States waters. Fortunately for the sea turtles, an inexpensive device now exists that virtually eliminates their accidental death in shrimp fisheries. The turtle excluder device, or TED, is a grid that is placed in a shrimp trawl net to create a "trap door" through which sea turtles escape. When used properly, TEDs allow up to 97 percent of captured turtles to escape, with virtually no loss of shrimp. This remarkable device is also remarkably cheap: a typical TED costs less than US\$400.00.

For almost a decade, the USG has required commercial shrimp trawl vessels under U.S. jurisdiction that operate in areas and at times when there is a likelihood of intercepting sea turtles to use TEDS. We do permit very limited exceptions to this requirement.

U.S. law, through this regulation of shrimp imports into the U.S., also encourages shrimp fishermen in other nations to use TEDS. Under this law, we certify harvesting nations if they have programs to protect sea turtles that are comparable to the U.S. program. The certification process takes into account all manner of measures a harvesting nation may take in this regard. We also certify harvesting nations if their fishing environment does not pose a threat to sea turtles, either because the waters are too cold to be regularly frequented by sea turtles or because their fishermen only use gear that poses no threat to sea turtles.

The USG has worked hard to transfer TED technology to shrimp fishermen in other countries, through numerous training workshops and seminars. We have also made clear our willingness to evaluate any evidence other nations may have to establish that shrimp trawling does not pose a threat to sea turtles in their waters. So far, no nation has presented a properly designed scientific study of adequate scope and duration that establishes this.

12. According to the U.S. Government, the legislative basis for its action is contained in Section 609(b) of the Endangered Species Act. We note, however, that Section 609(a) of that Act calls on the Secretary of State, in consultation with the Secretary of Commerce, 'to initiate negotiations for the development of bilateral and multilateral agreements with other nations for the protection and conservation of sea turtles, and undertake co-operative activities to promote these objectives'.

- Can the U.S. elaborate on its activities under Section 609(a) of the legislation?
- Has the U.S. continued discussions since the embargo to address co-operative approaches to turtle conservation, including to identify the particular circumstances of the various countries which have sea turtle population?

Following several years of negotiations involving the U.S. and 22 other States of the Western Hemisphere, the Inter-American Convention on the Protection and Conservation of Sea Turtles was adopted on September 5, 1996. The Convention is now open for signature by States in the Western Hemisphere. The treaty requires that all commercial shrimp trawl vessels operating in treaty waters use TEDs to reduce the incidental capture of sea turtles, as well as other measures to protect and conserve these important endangered animals. We have encouraged nations outside the Western Hemisphere to consider adopting similar agreements for their regions. Also, the Convention contains a provision that calls for the creation of protocols for application to regions outside the Western Hemisphere.

13. On 8 October 1996, the U.S. Court of International Trade made a ruling to disallow importation of shrimp harvested using TEDS from countries that have not been certified by the US as having a comparable sea turtle protection regime.

- What criteria will be used to determine whether turtle protection regimes are 'comparable'?
- Does the U.S. believe that the relevant provisions of the endangered species act - as currently interpreted by U.S. courts and applied by the U.S. Government - apply equally to U.S. and foreign shrimp harvesters?

The Department of State's guidelines implementing P.L. 109-162 set forth the standards used by the USG in determining whether a program adopted by a foreign government is comparable to the U.S. program. Basically, such programs must require all commercial shrimping boats equipped with types of fishing gear that might harm sea turtles to use turtle excluder devices, and must provide for proper supervision and enforcement of the requirement. A foreign program need not be identical to the U.S. program, merely comparable.

Legislation with extraterritorial application

14. Both the Helms-Burton and d'Amato/Gilman legislation include provisions which impact on the interests of other states, including on the legitimate trading interests of those states' nationals and companies.

- Can the U.S. explain what steps it has taken to accommodate the interests and concerns of other states in the formulation and administration of these pieces of legislation?
- Can the U.S. explain what consideration it has given to identifying means of pursuing its objectives which would not adversely affect the interests of other states?

We have made clear our intention to implement the Act in a way that maximizes the pressure on the Cuban government while minimizing frictions with our allies. There have so far been only two determinations under Title IV. We are proceeding carefully.

The Act does not ban all foreign trade with or investment in Cuba. It is narrowly focused. It applies sanctions only to those who profit from confiscated U.S. properties in Cuba for which no compensation has ever been paid.

Trade and environment

15. The U.S. has been in conflict with many of its trading partners in regard to some requirements imposed on third countries to adopt domestic U.S. environmental production and processing standards if they wish to export to the U.S.

Can the U.S. advise the domestic policy formulation and decision-making processes involved in reaching decisions on such matters, including inter-agency consultation, consultation with NGO's and with third countries, together with the factors taken into account in reaching decisions on environmental measures with trade effect?

The United States points to its performance with respect to the OECD Procedural Guidelines on Trade and the Environment. Among the steps the U.S. has taken to implement these guidelines are the establishment of a number of inter-governmental and advisory mechanisms to promote communication between the trade and environment communities. Most U.S. agencies have established committees

composed of representatives of various private sector groups to provide advice on issues within each agency's purview. For example, in March 1994, the President established a Trade and Environment Policy Committee (TEPAC) to provide policy advice to the U.S. Trade Representative's Office and the Environmental Protection Agency on issues involving trade and the environment.

Other agencies with responsibility for environmental issues also maintain various advisory committees. The National Oceanographic and Atmospheric Administration (NOAA) has eight Regional Fishery Management councils, as well as formal advisory committees. All of NOAA's committees include representatives from both the business community and environmental groups.

More broadly, the Office of Management and Budget has the responsibility of coordinating Administration input into the review and comment of environmental legislation being developed in Congress. Trade agencies actively participate in this process when there is a clear anticipated impact on international trade.

In addition, U.S. laws establish specific administrative procedures for obtaining advice from the public on various Executive Branch regulatory activities, including the negotiation of multilateral environmental agreements. All regulatory activity is normally governed by notice and comment rule making requirements, under which the public and other interested parties are given advance notice of and an opportunity to comment on rules and regulations as they are developed, and before they are officially promulgated. These transparent procedures ensure that the views of all interested parties--including those of foreign governments--can be expressed during the rule making process.

URUGUAY ROUND IMPLEMENTATION

Textile Rules of Origin

16. We refer to the change in Rules of Origin for certain textile imports emanating from the U.S. implementing legislation from the Uruguay Round - the Uruguay Round Agreements Act (URA) enacted on 8 December 1994. We note that, although the changed rules on apparel result in closer alignment of U.S. practice with prevailing international practice, the new rules of origin on home textiles represent a departure from practices utilized by a major international producing countries.

- Will the U.S. - in the interests of closer harmonization of Rules of Origin arrangements - consider reverting to previous arrangements for home textile imports?
- In the interests of transparency, will the U.S. provide detail on the outcome of bilateral consultations that have taken place to date under the aegis of Article IV of the Agreement on Textiles and Clothing (ATC)?

The U.S. rules of origin now in effect on textiles were legislated under the Uruguay Round Agreements Act of 1995. We do not anticipate revisions to that act in this area.

Under the ATC, the outcome of all agreements resulting from bilateral consultations, including those relevant to rules of origin, are notified to the Textile Monitoring Body in Geneva, and are available for review by WTO member countries.

17. We would be interested in the U.S. Government's reasoning for the differences listed below relating to the implementation of the subsidies agreement:

The URA incorporates much of the Uruguay Round agreement's defining specificity in the context of subsidies, but it changes the text defining de facto specificity. The Uruguay Round states

that ‘...if there is reason to believe a subsidy is specific, other factors may be considered’ (subsidies agreement article 2.1(c)), the URA, on the other hand, states ‘where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist... (M.R.5110 S251 (a) amending 19 U.S.C. to add subsection 5a (d) iii).

Another example relates to whether or not the Department of Commerce must find that an alleged subsidy has some discernible effect, or distortion in the market in order to constitute a countervailing subsidy. The Uruguay Round does not address the issue of market distortion in the supplying country. The URA includes a provision stating: ‘...the administering authority (commerce) is not required to consider the effect of the subsidy in determining whether a subsidy exists under (countervailing duty law)...’ (H.R. 5110 S251 (to be codified at 19 U.S.C. S1667(5)(c)).

In articulating the specificity test of the Subsidies Agreement in our domestic law, the United States wanted to balance a number of important goals. Among the most important of these was to reflect as closely as possible the language of the Agreement, while providing as much predictability as possible to exporters and others which must take account of how the law will be interpreted and applied in conducting their business. We agree that the section of the law cited by Australia (771(5A)(d)(iii)) does differ slightly from the language of the Subsidies Agreement. However, we believe that it implements faithfully both the substance and intent of the Agreement, and much of the difference can be explained by U.S. statutory drafting conventions that are intended to make the meaning of these provisions as clear as possible, recognizing (as does the Agreement) that their application will necessarily require a measure of judgment and accommodation to the facts of each case. This is made clear when one reads the Statement of Administrative Action in conjunction with the law. For example, the SAA makes clear that the administering authority will be expected to seek and consider information relevant to all of these factors...[but that] the weight accorded to particular factors will vary from case to case.”

With respect to the second observation, we note that it is absolutely correct that the "Uruguay Round [Subsidies Agreement] does not address the issue of market distortion in the supplying country", and it was that very fact which the United States wished to be clearly reflected and recognized in its domestic law. In certain past U.S. countervailing duty proceedings, the issue has arisen that a particular market distortion in the subsidizing country was a necessary precondition to the existence and identification of a countervailable subsidy under U.S. law. While it is reasonable to assume that subsidies ultimately and in some way are market-distortive, the WTO Subsidies Agreement in no way requires that any such determination or consideration be an element of satisfying the legal conditions for finding a potentially countervailable subsidy. Rather, one must only determine whether a particular measure meets the definition of a subsidy set forth in Article 1 and is specific within the meaning of Article 2. (Of course, in order for countervailing measures to be taken, one must also satisfy the relevant injury and causation requirements.) It is this principle which the U.S. statute implements in the language referred to by Australia.

MFA Phase-Out Plan

18. The WTO Agreement on Textiles and Clothing requires the phased adoption of GATT 1994 rules by fixed percentages of the 1990 import volume of textiles and clothing.

- Can the U.S. explain why its announced timetable for the phased adoption of GATT 1994 discriminates against wool in regard to other fibres due to delayed up-take of WHO rules for wool as opposed to cotton?
- Given that under the current U.S. timetable for the release of products from quotas the majority of wool products will be released simultaneously on 21 December 2004, how does the U.S. intend to avoid invoking the transitional safeguard clause of the Agreement on Textiles and

Clothing, noting that Article 1.6 states ‘members should allow for autonomous industrial adjustment and increased competition in their markets’?

As noted above, the wool product sector is a particularly sensitive sector in the United States. The Uruguay Round Agreements Act of 1995 stipulates that the most sensitive (textile) products will be integrated last.

The United States intends to invoke the safeguard clause of the ATC wherever necessary to forestall serious damage or actual threat thereof to U.S. industry.

ACTIVITIES OF SUB-CENTRAL GOVERNMENTS

19. What efforts has the U.S. administration undertaken to monitor the nature and content of practices undertaken by state and municipal governments which may contravene the provisions of the Subsidies and Countervailing Measures Agreement?

The U.S. federal government has an ongoing consultation process with the state governments concerning their obligations under the SCM Agreement as well as all the other Uruguay Round Agreements.

20. There is wide variation between states in relation to establishment restrictions and right to practice for foreign professional firms in accounting, engineering, architectural and legal services.

Does the U.S. have plans to review the regulatory restrictions at the state level for these foreign professional firms, either to improve the transparency of regulations or to move toward greater uniformity among the states?

In the United States, regulation of the professions is the responsibility of state governments. In terms of transparency, information is publicly available in each state on regulations pertaining to the establishment of foreign professional firms and the licensing requirements for individuals to practice the above-mentioned professions. Information on state regulations also is published by national associations representing the regulatory bodies and the professions. Through these national associations, the states and the professions exchange information and develop model laws, leading toward uniformity. Uniform examinations are given nationwide in accounting, architecture and engineering. U.S. Government officials meet periodically with state government officials in various intergovernmental groups. Aspects of international trade agreements relating to professional services have been discussed at such meetings over the last several years. For the information of WTO Members for GATS purposes, the U.S. Government has submitted to the Secretariat copies of publications which summarize the state laws and other measures applicable to these four professions.

AGRICULTURAL TRADE REFORM

21. The 1996 Federal Agricultural and Reform Act (FAIR) represented a significant step forward in decoupling agricultural support from production in the United States. There have been reports that President Clinton, if elected to a second term, intends to improve the safety net provided to farmers under the Act. The Act already provides generous direct payments to farmers during the course of the next seven years.

- What type of safety net does the U.S. intend to put in place to bolster these payments?

The FAIR Act provides that a new commission called the Commission on 21st Century Production Agriculture be established by October 1, 1997, to conduct a comprehensive review of effects of the

FAIR Act legislation, the future of production agriculture, and the appropriate role of the Federal Government in production agriculture. The Commission's report is to be submitted to Congress by June 1, 1998, and a subsequent review, with recommendations for legislation, shall be completed by January 1, 2001. We expect the commission's report to address the above question.

22. The report by the U.S. Government says that as a result of the FAIR Act, planting decisions and commodity prices will be determined by market forces, not government incentives. It is true to say that market forces will play a greater role in planting decisions and commodity prices. However loan rates still apply to a significant proportion of U.S. farmers, subsidies are still paid on exports of key commodities, and some commodities will be protected by prohibitive TRQ arrangements.

- Could the U.S. comment on the extent to which these policies are likely to continue to influence commodity prices and hence farmers' planting and investment decisions?

The scope for further influence of policy upon prices and production is significantly reduced, since, even though loan rates continue, there is no price floor and no government stock accumulation.

- Could the U.S. elaborate on the assistance provided under the FAIR Act to the Dairy Export Trading Companies and the Foreign Market Development Cooperation Program?

The FAIR Act provides that the Secretary of Agriculture shall, consistent with the obligations of the United States as a member of the World Trade Organization, provide necessary advice and assistance to the U.S. dairy industry to enable it to establish and maintain one or more export trading companies under the Export Trading Company Act of 1982, for the purpose of facilitating the international market development for and exportation of dairy products produced in the United States. With regard to the Foreign Market Development Cooperator Program, the legislation formally authorizes the program to develop and maintain foreign markets for U.S. agricultural commodities and products, and authorizes necessary appropriations to carry out the program for FY 1996 -2002, but does not specify funding levels.

- Could the US elaborate on the "Fund for Rural America", in particular the types of research and rural development covered by the program?

The Fund For Rural America creates a competitive research grant program for research, and funding for a range of rural development activities, including rural business enterprise grants, direct loans, loan guarantees, grants to water and waste water projects, distance learning and telemedicine loans and grants, self-help housing, and rural housing preservation. On the research side, the Fund For Rural America creates a competitive research grant program for "...research, extension, and education to increase international competitiveness, efficiency, and farm profitability; reduce economic and health risks; conserve and enhance natural resources; develop new crops, new crop uses, and new agricultural applications of biotechnology; enhance animal agricultural resources; preserve plant and animal germplasm; increase economic opportunities in farming and rural communities; and expand locally-owned value-added processing."

- How does the U.S. consider its reform measures in agriculture will affect U.S. trade?

The FAIR Act will make farmers more responsive to market forces and we envision U.S. agriculture to remain competitive in the world market.

23. The U.S. has a UR commitment to incorporate a polarity adjustment into the over-quota tariff rate on sugar.

- Has this commitment been included in the U.S. Schedule XX to the Marrakesh Protocol?

No, this commitment is not yet part of Schedule XX. Implementation of this commitment requires legislative and executive approval. The U.S. intends to seek legislative approval in the new Congress.

24. Can the U.S. confirm that, in line with the intention of Article 9 of the Agriculture Agreement, it would not carry forward shortfalls in expenditure into future years?

The United States believes it would be disruptive to world markets and to future multilateral agricultural negotiations if exporting countries were to carry forward shortfalls in order to subsidize above their annual Uruguay Round commitment levels. As long as our competitors respect their scheduled annual ceilings, so will the United States.

25. Although export subsidies are budgeted to continue and we acknowledge that they may return to the maximum levels in the United States' Uruguay Round Schedule, does the U.S. envisage the continuing suspension of export subsidies in the light of market developments over the next year?

International market conditions will determine the extent to which the U.S. applies its export subsidies. The U.S. believes that continuous world trade liberalization is the key to eventual elimination or suspension of export subsidies. The U.S. is committed to its World Trade Organization (WTO) obligations, and will continue to abide by all its international agreements and commitments.

26. How does the Administration interpret the provision in the Farm Bill that USDA be given "sole discretion" for the administration of the DEIP, and what impact will this have on the role of the TPRG which was established by Presidential order?

We are currently reviewing the legal implications of the 1996 "Farm Bill" before we implement any policy decisions affecting the DEIP. We intend to operate the DEIP consistent with our WTO commitments.

- How does the Administration view progress to date in the implementation of the Farm Bill, and how have farmers responded to the Bill and its market oriented reforms?

At this point in the bill's implementation, it is difficult to measure the effects of the legislation, especially in view of the current high commodity prices. In general, we don't expect major changes in prices and production in response to the increased flexibility in the program.

- What impact does the Administration foresee on production from changes introduced in the operation of the Conservation Reserve Program (CRP), and given that considerable acreage is scheduled to leave the program over the next few years, how much is expected to be enrolled in production flexibility contracts?

Up to 36.4 million acres have been enrolled in the CRP and some cropland that otherwise would have been in production has been idled. Under a proposed rule implementing FAIR Act provisions, there will be a greater emphasis on enrolling cropland that yields the highest environmental benefits while less erodible and environmentally sensitive cropland previously enrolled in the CRP will be returned to production. While the FAIR Act authorizes a 36.4 million acre cap on CRP acreage, future enrolment is uncertain at this time and will depend on how many producers offer cropland for enrolment, the environmental sensitivity of cropland offered for entry, rental rates offered by producers, and other factors.

- What prospects are envisaged for further U.S. agricultural reform, and in particular reform (elimination) of the sugar and peanut programs (which only narrowly escaped reform during the Farm Bill debate) and the step 2 provisions of the cotton program?

The FAIR Act provides that a new commission called the Commission on 21st Century Production Agriculture be established by October 1, 1997, to conduct a comprehensive review of effects of the FAIR Act legislation, the future of production agriculture, and the appropriate role of the Federal Government in production agriculture. The Commission's reports is to be submitted to Congress by June 1, 1998, and a subsequent review, with recommendations for legislation, shall be completed by January 1, 2001. We expect the commission's report to address the above question.

- Where do matters stand on the Administration's review of the future operations of the EEP and DEIP? When can a conclusion to the review be expected? To what extent will the U.S. now use this review to begin the process of removing these programs?

The U.S. Administration review of the operations of the EEP and DEIP is ongoing. Any changes in the operation of these programs will be made in accordance with our WTO commitments.

