

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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**COUNCIL  
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**TRADE POLICY REVIEW MECHANISM**

**UNITED STATES**

**MINUTES OF MEETING**

**Addendum**

**Answers to Written Questions**

The following communication has been received on 15 April 1994 from the delegation of the United States, responding to written questions submitted by delegations of Austria, Canada, Chile, Colombia, the European Union, Hong Kong, Japan, the Nordic countries, and Switzerland to the Council meeting on the Trade Policy Review of the United States.

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**AUSTRIA**

**Market Access**

1. While the average of U.S. tariff rates is fairly low, a considerable number of high rates for products of interest to Austria will remain, even after full implementation of the tariff cuts. Do we have to wait for the next round to see these peak rates reduced?

**Answer:**

The United States has a total of only 876 tariff peaks (rates 15 per cent and above) out of over 8,000 tariff lines. Of these, 514 are in textiles, 184 in chemicals, 7 in fish, and the rest in other areas (e.g., footwear, glass, ceramics, trucks). In comparison, the EC has 204 peaks of which 29 are in textiles, 25 are in chemicals, 68 are in fish and the rest are in other sectors. Japan has 589 tariff peaks, of which 297 are in textiles, 21 are in chemicals, 37 are in fish, and the rest are in other areas (e.g., leather and leather products).

The United States has offered cuts in over 90 per cent of its industrial peak tariff lines for an arithmetic average depth of cut of 49 per cent to GATT trade partners. Thus, the United States offer compares favourably to paragraph 4(c) of the Tokyo Economic Summit agreement which urges Quad partners to seek an objective of 50 per cent cuts in peaks subject to agreed exceptions.

The average U.S. trade-weighted duty pre-Uruguay Round is less than 5 per cent. With the one-third cut being offered, the average U.S. duty post-Uruguay Round will be about 3 per cent.

Anti-Dumping and CVD Actions

2. Steel exporters are concerned about statements by the United States steel industry that a new wave of complaints may be filed. What are the United States Government's intentions in the light of much better results achieved by U.S. mills? Will the MSA negotiations be taken up seriously in the near future?

Answer:

Domestic industries have the right under U.S. law and the GATT to pursue anti-dumping and countervailing duty remedies for unfairly priced and/or subsidized imports. The USG's Department of Commerce carefully reviews any anti-dumping or countervailing duty petition filed by a domestic industry to ensure that it meets the standards set forth in U.S. law and regulations, which are administered consistent with our international obligations under the GATT. If a petition contains appropriate evidence of sales at less than fair value (or subsidies) and injury to the domestic industry, then the Department of Commerce initiates an AD (or CVD) investigation. Provisional AD (or CVD) duties are not imposed until preliminary findings of both injury and dumping (or subsidies) are made.

With regard to any potential case filings on steel, the USG is not in a position to state its intentions on any petitions that have not yet been filed and initiated. However, as with any AD or CVD petition, in the event a petition is filed, the USG will examine it carefully, and initiate an investigation only if the petition meets the standards described above.

The United States continues to be interested in negotiating a Multilateral Steel Agreement as shown by its participation in the negotiations held in Geneva in April 1994.

Banking

3. There is an initiative in the United States Congress to charge foreign banks with the costs of the examination by the Federal Reserve. U.S. banks will not have to pay such fees. Does the United States Government have the intention to oppose this clearly discriminatory proposal?

Answer:

Section 203 of the Foreign Bank Supervision Enhancement Act of 1991 gives the Federal Reserve Board the right to examine all foreign banks, requires coordination of examinations with other federal and State bank regulators, and provides that the "...cost of any examination..shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be."

This is not a proposal; this is the law.

It is correct that no such charges are levied against domestic banks for Federal Reserve examinations, and the Chairman of the House Banking Committee wrote to the Chairman of the Federal Reserve Board asking that such fees be collected. Chairman Greenspan responded that the assessment provision is a "contradiction" of the principal of national treatment, and wrote that "...the Board believes

Congress should give consideration at an early date to reconciling current law to assure parallel treatment between foreign banks and U.S. banks in the area of assessment for the costs of examination."

The Secretary of the Treasury, in responding to a similar plea from the Institute of International Bankers, wrote that the Treasury Department "...appreciates your concerns about the potential denial of national treatment that may result from such action.." and said his department would be monitoring the issue as the Federal Reserve Board completed its proposal for public comment, which, together with the public responses, "...will be an appropriate starting point for consideration of further action." The European Commission has also raised the issue with Treasury.

#### Taxation of U.S. branches of foreign enterprises

4. Recently some strict laws on taxation of foreign firms have been passed and there is a stricter application of existing laws.

Thus in 1992/93 the reporting requirements have been extended to enterprises with more than 25 per cent foreign capital (instead of 50 per cent earlier on).

- If a foreign enterprise gives a guaranteed credit to a U.S.-affiliate the latter cannot book the credit interest as expenses but the tax authorities regard the interest as capital injection.
- Tax authorities often do not accept prices charged between foreign enterprises and their U.S. affiliates.

What are the policy intentions of the United States Government as regards these more restrictive practices of U.S. tax authorities which have particularly severe consequences for small and medium and-sized enterprises which cannot afford great expenses for tax lawyers?

Answer:

The United States believes that our tax practices are well within the range of acceptable international norms. Rules on information reporting, earnings stripping and transfer pricing are necessary to ensure that foreign taxpayers are complying with U.S. tax laws and paying their fair share of tax.

Article IV of the Convention between the United States and the Republic of Austria for the Avoidance of Double Taxation With Respect to Taxes on Income adopts the "arm's length standard", under which the tax authorities of the contracting parties may reallocate profits between related parties to reflect the amounts that would have been charged between unrelated parties. This provision is consistent with Article 9 of the OECD Model Income Tax Convention, and is the approach that all OECD members have adopted for determining transfer prices between related parties.

In accordance with these provisions, the United States has issued extensive regulations under section 482 of the Internal Revenue Code that provides methods to be used to determine if transactions between related parties are in conformity with the arm's length standard.

U.S. rules also, however, provide relief in certain cases to smaller taxpayers. A safe harbour provision for small taxpayers was introduced in 1993 under which taxpayers with less than \$10 million in gross receipts may elect to determine their taxable income in accordance with published rates of return. Taxpayers lacking the sophistication and resources to apply the regulations under section 482 may prefer to elect the safe harbour for purposes of determining transfer prices to their U.S. affiliates.

5. Import-authorization for plants and vegetable products are overly strict and amount to a non-tariff measure of the first order. The average time span needed for getting an import authorization is between one and a half and two years. Even for plants that are not grown in the United States the assessment process lasts something like one year. The main reason for this lengthy process seems to be lack of personnel in the USDA. Are there any intentions to shorten unduly cumbersome procedures? Could the USDA Animal and Plant Health Inspection Service's staff resources be strengthened?

Answer:

Prior to allowing a commodity to come into the United States, the Animal and Plant Health Inspection Service (APHIS) must conduct a plant risk assessment. The question is whether the entry of a foreign plant and plant products present a risk to U.S. agriculture. APHIS must answer this question and validate its answer with a pest risk assessment. This assessment identifies what pests would pose the risk and the control measures that must be taken. The latter requires control measures to be negotiated. APHIS receives technical support from the Agricultural Research Service (ARS). ARS identifies those parameters/protocols that must be taken into consideration to assure the pest(s) are controlled. Research takes time. This time must elapse before answers are obtained. APHIS will not allow the importation prior to obtaining these answers. It is not unusual for APHIS and their foreign counterparts to negotiate these protocols. It is common for the APHIS foreign counterparts to supply much of the data that APHIS needs to complete its assessment. Delays and faulty data are not the fault of the APHIS.

Also, the potential environmental impact of an "importation" may need to be reviewed. This action is mandated by the National Environmental Policy Act (NEPA). An environmental assessment (EA) may need to be prepared and clearly this takes time to prepare and write up. APHIS has to collect, at times, all the information before any analysis is performed (likewise for a pest risk assessment). This analysis presented in the form of an EA which may or may not be made available for public comment (public comment periods are mandated, although the length of time may be left to the agency's discretion). Sufficient time must be given for public comments, and APHIS reviews these comments and issues a final ruling. APHIS can hold public hearings, the number and locations throughout the country are linked to the complexity of the rulemaking. The length of the review is tied to the complexity surrounding the issues. The final ruling may be contested in court. Like any other agency, APHIS does not have all the expertise in-house and may need to go outside to get it. APHIS rule-making is also affected by Executive Orders, and the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), which is administered by the Environmental Protection Agency (EPA).

In summary, the rules that govern the United States authorization process are published and available to anyone who is interested. The United States system is transparent and fully in accordance with the provisions of the existing Standards Code (Agreement on Technical Barriers to Trade).

6. Other speakers have already pointed to the diversity and complexity of U.S. rules of origin. The question of simplification has been raised.

The Final Act of the Uruguay Round includes the Agreement on Rules of Origin, the development of which is to be undertaken by the CCC. The new preferential rules of origin under the NAFTA are based upon HS chapter change and in some instances, specified value-added requirements. These basic rules, now in effect for U.S. customs purposes under NAFTA, have also been proposed as rules of origin for general application to all trade. On 3 January 1994, HS chapter-change-based rules were published in the Federal Register for country of origin marking purposes under the NAFTA. These rules are not identical to the NAFTA rules of origin for duty purposes, but rather, are less stringent.

On the same day, Customs published a notice indicating that these NAFTA origin marking rules were being proposed for general application to all trade.

