

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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UNITED STATES-ANDEAN TRADE PREFERENCE ACT

Questions and Replies

Contracting parties were invited (GATT/AIR/3333) to communicate to the secretariat any questions they might wish to put to the United States concerning the Andean Trade Preference Act. In response to this request, a number of questions were received and were transmitted to the United States. The questions and the replies which have been received are set out below.

1. BENEFICIARY COUNTRY

Countries eligible for designation (Section 203(b))

1.1 Question

Can the United States Government provide an assurance that it will not seek to extend the existing arrangements to additional products and other countries?

Answer

The ATPA was established for a specific purpose and with provisions nearly identical to a well-established programme, the Caribbean Basin Initiative (CBI), for which the United States also has a waiver. A discussion of the rationale for the ATPA can be found in L/6980. The United States does not intend to extend the existing arrangements to additional products or to countries other than those named in the Act.

Factors affecting designation (Section 203(d))

1.2 Question

In subsection 203(d)(3), what is intended by the expression "provide equitable and reasonable access to the markets and basic commodity resources of such country"?

Would there be envisaged any sort of preferential access to the markets and to the basic commodity resources of the beneficiary countries in favour of the United States as per Section 203, subsection (d)(3)?

Answer

The ATPA autonomously grants preferential benefits to beneficiary countries. In deciding whether to grant such preferences, it is reasonable

to expect the United States to consider, among other factors, whether the beneficiaries commit practices that are harmful to United States interests. The factors contained in Section 203(d) do not include preferential access to beneficiary markets and commodities. Section 203(d)(3), rather, speaks of "equitable and reasonable" access. Its principal purpose is to seek assurances that the beneficiary country will not discriminate against the United States in terms of access to its market or to its basic commodities. Such factors are identical to those in the CBI and virtually the same as the factors to be considered for eligibility under the United States Generalized System of Preferences (GSP), from which these same countries receive preferential tariff treatment. Furthermore, the factors (which are intended to encourage the expansion of legitimate products as an alternative to the production and trafficking of illicit narcotics) are consistent with sound economic policy and the GATT.

1.3 Question

In determining eligible countries, the Act establishes certain conditions regarding protection of intellectual property rights and affordance of internationally recognized worker rights. Such conditions, besides being an additional burden on beneficiary countries, are not they themselves bent on pursuing goals other than those set out in the Act as approved by the CONTRACTING PARTIES, i.e. "... encouraging the expansion of legitimate products as an alternative to the production and trafficking of illicit narcotics..." (Decision of 19 March 1992, third preambular paragraph; L/6991)?

Answer

The ATPA, like the CBI and GSP, weigh the extent of protection of intellectual property rights and affordance of internationally recognized worker rights in determining a country's eligibility for preferences. Consideration of these practices, which are an integral element of economic development, does not defeat the goal of "encouraging the expansion of legitimate products".

1.4 Question

The number of conditions attached for countries to be eligible under the ATPA is such that one wonders whether its real goal is not to instigate reforms in their trade and industrial policies to the extent that surpasses the GATT and the Draft Final Act of the Uruguay Round. What are the yardsticks that the United States Government will use to judge whether a country is complying with those conditions?

Answer

All of the four beneficiaries submitted applications by the end of February 1992. These applications, private sector comments, and an understanding of each country's laws and practices form the basis for determining eligibility. The President granted ATPA benefits to Bolivia and Colombia on 2 July 1992. Ecuador and Peru remain under consideration.

Duty-free treatment of products

1.5 Question

It is noted that Peru will be the main beneficiary of duty-free treatment for fresh or chilled asparagus in the period outside 15 September-15 November. Is the United States able to inform the Working Party during which months Peru sends the bulk of its asparagus exports to the United States? Does Peru already benefit from a tariff preference (against the 25 per cent m.f.n. rate) for this item?

Answer

During the past several years, Peru has sent the bulk of its exports of asparagus to the United States during the period September through January, with most of this flow concentrated in December. Peru does not benefit from any United States tariff preference for this product.