27. The Report by the Secretariat (page 116, para 21) mentions a number of anti-dumping actions which are current in force for agricultural products. The oldest of these is an anti-dumping measure on canned Bartlett pears from Australia. This measure has been in place since March 1973.

- After 23 years of protection, what are the justifications for continuation of anti-dumping duties on canned pears from Australia?

In accordance with Article 11 of the Antidumping Agreement, the U.S. antidumping law provides a review mechanism which allows for revision and/or termination of an existing dumping duty. If a foreign exporter makes sales to the United States, it may annually request a revised duty rate through the administrative review process. If dumping is no longer occurring, the duty will be removed. New exporters and producers that ship for the first time can request "new shipper" reviews which can commence prior to the annual review cycle.

The conditions for termination of the antidumping order on canned Bartlett pears were not met for this product.

28. We note that earlier this year, the Administration expressed support for legislative efforts to narrow the definition of domestic industry to take account of regional and seasonal factors in determining injury.

- Can the U.S. explain how it believed such a definition of industry would be consistent with Article 4 of the agreement on implementation of Article VI of the GATT 1994?
- Does the U.S. propose to re-examine this issue with a view to altering the definition of domestic industry in the future?

The draft legislation regarding the definition of domestic industry pertained to Section 201 of the Trade Act of 1974, not to the antidumping statute. Thus, it was not inconsistent with the Agreement on Implementation of Article VI of the GATT 1994.

The draft legislation ultimately was rejected by the Congress. There are currently no plans to resubmit a revised version of the bill.

29. United States domestic government procurement policies appear to be a mix of social policy (small and minority business), domestic preferences (buy America and balance of payments provisions), reciprocal trade policy (trade agreements act), strategic security policy and administrative purchasing policy (such as value for money).

- Leaving aside strategic defense purchasing, can the U.S. provide a description of the basis of its domestic procurement policy and the inter agency processes which determine its procurement policy, together with the weighting given to trade and trade related factors.
- Australia is also interested in the consultative arrangements between federal and state agencies on government procurement, together with advice of any approaches directed towards coordinating policies and practices at the domestic and international level.

The general rule applied in U.S. procurement policies, both at the Federal and subfederal levels, is full and open competition. The emphasis is on ensuring transparency throughout the process. Procedures generally are predictable, even when certain Buy American preferences apply, and interested suppliers, both domestic and foreign, can readily assess under what circumstances they are bidding and their prospects for success. For example, at the Federal level, the Competition in Contracting Act requires that criteria for award of a contract be set forth in the solicitation. If an agency changes the criteria without advising all interested suppliers, the procurement may be protested.

U.S. Federal procurement policy is established through an interagency process with lead roles for the Office of Federal Procurement Policy, the Department of Defense, the General Services Administration and NASA. On trade-related matters, the Office of the U.S. Trade Representative coordinates with procuring agencies and other trade agencies.

QUESTIONS FROM BRAZIL

TRADE POLICY INSTRUMENTS

Anti-dumping and countervailing measures

US is a main user of commercial defense instruments, with 292 anti-dumping and 62 countervailing measures in force as at December 1995. Since the approval of the URAA-Uruguay Round Agreement Act, the US is discussing new methods to implement the Agreements on AD and CVM. Can the US present the main changes of this new regime?

The changes made in the U.S. antidumping and countervailing duty laws law as a result of the Uruguay Round Agreements were fully set forth in submissions to the WTO and reviewed in detail in the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures. As was pointed out in the Committee review processes, virtually all the significant changes made to the U.S. antidumping law and countervailing duty laws in the Uruguay Round Agreements Act (URAA) were to bring those laws into full conformity with the new Agreements. Proposed regulations implementing the changes made to the U.S. antidumping law were published on February 27, 1996. Those proposed regulations and the comments received on them are still being reviewed. Proposed regulations to implement the countervailing duty provisions of the URAA are expected to be published shortly. Once final regulations are published they will be provided promptly to the responsible WTO Committees.

Rules of origin

The US is an important partner to several free trade agreements, where rules of origin are one of the most relevant trade instruments. Can the US present the main characteristic of this instrument and how compatibility among them is achieved ?

The main characteristic of the rules of origin utilized for preferential trade agreements is one of transparency, with procedures implementing these rules of origin that are in accord with the relevant disciplines set out in the WTO Rules of Origin Agreement. Several free trade agreements have been separately negotiated; therefore, these agreements may employ differing standards of preference. However, the implementation of each agreement's rules of origin involves a transparent rulings process that provides both certainty and predictability to the trading community.

GSP - Generalized System of Preference

GSP scheme offered by the US has now introduced some important new features as "workers rights" and "protected intellectual property rights". Can the US explain the main aspects of these new requirements introduced in the scheme?

These are not new features. They have been a part of GSP for over a decade, and are statutory criteria legislated by Congress. The Generalized System of Preferences (GSP) program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. To qualify for GSP privileges, each beneficiary country must comply with a number of eligibility requirements. Two such requirements are that the beneficiary country must be "taking steps" (i.e., making progress) to provide "internationally recognized worker rights" and the extent to which the country is providing adequate and effective protection of intellectual property rights.

The GSP statute defines "internationally recognized worker rights" as: (1) The right of association; (2) the right to organize and bargain collectively; (3) a prohibition against any form of forced or compulsory labour; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. Each year, the Administration conducts a public review process in which a beneficiary's compliance with the eligibility requirements can be reviewed.

In making a determination about a country's protection of intellectual property rights, it is necessary to consider the extent to which a beneficiary country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights.

Section 301, Super 301 and Special 301

Section 301 is a trade measure used to enforce US rights under international trade agreements and to respond to unfair foreign practices. Super 301 is aimed to identify foreign country practices whose elimination is likely to have a significant impact to increase US exports. Special 301 is used against alleged infringements of US intellectual property rights. Can the US explain how the compatibility of these measures with the obligations of a WTO member is assured ?

Super 301 and Special 301 both can lead to the initiation of a Section 301 investigation. Section 301 requires that when the United States considers that a country is violating its WTO obligations, we must proceed to WTO dispute settlement. Of the 15 investigations initiated since the WTO came into force, 11 involved resort to WTO dispute settlement procedures or GATT 1994 Article XXVIII procedures.

The initiation of a section 301 investigation does not represent a threat of retaliation. Out of the section 301 investigations that have been concluded since the WTO came into force, retaliation has been used only once and that was against a non-WTO member. The United States has never determined unilaterally that another country has violated its GATT or WTO obligations; we have always based such determinations on a GATT or WTO panel finding of such violation.

Many WTO members have laws on the books that authorize, but do not require, measures that could be WTO-inconsistent. Such laws are not, per se, WTO-illegal. If any trade action taken under the authority of section 301 should contravene the WTO, that action can be examined by a WTO panel to determine whether it does violate the GATT.

REGIONALISM

The US is engaged in the negotiation of two extra - region trade agreements - APEC in the Pacific area and the Transatlantic Marketplace with the European Union. What are the main points of these initiatives and how are the conditions imposed by Article XXIV assured?

We will provide separately information on APEC and the Transatlantic Marketplace. We would also note that neither of these regional agreements are free trade areas. However, if at some point they become regional agreements in the sense of Article XXIV, we will of course comply with its requirements.

QUESTIONS FROM CANADA

U.S. Trade Policy Making

Could you explain how the "simple principle of reciprocity" contained in the 1996 Trade Policy Agenda of the President is reconciled with granting "unconditional m.f.n. treatment" as required by the rules of the WTO?

Without more specific reference to the 1996 Trade Policy Agenda of the President, we would reiterate that the United States is committed to the multilateral system and to observance of its rules.

Question regarding the reconciliation of paragraph 13 (page 25) and paragraph 21 (page 27): Could the United States reconcile the qualification of its multilateral commitments on the movement of natural persons with action taken under Title IV of the Helms-Burton Act?

The United States is unaware of any respect in which the application of Title IV of the Libertad Act is inconsistent with multilateral commitments on the movement of natural persons. We believe that the Libertad Act is consistent with our international obligations.

Agriculture

The Federal Agricultural Improvement and Reform Act of 1996 (1996 Act) states that the Commodity Credit Corporation (CCC) monthly interest rates shall be one percent higher than the rate determined in October 1, 1995. How is the rate for CCC loans determined?

Effective May 1, 1996, the interest rate on 1996 and succeeding crop year commodity loans will be 1 percentage point higher than would have been the case under the formula which was used to calculate commodity loans secured prior to fiscal year 1997. Thus, CCC's monthly commodity loan interest rate for any given month will be 1 percentage point higher than CCC's cost of money for that

month. CCC's cost of money for a given month is the rate charged CCC by the U.S. Treasury for funds borrowed from the U.S. Treasury to finance commodity loans.

Will interest rates be determined from the date a loan is issued, from the October 1, 1995, date set out in the 1996 Act, or by the Secretary of Agriculture in case of marketing loans?

The interest rate applicable to a given commodity loan made by CCC to a producer is the U.S. Treasury lending rate in the month the commodity loan is made, plus one percentage point. The Secretary of Agriculture has no discretion regarding the interest rate that is charged for CCC commodity loans to producers.

If the rate is lower than the rate of October 1, 1995, how will the losses be absorbed?

The October 1, 1995, date that is noted in the U.S. statute is not a reference to interest rates in place as of that date, but rather to the formula used as of that date. The formula as of that date was as follows: CCC charged a rate of interest on CCC commodity loans to producers that was equivalent to the rate CCC was charged for borrowing such funds from the U.S. Treasury. Commodity loan rates for a month (or months) over the life of the 1996 Act (1996 through 2002) may possibly be lower than rates charged on October 1, 1995, but such rates will not be lower than the CCC costs of borrowing such money plus one percentage point.

Has the Secretary of the Department of Agriculture begun to develop an export strategy to increase U.S. exports of high value and value-added agricultural? If yes, what does the strategy entail, and which "high-value and value-added agricultural products" will be promoted?

The Secretary of Agriculture has not implemented a strategy solely for promoting the export of high value or value-added products, The strategy implemented by the United States Department of Agriculture (USDA) is oriented towards assisting American agriculture to increase the value of all agricultural exports. The FY 1996 Long-term Agricultural Trade Strategy proposes guidelines for policy makers to use to increase U.S. exports of agricultural products, including high value and value added products.

The Secretariat Report notes that agricultural imports are also eligible for trade-remedy protection and continue to receive preferences under public procurement. Which agricultural imports (by commodity, country and volume) receive trade remedy preferences under public procurement?

Trade remedies and public procurement are two separate issues. There is no U.S. policy that combines them in any way.

The Animal and Plant Health Inspection Services of the U.S. Department of Agriculture has proposed to change its regulations to establish criteria for foreign regions based on risk class levels and allow certain unloading/reloading procedures for meat otherwise prohibited from entry in the U.S. When are the new procedures scheduled to take effect?

These procedures will take effect when the final rule is published, but we are unable to provide a definite timetable for this to occur. Comments received on the proposed rule are currently being reviewed. The time involved in this process depends on the number and complexity of the comments received and the extent of changes which must be made in the final rule as a result of these comments. After development of the final rule, there is a review process within the Department which must be completed before the rule is published.

What are the criteria that will be used for foreign regions?

Under the proposed rule, a region could be a national entity, part of a national entity, or a group of national entities combined into a single trading block. The criteria for assigning a risk classification to a given region are outlined in the proposed rule, i.e., Docket No. 94-106-1, which was published in the Federal Register on April 18, 1996,

Will the new procedures only apply to meat or will they affect other commodities as well?

The proposed rule applies to the importation of live ruminants and swine, and products derived from ruminants and swine, including meat, hides and skins, casings, meat meal, bone meal, and other animal by-products.

Trade Remedy Law

Could the U.S. indicate how its circumvention provisions as described in page 59 are consistent with the WTO Anti Dumping Agreement?

The United States believes that the prevention of circumvention of antidumping and countervailing duties is consistent with both the letter and the spirit of Article VI of the GATT 1994 and the Antidumping and the SCM Agreements. Article VI of the GATT clearly establishes the right of a Member to impose antidumping or countervailing duties in order to counteract the effects of dumped or subsidized imports found to be causing injury. This right would be undermined if duties could be evaded by the simple act of shifting limited operations of minimal commercial significance to the country of importation or to a third country, a circumstance made more likely by the increasing globalization of international production.

In our view, the Ministerial Decision on Anti-Circumvention serves to reinforce the validity of anti-circumvention measures under Article VI. It recognizes the existence of the problem of circumvention and the desirability of uniform anti-circumvention rules. Quite obviously, the Ministers' view that harmonization of practices is desirable carries the clear implication that it is legitimate for Members to take actions to deal with this problem.

Could the U.S. indicate how the origin determination reached with respect of its circumvention rules may differ from that reached by the rules of origin used by the Customs Department when the WTO Rules of Origin calls for the harmonization of such rules?

As stated in Article 1.2 of the Agreement on Rules of Origin, the harmonized rules of origin will apply to AD/CVD matters after the harmonized rules of origin are agreed upon and are put into effect.

Section 301

With regard to the powers conferred to USTR by Section 301 of the Trade Act of 1974, and which may include the suspension of trade agreement benefits, does Section 301 require that any action taken in respect to WTO covered agreement conform to the requirements of Article 22 of the Dispute Settlement Understanding on the suspension of concessions?

Regarding Special 301 remedies, would the priority listing of a country be restricted to the unacceptability, from a U.S. perspective, of a specific feature of that country's IP laws/practices which is not covered by the TRIPS Agreement or could it be based on an aspect of that country's IP regime which conforms to the TRIPS but does not satisfy the U.S.'s TRIPS-plus objectives?

The United States has always maintained it can administer Section 301 consistent with its WTO obligations, including the obligations in Article 22 of the DSU . Section 301 gives the U.S. Trade Representative authority to suspend trade agreement concessions, and permits the USTR to take action consistent with the requirements of Article 22. For example, section 301 permits the USTR to forego trade sanctions even if another country has been found to have violated its WTO obligations if the other country eliminates or phases out the WTO-inconsistent measure or agrees to an imminent solution to the economic harm caused by it, or agrees to provide compensatory trade benefits. Section 301 also requires that in taking action with respect to trade agreement violations, including violations of the WTO, the action must be in an amount equivalent to the burden or restriction being imposed by that country on U.S. commerce. We have interpreted this requirement in a manner consistent with DSU Article 22.

Competition Policy

The report states that export associations may be challenged under foreign competition law. Could the U.S. clarify the basis on which a challenge may be undertaken?

It is difficult to provide a general response to this question. U.S. law provides no immunity from prosecution under foreign antitrust laws to business associations engaged in collective export sales. Moreover, the United States maintains no statute which would block the enforcement or application of foreign antitrust laws in such circumstances. Thus, the basis for any such challenge would depend entirely on the existence and nature of antitrust law in the foreign jurisdiction in question.

Foreign Aid

As it is Canada's understanding of the "Helsinki package" that aid funds are only allowed for projects that are financially non-viable and the Secretariat report seems to indicate that the U.S. has a different view, could you please clarify your position with regards to the provision of aid to long term projects which are financially viable?

The USG has an unwavering commitment to the terms of the Helsinki Arrangement. This commitment is overseen by the U.S. Department of the Treasury.

The bilateral assistance programs administered by USAID are primarily grant-funded. The objectives are to promote sustainable development and provide for humanitarian assistance.

USAID provides bilateral assistance for activities that are developmentally sound and not for activities that should be funded by the commercial sector. There are, however, other USG agencies that provide funding for commercially-oriented activities.

Financial Services

In the area of financial services Canada notes that a reference is made to a moratorium, When is it anticipated it will be lifted?

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 removed the moratorium on examination fees that were to be charged by the Federal Reserve Board on foreign banks without being charged on state member banks; it requires the Board to collect examination fees from foreign banks only to the same extent as fees are collected by the Board for the examination of any state member bank.

Canada has concerns as to the present regime which imposes taxes on foreign insurers as noted in of the report. When is it anticipated that such tax schemes will be eliminated?

There are no plans at this time to eliminate this tax.

Can Texas' sunset provision be extended?

Texas opted out of branching by merger, which otherwise would be required by June 1, 1997. The sunset permits Texas to reconsider its decision.

Is opting-in a one-time process? Can a state that has opted-in subsequently opt-out?

Interstate branching de novo is available only if a state opts to permit branching; there is no time limit. Interstate branching by merger is available after June 1, 1997, unless a state opts out before that date. No further opportunity to opt out is provided under current law.

Canada also seeks clarification about the statement in para. 130 that 34 States have opted-in to "some sort of inter-state branching by merger." What type of restrictions have been placed on entities wishing to branch by merger?

Interstate banking by merger takes effect June 1, 1997, unless a state passes legislation to opt out before that date. A state that opts-in early may impose non-discriminatory conditions so long as the conditions are not preempted by federal law and do not require performance beyond May 31, 1997. In addition, states may require acquisition of an entire bank and not just a portion of an in-state branch network, and they may impose a minimum age requirement of up to 5 years on the acquired bank.

The Report refers to the United States and its obligations concerning financial services with another country in a multilateral (e.g. NAFTA) or bilateral agreement and that agreement authorizes sanctions to be applied but only as a result of a dispute settlement process. This raises the question of how is a unilateral procedure by the United States pursuant to the Fair Trade in Financial Services Act, imposing sanctions for the breach of those same obligations consistent with the multilateral or bilateral agreement?

The Fair Trade in Financial Services bill introduced in Congress in early 1995 would have required any imposition of sanctions to be consistent with any U.S. bilateral or multilateral obligations concerning financial services. In other words, the language affirms that the United States would live up to its multilateral commitments, including its WTO commitments.

Is the United States now prepared to bind its financial services regime on an m.f.n. basis?

The U.S. will respond to questions of negotiating parties in the context of upcoming negotiations and will, of course, have its own requests to direct to each of its negotiating parties at that time.

If the United States does not bind its financial services regime on an M.F.N. basis, is it prepared to make a commitment to WTO members that future bilateral agreements in this area will be applied on an m.f.n. basis as was the case of the October 1994 agreement with Japan?

U.S. commitments in financial services in the WTO are bound on an MFN basis. The MFN exemption of the United States permits but does not require it to differentiate among countries in terms of the treatment accorded their firms in the U.S. market with respect to new entrants, expansion of operations, or new activities.

Government Procurement

Could the United States include the share of the contract dollars that foreign firms win in Graph III.8 and Table III.6?

Existing data would not give an accurate measure of the percentage of contract dollars won by foreign firms.

Could the United States clarify how the following provisions now in place under the new Federal Acquisition Streamlining Act (FASA) of 1994 and the proposed changes to the Federal Acquisition Reform Act (FARA) of 1995 will liberalize the U.S. procurement market and are consistent with WTO-AGP obligations?