Some U.S. private sector groups have reacted by urging that U.S. Customs not undertake to pre-empt the work of the CCC in this manner; there were industry-specific policy reasons behind many of the NAFTA preferential origin rules which should not be presumed applicable to worldwide trade. For the same reason, other U.S. industry groups have reacted favourably to the possible expanded (and protective) application of the NAFTA preferential rules.

Could the United States authorities clarify their intentions as to the possible extension of NAFTA rules of origin for general application to trade? Will there be an ample opportunity of discussing any proposed changes in appropriate GATT/WTO fora?

Answer:

The premise of this question is mistaken. The NAFTA preferential rules have not been proposed for general application. The rules proposed for general application are a codification of the substantial transformation standard currently applied by the United States on a case-by-case basis. The United States would be happy to discuss rules of origin in a GATT/WTO forum or any other site/forum suggested by interested parties.

## CANADA

### I. Trade Policy Regime: Objectives and Framework

#### General

- (a) Will the United States "multilateralize" the process of negotiating trade liberalisation agreements with important Asia trading partners? This would require that a) an appropriate multilateral or regional forum be used and b) the goal be agreement on multilateral rules, not on market-sharing arrangements.

Answer:

- The Framework agreement concluded last July between the United States and Japan underscores the m.f.n. principle and calls on the "benefits under the Framework" to be applied on an m.f.n. basis.
  - Furthermore, the Framework states that the United States and Japan are "committed to an open multilateral trading system that benefits all nations."
  - In this regard, the specific proposals the United States has tabled in the four priority sectors - telecommunications and medical technology government procurement, insurance, and auto and auto parts - call for access to Japan for foreign (not U.S.) products and services.
- (b) Can the United States explain the ways in which the broader interests of U.S. consumers and the economy are reflected in the trade policy process in order to counterbalance the influence of special interests? The United States trade policy process appears to be heavily influenced

by single interest groups who appear consistently successful in bringing pressure to bear to protect their interests.

Answer:

The United States trade policy decision-making process is open and transparent. Decisions involve seeking input from: 1) the public through announcements in the Federal Register and hearings as appropriate; 2) our extensive network of private sector advisory committees (which cover industrial, agricultural, labour, environmental and consumer interests, including NGOs); 3) a wide spectrum of agencies (including State, economic agencies like the Treasury and the Council of Economic Advisors, and trade agencies such as Commerce, Agriculture and Labour) which participate in our interagency trade policy mechanism; and 4) the Congress.

- (c) The United States Government seems to focus all of its trade policy efforts on the opening of foreign markets to U.S. exports. Does the United States Government recognize the positive role played by imports and inward investment in maintaining U.S. competitiveness?

Answer:

President Clinton has stated the Administration's support for foreign investment in the United States, recognizing that foreign investment brings benefits with it such as new technologies and new techniques. With regard to our advocacy guidelines, in determining whether the United States Government will support a bid or proposal in an international transaction, it considers whether the transaction would promote the United States national interest, which includes U.S. exports, U.S. employment and the U.S. technology base. These criteria are applied to both domestic and foreign-invested companies.

- (d) The United States Department of Commerce has described a number of developing countries as Big Emerging Markets, which represent the best opportunity for U.S. exports. How does the United States propose to encourage the integration of these countries into the international trading system? Will the United States attempt to use bilateral, regional or multilateral means to encourage the opening of these markets and their re-structuring in conformity with international disciplines?

Answer:

The identification by the Department of Commerce of certain countries as "Big Emerging Markets" is an effort to reorient U.S. trade development initiatives and priorities toward those markets which possess the greatest potential for increased U.S. exports. With that goal in mind, the United States will continue to support bilateral, regional and multilateral efforts to facilitate the integration of these economies into the international trading system. Vehicles such as the NAFTA, APEC and the WTO are not mutually exclusive in encouraging open markets and liberalization measures consistent with international disciplines.

Trade Laws and Regulations

- (a) Is the United States Administration contemplating the inclusion of a public interest provision in its trade remedy regime as part of the implementing legislation for the Uruguay Round?

Answer:

The United States currently permits persons who are not parties to the proceedings to make submissions in anti-dumping and countervailing duty investigations. The United States implementing legislation is expected to reaffirm this principle in accordance with Article 6.12 of the Anti-dumping Agreement and Article 12.10 of the Subsidies and Countervailing Measures Agreement. These articles provide that industrial users of the product under investigation and representative consumer groups in cases where the product is commonly sold at the retail level shall be given the opportunity to provide information which is relevant to the investigation regarding dumping, injury and causality.

- (b) Trade Remedy Assistance Office: What are the functions of this office and are there statistics on the use made of the office by federal and state officials and the public?

Answer:

The Trade Remedy Assistance Office was established in 1989 to provide technical assistance to eligible small businesses seeking a remedy under U.S. trade law. In 1993, three cases were filed on behalf of eligible firms.

- (c) When will the study by the ITC of the effects of trade remedies action on the United States economy be completed? Will the results of the study be made public?

Answer:

Investigation No. 332-344, The Economic Effects of Anti-dumping and Countervailing Duty On the United States Economy. The report to the United States Trade Representative will be available to the public.

- (d) Exporting nations are concerned about the significant harassment of compelling exporters to participate in specious investigations. Can the United States explain the significant decline in ITC affirmative final injury determinations in the two-year period prior to June 1993 as compared to investigations conducted in the 1980s? In addition, how many petitions has DOC decided not to investigate during the review period?

Answer:

During 1986-94 the Commission conducted three investigations under section 406 of the 1974 Trade Act. Two of the cases resulted in affirmative findings. An OMA was negotiated with China re imports of tungsten. That OMA has expired. The second affirmative finding concerning honey from China is currently before the President for a decision on relief. Decision is due by March 8.

Since 1986 the Commission has conducted eight investigations under Section 201 of the Trade Act of 1974. Two of these cases resulted in affirmative (or tie) determinations but only one resulted in quantitative restrictions. Those restrictions on cedar shakes and shingles are no longer in place.

- (e) Although the United States asserts that the Department of Commerce has little discretion in its determination of dumping and subsidy, we would ask the United States to provide clarification of this statement since practice would appear to suggest otherwise.

Answer:

In indicating limited discretion, we were speaking more in a relative sense as compared to the determination of injury and causation undertaken by the USITC. The identification and calculation of a dumping margin is inherently a quantitative exercise, and therefore is more formulaic than a determination of injury, for which a variety of factors (both quantitative and qualitative) must be assessed and a yes-or-no decision reached. Of course, the DOC also must make judgements in the course of its investigations - such as whether or not an adjustment to prices for differences in selling expenses is justified, or whether a particular subsidy program has provided disproportionately large benefits to a specific industry - but these decisions depend as much or more on whether the respondent has supplied sufficient, verifiable information in support of its position as it does on the "discretion" exercised by DOC.

- (f) In para 192 of its report, the United States states that a petition need only contain "reasonably available information" in order to have the authorities initiate an investigation. Although the United States has also stated that the Department of Commerce has little discretion in the trade remedy process, this term appears capable of rather elastic practical interpretation. Could the United States provide a precise definition of not only the term but also its application? (In para 170 of its report, the United States attempts to attribute the low incidence of dismissal of petitions to the cost of preparing complaints. An alternative, and equally feasible, explanation is the low initiation standards maintained by DOC, which result in most complaints leading to investigations, especially since the petition need only contain "reasonably available information".)

Answer:

The full standard alluded to in the question is information reasonably available to the petitioner supporting the allegations of dumping/subsidy, injury and causation. Therefore, the information must not only be reasonably available, but it must also support the elements required by the Anti-dumping and Subsidies Code for the imposition of an AD or CV duty. The reasonable availability criterion is merely a common sense benchmark by which to judge the sufficiency of the evidence provided in the complaint. It would seem nonsensical to establish a standard requiring that industries supply data that would not be reasonably available to them, particularly given the difficulties of private parties attempting to collect information on the contractual arrangements of their foreign competitors with customers or foreign governments.

We are, of course, familiar with the views of some concerning the question of whether U.S. initiation standards are "low." However, irrespective of these opinions, U.S. initiation standards are nonetheless compatible with Code requirements, as was confirmed by Subsidies Code panel report concerning the United States CVD investigation of Canadian softwood lumber.

- (g) The comments of the United States (para. 177 of its report) regarding the increasing and now extensive use of the "best information available" (BIA) rule is of concern since it suggests an unnecessary tendency to rely on BIA even when respondents make every effort to supply DOC with appropriate information. BIA is not an equivalent option to verifiable information supplied by a respondent. Can the United States define the threshold criteria for triggering reliance

on BIA? In addition, can the United States provide some assurance that this practice will change in order to ensure that the rule will only be relied upon as a measure of last resort?

Answer:

U.S. authorities have absolutely no interest in increasing their "use" of BIA, if for no other reason than it gives our trading partners a convenient excuse to claim that enforcement of U.S. AD/CVD laws amounts to "disguised protectionism." We fully agree that "BIA is not an equivalent option to verifiable information supplied by a respondent," but the critical word in that statement is verifiable. If we are left with unverifiable information, including no information at all, there is no recourse but to resort to BIA. Needless to say, there are no "threshold criteria" which can be applied generally to determine when it is necessary to use BIA; the facts and circumstances of each case differ and, presumably, exporters would not want us to ignore those differing facts, at the risk of being charged with arbitrariness.

- (h) The process of administrative reviews by DOC is a source of concern. The extensive delays are supportive of protection. Also supportive of this conclusion is the fact that, of 158 reviews of AD and CVD orders in 1992, only 2 AD orders were terminated. Is the United States Administration planning to implement changes in order to, as a minimum, expedite the review process?