2. ELIGIBLE ARTICLES

Suspension of duty-free treatment (Section 204(d))

2.1 Question

Imports benefiting from the Act have a separate treatment on the process of imposition of safeguard measures, including a separate determination that serious injury is caused by them:

- How is the distinction of effects of imports of beneficiary and non-beneficiary countries to be made?

Answer

Section 204(d)(4) of the ATPA provides that:

"No proclamation providing solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under (the US escape clause) unless the United States International Trade Commission in addition to making an affirmative determination with respect to such article under (the escape clause) determines in the course of its investigation under such section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this chapter." (emphasis supplied)

The statutory language does not require a separate injury determination in all cases in which imports of an article granted duty-free treatment under the ATPA are subject to escape clause investigation, nor does it require the Commission to distinguish between "effects of imports of beneficiary and non-beneficiary countries", as the question presumes. The ATPA requires only that, when investigating imports of an article

afforded ATPA duty-free treatment, that the Commission state "whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries."

The interpretation of this statutory language must be made, in the first instance, by the United States International Trade Commission (ITC), an independent agency of the United States Government. Because the Commission has yet to conduct an escape clause investigation covering, inter alia, eligible articles from ATPA beneficiary countries, the ITC has yet to interpret this statutory language and the exact parameters of the Commission inquiry and the methodology it will employ has not yet been established.

However, the ITC has interpreted similar language embodied in the law applying to suspension of GSP duty-free treatment under Section 203 of the Trade Act of 1974. The Commission found that provision to require such a finding by the Commission only if the relief to be provided by the President pursuant to an escape clause action is solely in the form of the suspension of duty-free treatment afforded a GSP eligible article. The President can provide relief under the escape clause law solely in the form of suspension of the designation of the article as eligible for duty-free treatment under GSP only if the Commission has determined that the serious injury substantially caused by imports results from such designation. The Commission has made such a finding in only one instance, with respect to artificial baits and flies in investigation No. TA-201-34, Certain Fishing Tackle (September 1978). The Commission recommended that the President provide relief in the form of suspension of GSP designation, and the President did so.

2.2 Question

If safeguard measures are not imposed on imports benefiting from the Act, but are imposed on other imports of a product, is any action going to be taken to avoid that imports benefiting from the Act replace restrained imports?

Answer

No action is necessarily required to restrain imports from a beneficiary country from displacing restrained imports from a non-beneficiary country.

2.3 Question

Are imports benefiting from the Act subject to other trade remedies (anti-dumping, countervailing duties) on an m.f.n. basis?

Answer

Imports benefiting from the ATPA are subject to all US laws on anti-dumping and countervailing duties on a m.f.n. basis.

3. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THE ATPA
(Section 206)

3.1 Question

Section 206 of the Act provides for a report by the International Trade Commission (ITC) to the Congress on the economic impact of the Act on United States industries and consumers and, in conjunction with other agencies, its effectiveness in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Does this report include an analysis of the economic effect of the Act on United States trade with third markets? If not, why is this not considered? How does the United States Government hope to ensure that such tariff preferences will not be aimed at establishing obstacles or creating undue difficulties for trade with other contracting parties?

Answer

The report to be prepared by the International Trade Commission (ITC) will not contain an analysis of the economic impact of the ATPA on US trade with third countries. Congress, in passing the ATPA, provided clear guidance concerning the areas for ITC assessment. These areas focus on the effect of the ATPA on the US economy, particularly on domestic industries which produce articles that may be competitive with ATPA-eligible products. The ITC has no plans to evaluate the impact of the ATPA on non-beneficiary suppliers.

3.2 Question

Will the reports of ITC make room for analysing the effects of the Act on imports from non-beneficiary sources?

Answer

The United States continues to believe that the ATPA will have little, if any, impact on other contracting parties. As explained in L/6980, the ATPA will not raise any barriers. Furthermore, because of the extremely small share of US imports directly affected by the ATPA - under 0.1 per cent - the affect on third countries will be insignificant. As stated in C/W/692, the United States will consult promptly with any interested contracting party where such party believes that its benefits under the General Agreement are being impaired by the ATPA.