Since April 1993 NASA has had procedures in place similar to those of the \$100,000 Simplified Acquisition Threshold, for all contracts \$25,000 to \$50,000 in value. NASA procedures for these mid-range contracts include the same mandatory set-asides for contracts up to a value of \$1 million as does the SAT. Moreover, these contracts can be renewed up to four times a year - effectively a \$5 million threshold in accordance with WTO guidelines for contract evaluation. These mid-range procurements are not advertised through the Commerce Business Daily, as required by the WTO. Could the U.S. comment on the consistency of this program with its WTO obligations?

FASA, FARA and NASA - in recent years, the United States has initiated procurement reform to take advantage of new technologies and reduce the administrative and regulatory burden of Federal procurement procedures. These reforms have been initiated largely through the Federal Acquisition Streamlining Act of 1994 and the Federal Acquisition Reform Act of 1995. Additionally, NASA has implemented a pilot program for certain procurements to utilize simplified procedures. Despite the increasing use of simplified procedures, there has been no change in application of set aside programs, as some have suggested. Small business subcontracting programs also are restricted to products of U.S. origin and are not applied with respect to foreign products, creating a situation in which suppliers of foreign products have a lesser administrative burden than suppliers of domestic products. The utilization of simplified procedures and new information technologies in U.S. Federal procurement reflect a trend that is occurring all over the world. At the same time, the United States has sought to implement these reforms consistently with our international obligations, including through increasing use of notices of planned procurement for which shorter deadlines are authorized under both the GPA and NAFTA. Additionally, most signatories to the GPA already recognize that the GPA should be updated to reflected new commercial practices in government procurement, and the GPA Committee has already agreed to pursue work on updating the Agreement in this way.

Could the United States elaborate on the list, and dollar value, of domestic preferences contained in the TPR? For example, at the federal level, additions to the list should include the Byrnes Tollefson Act (restricting shipbuilding and repair to U.S. companies) the Berry Amendment (Requiring the purchase of military uniform and combat boots from U.S. companies). At the state level, there are numerous restrictions, which differ from one state to another, including: the procurement of computer software, lumber and wood products, and state programmes which duplicate those to the federal government, such as the small business set-aside.

Preferences and Set-Asides - with a few exceptions, particularly that of small and minority business set asides, Buy America requirements are waived for products from signatories to the WTO Government Procurement Agreement and NAFTA. As reflected in those agreements, the President has broad authority under the Trade Agreements Act of 1979 to waive Buy American restrictions for countries that make reciprocal commitments to apply transparent and competitive procurement procedures. Restrictions generally do not apply to procurement of services. As a result of coverage under the WTO

GPA, Buy American restrictions apply to a relatively small portion of Federal contracts --only those for goods under the GPA threshold of 130,000 SDRs (\$190,000). For those contracts covered under the GPA, Buy American preferences are waived for signatories, but a purchasing prohibition applies to products from countries that are not signatories. The United States also applies a number of restrictions limited strictly to procurement by the Department of Defense, such as those covered by the so-called "Berry Amendment". The United States maintains exceptions under the GPA and NAFTA for these items, including those that are sensitive for national security reasons, just as other signatories maintain their own defense-related restrictions through similar negotiated exceptions.

The United States has also negotiated exceptions to the GPA and NAFTA for small and minority-owned business (SMB) set-asides and has no plans to phase-out these set-asides. As exceptions to the GPA, U.S. legislation on set-asides is compatible with its obligations. Set-asides serve an important socio-economic function while being limited in scope to a relatively small portion of contracts. Historically, they have affected between six and seven percent of the total value of U.S. coverage under the Tokyo Round GPA. It is too early to tell whether the impact may be increased as the result of coverage of services, including construction, under the WTO GPA, since statistics have yet to be reported under the new agreement. Despite the fact that the United States has negotiated exception, it has always sought to apply them on a transparent, predictable basis. The United States expects to continue to discuss with other GPA signatories how transparency and predictability associated with set asides can be enhanced. However, one aspect of awards made to SMBs should not be overlooked. Many of these awards are made through a full and open competitive procurement process and not through set asides. Often our trading partners have cited inflated statistics that include contracts awarded on a competitive basis.

Transportation Buy American - the United States has excluded Federally-funded transportation projects, undertaken at state and municipal levels, from coverage under the GPA. Nevertheless, the United States has unilaterally initiated liberalization measures even for these projects, by raising the threshold above which Buy American restrictions apply. Since there has been no de facto change in application of SMB set asides, contrary to what has been suggested, this liberalization does offer new procurement opportunities for suppliers of foreign products.

QUESTIONS FROM CUBA

On reading the report submitted by the Government of the United States for its Trade Policy Review, document WT/TPR/G/16 of 21 October 1996, in Section 1, "The United States in the Multilateral System," we note references to the following aspects...:

The delegation of the United States sought to explain how it reconciles the implementation of these tenets or policies, in the light of the rules and obligations entered into under the WTO Agreements, with the continuing and systematic application of unilateral and coercive measures, for political purposes in the area of foreign relations.

Thus, how does it explain, in the case of Cuba, the unilateral economic, trade and financial blockade imposed for over 35 years, as well as the strengthening, deepening and widening of its extra-territorial nature, first with the "Torricelli Act" in 1992, and subsequently with the "Helms-Burton Act" in early 1996?

When some of the laws and regulations related to trade with Cuba were raised previously by Cuba in the GATT, the United States expressly justified them as measures taken in pursuit of essential U.S. security interests.

The United States remains strongly committed to facilitating a transition to democracy in Cuba. The Cuban Liberty and Democratic Solidarity ("Libertad" or "Helms-Burton") Act of 1996 and the Cuban Democracy Act of 1992 are both intended to promote this objective.

President Clinton signed the Libertad Act into law in the aftermath of the Cuban Government's shootdown of two U.S. unarmed civilian aircraft in broad daylight and without justification. That attack, which was in blatant violation of international law and resulted in the deaths of three U.S. citizens and one permanent resident, was only the latest in a series of actions by the Cuban Government over 35 years that have directly affected the interests of the United States.

QUESTIONS FROM THE EUROPEAN COMMUNITY

General comments

Due to the very late release of the documents of the Secretariat and of the US Government concerning the 1996 US Trade Policy Review Mechanism, the European Community and its Member States only had a week to devote to the assessment of these documents. The European Community requests for the future a strict compliance by the country under review and by the Secretariat with the internal rules of the Trade Policy Review Body, namely chapter VI para. 9 which stipulates that documents shall be released at least 4 weeks in advance of the meeting.

We agree that all parties should endeavour to improve upon the timeliness of the receipt of documentation. For example, we note that other WTO members had 24 days to respond to the Report of the European Commission in the Summer of 1995.

Report of the Secretariat

Page 19 - 32: On foreign investment, the attempts to relax all foreign ownership restrictions was dropped some months ago. The European Community and its Member States would welcome any further information from the U.S. as to whether this debate could be reopened or a new proposal tabled.

It is difficult to respond to the question because we are not clear which restrictions on foreign ownership are being referred to and what proposal to relax restrictions was dropped. However, in general we can say:

- *An open investment policy has been one of the most enduring of the United States' international economic policies.*
- *It has been U.S. policy to provide national treatment, with only limited exceptions for national security in areas such as telecommunications, shipping, air transport, and atomic energy.*
- *At the same time, the United States has worked to liberalize investment regimes abroad.*
- *President Clinton articulated U.S. investment policy in February, 1993, a month after taking office, when he stated in a speech that we welcome foreign investment in our businesses knowing that with it come new ideas as well as capital, but as we welcome that investment, we insist that our investors should be equally welcome in other countries.*
- *Both prongs, welcoming investment in the United States, and insisting on equal treatment for U.S. investors abroad, are part of our investment policy.*

The EC and its Member States wonder to what extent the regulatory reform has effectively increased or decreased the possibilities for foreign participation in the different sectors? Are restrictions for foreign investment in broadcasting and telecommunications still based, ultimately, on national security grounds as apparently implied by the report?

What role do reciprocity requirements play in the award of broadcasting on common carrier radio licenses to foreign controlled companies?

Regulatory reform has been applied in the United States on a national treatment basis. To the extent that it has opened up new possibilities for U.S. financial services providers, for example to do banking interstate, it has opened up the same possibilities for foreign financial services firms in like circumstances.

The U.S. licensing system is not based on reciprocity but on a policy that foreign controlled companies are not permitted to hold broadcasting licenses. In the GATS, the United States took a market access limitation that radio and television licenses may not be held by: a foreign government; a corporation chartered under the law of a foreign country or which has a non-US citizen as an officer or director or more than 20 per cent of the capital stock of which is owned or voted by non-US citizens; a corporation chartered under the law of the United States that is directly or indirectly controlled by a corporation more than 25 per cent of whose capital stock is owned by non-US citizens or a foreign government or a corporation of which any officer or more than 25 per cent of the directors are non-US citizens.

Why is the restriction on cabotage in shipping set at the high level of 75 percent US ownership? Why is a domestic carrier for cabotage and exercise of US international air rights defined as one in which no more than 25 percent of the shares are held by foreign interests. Why does the director and two thirds of the board have to be US citizens in order to qualify as a domestic air carrier?

The 75-percent citizen ownership requirement for vessels operating in U.S. cabotage trades is based on section 38 of the Merchant Marine Act of 1920, which amended section 2 of the Shipping Act of 1916. U.S. flag carrier representatives have reaffirmed their support for the investment requirements of this longstanding legislation, stressing their concern about the ability of foreign companies to circumvent U.S. environmental, safety, and labour laws and standards. The United States is among several countries that reserve their coastwise trades to national-flag vessels, owned by domestic interests and crewed by national citizen seamen.

The investment criteria for the aviation sector remain unchanged since their adoption in the Civil Aeronautics Act of 1935. These investment criteria have been reviewed from time to time in the United States as in other countries.

Why are the eligibility criteria for financial assistance under the Advanced Technology Program (ATP) subject to a triple reciprocity clause for foreign investors? Same question in relation to foreign access to funds under the Energy Policy Act.

These criteria are likewise required by statute, and have been reviewed periodically.

Page 23 - 6: Trade in services covered by State law (sub-federal regulation) is of particular importance. The EC would welcome precision concerning the division of competencies in the different service sectors as well as the supervisory and regulatory agencies which must implement and guarantee the WTO commitments of the Federal Government. These precisions would be particularly necessary in relation to tax measures, subsidies, and qualifications applicable to the supply of services.

In the United States a number of services sectors are regulated wholly or partially at the state level. These include professional services, financial services, and distribution, truck transport, real estate, construction, and education. With respect to qualifications, state governments set the qualifications for licensing of professionals, usually a combination of education, experience, and examinations for the major professions. Candidates for licensure must apply to the licensing board

in the jurisdiction in which they want to practice. States also have independent authority to tax and provide incentives.

Page 26 - 17: A legislative proposal after passage of the "US Uruguay Round Agreement Act" (URAA) required the establishment of a Panel of five federal judges that will review panel and appellate body reports to determine whether they have complied with their terms of reference, or have alerted the rights and obligations of the US under the WTO. The European Community and its Member States would like to know if this legislation has been passed to and if the panel has been called on.

The legislation did not pass.

Page 26 - 18: In 1996 the USTR established a Monitoring and Evaluation Unit to watch the implementation of trade agreements by US partners. Likewise the Department of Commerce established the Trade Compliance Centre (TCC) to develop a database and perform research and analysis on compliance issues. Will these agencies directly contact interested governments, trade bodies or agencies in the course of their monitoring activity?

USTR's Monitoring and Enforcement unit has focused on implementation of Uruguay Round Agreements and in that context has directly contacted governments, in addition to relevant international organizations. The Department of Commerce's recently established Trade Compliance Center (TCC), will build upon and complement the work of USTR's Monitoring and Enforcement Unit. The Center will (1) collect information on trade compliance, (2) develop a computerized database and information retrieval system and (3) perform focused research and analysis on compliance issues, including development of methodologies for evaluating compliance with trade agreements. In the course of fulfilling its mandate, TCC staff will draw upon all resources at their disposal, including direct contact, as necessary, with interested governments, trade bodies or agencies.

Page 30 - 35: The EC understands that the US authorities intend to extend free trade status of Israel to the areas under control of the Palestinian Authority. Will this imply that the U.S. enter into an Agreement with the Palestine Authority?

On October 2, 1996, the President signed legislation giving him authority to proclaim duty-free treatment of products from the West Bank and Gaza Strip. On November 13, the President signed the proclamation to modify the Harmonized Tariff Schedule in order to initiate the duty-free treatment. The signed Proclamation went into effect three days after its publication in the Federal Register on November 17, 1996. The Proclamation contains no sunset clause nor renewal date; it will remain in effect at the President's discretion. The President retains the authority to modify, suspend or terminate the agreement unilaterally.

The President took this unilateral action in order to restore benefits previously accorded the Palestinians under the U.S./Israel Free Trade Area Agreement, but which were lost to them as part of the implementation of the 1994 Declaration of Principles of Interim Self-Government. The restoration of this duty-free status for all products is a key element of the Administration's effort to stimulate the Palestinian economy and, more generally, to support the Middle East peace process.

Under the proclamation all duties have been eliminated for Palestinian goods. The Palestinian Authority has confirmed to the U.S. its intent to provide reciprocal treatment for U.S. products entering the region. The Palestinians also stipulate that they will assist the U.S. in verifying compliance with U.S. trade laws, and that they will support all efforts to end the Arab League Boycott of Israel in all respects.

Israel also has provided the U.S. an assurance of its commitment to the principles embodied in this proclamation. This action by the President does not extend or amend the U.S./Israel FTA. Therefore, it does not incorporate the specific provisions of the FTA. The proclamation does provide that articles of Israel can retain their Israeli origin, even if they are shipped to the U.S. from the West Bank, Gaza, or a qualifying industrial zone. The law and proclamation also treat products of the West Bank and Gaza which are shipped to the U.S. via Israel as if they were "imported directly" from the West Bank and Gaza. Therefore, Israeli goods shipped out of the West Bank and Gaza can still benefit under the FTA and may now additionally enjoy the universal duty free status established under the Proclamation. Furthermore, products of the West Bank and Gaza transshipped out of Israel can benefit under the Gaza Proclamation or under the U.S.-Israel FTA. This process of "cumulation" encourages existing and future commercial ties between Israeli and Palestinian businesses.

Page 30 - 36: Concerning the NAFTA Agreement and the implementation measures related to it could the US tell which measures have been notified to the WTO? Does the US believe that NAFTA Agreement covers services to the extent required by Article V of the GATS?

The NAFTA was notified to the Council on Trade in Services on March 1, 1995. A Working Party is now engaged in an exchange of information on the provisions of the agreement. As has been stated in the Working Party, it is the view of the United States and the other NAFTA Parties that the agreement meets the criteria for an "economic integration agreement stipulated in GATS Article V.

Specifically, the NAFTA meets the requirements in GATS Article V:1 regarding substantial sectoral coverage and absence or elimination of substantially all discrimination, in the sense of Article XVII. Only one services sector --civil aviation --is not covered by the NAFTA. (The GATS also excludes that sector). All other sectors are covered, subject to individual country reservations in certain sectors. Both the breadth and depth of services sector commitments under the NAFTA are greater than those under the GATS. In addition, as required by Article V, no mode of supply is a priori excluded; that is, the agreement covers all four GATS modes: cross-border trade and consumption abroad (Chapter 12), commercial presence (Chapter 11), and movement of persons (Chapter 16). Chapter 14 on financial services also covers all four modes.

Moreover, NAFTA services commitments must be evaluated, as outlined in Article V:2, as part of a wider framework of economic integration. In addition to services, the NAFTA covers, inter alia, goods, investment, competition policy, and government procurement.

For trade in goods the increase of US exports to NAFTA-Members was less than the increase of US global exports from 1993 to 1996. Could the US precise what the increase in trade in services was?

U.S. imports and exports of services (cross-border; in billions of dollars)

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>Pct. chge.</u>
Canada				
Exports	16.4	17.3	18.1	+ 10.4
Imports	8.6	11.7	12.6	+ 46.5
Mexico				
Exports	8.4	8.9	N/A	+ 6.0
Imports	8.3	8.4	N/A	+ 1.2
World				
Exports	186.1	195.8	210.6	+ 13.2
Imports	125.5	134.1	142.2	+ 13.3

Page 31 - 37: In the event of inconsistencies between NAFTA and the obligations assumed by the US in the WTO framework the latter must give way to the former. How would the rights of the EC and its Member States under the WTO Agreements be safeguarded in these circumstances?

We have implemented, and will continue to implement, our regional trade agreements consistent with the WTO.

Page 35 - 48: The Free Trade Area of the Americas (FTAA) and the Asia Pacific Economic Cooperation Council (APEC) ("Bogor Declaration" and Osaka Agenda) developed a framework for consultations between Members but no formal agreement. In particular, the EC and its Member States understand that working groups on services have been set up and would like to know the content of the debates and if any conclusions have been reached. Is it the intention of the US that APEC and FTAA develop as fully fledged Free Trade Areas, and fulfil the conditions of Article V of the GATS?

In the FTAA process, working groups have been established in a number of sectors. The FTAA working group on services, chaired by Chile, is currently conducting the necessary analytical work to prepare for eventual negotiations. No working group on services exists in APEC, although groups exist for four sectors: energy, telecommunications, transportation, and tourism. The mandates for these groups are set out in the Osaka Action Agenda. All bilateral and regional trade agreements to which the U.S. is a party will be consistent with the relevant WTO provisions.

Page 38 - 58: A new bilateral agreement with Japan on insurance and other financial services will be applied on an MFN basis to all WTO members. The European Community and its Member States would like to obtain details on the content and nature of this agreement.

On December 15, 1996 the United States and Japan reached agreement on a package of supplementary measures to the 1994 U.S. - Japan insurance agreement. These measures, fully consistent with the 1994 agreement, will benefit both foreign insurance providers and Japanese consumers by opening up Japan's insurance market to far greater competition and innovation than previously existed. The United States has briefed WTO members and has provided copies of the agreement to them and to representatives of the EU and its Member States at their request.

Page 39 Table II.2: Two other agreements covering services have been concluded lately between the US and Japan: one on Construction Services, and one on civil aviation, finalized in March 27,

1996. These agreements have not been notified to the WTO. The EC and its Member States would like to obtain information on their contents and scope.

The U.S. -Japan construction agreement, signed on January 18, 1994, is designed to further increase foreign access to Japan's public construction market. All measures will be applied on an MFN consistent basis.

The U.S. and Japan concluded an agreement on a number of specific cargo services issues earlier this year. Further discussions on cargo and passenger services will continue at a later date.

Page 43 - 71: With China a USTR proposal (1994) for a bilateral trade agreement on the liberalization of telecommunication value-added services (VAS) is still under review. Has there been any progress since then? On other accounts, bilateral transport talks ended on April 1996. Have those brought any further opening of markets which might be relevant for the EC and its Member States?