Answer:

No CP is more interested in expediting the completion of U.S. administrative reviews than is the United States. This is an area where U.S. authorities have made progress in the past, and we intend to improve upon our track record in the future. Of course, one explanation for any delays which exist is the number of opportunities for reviews provided for under the United States system; no other system makes it so easy for exporters to have their sales reviewed to determine whether dumping has been discontinued. Another consideration worth recalling is that delays often come in response to requests to consider additional arguments or information. The enforcement of strict deadlines obviously would also restrict the ability of authorities to consider such information.

- (i) Can the United States authorities provide an explanation for the increased reliance on constructed-cost sales?

Answer:

U.S. authorities rely on the use of constructed value only in situations where there are no or insufficient sales to provide a basis for price-to-price comparisons, or when below-cost sales have been made in substantial quantities over an extended period of time and at prices which do not permit cost recovery within a reasonable time period. Whether or not there has been an "increased reliance" on the use of constructed value - an allegation which the United States is not in position to confirm - the basis for such reliance remains unchanged. Furthermore, these bases are fully authorized by Article 2 of the Anti-dumping Code.

- (j) When will the United States Administration amend its legislation in response to the GATT panel finding in January 1989 that Section 337 of the Tariff Act is inconsistent with GATT Article III:4?

Answer:

The United States has repeatedly stated that it intends to include amendments to Section 337 of the Tariff Act of 1930 in legislation presented to the United States Congress to implement the results of the Uruguay Round. That position has not changed.

- (k) The results in the Uruguay Round will require CPs to make changes to elements of their trade remedy regimes. We assume that the United States will do so, for example in the areas of subsidy definition and sunset provisions. Will the Administration make every effort to ensure that legislation implementing the Uruguay Round will not contain provisions that will negate the benefits gained through the MTN?

Answer:

As has been the case in the past, U.S. countervailing duty law and practice will continue to conform to U.S. international obligations as expressed and permitted by the Subsidies Agreement.

- (l) Where proposed rules of origin for marking purposes are restrictive, will the United States amend these rules to reflect past practice? (A number of Canadian companies have rulings from U.S. authorities stating that their products should be marked as "Product of Canada"; if the proposed new rules do not allow this, will the United States amend them to reflect current practice?) Does the United States intend to use the new rules of origin for anti-dumping, countervail and government procurement procedures?

Answer:

The proposed U.S. rules of origin would employ a change in tariff classification methodology and are intended to codify the effect of existing U.S. practice. The United States intends to modify the proposed rules if it appears that the results of their implementation would diverge from those arising from current practice, and hopes to accomplish this following the "notice and comment" period of public review. Existing rulings might provide evidence of such divergence.

The proposed U.S. rules of origin are intended to be used where origin determinations are required under the Customs and related laws of the United States. With respect to other U.S. laws (e.g., anti-dumping, countervailing duties, government procurement), the relevant authorities that administer these laws are free to base their determinations on the proposed rules but are not bound to do so by the rulemaking.

## II. Trade-related Aspects of Foreign Exchange and Investment Regimes

- (a) Does the United States continue to support the principle of national treatment for foreign investment? (The Administration's support for the Fair Trade in Financial Services legislation sends mixed signals.)

Answer:

Yes, the United States supports the principle of national treatment for foreign investment. However, there are exceptions to this principle in highly-regulated sectors, such as the banking and securities sectors, in many countries around the world. Support of this legislation does not indicate

a move away from the basic principle, it reflects the need to address the continued problem of the lack of national treatment or market access for U.S. banking and securities firms in many foreign markets.

It should be kept in mind that the legislation mentioned, Fair Trade in Financial Services, is not yet final. The Administration is working with the various Congressional committees to ensure the legislation meeting the Administration's objectives of providing U.S. negotiators with an effective tool to open banking and securities markets overseas. Administration representatives have testified on several occasions that the legislation must be consistent with and supportive of our international obligations, including commitments we ultimately may take in GATS. We have also made it clear that we believe existing operations of foreign financial institutions already established in the United States should be protected. The impact of the legislation should be prospective.

- (b) Does the United States intend to discriminate against foreign-owned companies in the United States for the purpose of giving preferential treatment to domestically-owned companies? (For example, the Department of Commerce's advocacy guidelines effectively mean that Northern Telecom (U.S.) is unable to seek the services of U.S. commercial officers to assist in the export of equipment manufactured in the United States, while Northern's U.S. competitors can do so.)

Answer:

The preferred-supplier relationship had long permitted Bell Canada to seek proposals from Northern Telecom before seeking outside suppliers for its telecommunications equipment requirements. It acted to disadvantage U.S. firms seeking to compete for telecommunications equipment business in Canada. We wish to note that effective 31 March 1994, Bell Canada and Northern Telecom ended their preferred-supplier relationship. With the companies' decision to abrogate the contracts that defined the relationship, and the Canadian Government's confirmation of these actions, we are removing the references to this relationship from this year's National Trade Estimates Report (NTE). As a result, U.S. exporters will have new opportunities in Canada, and Northern Telecom's U.S. subsidiary will be eligible for U.S. Government support under the Commerce and State Department's export advocacy program.

- (c) Will the United States narrow the scope and breadth of the national security exemption? As it is currently applied, it includes services such as dredging and salvaging and air transport of persons or properties, except in limited circumstances, between two foreign points. Such examples suggest that the exemption is not justified in its current form.

Answer:

We would be pleased to answer this question but would appreciate some clarification as to exactly which national security exemption the Canadian delegation is referring.

### III. Trade Policies and Practices by Measure

#### Government Procurement

- (a) Can the United States provide an explanation for the fact that, although it has the highest dollar value of procurement above the threshold of all procurement code signatories, it nonetheless has the lowest percentage of contract awards made to foreign suppliers (Table IV.5)?

Answer:

The United States has not undertaken an analysis of the competitiveness of U.S. vs. foreign suppliers of goods and services in our domestic procurement market. Given the size of the United States Federal procurement market and the United States manufacturing base, it is not surprising that U.S. companies win a high proportion of these contracts. It would be highly distortive to compare import penetration data among Code signatories since the relative sizes of domestic manufacturing bases vary so much. As noted by a Secretariat official in a recent analysis, the Code guarantees the opportunity to bid on covered contracts and non-discriminatory treatment in the procurement process. It does not guarantee a certain level of actual awards.

- (b) The United States has asserted (para. 168) that the recommendations of the Administration's National Performance Review "should have a significant liberalization effect benefitting both domestic and foreign suppliers through greater simplicity and transparency". Can the United States provide an explanation for the basis of this statement given that market access will, in fact, be reduced by raising the acquisition threshold from \$25,000 to \$100,000? Such action creates additional preferences for U.S. small business and renders procurement currently covered under other international agreements inaccessible to other signatories.

Answer:

The increase in the small acquisition threshold, contrary to the question's implication, does not change the basis for setting aside contracts for small and minority businesses. The criteria for setting aside contracts are the same above and below this threshold. The increase in the threshold mainly results in the simplification of procedures for contracts between \$25,000 and \$100,000. Certainly, improvements to the United States procurement regime resulting from the recommendations of the National Performance Review will be implemented in a manner consistent with our international obligations. These improvements should increase opportunities for foreign bidders. For example, the current complicated system for cost accounting, which deters many suppliers from bidding, will be dismantled in favour of more commercial-like practices.

- (c) What is the impact of small-business set-asides on foreign bidders for government procurement? (Small-business set-asides are an exception to the GATT Procurement Code and the NAFTA. The Secretariat Report (para. 281) indicates that, in 1991, small and disadvantaged businesses obtained about 25 per cent of total federal procurement under contracts closed to foreign bidders. The definition of "small" varies by industry but may include those with up to 1500 in a manufacturing firm or up to \$18 million in a services firm. In Canada, such criteria would cover 98 per cent of all Canadian businesses.)

Answer:

It is estimated that small business set asides apply to approximately 5 per cent of Code-covered contracts. It is also our experience that the contracts set-aside represent, as a rule, those at or near the Code threshold, as opposed to the higher value contracts.

- (d) Will the United States give consideration to the narrowing of the application of its national security exemptions under the Government Procurement Codes? (Although the United States states (para. 260) that Canada is not subject to most restrictions on foreign procurement by the Department of Defense, this is incorrect. There has been an increasingly restrictive

interpretation on a wide number of defence appropriations in addition to those covered by the Berry and Byrnes-Tollefson amendments.)

Answer:

One of the key recommendations of a recent review of the procurement practices of the Department of Defense was to rely to a much greater extent on commercially available products and services rather than to increase costs to the government and potential suppliers by requiring a "customized" product or service developed to overly detailed specifications. As these recommendations are implemented and in the interest of cost containment, it is likely that the application of national security exemptions will diminish. Nevertheless, we believe that U.S. application of national security exemptions is no broader than any other signatory's application of national security considerations.

- (e) Can the United States explain the justification for its government procurement practices under which U.S. producers are routinely given "Buy American" preferences for fish products when the same products are available from Canadian producers at favourable price?

Answer:

If the contracts at issue are covered by international obligations, either under the Code or the NAFTA, Canadian producers are given national treatment. If the contracts are not covered by these agreements, the United States is fully consistent with our obligations to apply preferences in favour of domestic producers. It is our experience that other signatories engage in a variety of non-competitive practices with respect to their non-covered procurements.

#### Environmental Standards

- (a) State-level legislation on recycled content for newsprint and other such environmental standards are being implemented with a resultant trade-inhibiting impact. Does the United States intend to try to develop some national and international standards which will ensure that the legislation has the least trade-distorting impact while, at the same time, respecting the intended goals of the legislation?