3.3 Question

Will the reports of ITC, when evaluating the effects of the Act on the drug related crop eradication, also consider drug related crop migration to regions of non-beneficiary countries?

Answer

According to Section 206(b)(1)(C), the ITC is expected to focus its report on the effects of the ATPA on drug-related crop eradication and crop

substitution efforts of the beneficiary countries. As such, the report is not expected to consider drug production in non-beneficiary countries.

Public Comments (Section 206(c)(2))

3.4 Question

In the context of the preparation of reports by the ITC, does "submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports" include submissions by non-beneficiary governments or enterprises and associations of non-beneficiary governments?

Answer

Representatives of non-beneficiary governments, enterprises and associations may submit information on matters to be addressed in the ITC's report. Relevant information will be taken into account when the ITC prepares its report.

4. TERMINATION OF DUTY-FREE TREATMENT (Section 208 (b))

4.1 Question

Does not the ten-year duration of the preferential treatment provided in the Act prejudice the United States position on the extension of the waivers, which are essentially exceptional and transitional?

Answer

The decision taken by the Council on 18 February 1992, grants the United States a ten-year waiver from its obligations under paragraph 1 of Article I of the General Agreement (C/W/692). The United States has no plans to request an extension.

5. TRADE DATA

5.1 Question

Could the United States provide statistical data on the trade concerned by this Act: total figures, breakdown by product, origin of imports?

Answer

The ATPA provides the potential for duty-free benefits on over 6,000 tariff items. Detailed information on all 6,000 items would require an extremely lengthy publication. The United States provided contracting parties with summary data in L/6980. In addition, the United States has replied to specific questions already raised by contracting parties and will continue to do so.

6. WAIVER DECISION OF 19 MARCH 1992

6.1 Question

Will the United States give an undertaking to relinquish the waivers in the event that it achieves the objectives prior to the life of the waiver or is unsuccessful in reducing the supply of narcotics to the United States.

Answer

The ATPA is one feature of a comprehensive anti-drug programme in the United States. This programme includes demand reduction, supply interdiction and alternative development. The ATPA, by expanding market access opportunities, is intended to complement efforts aimed at encouraging people in the Andean nations to pursue alternatives to the production and distribution of illicit narcotics. While progress has been made towards meeting the objectives of the US drug programme, reaching our ultimate goal of eliminating this scourge will take time. The preferences granted under the ATPA and the waiver, unfortunately, will probably be necessary for the full ten-year period.

6.2 Question

Paragraph 4 of the Decision of 19 March 1992 establishes that the United States Government will enter into consultations, upon request, with other governments and "examine the possibility of action for a satisfactory adjustment of the matter", but the Act itself, preceding the waiver, contains no references to such consultations nor actions. What kind of actions could be taken? Would suspension of duty-free treatment as provided for in Section 204(d)(1) be included among possible actions for satisfactory adjustment?

Answer

It is difficult to prejudge actions stemming from consultations which have not even been called. The purpose of such consultations would be, inter alia, to determine whether any action was necessary. The President does, however, have the authority to "withdraw, suspend, or limit the application of duty-free treatment" as a result of "changed circumstances".

7. GENERAL

7.1 Question

We understand the objective pursued by the Act and its temporary nature. Nevertheless, we would like to know what permanent measures the United States is taking or is considering taking to reduce demand for drugs and resolve this problem in a permanent fashion.

Answer

Although this question does not concern trade and, therefore, is not within the competence of the General Agreement, we offer the following response. As indicated above, the Administration is engaged in a comprehensive programme aimed at reducing the demand for and the supply of illicit narcotics. It is a detailed counternarcotics strategy with objectives, programmes, and performance criteria to support a broader international counternarcotics strategy. The Andean counternarcotics strategy is a major effort on the part of the Administration to further the steady trend in Latin America and the Caribbean to democracy and market-oriented economic reforms.