The United States has been pursuing the issue of telecommunications value-added services (TVA) and transportation services in the context of China's accession to the World Trade Organization (WTO). The United States considers attainment of market access for TVA services and service providers to be a key objective for the accession process. Similarly, the United States is seeking broad commitments in the distribution sector, including wholesaling, retailing and associated activities such as transport of relevant goods. China has recently submitted a revised services market access schedule to the Working Party on its accession (WT/ACC/CHN/4--4 December 1996). We continue to seek significant improvements in China's offer in these and other services sectors.

Pages 59-61, - 25-31: The Department of Commerce more and more frequently uses "Best Information Available" (BIA) when determining dumping margins. This has been done recently even in cases when the exporter has been fully cooperative and provided the information requested. One recent example concerns cut to length steel plate from Sweden (Case A-401-805). In the last review, suddenly, the Department of Commerce changed to BIA after having used the information from the exporter in previous reviews and also in the original investigation. The EU would welcome an explanation of this practice.

A further example of questionable administrative burdens put on the exporter and the government in the exporting country can be found in the CVD case on Viscose Rayon Staple Fiber from Sweden (case C-401-056). A review has been initialled regardless of the fact that in the previous review the countervailable amounts were found to be negligible i.e. less than 0.5 per cent.

For all antidumping and countervailing duty cases, interested parties have the opportunity to comment throughout the administrative process. Those comments are considered and addressed in the final determination. Finally, if an interested party disagrees with a decision, that party has recourse to judicial review. On the general issue of facts available as a basis for a determination, the United States will not base a determination on facts available if the exporter provides the information requested, in a timely manner, in the format requested, and the information is verifiable. Simply providing information is not sufficient under either the US or the EU's law. The information must be accurate and verifiable.

Certain information is required for conducting an antidumping or countervailing duty investigation, and we understand that providing that information is burdensome. However, in those cases where we may request information that the exporter believes is not necessary or that imposes a significant burden in that particular case, we hope the exporter will contact the Department of Commerce and explain the situation. If there is a less burdensome way of providing the information necessary for conducting the investigation, we will consider it. On the last issued raised, we do not

consider it unreasonable to allow a request for an administrative review simply because the previous review showed a de minimis level of subsidization; nor is there a basis in the WTO agreement for declining a request for a review on such agenda.

Page 70 - 44-45: The "section 301" family of legislation provides the most striking example of unilateral trade legislation in the sense that these measures are based on an exclusively US appreciation of the trade related behaviour of a foreign country or is legislation without reference to agree multilateral rules. A good example of such unilateral measures can be found in the "Hormones" dispute. In response to a Community ban on the use of certain hormones in the production of livestock, the US imposed unilateral retaliation measures increasing dramatically duties on imports of certain agricultural producers since 1989. Following consultations with the EU under the WTO dispute settlement mechanism, the US finally removed these measures in July 1996. Page 72 - 141: The description made of the 1984 Drug Price Competition and Patent Restoration Act is not entirely accurate since this Act contains a unique feature (the so-called "Roche/Bolar amendment") which allows pre-patent expiry testing of generic medical products, something which is to allowed in the main trading partners of the US where generic manufacturers have to wait until the paten has expired to begin their testing activities. The EC and its Member States would like to know hat is the perception of the US government of the application of this clause since 1984.

With respect to the EU's observation regarding the U.S. withdrawal of its retaliation in response to the EU ban on meat produced from animals treated with growth hormones, the U.S. only imposed the sanctions after the EU blocked U.S. attempts to resolve the matter through the dispute settlement procedures under the Tokyo Round Agreement on Technical Barriers to Trade. As there are now effective WTO procedures to address the matter of the EU's restrictions on imports of U.S. meat, the United States can terminate the increased duties.

The application of the so-called "Roche/Bolar" amendment in U.S. patent law is consistent with the United States' obligations under the TRIPS Agreement. That amendment permits the use of a pharmaceutical patent for the sole purpose of seeking regulatory approval of a generic form of the pharmaceutical product, thereby enabling the successful generic applicant to put its product on the market as soon as the patent expires. Other pre-expiration commercial activity using the patented pharmaceutical product remains prohibited. If pre-grant use to seek FDA approval were not permitted, the term of the patent would be effectively extended to include the statutory grant and the years it takes for generic competitors to seek and receive marketing approval from the FDA. Because this amendment avoids effective extensions of the patent term in the unique context of regulatory approval for pharmaceutical products, and does not shorten or impinge on the effective life of the patent in any way, it is a permissible limitation on the grant of a patent under Article 30 of the TRIPS Agreement. This point is strengthened by the fact that at the same time the "Roche/Bolar" exception was adopted, pharmaceutical patent owners were given the opportunity to seek and receive actual extensions in their patent terms to compensate for delays in the FDA regulatory approval process.

Page 98 - 118: The US patent system is the only one in the world based on the principle of first-to-invent rather than first-to-file. The Transatlantic Business Dialogue recommends that the US seriously take into consideration the possibility to move to first-to-file system and to harmonize their law on this important point. The EU would be interested to know whether such possibility has been seriously considered.

The TRIPS Agreement does not mandate the adoption of a first-to-invent system or a first-to-file system, and leaves it up to individual WTO members to decide which is appropriate for their patent system. The United States has considered moving from a first-to-invent system to a first-to-file system, but does not consider it appropriate to do so at this time.

Page 102 - 130: Although the US government argues that the amendments made to the Section 337 of the Tariff Act of 1930 “brings it into conformity with TRIPs requirement”, the EU has constantly said that it does not consider these modifications to be sufficient. The coexistence of two parallel actions in the federal district court and before the International Trade Commission continues under the modified Section 337. This makes it necessary for the respondent to defend his rights in two fora, which causes double effort and expense. Therefore, the EU remains of the view that Section 337 is still not in compliance with the GATT panel findings of 1989.

The URAA amendments to section 337 of the Tariff Act of 1930 bring it into conformity with the United States’ obligations under the WTO Agreements, including article III of the GATT 1994 and the relevant provisions of the TRIPS Agreement. The significant differences between proceedings in the ITC and in the Federal district courts have been eliminated. Furthermore, the burden of parallel proceedings has been greatly lessened by (1) allowing a respondent in both proceedings to stay the Federal district court proceeding until the ITC proceeding has concluded, thereby eliminating the need to address an issue in two fora at the same time, and (2) allowing the record in the ITC proceeding to be transferred to the Federal district court for its use, with the intended benefit of eliminating duplication of effort on such issues. This set of amendments to section 337 substantially reduces double effort and expense that might otherwise take place, while retaining what in some cases is the only effective way of enforcing intellectual property rights at the border.

Page 102 - 133: The US system of “government use” of patented inventions operates in a very non-transparent manner. EU companies have often complained to the Commission that they are not even aware that their patented invention is being used by federal authorities, let alone being financially compensated.

The U.S. system of government use of patented inventions operates in a transparent manner. To the extent that government agencies become aware of their use of patented technology, they are expected to notify the patent owner. We have no evidence that this is not actually taking place.

Page 147 - 92: How has the domestic development (“explosion”) in the telecommunications sector affected the positions taken by the US in the Negotiations (NGBT) and Group (GBT) on Basic Telecommunications?

The experience of the United States is that greater reliance on private investment and competition, fostered by pro-competitive regulatory practices, will create a growing pie of telecommunications goods and services to the benefit of industry and consumers. The United States already maintains one of the world’s most open and competitive markets. Our objective in this negotiation is to obtain similar levels of openness to foreign investment and competition in the markets of other major trading partners, most of which are dominated by single providers.

Page 147 - 95 The EC and its Member States would request details from the US Government on the American Mobile Satellite Corporation monopoly for domestic satellite based mobile services. In particular, how long will the monopoly last? How was the frequency spectrum allocation decided?

American Mobile Satellite Corporation, AMSC, is not a monopoly. It competes against terrestrial mobile service operators, and in future AMSC will compete against new Big Leo and Little Leo mobile service operators. AMSC’s license was granted by the FCC on the basis of non-discriminatory, objective award procedures.

Page 148 - 96: Also, the European Community and its Member States would like to obtain more details on the concept and examples of the so-called ‘de facto’ monopolies. What are the

obligations imposed on dominant suppliers? How are dominant suppliers defined? Is there a presumption that all foreign suppliers are to be considered 'dominant suppliers'?

The matter of dominant carrier regulation is best summarized by the proposed Reference Paper on Regulatory Principles, adopted so far by thirty-one countries in the GBT, including the United States and the E.U. The definition of "major supplier" in the Reference Paper conforms with the U.S. definition of a "dominant carrier". The definition is objective and it is not nationality-based. It states:

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or*
- (b) use of its position in the market.*

Page 150 - 99: Could the US provide details on the regulation and practice of interconnection for rural networks?

In order to fulfil the universal service objectives of the Telecommunications Act of 1996, state regulatory bodies may exempt rural local exchange carriers from interconnection obligations. The purpose of the exemption is to strengthen universal service by avoiding excessive regulation of these small companies. Today, carriers controlling only four percent of U.S. local exchange phone lines qualify for the exemption. That percentage is shrinking, however, as consolidation takes place among the more than 1800 local exchange carriers, thanks to the deregulatory emphasis of the Telecommunications Act.

Rural local exchange carriers may be exempted by a state regulatory authority for a limited period of time from interconnection obligations with competing local exchange carriers. Rural telephone companies do not have to provide interconnection to competing local exchange carriers until ordered to do so by a state regulatory authority.

Page 150 - 100: The Submarine Cable Landing Act is not only a potential national treatment limitation but also a real market access one. What are the conditions for the restrictions listed in the statute to be applicable? Are there fixed administrative criteria for landing concessions? What a degree of discretionary power do these give to the US authorities?

Presidential authority, under the Act, is delegated to the State Department and the Federal Communications Commission. These agencies are subject to the Administrative Procedures Act in deciding the award of licenses. Their discretion in the award of licenses is guided by the statute, of which an important part is "that the President may withhold or revoke (a submarine cable) license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States of its citizens in foreign countries...."

Page 151 - 103: The Report comments extensively on the different competencies of the Federal Communication Commission (FCC). However, the EC and its Member State would require information on sub-federal regulatory agencies and their competencies to administer federal and/or state law.

We find this question too general to answer in this context.

Page 152 - 105: The WTO Secretariat Report does not indicate that, if the telecoms negotiations succeed, the ECO test will need to be modified and made if compatible with MFN (so will need to

be made the ECO-Sat if approved). So far, the Secretariat Report only indicates that such measures might need to be listed as an MFN exemption. The EC and its Member State have an essential interest in this matter and request precise details as to the US intention aspect.

Page 152 - 106: In relation to the ECO-Sat, could the US provide more indications as to what are the current regulatory options or overall intentions of the Government in this field. At present the EC and its Member States are only aware of draft legislation. When will it be ready? Does the US consider the legislation to be compatible with the MFN principle?

The Telecommunications Act of 1996 opened local exchange markets to competition and ended prohibitions on cross-entry affecting the local exchange telephone industry, the inter-exchange telephone industry, and the cable television industry.

The Federal Communications Commission's rulemaking on Market Entry and Rulemaking of Foreign-Affiliated Carriers, adopted in November 1995, codified an objective set of criteria for case-by-case decisions on issuance of radio licenses and licenses to provide international services, based on a de jure and de facto examination of effective competitive opportunities in the home market of the applicant.

The Federal Communications Commission's Notice of Proposed Rulemaking (NPRM) in the matter of Domestic and International Satellite Consolidation Order --II (DISCO-II) proposes an objective set of criteria for case-by-case decisions on licensing of U.S. earth stations to use non-U.S. licensed satellites. The FCC has not taken action on the proposal and we cannot speculate as to when it may do so. Comments from foreign governments and foreign operators have been received and welcomed by the Commission.

The United States' conditional offer in the WTO Group on Basic Telecommunications is to replace these existing and proposed (respectively) case-by-case processes by a WTO commitment to provide effectively unlimited market access and national treatment for all basic telecom sectors, including satellite-based services. The offer is conditional on a critical mass of high quality offers by other trade partners.

The Telecom Act and the FCC's recent actions have increased the possibilities for foreign participation in the different sectors by codifying rules and providing incentives for other governments to match the United States' demonstrated willingness to open its market further to private investment and competition. The United States' conditional offer in these negotiations takes the same approach, contingent on more and better offers from our trading partners.

Page 152 - 106: The EC and its Member States would need also more details on satellite regulation. Can Inmarsat provide services in the US? Comsat is the only US signatory to INTELSAT and Inmarsat. Was this decided by Statute or by an administrative decision?

Direct access to Inmarsat and Intelsat in the United States is the monopoly of Comsat. This is not a matter of denial of national treatment, insofar as AT&T is Comsat's largest customer. Comsat's monopoly is not under review at the present time.

Page 155 - 116: The Foreign Bank Supervision Enhancement Act of 1991 (FBSEA) imposed supervisory fees payable by foreign banks established, in the US. The Interstate Banking and Branching Efficiency Act of 1997 set a moratorium on the collection of these fees until July 1997. Are there plans to reconsider this moratorium in particular in light of the negotiations on financial services to be held next year?

U.S. law has been changed; the Economic Growth and Regulatory Paperwork Reduction Act of 1996 removed the moratorium on examination fees that were to be charged by the Federal Reserve board on foreign banks without being charged on state member banks; it requires the board to collect examination fees from foreign banks only to the same extent as fees are collected by the Board for the examination of any state member bank.

Page 156 - 120: The application of the Glass-Steagall Act (GA 1933) to foreign banks' branches and subsidiaries is ensured through the International Banking Act of 1978 (IBA) and constitutes a limitation on national treatment. The EC and its Member States have an interest in maintaining, and if possible expanding, the Federal Reserve Board's progressive interpretation of GA Section 20. Could it be incorporated to the forthcoming negotiations on financial services next year? What other possibilities would ensure its continued application?

We do not regard application of the Glass-Steagall Act to foreign banks' branches and subsidiaries as a limitation on national treatment. It should be noted that the Federal Reserve Board has recently decided to raise the limit on revenues that may be generated by underwriting and dealing in corporate securities from 10 percent to 25 percent. In addition, the Fed has proposed for comment a regulation that would modify current rules (firewalls) restricting transactions between banks and their securities affiliates. Any such modifications would apply equally to foreign and domestic banks.

Pages 160 - 135: It is not correct to say that GATS financial services negotiations are expected to resume towards the end of 1997. On the contrary, the Committee on Trade and Financial Services has agreed on its meeting of 22 October to hold its first meeting in early April next year, and to use this opportunity to re-launch bilateral negotiations. Therefore, the first sentence of par. 135 should read: the GATS financial services negotiations are expected to resume early in 1997."

The second sentence should be redrafted in particular as regards the reference to "substantially full market access and national treatment." This reflects the US maximalist approach. This paragraph should therefore be redrafted to state clearly what the US objective is as opposed to all other WTO Members' objective which is to achieve higher levels of liberalization commitments on an MFN basis.

We agree that the Secretariat's report does not incorporate the recent agreement reached in the Committee on Trade in Financial Services to resume negotiations in early April 1997.

With regard to the second comment that the Secretariat's report should be redrafted so as not to reflect the U.S. "maximalist approach," we find the statement in question to be a balanced statement. Whether WTO Members, including the United States, will take an m.f.n.-based obligation under the GATS to guarantee substantially full market access and national treatment to foreign financial services suppliers will most certainly be a focal point of interest to the United States. We sincerely hope that all of our negotiating partners will aim for a high level of commitments in the next round of negotiations.

Page 160 - 44-45: How has regulatory reform in the financial services sector affected the overall possibilities of foreign service providers to be active on the US market?

Regulatory reform has been applied in the United States on a national treatment basis. To the extent that it has opened up new possibilities for U.S. financial services providers, for example to do banking interstate, it has opened up the same possibilities for foreign financial services firms in like circumstances.

Exporters of potted plants from several EU Member States, amongst others the Netherlands, experience difficulties in entering the US market due to the application of the photo-sanitary legislation PQ37 by the US Annual and Plant Health Inspection Service (APHIS). This legislation is applicable

to potted plants grown in soil. However, a growing number of EU exporters uses sterile materials to grown potted plants. For these plants there is no reason to block or delay importation into the USA on the basis of PQ37. Does the US government share the EU opinion and is it willing to act accordingly?

Under current U.S. law (7 CFR 319.37-8), the Animal and Plant Health Inspection Service (APHIS) is required to conduct a pest risk analysis (PRA) in order to evaluate requests to allow the importation of new taxa established in growing media. Working with EU suppliers, APHIS has completed the necessary PRAs and approved the importation in growing media of five plant genera. APHIS is now moving forward with PRAs on additional plant genera, including those that EU member states have identified as high priorities.

Additional questions and comments

Several European companies have received letters from the State of Massachusetts (Secretary of Administration and Finance), which refers to Chapter 130 of the Massachusetts Act of 1966, informing them that their companies will be placed onto a restricted a restricted purchase list unless they can prove that they are not doing business with Burma.

- Could the US provide further details on this matter? Does the treatment apply to all domestic and foreign firms in the same way?
- Does the US consider this action compatible with its commitments under the GPA and the 1995 bilateral US-EU procurement agreement which covers government entities of the state of Massachusetts (including the Executive Office for Administration and Finance)?

We are aware of the recent action by the State of Massachusetts regarding the law in question. Based on the information available to U.S. authorities, this law is not discriminatory, nor is it aimed at foreign businesses. It applies equally to U.S. and foreign companies. We have been consulting with state officials about the law and its implementation. We are also considering the extent to which the law is consistent with the requirements of the GPA.

In Paragraph 50 of the US government Report it is noted that while “the Uruguay Round represents a major step forward in matching global structures and disciplines to current realities of international trade, ... much work ... remains to be done in the years ahead.” It would be interesting if the US could expand on this point and explain how it sees the “New Trade Agenda” develop in the next few years.

On January 29, 1997, Ambassador and USTR-Designate Barshefsky testified before the Senate Finance Committee. Her remarks address the United States trade agenda, and are available on USTR’s Website at <http://www.ustr.gov/index.html>.

It would be useful if the US Government could expand on the recent changes in the rules of origin for textile and clothing products.

The objective of the amended rules of origin was to aid the United States in combating illegal transshipment. In large part, the rules also help bring U.S. origin rules in this sector into line with those of other major trading countries. The Administration’s statement of Administrative Action specifically defines the intent as follows:

- (i) to reflect the important role assembly plays in the manufacture of apparel products
- (ii) to help combat transshipments by

- (a) *lessening confusion resulting from differences between U.S. practices and the practices of other major trading countries;*
 - (b) *facilitating the use of more effective labelling requirements; and*
 - (c) *focusing on practices more easily subject to inspection by the U.S. Customs Service;*
- (iii) *to bring the U.S. rules of origin in line with rules employed by other major importing countries, such as the European Union and Canada.*

QUESTIONS FROM HONG KONG

Government Procurement

Federal Preference Programmes

We note that in addition to the Buy American Act, the US government procurement market is subject to a large number of federal, state and local laws and regulations. These could create market access problems for foreign suppliers both in terms of discrimination (preference margin for local suppliers) and in terms of transparency (difficulties arising from the need to work through complicated maze of federal, state and local laws and regulations). Does the US government have any plan to improve the situation?