Answer:

The United States respects the rights of States to determine the level of environmental protection they deem appropriate. Where there are relevant international standards, the United States has already committed under the Standards Code to taking such reasonable measures as may be available to ensure that States use the international standards as a basis for their standards, unless they would be inappropriate. However, the United States cannot develop international standards on its own. That will require cooperation and effort on the part of U.S. trading partners.

- (b) Will the United States reconsider the extraterritorial application of its fish-management laws such as the implementation of minimum fish size restrictions at border entry points for groundfish and lobster?

Answer:

Measures of the type referred to in the question, such as those implemented with respect to the groundfish and lobster fisheries, are measures that the United States applies to enforce the regulations

implementing its domestic fishery management programs. As the question itself recognizes, these measures are not extraterritorial, but are measures applied at the border which provide equivalent treatment in the United States market for fishery products regardless of their nation of origin.

- (c) Can the United States explain the rationale for its import prohibition of Canadian aboriginal marine mammal products which are produced in a sustainable manner, while it allows the domestic sale of the same products produced by U.S. aboriginals?

Answer:

The United States Marine Mammal Protection Act, which provides for comprehensive protection of marine mammals, allows for the importation of Canadian aboriginal marine mammal products for scientific research or for public display purposes. The MMPA will be reauthorized by the United States Congress this year. Amendments that could ease transfers of native products for some purposes are under consideration.

#### Background

The MMPA does allow Alaskan natives to take marine mammals for subsistence purposes, which include production of handicrafts that are not machine made or mass produced. Aboriginal subsistence taking is also authorized by the International Whaling Convention. With the exceptions noted above (science and public display), all import of marine mammals or marine mammal products into the United States is prohibited. Note that the concept of sustainable use is not relevant here; the criterion is "subsistence" use by aboriginals.

- (d) Is the United States Administration planning to review its administrative practices maintained at the border, particularly in the area of product standards, with the view to harmonization or mutual recognition?

Answer:

Assuming the question relates to spot checks, inspections or other actions taken by U.S. Government (Customs or otherwise) officials as part of our enforcement of regulatory requirements (standards are voluntary and there is no border enforcement):

- Current U.S. legislation (Title IV of the Trade Agreements Act of 1979) requires federal agencies in the United States to consider the use of international standards when developing technical regulations. This requirement is in furtherance of meeting the objective of the Agreement on Technical Barriers to Trade (Standards Code) that such requirements be harmonized on the broadest possible basis.
- That same legislation suggests the possibility of negotiating mutual arrangements with respect to standards-related activities (under the responsibility of USTR). We have agreed, for example, to enter into negotiations with the European Union on a possible mutual recognition agreement.
- The United States recently reaffirmed its commitment to harmonization on a broad basis (i.e., first and foremost, giving due consideration to international standards) in the NAFTA Chapter on Standards-Related Measures.

- The WTO agreement on technical barriers to trade encourages, among other things, governments to respond favourably to requests for negotiations on the mutual recognition of conformity assessment results, and we intend to fulfil that obligation (witness our progress with the EU!). It also continues the obligation we accepted in the Tokyo Round to use international standards, recommendations and guides when they are appropriate for our technical regulations and conformity assessment procedures.
- Implementation of the obligations concerning "harmonization" and "mutual recognition" as outlined above necessitate evaluation on a case-by-case basis by the appropriate authorities within a particular domestic regulatory environment.
- The United States would welcome the elaboration of any particular practices or regulations which are perceived to be a violation of its multilateral obligations (either by TBT signatories or WTO Members, depending on how long it takes them to develop the info).

#### IV. Trade Policies by Sector

##### Agriculture

- (a) EEP: In the light of the Uruguay Round results and the opportunity for renewal of the world trading system, will the United States now consider the abandonment of EEP, which has proven so destructive to the market forces that the trading system is designed to promote? Why does the United States continue to add countries to the eligibility list?

Answer:

Regrettably, participants in the Uruguay Round did not agree to the complete elimination of export subsidies, as the United States had proposed in its initial agricultural offer submitted in 1987. We believe that the total elimination of all export subsidies remains a viable goal and should be a priority objective in any future multilateral trade negotiation. As we have stated previously, the United States is prepared to completely eliminate the EEP, as well as our other export subsidy programs, in the context of a multilateral agreement in which all countries agree to phase out all export subsidies. Until then, we will meet our Uruguay Round reduction commitments, but we will maintain the EEP.

With respect to adding countries to the EEP eligibility list: The Uruguay Round agricultural component does not address the use of export subsidies in new markets. We have no plans to significantly expand the EEP eligibility list, but we will retain the flexibility to move into new countries should that become necessary to compete with other subsidizing suppliers.

- (b) Commodity Credit Corporation: Is the United States planning to raise the wheat loan rate for domestic producers? If so, how does the Administration plan to ensure that the Commodity Credit Corporation is not inundated with stock, thereby requiring surplus disposal measures and further market disruptions?

Answer:

The minimum loan rate is set by statute. It is calculated as 85 per cent of the most recent five-year average farm price, excluding the high and low prices, with the proviso that the loan rate not be more than 5 per cent below the loan rate for the previous year's crop. For 1994, the loan rate is calculated to be \$2.72 per bushel, 27 cents above the 1993 loan rate of \$2.45.

However, the statute also provides that if the ratio of ending stocks to total use for the marketing year is expected to exceed 30 per cent, the Secretary of Agriculture may reduce the formula loan rate by no more than 10 per cent. If the stocks-to-use ratio is expected to be between 15 and 30 per cent, the Secretary of Agriculture may reduce the formula loan rate by no more than 5 per cent. In 1994, the latter condition is projected; thus, the adjusted minimum loan rate would be \$2.58 per bushel.

Finally, the Secretary may reduce the formula loan rate by no more than an additional 10 per cent to maintain a competitive market position for wheat. For 1994, this would further reduce the adjusted minimum wheat loan rate to \$2.32 per bushel.

No decision has yet been made on where the 1994-crop wheat loan rate will be set. However, USDA is forecasting farm-level wheat prices of more than \$3.00 for the 1994 marketing year. Prices at this level should be more than sufficient to ensure the repayment of most wheat loans, whether or not any reductions to the formula rate are taken.

"Marketing loans", which have been in effect for wheat since 1993, will also encourage the repayment of wheat loans. These provisions enable producers to take out a loan at the administratively-set rate, but to repay the loan at the lower of the market price or the loan rate, fully satisfying the loan commitment.

- (c) U.S. Farm Policy: Since the current U.S. Farm Bill expires in 1995, what changes are planned in the upcoming legislation to take account of specific U.S. commitments in the Uruguay Round Final Act? When does the United States expect to hold Congressional hearings on the new bill?

Answer:

Administration is currently consulting with the Congress on implementing legislation for the Uruguay Round. Any changes that are necessary to meet Uruguay Round commitments in agriculture will be contained in the implementing legislation.

Farm bill legislation will still be necessary in 1995, however. The farm bill authorizes a wide variety of programs - nutrition, research, foreign food assistance and conservation, for example - in addition to the domestic support and export subsidy programs. Hearings have not yet been scheduled.

- (d) Section 22 Agricultural Adjustment Act: Unilateral actions, and threats thereof, by the United States pursuant to Section 22 create disruptions and generate uncertainty in the global marketplace. Will the United States Administration revoke the GATT-inconsistent unilateralism embodied in Section 22, in view of the commitments it has made in the Uruguay Round?

In the light of the GAO Report recommending reform of the United States Peanut Program (GAO/RCED-93-18), why is the United States Administration now considering action under section 22 which would operate to slow such necessary reform?

In the case of wheat, why is the United States considering action which could limit high quality inputs from reaching U.S. manufacturers of wheat products, especially in view of the fact that the true problem at the heart of this situation has been created by EEP? (Secretariat Report para 436). The breadth of administrative discretion allowed under Section 22 (eg. more restrictive interpretations of quota language used to constrain even exempt imports, unilateral allocation of country quotas from global quotas) is also of concern.

Answer:

The United States has committed to convert Section 22 restrictions to tariffs in the course of implementing the Uruguay Round. However, in the interim, the United States has retained all rights to apply Section 22 import restrictions if the conditions outlined in the law apply.

Section 22 of the Agricultural Act of 1933, as amended, authorizes the President to impose fees or quotas on imported products that undermine any U.S. Department of Agriculture domestic commodity program. This authority is designed to prevent imports from interfering with USDA efforts to stabilize domestic agricultural commodity prices.

In November 1993, the Secretary of Agriculture notified the President that he had reason to believe that imports were entering the United States in such quantities and under such conditions as to render or tend to render ineffective, or materially interfere with, the price support, payment and production adjustment programs for wheat, wheat flour and semolina, as well as for peanut butter and peanut paste. The President agreed with the Secretary's assessment, and asked the International Trade Commission to initiate the required investigations. The investigations commenced on January 18, 1994; the findings are expected this summer.

- (e) Section 304 Marketing Orders: Can the United States explain why its Section 304 marketing orders discriminate between domestic production and imports in that inspections are applied to all imports but not to all production of U.S. origin? (Secretariat Report page 448)

Answer:

U.S. marketing orders are designed to help fruit and vegetable growers set quality and quantity standards to keep inferior products off the market and to control the short term flow of goods. There are currently 43 fruit, vegetable and specialty crop programs covering 32 commodities (tomatoes, table grapes, olives, citrus, oranges, prunes, stone fruits, onions, Irish potatoes, etc.) in 32 states. Whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary of Agriculture determines the area with which imports are in most direct competition. He then applies that area's marketing order's standards to all imports of the specified commodity.

- (f) Beer II: Can the United States describe the progress being made to implement, at both the federal and State level, the Beer II GATT panel report which was adopted in June 1992? In addition, what are the plans of the United States federal authorities to ensure compliance by the States?

Answer:

Pursuant to paragraph I.3 of the 1989 Improvements to the GATT Dispute settlement Rules and Procedures (BISD 36S/61), the United States advises Contracting Parties of the status of implementation of the recommendations of the report of the Panel in "United States - Measures Affecting Alcoholic and Malt Beverages."

Since the report was adopted, the United States has maintained intensive efforts to comply with the Panel's recommendations. These efforts have included consultations with the multiple States whose practices were cited in the Panel's recommendation.

- Five States have enacted legislative changes in their practices in an effort to comply with the Panel's recommendations.
- One State (South Carolina) has provided a clarification that its law does not in fact require foreign producers to distribute beer and wine via common carriers, and therefore accords equal treatment to imported and in-State products.
- At least nine States have corrective legislation pending or are drafting legislation for future introduction.
- A number of other States are actively considering methods to comply with the Panel's recommendations.

The United States will continue its efforts to make additional progress towards compliance with the Panel's recommendations.

#### CHILE

1. "The United States is implementing a new quality control system for eatable products called "Hazardous Analysis Critical Control" (HACCP). Although it is a technical system to improve health of such products, it can be affirmed that the frontier between its alleged purposes and protection is not a clear-cut one. That is something that causes us some concerns. Until now such systems would be applied only to sea food products. Nonetheless, in the future it would be expanded so as to cover some different goods. Which are those goods? In which time frame does the United States envisage to extend the HACCP?"

Answer:

On 28 January 1994, the United States Food and Drug Administration (FDA) proposed regulations designed to better assure the proper processing or manufacturing of seafood products. These regulations will be applicable both to manufacturers located in the United States and those in foreign countries that export to the United States and will require specific controls to ensure human food safety in accordance with hazard analysis critical control point (HACCP) principles, including detailed sanitation control procedures. The proposed regulations will also apply to importers, who are defined as being those responsible for ensuring that goods being offered for entry into the United States are in compliance with all laws affecting the importation of seafood. HACCP is a preventive system of hazard control that is the most effective and efficient way to ensure that these products are safe. Similar HACCP requirements, coupled with HACCP-based seafood inspection systems, have been, or are in the process of being, implemented in a number of other countries (e.g., Canada and the European Union). The WHO/FAO Codex Alimentarius Commission's (CAC) Committee on Food Hygiene recommends the use of HACCP-based systems for the control of food safety and quality.

The public health basis for FDA's determination that HACCP controls should be required for seafood manufacturers and processors are described in detail in the proposed regulation published in the Federal Register (see 59 FR 4142). The proposal requests written comments from interested parties. These comments will be considered and addressed by FDA in formulating an appropriate final rule.

FDA is also proposing that its HACCP regulations become effective 1 year after issuance of the final rule.

Since the early 1970's a HACCP-based system of controls has also been required by FDA for manufacturers and processors of low-acid canned foods. With regard to any intentions by FDA to require HACCP-based controls for other sectors of the food industry, FDA has made no decision for expanded coverage at this time.

### COLOMBIA

1. Are there are perspectives that the main agricultural products, such as wheat and other cereals, rice, oil seeds, cotton, tobacco, and some dairy products will stop receiving such high subsidies in the future?

Answer:

The United States is committed to reduce export subsidies and internal supports in the Uruguay Round negotiations. Expenditures on export subsidies will be cut by 21 per cent from 1986 to 1990. The United States has already reduced internal supports substantially and will meet the requirement to reduce internal supports by 20 per cent from the 1986 to 1988 period.

2. How can the rules of the statutes on United States' Government procurement establishing a certain preferential treatment in prices for domestic companies over imports; limitations on procurement of foreign products, unless they incorporate a minimum quantity of local content; and the prohibition on some foreign companies to participate in certain public biddings be explained?

Answer:

Procedures regulating government procurement are specifically exempted from general GATT principles under Article III:8 of the GATT. Existing multilateral disciplines are limited to those contained in the Government Procurement Code, which provides for guarantees of transparency and non-discrimination on a reciprocal basis for Code signatories. Colombia has not expressed interest in acceding to the Code.

U.S. Buy American regulations are transparent in their application and limited to those contracts not subject to coverage under the Government Procurement Code. In recent negotiations to expand coverage of the Code, the United States was a key advocate for an expansive, comprehensive agreement which would serve further to limit the scope of Buy American restrictions.

3. Why is it allowed that some States of the United States implement regulations limiting the participation of foreign products in their procurement?

Answer:

The United States Federal Government has no authority to regulate the procurement practices of the States. Additionally, procurement by subcentral entities has not been subject to international disciplines on government procurement. Under the new Code, the United States has offered a substantial proportion of State procurement, which will be subject to the national treatment obligations of the Code.

Non-Tariff Measures

4. Can the removal of quotas, licenses or voluntary restrictions by the United States on imports of dairy products, cotton, peanuts, sugar and its by-products be foreseen?

Answer:

Under the Uruguay Round Agricultural Agreement, the United States will "tariffy" current Section 22 quotas which limit imports of dairy products, certain types of cotton, peanuts, and sugar containing products. Sugar imports are currently subject to a tariff rate quota and after implementation of the Agreement will continue to be subject to a similar mechanism.

THE EUROPEAN UNION

I. Objectives of U.S. Trade Policies

What is the meaning of the absence of reference to the U.S /EU relations? Does this imply a U.S. trade policy which does not recognize the role of its largest trading partners?

Answer:

This Administration has publicly stated on several occasions that it attaches the greatest importance to its trade relations with the European Union.

Paragraphs 10 and 11, p. 2

"This arrangement is consistent with GATT rules", "benefits under the Framework will be on a Most Favoured Nation basis."

How do you view the GATT-compatibility of the Trade Framework in the light of possible bilateral agreements concluded with the Government of Japan in specific areas covered by the Agreement, and which themselves would be based on or include provisions of previous arrangements or agreements that involve non-m.f.n. actions (MOSS and GPPA)?

What is your position, again with respect to the vowed m.f.n. nature of the Framework concerning possible voluntary actions by Japanese industry, under U.S. pressure, that would lead to discrimination of EU products, both in the United States and the Japanese market (notably in the automotive sector)?

Answer:

The Framework agreement concluded last July between the United States and Japan underscores the m.f.n. principle and calls on the "benefits under the Framework" to be applied on an m.f.n. basis.

- Furthermore, the Framework states that the United States and Japan are "committed to an open multilateral trading system that benefits all nations."

- In this regard, the specific proposals the United States has tabled in the four priority sectors -
  - telecommunications and medical technology government procurement, insurance, and auto and auto parts, - call for access to Japan for foreign (not U.S.) products and services.

II. Report of the GATT Secretariat C/RM/S/45

Paragraph 94, p. 33

Could you expand on the policy of the United States with regard to performance requirements? Are they defined by regulatory action or mandated by Congress? What is the effect of conditional national treatment on trade and investment?

Answer:

The United States holds that investments should be free from performance requirements. This is among the protections extended bilaterally pursuant to U.S. investment treaties - a practice not shared by any member of the EU and which the EU has refused to sign on to in the context of the Energy Charter.

A specific tenet of United States policy towards international investment is that U.S. investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment.

Are performance requirements contrary to the spirit and the letter of the bilateral investment treaties and double taxation treaties which are referred to in paragraph 95?

Answer:

Double taxation treaties reduce double taxation, reduce tax avoidance and evasion, and prohibit tax discrimination. A double taxation treaty would not prohibit a nondiscriminatory performance requirement or a measure providing better than national treatment.

Is the taxation method called "unitary taxation" a fiscal performance requirement and is it contrary to double taxation treaties referred to in paragraph 95?

Answer:

We understand the term "unitary taxation" to mean a mandatory worldwide unitary tax system such as that imposed by several States of the United States in the past. Under this system, the income tax liability of a company that is a member of a unitary business group typically is determined by applying to the worldwide income of the unitary group an apportionment formula that compares in-State property, payroll, and receipts to worldwide property, payroll, and receipts.

Paragraph 99, p. 34

Could the trade volume of these cases which are often concentrated on particular sectors on the one hand and the fact that many of these cases were dismissed by the ITC on the other hand, be considered as indication that these proceedings have been used by U.S. petitioners as a strategy to close off their market and to harass foreign exporters?

Answer:

As the United States has explained to the EU on numerous previous occasions, it would neither be useful nor appropriate for U.S. authorities to attempt to define the motivations of U.S. petitioners in filing AD or CVD complaints. In general, one can only assume that the frequency with which industries in certain countries have had to resort to the exercise of their statutory rights, as reflected in GATT rules, to protect themselves from the injurious effects of unfair trade practices is indicative of the extent to which those sectors are overburdened by global excess capacity maintained through distortive government subsidies and sustained through international price discrimination. One could even say that the fact that certain investigations may result in negative findings is testimony only to the integrity and quality of the investigative process. However, in those jurisdictions where the investigation of unfair trade complaints is subject to strict rules to ensure objectivity and impartiality, there is no role for speculation as to "why" complaints may or may not be lodged by certain industries.

Paragraph 104, p. 35

Would you expand on the announcement made by the Justice Department in April 1992 referring to the challenge in U.S. courts of foreign business practices? What criteria is applied to determine the extent of which U.S. exporters are harmed?