Set-Asides

We note that "set asides" on goods, services and construction could equal some 12.5 % of federal procurement covered by the WTO GPA. We welcome the President's announcement of a three year moratorium on "new federal programmes that reserve some contracts for companies owned by minorities and women" (WT/TPR/S/16, p.88, para. 86). Set-aside programmes distort fair competition to government procurement contracts. Does the US Administration has any plan to phase-out set-aside programmes?

With a few exceptions, particularly that of small and minority business set asides, Buy America requirements are waived for products from signatories to the WTO Government Procurement Agreement and NAFTA. As reflected in those agreements, the President has broad authority under the Trade Agreements Act of 1979 to waive Buy American restrictions for countries that make reciprocal commitments to apply transparent and competitive procurement procedures. Restrictions generally do not apply to procurement of services. As a result of coverage under the WTO GPA, Buy American restrictions apply to a relatively small portion of Federal contracts -- only those for goods under the GPA threshold of 130,000 SDRs (\$190,000). For those contracts covered under the GPA, Buy American preferences are waived for signatories, but a purchasing prohibition applies to products from countries that are not signatories. The United States also applies a number of restrictions limited strictly to procurement by the Department of Defense, such as those covered by the so-called "Berry Amendment." The United States maintains exceptions under the GPA and NAFTA for these items, including those that are sensitive for national security reasons, just as other signatories maintain their own defense-related restrictions through similar negotiated exceptions.

The United States has also negotiated exceptions to the GPA and NAFTA for small and minority-owned business (SMB) set-asides and has no plans to phase-out these set-asides. As exceptions to the GPA, U.S. legislation on set-asides is compatible with its obligations. Set-asides serve an important socio-economic function while being limited in scope to a relatively small portion of contracts. Historically, they have affected between six and seven percent of the total value of U.S. coverage under the Tokyo Round GPA. It is too early to tell whether the impact may be increased as the result of

coverage of services, including construction, under the WTO GPA, since statistics have yet to be reported under the new agreement. Despite the fact that the United States has negotiated exception, it has always sought to apply them on a transparent, predictable basis. The United States expects to continue to discuss with other GPA signatories how transparency and predictability associated with set asides can be enhanced. However, one aspect of awards made to SMBs should not be overlooked; many of these awards are made through a full and open competitive procurement process and not through set asides. It is important that SMB set-aside statistics not be exaggerated through the addition of data concerning contracts awarded on a competitive basis.

Textiles and Clothing

Under Article 4.2 of the Agreement on Textiles and Clothing (ATC), Members agree that the introduction of changes, such as changes in practices, rules, etc in the implementation or administration of restrictions on textiles and clothing imports should not upset the balance of rights and obligations under the Agreement. The US Government introduced new rules of origin for imported textiles and clothing in July 1996. Has the US Government taken steps to ensure that the changes would not result in upsetting the balance of rights and obligations under the Agreement on Textiles and Clothing ?

The integration programmes under the ATC promulgated by the US Government reveal a trend of backloading the more "sensitive" products to the latest moment possible. Does the US Government consider that this approach would best serve the progressive liberalization objectives of the ATC ? We would also like to know what policies and measures have been taken or being planned by the US Government to help the domestic textiles and clothing sector to prepare for their full exposure to the market mechanism.

The United States has held consultations with a number of countries with respect to the potential effects of U.S. rules of origin. The United States remains ready to consult with countries which believe that they may have been impacted by the rules. The United States remains committed to carrying out the liberalizing provisions of the WTO Agreement on Textiles and Clothing, including efforts to open up foreign markets to ensure that our industry has the maximum opportunity to compete in those markets on a fair and equitable basis.

Notification in relation to the Jones Act (WT/TPR/S /16, p.164 para. 150)

Paragraph 3(c) of GATT 1994 requires that the statistical notification should include information on the average of actual and expected deliveries of relevant vessels and information on the use, sale, lease or repair of relevant vessels. The notifications submitted by the US in respect of the Jones Act on 20 December 1994 and 20 December 1995 respectively did not seem to cover the latter requirement. We have earlier raised our concern and would like to have clarifications from the US. Moreover, the economic cost of the Jones Act is huge. It would be useful to know whether the US will contemplate reform of the Jones Act.

With respect to notifications, the reason this data was not provided is that the United States does not maintain this information. If a vessel is built in a U.S. shipyard and is registered under the U.S. flag, then it can operate, with limited exceptions, in either the domestic trade or the international trade. Vessel itineraries are not tracked. Vessel use is identified more generally in the report by vessel type, indicating the purpose for which the vessel was built. Ownership information is available and is provided in the report, but information on leasing arrangements is either proprietary or simply not available. Similarly we do not collect vessel repair data.

The 104th Congress considered substantial changes to the Shipping Act of 1984 (1984 Act), including the closing of the Federal Maritime Commission (FMC or Commission), which administers

the 1984 Act. This was in response to a compromise worked out by shippers and U.S.-flag carriers. Among other things, this proposal maintained the carriers' antitrust immunity, ended tariff filing, and permitted negotiation of confidential agreements between shippers and carriers. With the closing of the FMC, its residual functions would have been continued in the Department of Transportation or some other government organization.

If the compromise proposal is reintroduced in the 105th Congress in substantially the same form and eventually incorporated into the 1984 Shipping Act, the international shipping trades in and out of the U.S. would be dramatically deregulated. Regarding the likely future direction of maritime reform, there are a range of views on the proposed legislation. The Administration is ready to work with the new Congress on this matter. The reform of the Shipping Act of 1984 does not extend to changes in the Jones Act or U.S. cabotage laws in proposals made in the last Congress to modify or repeal the Jones Act. Two of these proposals called for the grant of reciprocal domestic trading privileges for carriers of other countries, but there were other concerns that were not addressed, such as foreign subsidies, tax incentives, lower safety standards and national security. No proposals were enacted, and the Administration reaffirmed its strong support of the Jones Act.

Basic Telecom

We understand that the Federal Communications Commission (FCC) is contemplating the introduction of benchmarks for accounting rates for US carriers to follow. We would like to know more details of the proposal including the proposed level of the benchmarks and the calculations behind them; implementation date ; (whether and if so how the FCC is linking this to the WTO negotiation).

The FCC has not issued a formal notice of proposed rulemaking (NPRM) on this subject, and it would be inappropriate to comment on what may or may not be in such a NPRM until one is issued. When a NPRM is issued, comments from foreign governments and other foreign parties are welcomed and considered in the rulemaking process. A decision by the FCC is rendered in the form of a legally binding "Report and Order", which explains the new rules against the background of the NPRM and the public comments received.

We are aware of the background about the difficulty of the US in removing the 20% direct foreign ownership cap in respect of radio licence. The US now argues that since they have removed the 25% indirect foreign ownership cap, there should not be any foreign ownership restriction for a telecom company since foreign service suppliers can now fully control that company through a parent company. However, it would still be far more straight-forward for foreign service supplier if the 20% direct foreign ownership restriction can be removed through legislative amendment. We would like to know whether the US would revisit the issue again in the near future.

There are NO caps on foreign ownership in the United States except with respect to common carrier radio licenses. While the U.S. retains the ability to seek legislative changes for implementation of any trade agreement, that is not necessary with respect to implementation of the conditional offer of the United States in the basic telecom services talks. The United States' conditional offer in the WTO Group on Basic Telecommunications is to provide effectively unlimited market access and national treatment for all basic telecom sectors. The offer is conditional on a critical mass of high quality offers by other trading partners.

Environmental Process Regulations

The US Government has announced its intentions to address in international forums like the Commission for Sustainable Development's Intergovernmental Panel on Forests trade issues such as timber certification and labelling (WT/TPR/S/16, p.94, para. 101). We would like to know what specific

actions the US intends to use to address the trade issues? Do they include any trade measures? If yes, what are they and what is their relationship with the US obligations under the WTO ?

Trade and environment issues related to forests, including timber certification, are part of the terms of reference of the Intergovernmental Panel on forests. (IPG). While the U.S. is a member of the panel, we have announced no particular intentions to "address international forums" on such issues.

Rules of Origin and Labelling Requirements

The Secretariat Report quoted the US International Trade Commission as reporting that the US considered to have one of the more broad and complex marking regimes among industrialized nations and the cost to the Government of administering and enforcing the country-of-origin marking are estimated to have been in the range of US\$ 3.3 to 3.6 million. The compliance cost to certain industrial sectors could also be high. The initiative by the US Treasury to consider the adoption of uniform rules has not received widespread support. What is the US Government's response to the ITC report ? What is the US Government's policy on adoption of uniform rules or origin and rule of origin marking ? In particular, would preferential rules and non-preferential rules be subject to different treatments ?

Pursuant to Art. 3.1 of the WTO Agreement on Rules of Origin, Contracting Parties are required to apply the harmonized rules of origin equally for all purposes as set out in Art. 3.1. In view of the lack of widespread support for the US Treasury, would the US Government expect any difficulty in implementing Art. 3.1 of the Agreement, and whether considerations have been given to overcome these difficulties?

The referenced report by the U.S. International Trade Commission (Country-of-Origin Marking: Review of Laws, Regulations and Practices, July, 1996) was issued in response to a Congressional inquiry. The report represents the analysis of an independent U.S. government agency. The U.S. policies on adoption of uniform rules of origin are consistent with WTO obligations. Similarly, the U.S. implementation of preferential rules of origin are in compliance with the disciplines set forth in the Annex II of the WTO Agreement on Rules of Origin.

The U.S. is actively participating in the referenced WTO work program leading to the harmonization of non-preferential rules of origin. With regard to Article 3.1, the US intends to continue its compliance with obligations under the WTO Agreement on Rules of Origin.

Anti-dumping Measures

We note that the US adopts different *de minimis* dumping margins for original investigations and investigations in the context of administrative reviews (WT/TPR/S/16, p.60, para.29). What is the policy reason for adopting different standards?

Article 5.8 of the Antidumping Agreement states that an investigation shall be terminated if the level of dumping is determined to be de minimis and states that a margin less than two percent shall be considered de minimis. Although the Agreement requires no level of de minimis for a review, the United States has chosen to waive collection of duties if the margin of dumping in a review is less than 0.5 percent.

Similarly, we note that the US establishes dumping margins by individual-to-individual price comparisons for original investigations and by individual-to-average price comparisons for investigations in the context of administrative reviews (WT/TPR/S/16, p.61, para.34). This has the possible effect of significantly increasing the assessed duty margins. What is the policy reason for adopting different standards ?

Article 2.4.2 of the Antidumping Agreement specifically states the comparison methodology to be used "in the investigative phase". The Agreement however is silent as to the comparison methodology to be used in an administrative review. Consistent with the Agreement the United States has continued its previous practice of comparing average normal values to individual export prices in administrative reviews.

A USITC study is cited as estimated that in 1991 the removal of AD/CVD orders would have yields a welfare gain of US\$ 1.6 billion or 0.03% of US GDP (WT/TPR/S/16, p.65, para.41). What is the US Government's response to this ITC study ?

The flaws of the ITC report have been widely discussed by, among others, a number of the Commissioners themselves. We too have concerns about the report. First, the amount of the claimed welfare loss is insignificant in relation to the overall U.S. economy. Secondly, the report failed to consider the loss, both economic and social, due to jobs lost because of unfair trade.

We note the AD duties enforced by Canada and Mexico often cover the same sectors as US measures in place on imports of their products (WT/TPR/S/16, p.67, para. 43) and that 21% of outstanding and newly enforced AD and CV measures in NAFTA up to 2.5.96 were appealed to binational panels (p.63, para. 37). What are the possible reasons for the cross-enforcement of AD measures in NAFTA markets covering the same sectors? Would the US consider that its markets of certain sectors are protected, or its companies are engaging in predatory practices? Would the US consider that the use of AD measures by Canada and Mexico could adversely affect the competitive position of US suppliers in the Canadian and Mexican markets?

While the NAFTA went very far in eliminating tariffs and reducing trade barriers, the NAFTA countries continue to have antidumping cases among themselves because the markets are not completely integrated. US as well as foreign firms may price discriminate between markets for a number of reasons. If that price discrimination is injurious, the antidumping law provides a remedy. We do not object to governments taking action against injurious dumping, in conformity with GATT Article VI and the AD Agreement. The fact that an individual firm may find its competitive position impaired is not relevant to members exercising their WTO rights.

What is the US Government's policy towards its suppliers which have exports being subject to AD actions for foreign governments, in particular when such suppliers suspect that their foreign competitors petition for AD actions only in an attempt to restrict or delay their access to foreign markets? On the other hand, if US firms petitioned the US Government for the use of trade remedy laws only in a frivolous attempt to restrict or delay foreign competitors' access to the US market, would these US firms be caught under US antitrust laws ? What is the US Government's policy on this?

The US government makes every effort to ensure that the rights of our exporters under the AD Agreement are upheld. If a frivolous case is filed (i.e. adequate proof of dumping and injury is not shown) then we expect, consistent with the AD Agreement, that the foreign government would not initiate the investigation. Likewise, the US government will not initiate an antidumping investigation if the petition does not meet the requirements of the AD Agreement and U.S. law. In general, a person has the right to petition the government for relief (under the Noerr-Pennington doctrine); however this right can be abused and abuse of the right could be actionable under the "sham" exception to that doctrine. (California Motor Transport v. Trucking Ltd. 404 U.S. 508 (1978)). More specifically, there is case law to suggest that abuse of the dumping law could be actionable under the antitrust law. (Outboard Marine Corp. v. Pezetel, 461 Fed. Supp.. 384, US Dist. Court of Del. (1978)).

QUESTIONS FROM JAPAN

US Trade Policies by Measures

Tariffs

Does the US intend to further pursue "zero-for-zero" initiatives?

Although the average tariff rate of the US has come down to a comparatively low level as a result of several rounds of GATT negotiations, peak tariffs remain in several areas, such as textiles and clothing, footwear, ceramics, glass, trucks, tobacco and agricultural products. Does the US envisage any possibility to rectify such tariff structures in the near future?

As provided in the Uruguay Round Agreements Act, the United States has continuing negotiating authority to pursue a number of zero/zero initiatives. We have been pursuing these initiatives actively, and will continue to do so.

The U.S. tariff regime is characterized by minimal tariffs. By the end of the Uruguay Round implementation period, more than 70 percent of U.S. lines will be less than or equal to 5 percent and more than 40 percent of tariff lines will be duty free. In addition, the United States has bound its tariffs at applied rates, with the exception of only two tariff lines. That said, the United States does still have some tariff peaks in certain sectors. So-called tariff peaks play a minimal role in the U.S. tariff profile (3.8 percent of 1996 lines) and will continue to decline as Uruguay Round tariff concessions are phased in (to less than 2.5 percent of lines in 2004). By contrast, many of our WTO partners, both developed and developing, have high ceiling bindings and applied rates that range from 10 to 50 percent.

U.S. proposals in the Uruguay Round contributed to the substantial liberalization achieved in many areas. The United States also contributed to liberalization in all areas of the tariff schedule, including sectors that were priorities for other WTO members. We are continuing efforts at tariff liberalization. The proposed ITA promises to serve as a stepping stone to a continuous process for further tariff liberalization. However, one important aspect of further liberalization must be the binding of tariffs on a broad basis by developed and developing countries alike.

Anti-dumping and countervailing measures

Many exporting countries have expressed in the past serious concerns regarding possible "abuse" of anti-dumping and countervailing measures by the US as disguised protectionism. Such concerns continue to be the case, although the Uruguay Round Agreement Act (URAA) modified old provisions to make them more consistent with WTO Agreement. Some rules in URAA such as anti-circumvention go beyond WTO Agreement.

- We want to watch carefully how the newly revised rules will be actually applied and operated. Their implementation in a manner consistent with WTO Agreement is strongly desired. In this connection, I should like to ask if the US has already used the anti-circumvention and individual-to-average price comparison of its anti-dumping legislation. What is the experience with these provisions?

292 anti-dumping measures and 62 countervailing duties remain in force as of 31 December, 1995. How soon will the sunset clause begin to be applied to these cases? Acceleration of revocation of old measures is strongly expected without waiting until five years after the entry into force of the WTO Agreement (that is, after 1999).

We compliment the US on the sharp decline in the number of anti-dumping cases filed. What are the main reasons for this; new legislation for the implementation of UR, economic recovery, etc?

The U.S. believes that both its statute and its implementation of the statute are in full conformity with the requirements of the WTO Antidumping Agreement. The anti-circumvention provisions of U.S. law are not inconsistent with the WTO Agreement, for the Agreement is silent on the question of anti-circumvention measures and nothing in U.S. law contravenes any specific provision of the Agreement. Indeed, the Ministerial Decision at the conclusion of the Uruguay Round specifically recognized the problem of circumvention and urged the parties to agree on a uniform method of dealing with this problem. Efforts to reach such an agreement are only at an early stage at present.

The Agreement mandates, with some exceptions, the use of average-to-average price comparisons only in the investigation phase of an antidumping proceeding. U.S. law faithfully reflects this requirement. The Agreement is silent about comparison methods to be used in conducting reviews of an existing antidumping order. Indeed, during the Uruguay Round negotiations the U.S. specifically refused to agree to an across-the-board requirement to use average-to-average comparisons. Thus, the continued U.S. use of individual-to-average comparisons when conducting reviews cannot be said to be inconsistent with the Agreement. To date, the U.S. has not had occasion to implement the circumvention provisions of the legislation implementing the Uruguay Round Agreements (the URAA). Individual-to-average price comparisons have been made in all reviews conducted under the law.

U.S. law mandates initiation of sunset reviews of pre-existing orders five years from the effective date of the URAA, January 1, 1995. It permits initiation to begin 18 months before January 1, 2000, and the U.S. government fully intends to initiate sunset reviews as soon as possible, to make more manageable the significant burden they will impose. To date, no specific schedule for such reviews has been created. Once it has, it will be made public.

Because U.S. antidumping and countervailing duty laws are characterized by objective standards and impartial administration, the increased or decreased usage of these laws derives from the presence of injurious dumping or subsidization rather than the exercise of any policies on the part of the laws' administrators. The U.S. government is unaware of specific reasons for the reduction in the number of new antidumping petitions and believes that there likely are many causes for this. As such, we do not choose to speculate exactly what the reasons may be.

Government Procurement

Various Buy-American laws, both at Federal and State/local levels, are clearly discriminatory against foreign firms and extremely distort trade. Many countries have serious concerns over the continued existence of such wide-ranging Buy-American laws. Early correction is strongly desired. (Of course, they may not be in violation of Plurilateral Agreement on Government Procurement, but there is no excuse to justify such practices. The US normally complains strongly if it is treated in the same way by other governments.)

- The US exempted "set-asides on behalf of small and minority businesses" under both the 1979 and 1994 Agreements. What is the definition of such businesses?