Answer:

The United States applies its antitrust laws to transnational conduct that has direct, substantial and foreseeable effects within U.S. commerce. This is a long-standing policy that reflects economic and business realities.

The United States Department of Justice announcement in 1992 returned enforcement policy to what it had been prior to 1988. It is consistent with many years of settled judicial interpretation of the reach of the Sherman Act as well as with the Foreign Trade Antitrust Improvements Act of 1982, which codified the jurisdictional scope of the antitrust laws. Hence, the 1992 announcement reflects a desire to cure a conceptual anomaly in enforcement policy rather than to bend antitrust law to different ends.

The essence of the 1992 policy is that, in appropriate cases, the Department of Justice will take antitrust enforcement action against conduct occurring overseas that restrains U.S. exports, whether or not there is direct harm to U.S. consumers, where it is clear that: (1) the conduct has a direct, substantial, and reasonably foreseeable effect on exports of goods or services from the United States; (2) the conduct involves anti-competitive practices that violate the U.S. antitrust laws -- in most cases, group boycotts, collusive pricing, and other exclusionary activities; and (3) U.S. courts have jurisdiction over foreign persons or corporations engaged in such conduct. The criteria for determining harm to U.S. exporters will be the normal antitrust criteria employed in examining domestic business practices that harm consumers, sellers or competitors. For example, the Department of Justice might take action against a foreign cartel aimed at limiting purchases from U.S. exporters or depressing the prices they receive, or a boycott of American goods or services organized by competitors in foreign markets.

In today's world it is the exception, not the rule, to find a modern antitrust law that applies only to conduct strictly confined within one's own borders. Indeed, the reach of our law is not dissimilar to that of European Union antitrust law. There is always some possibility of a jurisdictional conflict, of course, but the United States is careful to consult with the pertinent foreign governments to minimize potential conflicts; to that end, the United States adheres to a number of bilateral and multilateral

understandings concerning antitrust cooperation and consultation. Accordingly, we firmly believe that the application of U.S. antitrust laws in this manner is consistent with recognized principles of international law.

Paragraph 168, p. 54

In the recent steel cases against the United States, how many companies had their dumping margins wholly determined under BIA or partly under BIA and what effect did this have on the margins for these two categories of exporters?

Answer:

The United States has not compiled statistics on the number of companies whose rates were wholly or partly established on the basis of "the best information available" in the recent steel cases. As a factual matter, however, many cases involve the use of BIA in some fashion, if only to fill in selective gaps in information provided by the exporter or where we have verified that some of the exporter's information was incorrect. Such BIA, moreover, does not necessarily stem from the domestic industry's information, but often is drawn from other information supplied by the exporter. Only in those cases where the exporter refuses to provide information, or where the information provided is substantially inaccurate or incomplete, do U.S. authorities resort to the use of BIA as the sole basis for a dumping finding.

The United States apply various categories of BIA, depending on the degree of lack of cooperation. Where there is no cooperation what standard is applied and what is the justification for such a standard?

Answer:

If an exporter refuses to respond to an Anti-dumping questionnaire, or refuses to permit a response to that questionnaire to be verified, U.S. authorities reasonably assume that the documented information provided in support of the dumping complaint must be substantially correct. Otherwise, it would clearly be in the interest of the exporter to refute such information. In this same vein, U.S. authorities attempt to recognize those situations in which an exporter has attempted to comply with requests for information, but may not have been able to supply sufficient or adequately supported information. In our view, while there is no alternative but to use BIA in such circumstances, neither is there a basis to draw the most adverse inferences from the exporter's failure to provide a complete and accurate response.

In the United States, petitions contain voluminous data on dumping but very little on injury. Why is this? Does the GATT Code not require that the petition should contain sufficient evidence on injury and its causality?

Answer:

We do not agree with the generalization that petitions contain very little information on injury. To the contrary, since the domestic industry is best-placed to describe and document its overall condition and the loss of sales or price-undercutting due to unfairly traded imports, many petitions contain as much "voluminous" data on injury and causation as they do on dumping. In determining whether the initiation of an investigation is warranted, the sufficiency of the evidence is always assessed by U.S. authorities.

Paragraph 177, p. 55

Explanation for the increased use of BIA?

Answer:

U.S. authorities have absolutely no interest in increasing their "use" of BIA, if for no other reason than it gives our trading partners a convenient excuse to claim that enforcement of U.S. AD/CVD laws amounts to "disguised protectionism." We fully agree that "BIA is not an equivalent option to verifiable information supplied by a respondent," but the critical word in that statement is verifiable. If we are left with unverifiable information, including no information at all, there is no recourse but to resort to BIA. Needless to say, there are no "threshold criteria" which can be applied generally to determine when it is necessary to use BIA; the facts and circumstances of each case differ and, presumably, exporters would not want us to ignore those differing facts, at the risk of being charged with arbitrariness.

Paragraph 250, p. 76

The footnote 181 under paragraph 250 refers to products specifically excluded from the Code. Is this list accurate and what about the Harmonized System of Tariff lines concerned?

Answer:

The list in footnote 181 is illustrative. The comprehensive list is provided in the United States Annex to the Code (as it is with other signatory exemptions). The United States is in the process of preparing an HS breakout of the product exclusions.

Paragraph 256, p. 78

If Buy American provisions do not apply to services, could you explain the criteria used to grant preference to U.S. suppliers in the procurement of the "Federal Telecoms System 2000" by GSA on behalf of U.S. Government departments and agencies?

Answer:

Based on the information currently available to USTR, this procurement was conducted on a fully transparent, competitive and non-discriminatory basis.

Paragraph 261, p. 80

Could you indicate the value of procurement contracts specifically reserved by NASA for national security reasons and its relative share in the total procurement of NASA?

Answer:

This may be difficult since the United States data system does not record procurements on the basis of the Code's national security provisions. We will endeavour, however, to provide additional information on the impact of national security exceptions on NASA procurement.

Paragraph 262, p. 80

There is a reference to special interest restrictions on certain procurement. How many are there special interests and is there a list of them? What is the minimum duration of these restrictions? Since the last TPRM, how many have been repealed?

Answer:

While there is not a master list as such, these limitations will be transparent in the tender notice. The example of the GSA restriction on procurement of certain types of equipment was addressed in our recent entity coverage negotiations under the expanded Government Procurement Agreement (GPA) and while the restriction on federal procurement of construction works has not been applied, we would anticipate its prospective application in a manner consistent with our obligations under the GPA.

Paragraph 264, p. 81

Is it correct to say that if the 30 per cent price preference on heavy electrical equipment has lapsed in 1993, there is no discretion left to waive it?

Answer:

In the annual appropriation process, the Congress may choose to attach the price preference as a condition on the use of appropriated funds for the purchase of heavy electrical equipment by Federally owned power utilities. This condition generally contains a waiver provision.

Paragraphs 261 and 270, p. 82

Do you think that the local material/component requirement, the United States steel requirement and the final assembly of vehicles requirement are measures which affect investment in the trade of goods as defined in the TRIMs Agreement?

Answer:

To the extent that these policies relate to government procurement which is specifically excluded from broader GATT disciplines, the "downstream" impact of these policies in terms of their effect on investment decisions could only be evaluated in the context of the reciprocal relationships peculiar to the Agreement on Government Procurement (and not in the broader discipline of TRIMs).

Paragraph 268, p. 82

Does the United States think that the Inter Modal Surface Transportation Efficiency Act contains trade sanctions which would run contrary to the Final Act and the MOU on Dispute Settlement Procedure of UR-1994?

Answer:

The USG is still in the process of reviewing our domestic laws to determine what changes will be necessary to render them consistent with our prospective obligations under the WTO.

Paragraph 273 - Telecommunication

The EU would welcome the addition of a sentence on the pending negotiations between the United States and the EU for a bilateral agreement on telecommunications procurement. Quid of a reference to sanctions taken by the United States on the basis of Title VII of the Trade Act in the field of telecommunications, and of the counter sanctions taken by the EU?

Answer:

The United States can accept a reference to the bilateral discussions on telecommunications. We only regret that there is still no agreement to lift the discriminatory requirements applying to EU telecommunications equipment procurement.

Box IV.4, Provisions of Section 301. p. 93

The third sentence of the fourth paragraph concerning Title VII of the Trade Act refers to Code violations not established by a GATT Panel. And then it is contradicted by the last sentence which indicates that USTR will go through Code dispute settlement for Code signatories. Which of the two affirmations is correct?

The fifth paragraph refers to Section 1374 of the Telecommunications Trade Act of 1988. Which provisions of this Act are still in force and which have lapsed?

Answer:

Title VII of the 1988 Omnibus Trade and Competitiveness Act requires use of Code dispute settlement procedures for cases of foreign procurement discrimination involving Code covered contracts. For example, the United States invoked Code dispute settlement procedures in the case against Norway on the Trondheim tollbooth system.

Paragraph 712, p. 202

The EU would appreciate to know if the National Foundation procurement of a sonar snapping system has been completed, terminated or suspended. In the case of termination and suspension, the EU would like to know when the USG intends to reinitiate a call for tenders. In the case of completion, the EU would like to know what were the criteria and justification of the final decision.

Answer:

Based on available information, it appears that this contract has been awarded to a United States supplier after foreign suppliers dropped out of the competition.

HONG KONG

Anti-dumping

1. Paragraph 192 of GATT document C/RM/G/45 states that an anti-dumping investigation is initiated upon a petition containing reasonably available information on dumping by foreign products and when required, (our emphasis) information on injury caused by such allegedly dumped imports

to the domestic industry. It would thus appear that evidence of injury and/or the link between the allegedly dumped imports and injury is not, as a rule, required in all cases, which in our view is inconsistent with Article 5.1 of the Anti-dumping Code.

Would the United States Government elaborate on the circumstances under which it might initiate an anti-dumping investigation without sufficient evidence of injury and/or causal link and, if so, how are such measures justified under the Anti-dumping Code?

Answer:

The "when required" language in paragraph 192 of C/RM/G/45 refers only to the discrete class of countervailing investigations for which the United States is not required to provide an injury test.

2. Paragraph 180 of C/RM/S/45 states that a study from the USITC was commissioned by the USTR covering the economic effects of anti-dumping duties in early January 1993. Can the United States Government indicate when this study will be completed and whether and when the results will be published?

Answer:

The study referred to in para. 180 of C/RM/S/45 will cover not only the economic effect of anti-dumping duties, but also the economic effects of dumping. The ITC is scheduled to issue its classified report to USTR in June 1995. We will not know before the issuance of the report whether it will be made public.

#### Import Restrictions

1. The United States has negotiated a number of bilateral arrangements with its trading partners to limit imports. What is the percentage of total imports of the United States that are subject to bilateral voluntary export restraints arrangements?

Answer:

This question requires some clarification. What bilateral arrangements? We are not monitoring any VRE's at this time.

2. There are various trade laws which enable the respective authorities to impose quantitative restrictions on imports. How often are such legislative provisions invoked?

Answer:

Since 1986 the Commission has conducted eight investigations under Section 201 of the Trade Act of 1974. Two of these cases resulted in affirmative (or tie) determinations but only one resulted in quantitative restrictions. Those restrictions on cedar shakes and shingles are no longer in place.

#### Government Procurement

3. Paragraphs 248 and 249 of C/RM/S/45 indicate that in 1991, federal government procurement covered by the Government Procurement Code amounted to about 1.9 per cent of total U.S. public

procurement and that only some 12 per cent of such procurement was supplied by foreign companies. What is the share of foreign supplies in total federal procurement and non-Code covered federal procurement respectively?

Answer:

The United States covers more than 10 per cent of U.S. Federal procurement under the existing Code, and this proportion continues to rise as national security procurements by the Department of Defense fall. The rest of non-covered U.S. Federal procurement involves services and construction, which is not covered by the existing Code but will be covered in the new Code. It is estimated that foreign supplies account for roughly the same share of total Federal procurement and non-covered procurement as their share of covered procurement. As noted, the bulk of non-covered procurement involves services and construction. The Federal Procurement Data System does not provide a reliable indicator of foreign share of these procurements.

## JAPAN

1. Concerning anticircumvention measures, the Secretariat report states that "in case of a final affirmative determination, products are added to the list of products subject to an anti-dumping duty order without the investigation procedure" (paragraph 167, C/RM/S/45). What is the United States view on the consistency of the United States procedure stated above with Article 1 of the AD code, which states that "the imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article 6 of the GATT and pursuant to investigations initiated and conducted in accordance with the provision of this code."?

Answer:

In reaching an affirmative finding of circumvention, U.S. authorities would have determined on the basis of information supplied by the foreign respondent that the changes in the product and/or production process are so insignificant as to render the imported products within the scope of the anti-dumping finding. Given this, there is no conflict with Article 1 of the Code or any other provision of the Code or GATT Article VI. An anti-dumping order would have already been legitimately imposed on the basis of the requirements of the Code. The effect of the anticircumvention finding is merely to clarify the scope of application of the order.

2. It is pointed out in footnote 121 to para 171, C/RM/S/45, that, "one of the reasons for the high share of positive preliminary findings may be the limited time the USITC has to make its determination, which may lead to an over-reliance on data contained in the petition." What is the United States view on this? Does the United States have intention to rectify this situation?

Answer:

The premise to the statement in footnote 121 that there is a high share of positive preliminary ITC findings is somewhat debatable. From the advent of Title VII (January 1, 1980) through fiscal year 1992 (the last full year for which final determinations have been in all cases filed), the Commission made a negative "preliminary" determination in 196 of 860 cases (23 per cent). In any event, the suggestion that there may be "over-reliance" on data contained in petitions is even more questionable. The Commission independently conducts a very thorough "preliminary" investigation and it is the information collected and developed during the course of that investigation (including questionnaire

data from U.S. producers and importers, questionnaire data from cited foreign producers, staff fieldwork, testimony of witnesses at a Commission conference, written submissions from parties, analysis of data by a professional staff including investigators, commodity-industry analysts, economists, financial analysts, and attorneys, etc.) that virtually always forms the basis of the determination.

3. It is stated that "in the two years to July 1993, this (Best Information Available) criterion was used at least partly in over 50 per cent of calculation, compared to some 18 per cent of investigations during 1980-89." (para. 177, C/RM/S/45). We are concerned that such frequent use of the BIA could lead to misuse or abuse of anti-dumping measures. Please explain the reasons for this increasing tendency of using the BIA.

Answer:

First, we are no position to confirm the accuracy of the statistics relied on by the Secretariat, particularly with respect to findings issued in the early 1980s. It is also far from clear whether it is appropriate to compare a 2-year period with a 10-year period, even if the statistics are accurate. In any event, there are no "reasons" to provide for any alleged "increasing tendency" for using BIA, as U.S. authorities have applied the exact same standard throughout both time periods.

U.S. authorities have absolutely no interest in increasing their "use" of BIA, if for no other reason than it gives our trading partners a convenient excuse to claim that enforcement of U.S. AD/CVD laws amounts to "disguised protectionism." However, if authorities are left with unverifiable information, including no information at all, there is no recourse but to resort to BIA.

4. Para 178 of the Secretariat report (C/RM/S/45) states that numerous factors may affect the dumping margin calculation, reflecting the large number of parameters to be evaluated. These include differences in products across countries, conditions of sale, timing of dumping calculations, choice of exchange rates, and indicators of inflation. Most dumping determinations made in the two years to June 1993 involved a comparison of production costs rather than pricing practices, at home (or third countries) and in the United States," and that, "in cases of constructed costs (where actual cost is not available), the home market price is increased by 10 per cent for overhead costs and 8 per cent for profit margins, regardless of the exporters' actual profit and "overhead costs." Japan would like to confirm that the United States will rectify the situation described above in the implementation legislation of the Uruguay Round Anti-dumping Agreement.

Answer:

See below.

5. Para 386 of the Secretariat report (C/RM/S/45) states that, "Once the home market price is determined, the Department of Commerce constructs a weighted average of this price, generally over a six month period. Each individual sale in the United States over this period is then compared to the weighted average home market price, and those sales occurring at a price below it are considered to be sold at LTFV (less than fair value). Sales which occur above the home market price are not included in the calculation." Japan would like to hear the confirmation from the United States that it will rectify this situation when the new AD agreement takes effect.

Answer:

As has been the case in the past, U.S. anti-dumping law and practice will continue to conform to U.S. international obligations as expressed and permitted by the Anti-dumping Agreement.

6. The United States recently initiated an anti-dumping investigation of the imports of a Japanese company's subsidiary in the Netherlands. Japan is concerned about the application of the "multinational corporation" provision of Section 773 (d) of the Tariff Act of 1930 to this case. What is the status of this case? What is the United States view on the consistency of the "multinational corporation" provision with the relevant provisions of the AD code? Japan would like to urge the United States to abide by the AD code and the GATT in this case.

Answer:

U.S. authorities are still considering the proper basis for establishing normal value in this investigation. We have listened carefully to all of the arguments made thus far, and we will take those arguments - including those relating to U.S. international obligations - into account in reaching our preliminary determination which is due next month. Whatever that determination may be, the parties to the investigation will of course have an opportunity to comment further and to express their views at a public hearing, if they so wish.

7. If the United States continues to use the "first to invent" system, it must abolish the discriminatory treatment against foreign countries as to the place of invention in accordance with Article 27 of the TRIPS agreement. We understand that the United States rectifies the relevant legislation when the TRIPS agreement comes into effect. Can the United States confirm this?

Answer:

Yes.

8. We are concerned that the so-called "Hilmer Doctrine" would hinder inventors outside the United States from fully exercising their rights as inventors in the United States. Does the United States intend to maintain it after the WTO enters into force?

Answer:

The United States has no plans to change the so-called "Hilmer Doctrine". The United States does not believe the doctrine is inconsistent with the TRIPS agreement.

9. The Exon-Florio provision can arbitrarily distort the flow of investment because determination as to whether and how an investment proposal is related to impairment of national security is left to the Administration's discretion and made without transparency. What is the United States view on this.

Answer:

This question can be answered in three parts:

1. The President has the ultimate responsibility for determining the national security. In order to preserve his flexibility to respond to changing world events, national security is not defined

in the Exon-Florio statute nor in other legislation. Implementation of Exon-Florio has been delegated by the President to the Committee on Foreign Investment in the United States (CFIUS) which acts on behalf of the President. It is not appropriate in the national security context for CFIUS to disclose its deliberations on behalf of the President.

2. Confidentiality is required. Confidentiality is required under the Exon-Florio statute to protect the interests of the parties to a transaction filing a notice with CFIUS.
3. The Exon-Florio process does not arbitrarily distort the flow of investment from both a policy and a practical standpoint. The Exon-Florio process operates in the context of a U.S. investment policy that is the most open to foreign investors of any other industrial country. Since its implementation in late 1988, over 850 transactions have been subject to Exon-Florio review and only one transaction was blocked by the President.