With a few exceptions, particularly that of small and minority business set asides, Buy America requirements are waived for products from signatories to the WTO Government Procurement Agreement and NAFTA. As reflected in those agreements, the President has broad authority under the Trade Agreements Act of 1979 to waive Buy American restrictions for countries that make reciprocal commitments to apply transparent and competitive procurement procedures. Restrictions generally do not apply to procurement of services. As a result of coverage under the WTO GPA, Buy American

restrictions apply to a relatively small portion of Federal contracts -- only those for goods under the GPA threshold of 130,000 SDRs (\$190,000). For those contracts covered under the GPA, Buy American preferences are waived for signatories, but a purchasing prohibition applies to products from countries that are not signatories. The United States also applies a number of restrictions limited strictly to procurement by the Department of Defense, such as those covered by the so-called "Berry Amendment." The United States maintains exceptions under the GPA and NAFTA for these items, including those that are sensitive for national security reasons, just as other signatories maintain their own defense-related restrictions through similar negotiated exceptions.

The United States has also negotiated exceptions to the GPA and NAFTA for small and minority-owned business (SMB) set-asides and has no plans to phase-out these set-asides. As exceptions to the GPA, U.S. legislation on set-asides is compatible with its obligations. Set-asides serve an important socio-economic function while being limited in scope to a relatively small portion of contracts. Historically, they have affected between six and seven percent of the total value of U.S. coverage under the Tokyo Round GPA. It is too early to tell whether the impact may be increased as the result of coverage of services, including construction, under the WTO GPA, since statistics have yet to be reported under the new agreement. Despite the fact that the United States has negotiated exception, it has always sought to apply them on a transparent, predictable basis. The United States expects to continue to discuss with other GPA signatories how transparency and predictability associated with set asides can be enhanced. However, one aspect of awards made to SMBs should not be overlooked; many of these awards are made through a full and open competitive procurement process and not through set-asides. It is important that SMB set-aside statistics not be exaggerated through the addition of data concerning contracts awarded on a competitive basis.

Environmental Process Regulations

Environmental process regulations contained in such laws as the US Marine Mammal Protection Act of 1972, the US High Seas Driftnet Fisheries Enforcement Act of 1992, Section 609 of Public Law 101-162, and the Pelly Amendment to the Fisherman's Protection Act of 1967 are extraterritorial applications of US law and in violation of the WTO/GATT Agreement. Currently applied to yellowfin tuna and shrimps, it is often pointed out that it is an attempt to enforce US value judgements on other countries, which are not shared universally.

Does the US foresee any initiatives, including early abolition of these WTO-inconsistent provisions, which would mitigate the impact of these standards on exporting countries?

The United States does not agree that the measures mentioned by Japan in this category constitute "extraterritorial applications of U.S. law" or that they are "in violation of the WTO/GATT Agreement." We do, however, recognize that some other governments have raised concerns about one or more of these measures. In general, we share the widely accepted view that it is preferable to address international environmental problems through multilateral approaches.

Marine Mammal Protection Act of 1972; for example, the United States favours addressing dolphin conservation issues multilaterally. The United States, along with other members of the Inter-American Tropical Tuna Commission (IATTC) and other States whose vessels fish for tuna with purse seine nets in the eastern tropical Pacific Ocean, has supported the IATTC's enormously successful International Dolphin Protection Program, which is responsible for reducing annual dolphin mortality to less than 4,000 in this fishery. The Administration strongly supports changes in U.S. legislation that will end embargoes on importation of tuna from this fishery into the United States and formalize the IDPP. This legislation has been introduced in the Congress.

Section 609 of P.L. 101-162.

Almost all nations recognize the importance of preserving sea turtles, all species of which are endangered or threatened. U.S. regulations require commercial shrimp trawl vessels operating in U.S. waters to use sea turtle excluder devices (TEDS), which have proven remarkably effective in preventing the accidental death of sea turtles in shrimp trawl nets, a major cause of their mortality. The United States favours multilateral solutions to the problem of preserving sea turtles, such as the Inter-American Convention for the Protection and Conservation of Sea Turtles. This treaty, signed by the U.S. in December, 1996, requires shrimp trawl vessels to use TEDs and provides for other important conservation measures. We have made clear our support of similar treaties for Asia and other regions.

High Seas Driftnet Fisheries Enforcement Act of 1992

The United States, along with many other States, actively supported the adoption by consensus of United Nations General Assembly Resolution 46/215, which called for a moratorium on the use of large-scale pelagic driftnets on the high seas, effective January 1, 1992. The U.S. High Seas Driftnet Fisheries Enforcement Act was enacted to reinforce that moratorium, by prohibiting the importation of certain products from nations identified as acting inconsistently with the moratorium. No nation has ever been subject to import restrictions under this legislation.

The Pelly Amendment to the Fishermen's Protective Act

By its own terms, the Pelly Amendment to the Fishermen's Protective Act can only result in import prohibitions to the extent that such prohibitions are sanctioned by the General Agreement on Tariffs and Trade.

Export Ban of Logs

Under the Forest Resource Conservation and Shortage Relief Act of 1990, the US has banned the export of logs from Federal forests and restricted such export from State forests. The Act does not restrict domestic trade of logs from these forests and, therefore, cannot be justified under Article 20 of GATT 1994 and constitutes discrimination against foreign users. There is a need for either dismantling or amendment of the Act.

Determinations made in 1990, following the listing of the northern spotted owl as a threatened species under the Endangered Species Act, and concern over the harvesting of old growth timber, were the catalysts for the passage of the Forest Resources Conservation and Shortage Relief Act (of the Customs and Trade Act of 1990, as amended in 1993) that restricted the export of most logs harvested from public land in the western continental United States. The Forest Resources Conservation and Shortage Relief Act, signed by the President on August 20, 1990, made permanent the temporary prohibition on log exports from the Federal lands in the region. The Act also placed a similar restriction on logs harvested from state lands, except for the State of Washington, which was allowed to continue exporting up to 25 percent of its harvest.

The United States is committed to minimizing, as much as possible, any impact on trade that may result from the export restrictions. Japan still has unrestricted access to over 200 million m3 of logs that are harvested annually in the United States (50 million in the five main exporting states).

Rules of Origin and Labelling Requirements

The American Automobile Labelling Act (AAA) makes it mandatory for passenger cars and other light vehicles to be labeled with the proportion of US/Canadian made parts and the final point

of assembly. This entails tremendous cost for non-North American manufacturers of automobiles and constitutes an unnecessary barrier to trade and possible inconsistency with the Agreement. We would like to request clarification of the US view on this inconsistency.

The United States Auto Labelling Act was enacted for the purpose of providing consumers information necessary to make a well informed decision when purchasing an automobile. The information it requires is information which must be provided for almost all products in many countries in the world. Far from preventing consumers from making rational economic choices based on individual needs and the inherent quality of a product, the result of a barrier to trade, the Act actually facilitates that process by increasing the amount of information available on which consumers can base their decisions.

Article II of the TBT Agreement acknowledges prevention of consumer deception as one of the "legitimate objectives" for which a new technical regulation can be adopted. The labelling requirements were designed to be consistent with existing laws and regulations and have been implemented by the National Highway Traffic Safety Administration (NHTSA) at the Department of Transportation in a manner believed to be the least burdensome possible for manufacturers both at home and abroad. The labelling is not discriminatory and does not constitute a barrier to trade, since both domestic and foreign manufacturers must provide the same information.

Gasoline Rule under the Clean Air Act

When and how is the US going to implement the report of the Appellate Body?

As the U.S. advised the Dispute Settlement Body, we have agreed on a fifteen-month period for implementing the results of this dispute. The day after the report was adopted by the DSB, we initiated a regulatory review process which has included opportunity for public comment. U.S. implementation of this report will continue to be an open process.

TRIPS

The famous Section 337 of the Tariff Act of 1930 has been modified, according to the US authorities, to bring US procedures into conformity with national treatment obligations under GATT 1994. We still need to watch carefully the actual operation of the modified law to ensure that there will be no discriminatory treatment against foreign firms.

The URAA amendments to section 337 of the Tariff Act of 1930 bring it into conformity with the United States' obligations under the WTO Agreements, including article III of the GATT 1994 and the relevant provisions of the TRIPS Agreement. The significant differences between proceedings in the ITC and in the Federal district courts have been eliminated. Furthermore, the burden of parallel proceedings has been greatly lessened by (1) allowing a respondent in both proceedings to stay the Federal district court proceeding until the ITC proceeding has concluded, thereby eliminating the need to address an issue in two fora at the same time, and (2) allowing the record in the ITC proceeding to be transferred to the Federal district court for its use, with the intended benefit of eliminating duplication of effort on such issues. This set of amendments to section 337 substantially reduces double effort and expense that might otherwise take place, while retaining what in some cases is the only effective way of enforcing intellectual property rights at the border.

The US maintains a unique patent system; "first-to-invent." To promote world-wide harmonization of patent system and to resolve interface problems, early US conversion to a "first to file" system would be desirable. What is the US view on this?

The TRIPS Agreement does not mandate the adoption of a first-to-invent system or a first-to-file system, and leaves it up to individual WTO members to decide which is appropriate for their patent system. The United States has considered moving from a first-to-invent system to a first-to-file system, but does not consider it appropriate to do so at this time.

US Trade Policies by Sector

Agriculture

Any change in the US agricultural policy is a matter of strong interest as well as concern for its trading partners. The Federal Agricultural Improvement and Reform (FAIR) Act of 1996 instructs the Secretary of Agriculture to develop an export strategy to increase US exports of high value and value-added agricultural products. Does this mean that the US strategy will shift in the future to the promotion of high value-added products from traditional bulk commodities under the Export Enhancement Program?

The Secretary of Agriculture has not implemented a strategy solely for promoting the export of high value or value-added products. The strategy implemented by the United States Department of Agriculture (USDA) is oriented towards assisting American agriculture to increase the value of all agricultural exports. The FY 1996 Long-term Agricultural Trade Strategy proposes guidelines for policy makers to use to increase U.S. exports of agricultural products, including high value and value added products.

FAIR converts most domestic production support into direct income support. What are the specific details of the direct income support? How does the US consider that this change affects the US agricultural supply and agricultural trade?

The 1996 Act removes the link between income support payments and current commodity prices and production. It eliminates deficiency payments and the Acreage Reduction Program (ARP). Constraints on individual farm decision-making imposed by past programs are greatly reduced or eliminated. Farmers have much greater flexibility in making planting decisions and the freedom to plant any crop on contract acres and receive payments, except for limitations on fruits and vegetables. (In some cases, fruits and vegetables can be planted with no reduction in payments or a one-to-one reduction in payment acres). The FAIR Act specifies total annual payments for production flexibility contracts from 1996 through 2002. Payment levels are allocated among contract commodities according to FAIR Act-specified percentages.

At this point in the first year of the bill's implementation, it is difficult to measure the effects of the legislation, especially in view of the current high commodity prices. In general, we don't expect major changes in prices and production in response to the increased flexibility in the program.

It is understood that the US authorities regard this direct income support as green box in the form of decoupled income support. Want to know how it satisfies the "requirements of green box.

The 1996 Act authorizes annual "production flexibility contract payments" which participating producers may receive independent of farm prices and production. To receive payments, farmers who have participated in the wheat, feed grains, rice, and upland cotton programs in any one of the past 5 years (1991-1995) may enter into 7-year production flexibility contracts for the 1996-2002 crops. They must comply with conservation requirements and keep contract acres in agricultural or related uses (production is not required, e.g., vegetative cover). Payments in any year do not affect and are not affected by a producer's marginal decision about what contract commodity should be planted. The

eligibility requirements to participate in the program are compatible with decoupled income support conforming to Annex 2, paragraph 6 of the Uruguay Round Agreement on Agriculture.

Out-of-quota import tariffs for products which are subject to tariff-rate quota are on average 50% as compared to in-quota tariffs of around 10%. Nevertheless, certain tariff quotas are underutilized. Why? What role, if any, does the allocation of quotas play in this regard?

Some quotas were underutilized in 1995 because of market conditions and lack of interest on the part of importers. U.S. prices, particularly for butter and butter oil, were near or below world prices, making the U.S. market less attractive compared to other destinations. For quotas subject to licensing requirement, U.S. regulations require that unused licenses be reallocated under more flexible terms. This was done in August of 1995, but there were very few applicants for these licenses.

Textiles and Clothing

Since the implementation of the UR Agreement on Textiles and Clothing, the US has issued more quota calls than any other WTO Member. While it is welcomed that the number of such calls declined from 24 in 1995 to only one in 1996, why were these calls not issued earlier, when they could have been integrated into the Agreement? And why are they issued during this period of economic expansion which contributed to a decline in the use of other trade remedy measures such as anti-dumping and countervailing duties? The change in the rules of origin applied to the imports of textiles and clothing affects a significant number of US trading partners. Which initiatives has the US developed to mitigate the impact of this change?

The U.S. rules of origin now in effect on textiles were legislated under the Uruguay Round Agreements Act of 1995. We do not anticipate revisions to that act in this area. The United States has held consultations with a number of countries with respect to the potential effects of U.S. rules of origin. The United States remains ready to consult with countries which believe that they may have been impacted by the rules. The United States remains committed to carrying out the liberalizing provisions of the WTO Agreement on Textiles and Clothing, including efforts to open up foreign markets to ensure that our industry has the maximum opportunity to compete in those markets on a fair and equitable basis.

Services

In maritime services, there are numerous domestic laws calling for "ship American" reciprocity or retaliation against foreign discriminatory treatment" etc., as well as the Jones Act. All these make it logically difficult for the US to enter into any meaningful multilateral agreement in this sector. What does the US Government intend to do to make this domestic legislation consistent with the objective of the maritime services negotiation?

Last July, the Negotiating Group on Maritime Transport Services agreed to suspend negotiations until the year 2000, the next round of comprehensive multilateral services negotiations under the WTO. It will be recalled that during the Uruguay Round, negotiators agreed not to include cabotage in the scope of the mandate of the negotiations. While it is premature to discuss negotiating positions for a negotiation that is three years away, there is no reason, at this time, to expect the U.S. position to change in the next round. That is to say that the outcome will depend in large part on the willingness of other maritime nations, including Japan, to commit to substantial liberalization of maritime transportation services.

QUESTIONS FROM JAPAN

(p29) OECD Shipbuilding

According to the report, implementing legislation was under preparation in the House Ways and Means Committee and the Senate Finance Committee. We understand that the 104th session of Congress has come to a close and as yet this legislation has not been passed. We request the US to present its intended schedule for fulfilling its obligations under the shipbuilding agreement.

As we indicated at the last OECD Shipbuilding Working Party meeting on October 17-18, 1996, we regret that the 104th Congress failed to enact implementing legislation prior to its adjournment. The House of Representatives passed legislation that was inconsistent with the Agreement and the Senate was subsequently unable to develop compromise legislation that would appease both supporting and opposing Members.

The Administration continues to strongly support the OECD Shipbuilding Agreement and has undertaken to provide the other Agreement signatories an updated assessment, after consulting with interested Members of Congress, industry and labour, of the outlook for passage of satisfactory implementing legislation by March, 1997 at the next OECD Working Party meeting.

(p59-70) Anti Dumping

US legislation has been amended in response to the new AD Agreement. However, there are still some measures inconsistent with the Agreement as has been stated in the AD Committee by member parties, measures including circumvention, de minimis assessment in the review process, cross cumulation of material injury caused by imports subjected to AD and CVD investigation, and the problem of comparing averages to individual cases. In addition, we would like to note that the consistency of symmetrical price adjustments and the implementation of the sunset clause in accordance with the AD Agreement are both of great interest to Japan, and would like to request the USG to clarify their stance on this matter, and the scheduling of the revocation of AD measures in place.

The concern about anti-circumvention provisions, price comparison methodology, and the implementation of sunset reviews is addressed in the response to question 2, above. With regard to the de minimis rule in reviews of antidumping orders, the antidumping agreement requires only that the 2 percent standard apply to original investigations. The U.S. applies the 2 percent de minimis standard of the Agreement in all investigations. A lower standard of .5 percent is applied in reviews. Since the Agreement is silent about the standard for reviews, the .5 percent standard cannot be viewed as inconsistent with the Agreement. With regard to cross-cumulation for injury determination purposes in antidumping and countervailing duty investigations, the relevant agreements, once again, are silent on the question. Accordingly, U.S. law, which permits such cross-cumulation in certain well-defined circumstances, is not inconsistent with the Agreements. The U.S. also asserts that price adjustments made in antidumping proceedings are properly symmetrical and in full conformity with the Agreement.

We would like to ask the USG's views on the Anti Dumping case on the Large Newspaper Printing Press in which the US expanded the scope of AD measures after the investigation had been concluded. In the US view, is the expansion of the scope of products after the conclusion of investigations in conformity with the AD Agreement?

With regard to the antidumping investigation of large newspaper printing presses from Japan, the scope of that investigation was not expanded after the conclusion of the investigation. The exact scope was specified in full detail only at the time of the final determination, in order that a number of complex questions could be adequately researched and addressed by the parties to the proceeding.

Anti Trust (p77-78)

In the area of Anti Trust Policy, the Department of Justice has expressed its intent to apply its anti competition laws in cases where the benefits of US exporters are at stake. In our view, this constitutes excessive extraterritorial application of US domestic laws, and would like the US to show its opinions on the GATT consistency of these measures and whether it has any intentions of amending these regulations.

The Department of Justice has from time-to-time confirmed its intention to apply the United States' antitrust laws in accordance with longstanding statutory provisions and judicial interpretations under which anticompetitive conduct that impedes U.S. export trade can, in some circumstances, be actionable. We do not consider these laws or actions taken pursuant to them to be in any way inconsistent with GATT or WTO rules.

Exports (p78-81)

What is the current situation regarding the export restrictions on lumber, at both the Federal and State level. Do you have any changes under consideration at this time?

We have no export restrictions on lumber. The restrictions on logs are described above under question 5.

International Agreements (p84-89)

The USG has maintained significant reservations under the Government Procurement Agreement for set asides for small and minority enterprises. Under this arrangement, any government tender shall be reserved for small business participation when there is a reasonable expectation that offers will be obtained from at least two small business and awards will be made at fair prices. This arrangement forces suppliers of other countries to bear the risk of being excluded from tenders. Does the US have any intentions of clarifying the meaning of 'reasonable expectation' under this arrangement, and how this is assessed? Does the US have any plans to revoke these reservations?

This question was addressed in the answer to question 3, above.

Government Procurement (p81-88)

The US maintains reservations for procurement of services rendered under administration consignment contracts between the Department of Energy and NASA and other agencies, private enterprises and universities (see Annex I the table for the US 4, 4.) Are suppliers who were involved in the development of these research and development projects allowed to tender for the products that they developed?

For the most part, U.S. procurement of services at all levels of government are free of Buy American type restrictions. However, there are exceptions to this, particularly in the transportation sector (e.g., the Cargo Preferences Act). As to U.S. interpretation of services exclusions from the GPA, such as R&D, the answer appears obvious. Procurements that are exempted from coverage are not subject to any of the GPA's obligations.

Regarding NCAR, the Department of Commerce sent a letter to NCAR expressing the possibility of dumping, regarding NEC computers. What is the legal basis for such action? Are there examples in which the Department of Commerce has issued notice regarding the possibility of dumping in a similar manner? Are there examples where other competent departments such as the Department of Justice

sent a similar notice? Is there regulation that authorizes the government to prohibit government procurement when dumping has been found? Are there regulations that prohibit anticompetitive pricing in government procurement in the case of domestic suppliers?

There are no regulations that prohibit government purchases from companies in cases where dumping has been found.

(para 90-94) It is stated in the report that "product safety requirements can change overnight as the product liability insurance market makes a new assessment of what will be required for insurance purposes". Could the USG explain how the USG ensures that changes in product safety requirements are not more restrictive than necessary within the meaning of Article 2.2 of the TBT Agreement?

First, we would like to note that the statement quoted in this question, ("product safety requirements can change overnight as the product liability insurance market makes a new assessment of what will be required for insurance purposes"), does not reflect our views on the subject, but rather reflects the concerns voiced by our trading partners.

Second, the United States has a long history of institutionalized mechanisms to achieve quality regulation. The current Administration's basic philosophy and principles for regulatory planning and review are detailed in the President's economic reports to Congress, and in Executive Order 12866, 'Regulatory Planning and Review.' In his 1996 report to Congress, the President emphasized the need to solve problems using flexible and non-bureaucratic means; to take a new look at regulations to ensure that they meet legitimate social needs, and, where necessary, to change both content and process to improve efficiency and effectiveness. In addition to deregulation, questions are being raised as to "how" to regulate. For example, there has been a shift in emphasis from prescribing methods of compliance to specifying desired outcomes.

Finally, the Office of the U.S. Trade Representative retains overall responsibility for national implementation of the TBT Agreement. Compliance with that Agreement requires making provision for public comment on and review of any new regulations. The United States has procedures in place which meet our obligations under that Agreement, which are outlined in the United States' Statement on Implementation. (G/TBT/2/Add.2)

(para 105) What products do the term 'selected products' in line 3 para 105 refer to? Does the word 'government' refer to Federal Governments only, or do they include State governments? Are testing laboratories restricted to laboratories situated inside the US, or do they include laboratories situated abroad? If there are limitations, what are the reasons for these notations?

The term "selected products" in line 3 of paragraph 105 refers to those products or conformity assessment procedures for which the government performs conformity assessment. This is done only on an exceptional basis in the United States.

(Para 108) It is stated in the report that "With the US firms themselves being involved in establishing and modifying US standards, the time taken to obtain certification of compliance with these standards for foreign made products is generally much longer than for local products". Could the US give its views on the consistency of its standards regime with Annex 3 Substantive provision D which states that "With respect to standards, the standardizing body shall accord treatment to products originating in the territory of any other member of the WTO no less favourable treatment than accorded to like products of national origin"? Specifically, is opportunity provided to foreign manufacturers to comment on standards before standards are made? If so, in what manner? If not, what is the reason?

[We were unable to locate the first quote in the Secretariat's Report on the United States' trade regime.]

Most U.S. standards are developed and adopted on a voluntary basis. Many of these voluntary standards are established through individual co-operation under the auspices of the American National Standards Institute (ANSI). ANSI (and other U.S. standards bodies) have developed guidelines for the establishment and management of the standards process in a fair and open manner. The standards setting process is monitored by the Federal Trade Commission and the Justice Department for collusion and unfair or deceptive practices that may produce anti-competitive effects. Not only are notices of proposed standards published in draft for public comment, most U.S. standards bodies go beyond WTO obligations to allow for the direct participation of foreign individuals in the standards development process.

Intellectual Property (p98-106)

(para 135) Could the US state its intention on whether it will join the Rome Convention, and if not, the reason for not doing so?

The U.S. does not intend to join the Rome Convention because the protection available to performers' and producers' rights in the United States is not provided in a form compatible with the requirements of the Rome Convention. In addition, certain provisions of the Rome Convention involve reciprocal treatment which the U.S. Government does not support. Finally, the U.S. strongly supports the efforts under the WIPO to negotiate and conclude a Protocol to the Berne Convention and a New Instrument to deal with issues involving performers' and sound recording producers' rights.

The U.S. accepted the GATT panel decision on section 337 of the Tariff Act of 1930, and has made amendments by the URAA. However, the amendment merely stipulates that the USITC issue a final determination within a fixed period of time, and depending on how long that period is, this may still constitute a burden on foreign enterprises. Could the U.S. give its views on what the "fixed period of time" is presumed to be?

Within 45 days of initiating an investigation, the USITC must establish a target date for issuance of its final determination. The target date chosen depends upon, among other things, the complexity of the case involved.

Can the US comment on whether it is going, to set a time frame for the provision of licenses? (cf. The application by KDD regarding the resale of international private lines took more than one year.)

The U.S. has incorporated into its GBT offer the reference paper on regulatory principles, which requires that licenses be issued in a timely manner. If the GBT negotiations are successful, the U.S. will ensure that the FCC issues licenses in accordance with its obligations.

The ECO test and the ECO-SAT test are both pre-examinations regarding reciprocity, which leave a lot of discretion to the competent authorities, and have the ability of impeding international competition. After the conclusion of negotiations in the telecommunications sector, these measures which are against the MFN principle should be revoked, and should not be maintained as an MFN exemption. Does the US have any plans to revoke this measure, and what is the US view on this matter?

The Telecommunications Act of 1996 opened local exchange markets to competition and ended prohibitions on cross-entry affecting the local exchange telephone industry, the inter-exchange telephone industry, and the cable television industry.

The Federal Communications Commission's rulemaking on Market Entry and Rulemaking of Foreign-Affiliated Carriers, adopted in November 1995, codified an objective set of criteria for case-by-case decisions on issuance of radio licenses and licenses to provide international services, based on a de jure and de facto examination of effective competitive opportunities in the home market of the applicant.

The Federal Communications Commission's Notice of Proposed Rulemaking (NPRM) in the matter of Domestic and International Satellite Consolidation Order --II (DISCO-II) proposes an objective set of criteria for case-by-case decisions on licensing of U.S. earth stations to use non-U.S. licensed satellites. The FCC has not taken action on the proposal and we cannot speculate as to when it may do so. Comments from foreign governments and foreign operators have been received and welcomed by the Commission.

The United States' conditional offer in the WTO Group on Basic Telecommunications is to replace these existing and proposed (respectively) case-by-case processes by a WTO commitment to provide effectively unlimited market access and national treatment for all basic telecom sectors, including satellite-based services. The offer is conditional on a critical mass of high quality offers by other trading partners.

The Telecom Act and the FCC's recent actions have increased the possibilities for foreign participation in the different sectors by codifying rules and providing incentives for other governments to match the United States' demonstrated willingness to open its market further to private investment and competition. The United States' conditional offer in these negotiations takes the same approach, contingent on more and better offers from our trade partners.

Transport Services

It is reported that the USG mitigates the cargo preference provisions of project cargoes resulting from loans made by the Export-Import Bank of the United States. What is the concrete schedule for this?

The Japanese question is unclear. The U.S. does not "mitigate" its cargo preference provisions and there is no schedule for doing so that we are aware of.

We are seriously concerned by the Unilateral action of the USG on Maritime Transport Services. What are the concrete conditions under which the Federal Maritime Commission (FMC) is to take action based on the Merchant Marine Act of 1920, the so-called "Jones Act?" It is really regrettable that on November 6, the FMC proposed to impose a new sanction against Japanese shipping companies. We call on the USG for explanations on this (paras 153 and 154).

The Federal Maritime Commission is considering imposing sanctions on Japanese liner vessel operators serving the Japan-U.S. trade in response to adverse conditions affecting U.S. carriers in Japanese ports. Japanese harbour restrictions have been raised by the United States for the past 16 years and only recently has Japan's Ministry of Transport taken a more active role that may lead to a swift resolution of these longstanding difficulties.

The new US legislation favouring U.S.-flag ships in transportation of Alaskan oil is an outright violation of WTO Ministerial decision. We want to seek the US views on this problem.

The United States continues to disagree with the assertion by Japan that this measure is a violation of the WTO Ministerial Decision. The measure in no way adds to the negotiating leverage of the U.S. position now or when negotiations on a comprehensive services agreement result in the

year 2000. Over 95 percent of all U.S. bulk imports and exports are carried on foreign flag vessels, an indicator of the openness of the U.S. international commercial maritime market. The Administration continues to support open access to international commercial cargoes and opposes extending cargo preference requirements to such shipments. Given the overall liberalization of U.S. maritime trade resulting from lifting the export ban, we do not believe that the provision of the legislation with regard to foreign-flag vessels signals a change in that policy. The Administration carefully considered its treaty obligations and other obligations before lifting the ban.

We are deeply concerned that the new programme contained in the Maritime Safety Act of 1996, maintaining subsidy to compensate cost differences between US and foreign operators, distorts fair conditions of competition; this has adverse effect on international shipping services. Will this point be elaborated?

The USG carefully considered its international obligations prior to adopting the new subsidy program, known as the Maritime Security Program. The new program replaces an existing subsidy differential program at a lower level of funding and covers fewer vessels. The purpose of the program is to permit the United States to maintain a core fleet of militarily useful commercial vessels to provide sealift support in time of war or national emergency.

QUESTIONS FROM KOREA

Tariff Measures

With respect to fees imposed on customs procedures

The 1990 Customs and Trade Act of the United States, and the 1990 Omnibus Budget Reconciliation contain certain stipulations for the commercial operation of customs offices.

- These stipulations impose monetary charges for customs procedures.

I recall in this regard that the GATT Panel findings of November 1987 called upon the United States to limit the charges to the cost of the services rendered.

However, we have noted that the import charge as a percentage of the value of the imported goods has risen since this Panel finding, as follows:

- 1987 - .17%
- 1992 - .19%
- 1995 - .21%

Furthermore, the ceiling charges have continued to be increased.

As a result of both the increased rate and the rising ceiling charges, the charges associated with importation went so far as to exceed the actual cost of providing the services rendered.

I would therefore ask the American delegation to explain its position on this phenomenon, and to address the concern that the charges are being increased in order to compensate for Declining tariff revenues since the completion of the Uruguay Round.

Secondly, I would ask if the U.S. has any further plans to increase charges again?

Increases in the Merchandise Processing Fee (MPF) in 1992 and 1995 are solely related to adjustments for inflation. In fact, the increases are less than the inflationary rate over the past 10 years. The MPF is authorized by statute (19 U.S.C. 58c) and is to be used to "offset the salaries and expenses that will likely be incurred by the Customs Services in the processing of...entries and releases [of merchandise] during the fiscal year in which such costs are incurred." Because the MPF rate is prescribed by Statute (19 U.S.C. 58c), and further changes in the MPF rate would need to be enacted by Congress. Customs is not aware of any proposals at this time to change the rate.

Antidumping Measures with respect to Korean made Colour TV's

Since 1984, the United States administration has consistently applied antidumping measures to colour TV's from the Republic of Korea.

The Korean has requested the U.S. government to review its antidumping measures on the grounds of the *de minimis* clause and the fact of suspension of exports. However, the U.S. government has rejected our request, or delayed the procedures, which violates, in our view, Paragraphs 1 and 2 of Article II of the Anti Dumping Agreement.

Also, the U.S. government initiated an investigation on allegations of circumvention on the part of Samsung colour TV's manufactured in Mexico.

- However, I would note that there is no rule whatsoever of circumvention in the Antidumping agreement at this stage.

One encouraging development is that last June the US government started the review procedures based on change of circumstances, even though much belated, in response to our request of July 1995.

It is our belief that the excessive use of antidumping measures on the part of the United States government, and the frequent and frustrating delays in reviewing the termination of such measures have posed serious impediment to smooth trade flow.

In conclusion, the present practices of the US Government is clearly an abuse of antidumping measures.

The Department of Commerce has conducted administrative reviews of Color Televisions (CTVs) from Korea in strict accordance with U.S. law and regulations, which, in turn, comply with international obligations under the GATT and WTO antidumping agreements. Reviews are conducted to assess the continued need for existing dumping orders; such assessments are based on shipments of the subject merchandise to the U.S. market and may result in revised duty rates or revocation of an order. Revocation of an order will occur where there is no dumping occurring and there is no likelihood that dumping will recur. Interested parties are provided with ample opportunity to present information to be considered in both the investigation and review processes.

Unlike an antidumping investigation, a circumvention inquiry is not designed to determine whether merchandise is being sold at less than fair value or whether such sales injure domestic industry. A circumvention inquiry is designed to determine whether particular merchandise is properly within the scope of an existing order. Such an inquiry is fully consistent with the WTO antidumping agreement, which is silent on anti-circumvention measures. Moreover, a Ministerial Decision at the conclusion of the Uruguay Round specifically recognized circumvention as a valid concern under the dumping agreement and urged agreement on uniform rules governing anti-circumvention measures.

The U.S. is not engaging in "excessive use of antidumping measures". Antidumping proceedings are initiated strictly according to WTO obligations, and orders are applied only where both dumping and injury (or threat thereof) occur.

Non Tariff Measures

Labelling requirements of automobiles

As of January 1994, all vehicles are required to bear a marking of the ratio of American or Canadian parts, as well as, *inter alia*, the place of final assembly, and the origin of the engines.

These stipulations are delineated in the United States Auto Labelling Act. The introduction of this Act states that the reason for such regulations is to provide relevant information to consumers and to enhance transparency for consumer decision making. Effectively, however, such labels encourage consumers to buy US-made autos.

This situation may be in violation of Article 2 of the Agreement on Technical Barriers to Trade, given that such tacit encouragement to buy certain products imposes, for all practical purposes, a barrier to trade against imported vehicles.

We would therefore ask the U.S. delegation if they are able to confirm that there will be a positive refinement of this contentious legislation, to bring it into conformity with both the letter and the spirit of the TBT Agreement?

If no, please explain the justification for that regulation as set out in paragraph 5 of the TBT Agreement.

- Para 5 of TBT Agreement stipulates that Member shall explain the justification of conformity of any measures to the Agreement, on the request of the other trading partners.

The United States Auto Labelling Act was enacted for the purpose of providing consumers information necessary to make a well informed decision when purchasing an automobile. The information it requires is information which must be provided for almost all products in many countries in the world. Far from preventing consumers from making rational economic choices based on individual needs and the inherent quality of a product, the result of a barrier to trade, the act actually facilitates that process by increasing the amount of information available on which consumers can base their decisions.

Article II of the TBT agreement acknowledges prevention of consumer deception as one of the "legitimate objectives" for which a new technical regulation can be adopted. The labelling requirements were designed to be consistent with existing laws and regulations and have been implemented by the National Highway Traffic Safety Administration (NHTSA) at the Department of Transportation in a manner believed to be the least burdensome possible for manufacturers both at home and abroad. The labelling is not discriminatory and does not constitute a barrier to trade, since both domestic and foreign manufacturers must provide the same information.

Regulation of the size of alcoholic beverage containers

The United States Federal Alcohol Administration Act regulates the size of alcoholic beverage containers. The justification provided in the text of the Act is that such measures are necessary to "prevent the proliferation of the size and shapes which could cause consumer confusion and deception".

- The Act therefore limits the size of such containers to seven different design categories. By the way, this is a system that is unique to the United States, existing nowhere else in the world.

The U.S. administration has responded to complaints regarding this system by claiming that any individual and company may request exemption from this regulation, if necessary.

It would seem to us that such bottling requirements act as an impediment to free trade, and thus violate the TBT Agreement. We would therefore ask the US delegation to both provide the justification according to Paragraph 5 of Article 2 of the TBT Agreement, and cite any relevant examples of exemptions which have been granted.

- We would also ask whether foreign companies are able to file such applications for exemption. If the response is positive, how long does it take to get permission for such exemptions.

The United States, not unlike many other countries in the world, has, at the request of manufacturers and distributors, adopted requirements for containers for all alcoholic beverages except beer. In the case of beer, the manufacturer is free to use safe containers of any size and shape to best market and preserve the product.

For other alcoholic beverages it is necessary to conform to the packaging standards outlined in the Federal Alcohol Administration Act. These standards have been adopted in order to mitigate problems with packing and storing alcoholic beverages of many different sizes, problems with display at the distribution sight for the same reason, and inadequate or deceptive consumer information which may be conveyed through bottles of many different shapes and sizes. Without the existing regulations, to cite just one example, compliance with laws stating that distributors must give equal space on their shelves to equal volumes of each distinctive label they carry would be much more difficult. That law was designed to protect competition in the industry among domestic and foreign producers alike by preventing distributors from withholding information about all the various labels available for purchase.

Exemptions to the bottling requirements have been granted only twice, and then only to respond to industry wide concerns as opposed to the needs of a single firm. The Bureau of Alcohol Tobacco and Firearms, the regulatory authority for alcoholic beverage containers, opened its container regulations for public comment through the Federal Register review process twice in the last five years in order to address concerns that the bottling requirements were unnecessarily restrictive. The consensus at the end of those comment periods was that the container regulations serve the valid purpose of protecting consumers from making misleading assumptions about quantity and value that may arise from a lack of familiarity with a myriad of different containers and of facilitating storage and distribution processes.

Government Procurement

The 1993 Buy American Act, and the 1954 Executive Order number 10582 actively promote so-called "buy American campaigns".

State procurement

State governments within the United States purchase almost 50% of U.S. total of government procurement. However, only 24 American States are subject to GPA. Only 24 States out of 50 is a relatively narrow scope of coverage compared to other countries.

We would therefore ask if there is any intention on the part of the United States to expand the scope of coverage in the context of the further negotiations, which are delineated according to Article 24 (7) of the GPA?

The U.S. Small Business Program stipulates that federal government procurement should have a contract with small and minority owned businesses according to Public Law 95-507.

- Our question is, what is the scope and definition of such small and minority owned businesses? What is the size and nature of federal procurement under this provision?

What is the opinion of the U.S. delegation as to the compatibility of such legislation with the GPA?

With a few exceptions, particularly that of small and minority business set asides, Buy America requirements are waived for products from signatories to the WTO Government Procurement Agreement and NAFTA. As reflected in those agreements, the President has broad authority under the Trade Agreements Act of 1979 to waive Buy American restrictions for countries that make reciprocal commitments to apply transparent and competitive procurement procedures. Restrictions generally do not apply to procurement of services. As a result of coverage under the WTO GPA, Buy American restrictions apply to a relatively small portion of Federal contracts -- only those for goods under the GPA threshold of 130,000 SDRs (\$190,000). For those contracts covered under the GPA, Buy American preferences are waived for signatories, but a purchasing prohibition applies to products from countries that are not signatories. The United States also applies a number of restrictions limited strictly to procurement by the Department of Defense, such as those covered by the so-called "Berry Amendment." The United States maintains exceptions under the GPA and NAFTA for these items, including those that are sensitive for national security reasons, just as other signatories maintain their own defense-related restrictions through similar negotiated exceptions.

The United States has also negotiated exceptions to the GPA and NAFTA for small and minority-owned business (SMB) set-asides and has no plans to phase-out these set-asides. As exceptions to the GPA, U.S. legislation on set-asides is compatible with its obligations. Set-asides serve an important socio-economic function while being limited in scope to a relatively small portion of contracts. Historically, they have affected between six and seven percent of the total value of U.S. coverage under the Tokyo Round GPA. It is too early to tell whether the impact may be increased as the result of coverage of services, including construction, under the WTO GPA, since statistics have yet to be reported under the new agreement. Despite the fact that the United States has negotiated exception, it has always sought to apply them on a transparent, predictable basis. The United States expects to continue to discuss with other GPA signatories how transparency and predictability associated with set asides can be enhanced. However, one aspect of awards made to SMBs should not be overlooked; many of these awards are made through a full and open competitive procurement process and not through set-asides. It is important that set-aside statistics not be exaggerated through the addition of data concerning contracts awarded on a competitive basis.

Procurement in the United States is decentralized with states and localities free to pursue their own procurement policies. Nevertheless, most of these subfederal jurisdictions have well-established procurement systems that mirror the transparent and competitive practices employed at the Federal level. Many also apply discriminatory requirements to favour local suppliers. As the result of requests from our trading partners in negotiations on the WTO GPA, the United States Federal government sought commitments from state governments to submit their procurement for coverage under the GPA. Through these efforts, 37 states (as opposed to 24, as suggested in the question), including most of the largest -- e.g., California, New York, Florida, Texas, agreed to cover certain of their procurements under the GPA. State coverage is estimated to total nearly \$50 billion annually. States have either

eliminated discriminatory restrictions or bound themselves to not apply new discriminatory requirements on this procurement. The Federal government and these 37 state governments have developed an extremely cooperative relationship on trade-related procurement issues as a result of GPA coverage. We expect that efforts to date are just a starting point and that additional states and municipalities will be addressed in future negotiations under Article XXIV:7.

Agriculture

Tariff rate quotas

According to Article 404(a) of the United States Act Implementing the Uruguay Round, the United States government may take measures to prevent the tariff quota levels of imported agricultural products from disrupting orderly marketing within the United States.

- What exactly is the meaning of "orderly marketing " in this case?
- Please provide the details of the concrete measures that the United States government has undertaken pursuant to this Article.

There is no standard definition of "orderly marketing" from a regulatory perspective, in this case. The term is understood to mean that, with respect to imports of items subject to TRQs, the U.S. would take measures to ensure that these imports do not disrupt the internal market by sharply influencing prices or supply. The two major measures related to this are licenses for dairy imports and the sugar import process.

SPS restrictions

In para 33 of the summary observations of the Secretariat's Report on the United States Trade Policy Review it is mentioned that the United States Department of Agriculture "has invited comment on the liberalization of a selection of other outstanding SPS restrictions."

- What are the specific details of the U.S. Department of Agriculture's plan regarding the solicitation of opinions on SPS restrictions?

The solicitation of opinions on SPS restrictions is two-fold. From a domestic perspective, USDA is looking into the expansion of the U.S. enquiry point to include private sector companies and associations. This would also entail a project to make the enquiry notifications available on the Internet. U.S. notifications would also become part of the expanded enquiry point dissemination process for the first time (only foreign notifications have been disseminated in the past).

The second aspect of the planned solicitation process would involve increased participation of private sector, consumer organizations, and trade associations as part of U.S. delegations to international standards bodies, such as CODEX and the WTO.

QUESTIONS FROM MEXICO

We appreciate the reports from the Secretariat and from the United States. Inasmuch as we maintain very frequent contacts with the United States both here and by virtue of our geographic proximity and other contractual commitments between us, our contribution will be extremely brief.

We would like the United States delegation to inform us of the current status and the short-term prospects for resolving the following matters, in compliance with U.S. international trade obligations:

- Adoption of the report by the Special Group reviewing the case of Mexican cement exports to the United States;
- Recognition that Mexican avocados can be imported into the United States without causing plant health problems;
- Final determination that millet brooms [broomcorn brooms] shall not be subject to safeguards;
- Lifting of the tuna embargo and the corresponding amendments with respect to labelling; and
- Suspension and, we hope, rapid abrogation of the "Helms-Burton" Law.

Cement

The status of the 1992 panel report "United States -Antidumping Duties on Gray Portland Cement and Cement Clinker from Mexico" was determined in the final meeting of the Tokyo Round Committee on Antidumping Practices which was held on December 18, 1996. At this meeting, the Committee concluded that there was no consensus to adopt this panel report. At the meeting, the United States reiterated that the panel report was seriously flawed in several respects, inter alia, the panel had given Mexico the opportunity to raise arguments which had never been raised in the underlying U.S. antidumping investigation; the panel had inappropriately interpreted the Tokyo Round Antidumping Agreement as including a requirement that for an antidumping investigation to have been properly initiated the petition had to have been submitted on behalf of all or almost all of the production in the regional market; and, contrary to the bounds of authority traditionally respected by GATT panels, the panel had erred by recommending a specific and retroactive remedy. Accordingly, the Committee concluded that there was no consensus for the adoption of this panel report.

Avocados

On July 3, 1995, following an extensive quantitative risk assessment, USDA published a proposed rule that would allow Mexican avocados to be imported into northeastern states under certain prescribed conditions. The comment period ended October 16, 1995. A large number of comments were received. Under U.S. administrative procedures, all comments must be reviewed prior to decision making. USDA has worked diligently to assess the more than 2,000 comments. The Department remains committed to resolving the issue based on appropriate procedures and principles that are fully consistent with WTO obligations.

Broom Corn Brooms

Attached is the notification of the action as submitted to the WTO:

Notifications pursuant to Article 12.1(c) and Article 9, footnote 2 of the Agreement on Safeguards

Pursuant to the above-referenced provisions of the Agreement on Safeguards, and in light of the agreed format for notifications (G/SG/1, 1 July 1996), the United States provides the following notifications to the Committee on Safeguards.

- A. Notification to the Committee on Safeguards under Article 12.1(c) upon taking a decision to apply a safeguard measure:**

1.-2. *This information was provided in a previous notification. See G/SG/N/8/USA/1, 24 July 1996).*

3. Provide a precise description of the product involved. *Broom corn brooms, provided for in subheadings 9603.10.50 and 9603.10.60 of the Harmonized Tariff Schedule of the United States (HTSUS).*

4. Provide a precise description of the proposed measure. *The measure is an increase in tariffs on imports of broom corn brooms, as follows:*

HTSUS subheading	Current bound rate	YEAR 1: Nov. 28, 1996 to Nov. 27, 1997	YEAR 2: Nov. 28, 1997 to Nov. 27, 1998	YEAR 3: Nov. 28, 1998 to Nov. 27, 1999
9603.10.50	32¢ each	33¢ each	32.5¢ each	32.1¢ each
9603.10.60	32% <i>ad valorem</i>	33% <i>ad valorem</i>	32.5% <i>ad valorem</i>	32.1% <i>ad valorem</i>

An annual quantity of broom corn brooms provided for in subheading 9603.10.60 may be entered free of the above-described increase in duties, as follows:

Country from which product originates	YEAR 1: Nov. 28, 1996 to Nov. 27, 1997	YEAR 2: Nov. 28, 1997 to Nov. 27, 1998	YEAR 3: Nov. 28, 1998 to Nov. 27, 1999
Mexico	100,000 dozen	100,000 dozen	100,000 dozen
Panama	41,000 dozen	41,000 dozen	41,000 dozen
Honduras	37,000 dozen	37,000 dozen	37,000 dozen
Colombia	12,000 dozen	12,000 dozen	12,000 dozen
All Others	2,000 dozen	2,000 dozen	2,000 dozen

The measure does not apply to imports from Canada, Israel, or from developing countries described in the notification under Article 9, footnote 2, provided below.

5. Provide the proposed date of introduction of the measure. *The measure was introduced on November 28, 1996.*

6. Provide expected duration of the measure. *The measure is expected to last three years; i.e., through November 27, 1999.*

7. *Not applicable.*

8. If the expected duration is over one year, provide expected timetable for progressive liberalization of the measure. *The tariffs will decrease in years 2 and 3, as set out in the table above.*

9. *Not applicable.*

B. Notification under Article 9, footnote 2 of the non-application of safeguard measures to developing countries under Article 9.1 of the Agreement on Safeguards:

1. Specify the measure. *The measure is a temporary increase in tariffs described in the above notification under Article 12.1(c).*

2. Specify the product subject to the measure. *Broom corn brooms, provided for in subheadings 9603.10.50 and 9603.10.60 of the Harmonized Tariff Schedule of the United States.*

3. Specify the developing countries to which the measure is not applied under Article 9.1 of the Agreement on Safeguards, and the import shares of these countries individually and collectively. The developing countries to which the measure does not apply are those listed in general note 4(a) to the HTSUS, as that note existed on November 28, 1996, that account for less than 3 percent of imports of the products at issue. A list of the countries in general note 4(a) is attached to this notification. The countries listed in general note 4(a) that account for more than 3 percent of imports, and thus to which the measure does apply are as follows:

HTSUS subheading	Country	Share of imports (average 1994-95)
9603.10.50	Panama	19.65%
9603.10.60	Panama	21.14%
9603.10.60	Honduras	19.33%
9603.10.60	Colombia	6.31%

The share of imports of the remaining countries listed in general note 4(a) are collectively less than one percent for 9603.10.50 and 2.86 percent for 9603.10.60.

4. Not applicable.

Tuna legislation

The United States remains committed to supporting international efforts to protect dolphins and other marine life in the Eastern Tropical Pacific.

The Administration engaged in considerable efforts to obtain passage of legislation to implement the Panama Declaration last year, and we were deeply disappointed when we were unable to secure its final passage. Passage of legislation to implement the Panama Declaration remains a top priority for the Administration. We are working with members of the bipartisan coalition supporting the Panama Declaration on passage of the implementing legislation, which has been reintroduced in the U.S. Congress.

5. Status of "Helms-Burton" Law

The United States believes that the Libertad Act is consistent with our international obligations. We will continue to implement it. At the same time, we will continue to work with trading partners to manage our differences over the Act.

The Act permits the President to suspend the right to bring lawsuits under Title III of the Act for a six-month period. The President exercised this authority in July 1996 when he suspended the right to file lawsuits for six months from August 1. On January 3, 1997, the President again exercised this authority to suspend the right to file lawsuits for six months from February 1.

QUESTIONS FROM NEW ZEALAND

The United States Government sees the WTO system as "the base upon which regional arrangements might be built, provided that such arrangements go further in the cause of liberalization" and also "supports regional agreements that are consistent with WTO rules". (G/16 para. 28).

- How much further towards liberalization should regional arrangements go in areas such as agriculture, textiles and other often highly protected sectors for such arrangements to be consistent with WTO rules?
- Would the United States support the notion that all regional arrangements ought to include provisions that would eventually ensure free (and fair) trade in all goods sectors?

We would not like to speculate at the moment on what would be advisable for other WTO members, so long as their arrangements are WTO consistent. For the United States, however, our arrangements to date have been free trade agreements that cover substantially all trade, including agriculture and textiles and apparel. They already meet the standard laid out in the second part of the question.

Export Credits

The FAIR Act asks the United States Department of Agriculture to develop an export strategy to increase US exports of "high" value and value-added agricultural products" in order to raise the US share of world trade in such products (S/16, para 13, p. 112).

- How does the United States reconcile continuing use of government financed export credit and export guarantee programmes with the statement that its [trade] policy is premised on the removal of barriers and distortions to global trade (G/16, para 48) and the US clear attachment to the concept of "fair trade" (G/16, page 1)?

Our goal is the removal of barriers and distortions to trade. This goal is far from being met. As long as our exporters face competition from, or are unfairly abetted by, foreign governments, we will not unilaterally dismantle our programs.

Such programmes are currently subject to discussions in the OECD in order to develop effective disciplines on their use.

- In line with its apparent policy objectives, will the United States be joining the emerging consensus in favour of multilateral disciplines?

The U.S. is presently engaged in the OECD negotiations concerning the establishment of disciplines for agricultural export credits. Our participation in those negotiations is indicative of our commitment to the multilateral trading system. We cannot prejudge the final outcome of the negotiations.

Tariff quota administration

Some of the United States' "new" or "minimum access" tariff quotas committed in the Uruguay Round have been allocated by lottery (S/16, para 18, p. 116)

- What is the United States' response to criticisms that such an allocation mechanism provides no continuity of access, does not allow the development of value-added trade, and does not provide TQ access quantities which are commercially attractive?

Uruguay Round TRQ quantities for cheese are issued as "lottery" (nonhistorical) import licenses when the government of the supplying country does not designate importers. For non-cheese dairy products, the Uruguay Round Agreement did not provide for country specific allocations or permit designation of importers. Therefore, nonhistorical licenses providing for entry from any country are issued for such imports. However, under the revised Import Regulation, published on October 9, 1996,

nonhistorical licenses issued for butter in 1997 and in 1998 may be converted to historical licenses if 90 percent of the original license quantity is utilized during the year it is issued.

In addition, the new rule replaced the random lottery system with a rank-order lottery system which is intended to increase an applicant's prospects of receiving a license for the same article in consecutive years. Furthermore, the new rule increased the minimum size of most nonhistorical licenses to make them more economically viable. The minimum size in most cases will more than double the size under the previous rule. Since the TRQ amount are fixed, the system must balance the size of the license with the large number of requests for licenses. The minimum license sizes in this context are deemed reasonable.

Recent changes to United States dairy tariff rate quote licensing provide for exemptions from licence performance requirements when a license can simply demonstrate that the country to which the licence applies maintains an export monopoly.

- How does the United States justify such arbitrary treatment of the trade of export monopolies in the absence of any evidence of the nature of such entities' behaviour?

The Import Regulation requires licensees to enter at least 85 percent of the quantity for each license issued for a dairy product (excluding amounts surrendered and including amounts added to a license during the year). Any licensee that fails to meet the 85 percent requirement shall not be eligible to receive the same license next year (i.e., will not be able to receive a license to import the same article from the same country). The Import Regulation provides certain exceptions to the 85 percent requirement. A licensee may apply to have the 85 percent requirement waived when the country of origin on a historical or nonhistorical license maintains or permits an export monopoly to control the export of the dairy article under license. An export monopoly is defined as a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States. A licensee that petitions the U.S. Department of Agriculture (USDA) for an exception will be required to submit evidence that the country maintains an export monopoly.

As indicated in the Federal Register on January 18, 1995, this provision replaced and modified an exception in the previous Import Regulation. Under the previous rule, if it was shown to the satisfaction of USDA that the country specified on a license discriminated against a licensee, the licensee would not be penalized for failure to use 85 percent of a license and/or the license could be globalized. This provision was in place for 16 years and was never invoked.

The revised provision is intended to be administratively narrower and simpler. Potential use of such a measure would not be contrary to Uruguay Round obligations. There is no nullification or impairment in that the provision does not prevent utilization of the full TRQ amount. It is applied equally to export monopolies sanctioned by any country and thus is not discriminatory. In reviewing the exception to the 85 percent utilization requirement it is important to remember that most licensees are able to meet the 85 percent requirement because of their ability to source from alternative suppliers, particularly when specific products are not available from a single source. The rule's exception is not discriminatory, but instead applies regulatory treatment to licensees dealing with export monopolies that is no more favourable than the treatment afforded licensees trading in competitive markets. The purpose of the rule is to ensure that TRQs are filled and on the other hand to recognize the need to be fair to licensees who cannot meet the 85 percent requirement for reasons beyond their control. Finally, the rule fully implements the commitments made with regard to licensing in the bilateral agreements under the Uruguay Round by providing for exporting country designation of U.S. importers.

State trading enterprises

No mention is made in the Secretariat's report of state trading enterprises in agriculture, although the United States notified the Commodity Credit Corporation to the Working Party on State Trading Enterprises in 1995.

- Given that CCC finances or administers a range of export credit or export subsidy programmes, how does the United States justify its retention under the provisions of Article XVII.1(b) of the GATT 1994 which require that such enterprises make purchases or sales "solely in accordance with commercial considerations"?

The credit and assistance programs referred to above are administered by the CCC. Under the above programs, purchases and sales are made by private entities whose decisions are based solely on commercial considerations. The CCC also retains the authority to liquidate stocks. The stocks acquired by CCC through price support programs are independent of its commercial export programs. When CCC liquidates stocks through domestic or foreign sales, with the exception of the Food Aid program, its decision to do so is based on commercial considerations with the primary intent of protecting the assets of CCC.

The United States recently provided information to New Zealand on the operations of the California Kiwifruit Commission and the Washington Apple Commission. We were interested in the advice that the authorized activities of the Commissions were entirely self-funding and include research, promotion, consumer education and quality standards. The role of the government is to provide "administrative guidance" and to ensure that the statutory provisions are adhered to.

- What is the nature of the Federal Government legislation/regulation which provides the framework for state-level authorization of such Commissions?

The authority rests with the U.S. Constitution. There are no other Federal Government statutory or regulatory authorities.

- Are there any other significant activities that these or other state-level bodies are engaged in?

We are unaware of any State Commissions controlling the quality of product. State governments may establish minimum quality requirements. State governments are involved in many activities. It may be easier to address a more specific question.

- What does the term "administrative guidance" refer to?

The State governments oversee the operations of the commissions to ensure that they operate within the confines of state laws and regulations. Some examples of administrative guidance activities may include budget oversight and approval, enforcement, and contract review.

- Are there any state-level bodies which have exclusive rights to control exports from the state in question?

Some State governments set minimum quality standards for shipments of fresh fruits and vegetables which may include domestic and export shipments or just export shipments. State Commissions do not control exports, nor are there any State bodies that have exclusive control over the sales or marketing of product.

Checkoff schemes

Could the United States confirm that promotional and research activities funded by checkoff levies will apply on a generic basis, regardless of the origin of the product?

Should the statute for a National research and promotion program contain a provision to assess imports as well as domestic product, the assessment is applied equally regardless of the origin of the product.

Telecommunications

There have recently been extensive changes to United States policy and regulation in a number of sectors. Could the United States please identify the most important areas where changes to policy and regulations are expected to lead to increased liberalization of market access for foreign suppliers of telecommunications services.

The Telecommunications Act of 1996 opened local exchange markets to competition without any limits on market access or national treatment.

The Federal Communications Commission's rulemaking on Market Entry and Rulemaking of Foreign-Affiliated Carriers codified an objective set of criteria for case-by-case decisions on issuance of radio licenses and licenses to provide international services, based on a de jure and de facto examination of effective competitive opportunities in the home market of the applicant.

The United States' conditional offer in the WTO Group on Basic Telecommunications is to replace that case-by-case process by a WTO commitment to provide effectively unlimited market access and national treatment for all basic telecom sectors. The offer is conditional on a critical mass of high quality offers by other trade partners.