The data on Foreign Direct Investment in the United States (FDIUS) as published by the United States Department of Commerce bear out these points. Since 1988, FDIUS inflows have been more than \$200 billion. While direct investment inflows have slowed since 1990, the consensus of experts points to general economic conditions and associated investment activity as the principal reason.

10. What are the qualifications for an exporter eligible to the benefit under the Export Enhancement Program? Do these qualifications differ according to the product to be exported or not? If there are such differences, please explain them.

Answer:

An exporter interested in participating in the EEP must meet qualification standards. These include:

1. documented experience of selling for export, within the preceding three calendar years, the agricultural commodity to be exported under EEP (or a similar agricultural commodity as determined by the Commodity Credit Corporation;
  2. an office and an agent for service of legal process in the United States (names, addresses);
  3. a description of business structure - how and where incorporated, etc.; and
  4. a certified statement describing participation, if any, during the past three years in U.S. Government programs, contracts, or agreements. In addition to the above qualifications standards, exporters are required to post a performance security before submitting a request for a bonus. To reflect that the quantities of normal commercial sales vary substantially from commodity to commodity, the measurement of the experience needed to qualify (under 1 above) also varies by commodity.
11. It is agreed that the United States shall eliminate import restrictions taken under Section 22 of the Agricultural Act based on the Uruguay Round results. Please outline the legislative schedule to amend Section 22 in this respect.

Answer:

The United States has committed to convert Section 22 restrictions to tariffs in the course of implementing the Uruguay Round. However, in the interim, the United States has retained all rights to apply Section 22 import restrictions if the conditions outlined in the law apply.

Section 22 of the Agricultural Act of 1933, as amended, authorizes the President to impose fees or quotas on imported products that undermine any U.S. Department of Agriculture domestic commodity program. This authority is designed to prevent imports from interfering with USDA efforts to stabilize domestic agricultural commodity prices.

In November 1993, the Secretary of Agriculture notified the President that he had reason to believe that imports were entering the United States in such quantities and under such conditions as to render or tend to render ineffective, or materially interfere with, the price support, payment and production adjustment programs for wheat, wheat flour and semolina, as well as for peanut butter and peanut paste. The President agreed with the Secretary's assessment, and asked the International Trade Commission to initiate the required investigations. The investigations commenced on January 18, 1994; the findings are expected this summer.

12. Import prohibitions on Japanese tangerines into certain States have been in force although the United States recognized that Japanese tangerines have no sanitary and phytosanitary problems relating to citrus canker. What is the United States view on the GATT consistency of this measure? Does the United States have any plan to abolish it?

Answer:

There is a legitimate phytosanitary concern regarding the infestation of U.S. citrus-producing areas with citrus canker. The United States measure is based on considerable scientific evidence, and therefore is consistent with even the new GATT disciplines in the Uruguay Round Sanitary and Phytosanitary Agreement. The United States is now considering reducing the restriction so that it would cover only five States, rather than 12.

13. When does the United States intend to eliminate the temporary increase of the import tariff on certain vehicles for the transport of goods (per footnote 405 to paragraph 654 of Secretariat Report C/RM/S/45)?

Answer:

The United States has no plans to eliminate the temporary increase in the import duty for light trucks.

14. In 1989, the United States decided that two-door sport utility vehicles would be classified as "other vehicles for the transport of goods", and therefore be dutiable at 25 per cent ad valorem, as opposed to the previously applied 2.5 per cent passenger car duty. This action violates Article 2 of the GATT and is against the CCC's rulings. When and how does the United States intend to rectify this situation?

Answer:

At its fifth session, the Harmonized System Committee of the Customs Co-operation Council decided that the Nissan Pathfinder should be classified in HS 8703, as a vehicle principally for the transport of persons. In accordance with Treasury Department guidelines, such vehicles are classified in the United States under HS 8704 as vehicles substantially for the transport of goods, unless significantly modified.

The United States chose not to enter a reservation against the HSC decision because a lawsuit had been filed in U.S. courts challenging the United States classification of the Pathfinder. The original lawsuit was filed on April 23, 1990; the complaint was filed on April 28, 1991. On May 14, 1993, the United States Court of International Trade reversed the 1989 decision of the United States Department of the Treasury and ruled that a two-door Nissan Pathfinder should be classified in heading 8703 of the United States Harmonized Tariff Schedule. Thus, the classification of two-door Nissan Pathfinders has been modified accordingly.

#### THE NORDIC COUNTRIES

1. We understand that legislation is presently being prepared by the United States Administration to be presented to Congress. The legislation will cover the changes made necessary by U.S. undertakings under the Uruguay Round. According to information from Washington, discussions relating to this legislation particularly concern the agreement on subsidies and countervailing measures, and the agreement on implementation of art. VI relating to anti-dumping. It would be of great interest to have an assessment on the legislative changes due to the UR, any additional changes and how they conform with the revised anti-dumping code?

Answer:

The United States will faithfully and consistently implement our international obligations. Although existing U.S. anti-dumping and countervailing duty laws are for the most part consistent with those obligations, we will be making some "necessary and appropriate" amendments, as that term is used in the context of our "fast-track" implementation process, including amendments concerning: dumping methodology (i.e. home market viability, sales below cost, profit and SG&A, and averaging) injury determination, initiation requirements, new shipper reviews, sunset reviews, subsidy definition, and subsidy "green lights". This list of anticipated amendments is not exhaustive, but does illustrate the comprehensive nature of the United States' implementing legislation.

2. The United States has on earlier occasions linked certain outstanding panel reports, both reports that are unadopted and reports that are adopted but still not implemented, to the outcome of the UR. It would be interesting to hear how the United States intends to adopt and implement these reports? One example of this kind is the panel report concerning the United States anti-dumping order on seamless stainless steel hollow products from Sweden where the United States is recommended to revoke the order.

Answer:

The United States and other delegations have stated in the case of adopted panel reports, their intention to use domestic procedures for implementation of the results of the Uruguay Round as a means for enacting changes in legislation that the Government believes are required to meet GATT obligations.

The parameters and details of such legislation will be determined during the legislative process which process we have explained. It would, moreover, be premature to speculate on the details of the implementing legislation.

With respect to the panel report concerning anti-dumping duties on seamless stainless steel pipes and tubes, the United States' continuing objections to the report's specific and retroactive remedy recommendation are well known.

3. Is it expected that the implementing of GATT/WTO panel reports will have a greater degree of automaticity?

Answer:

The WTO agreement does not affect domestic decision making on implementation of panel reports. The issue of implementation will be considered in the context of each individual panel report.

4. We note that the United States Government in Federal Register of 3 January 1994 proposed to amend the rules for determining the country of origin for imported merchandise (Federal Register, p. 141, 3 January 1994). We recognize the aim of contributing to improved transparency in the assessment of country of origin, but we question whether the proposed rules sufficiently take into account the concept of "substantial transformation". Since the Harmonized System was never designed to serve as a basis for origin determinations, the "change of tariff heading criterion" is quite often a very blunt and imperfect instrument for determining whether a substantial processing has taken place. Doesn't this mean that some allowance frequently must be made for the inadequacies of the Harmonized system when used in context of rules of origin? How does this proposal relate to the upcoming harmonization negotiations that will start after the entry into force of the WTO and to be completed within three years? Would the United States Government be ready to consider postponing changes to its m.f.n. rules of origin until the harmonization negotiations have been concluded?

Answer:

The change of tariff classification based on the Harmonized System is an imperfect instrument for determining whether a substantial transformation has occurred. That is why the proposed U.S. rules, while based on change of tariff classification, include other tests where appropriate.

The proposed U.S. rules are intended to express the substantial transformation standard in a tariff shift format, as outlined in the harmonization work program. They do not necessarily reflect what U.S. positions in that effort may be. The United States views the adoption of the tariff shift program as an improvement that will provide clarity and certainty to traders and ought not to be delayed.

5. We would like to repeat our question on the Gibbons Bill. The proposal would allow U.S. authorities to impose certain restrictive measures if they determine that a subsidized vessel is entering a U.S. port. What is the United States delegation's view on the GATT-legality of this proposal, that according to our information has been supported by the administration?

Answer:

Presently before the United States Congress is proposed legislation whose goal is to provide a remedy in U.S. law with respect to shipbuilding subsidy practices of foreign governments. The

Administration is studying and monitoring this legislation closely and is committed to working with the Congress to address any legal, administrative, or policy issues that may arise concerning it.

6. In the area of Government Procurement the frequent use of Buy American requirements effectively locks out foreign companies from the American market. This is one major obstacle to the trade between the United States and the Nordic countries. In the MOU of May 1993, the United States and the EC agreed to temporarily remove discriminatory restrictions against each other for central/federal government entities as well as for entities in the electrical sector. This has put companies in the Nordic countries in an adverse situation compared to companies in the EU. The new GATT Agreement on Government Procurement only partly alleviates this situation and this not until 1996. We expect that this arrangement with discriminatory features could be multilateralized soon.

Answer:

Procedures regulating government procurement are specifically exempted from general GATT principles under Article III:8 of the GATT. Existing multilateral disciplines are limited to those contained in the Government Procurement Code, which provides for guarantees of transparency and non-discrimination on a reciprocal basis for Code signatories.

U.S. Buy American regulations are transparent in their application and limited to those contracts not subject to coverage under the Government Procurement Code. In recent negotiations to expand coverage of the Code, the United States was a key advocate for an expansive, comprehensive agreement which would serve further to limit the scope of Buy America restrictions.

7. Issues relating to trade and competition, like trade and environment, are often cited as being amongst the most obvious candidates for the trade agenda of the 90's. The Nordics share this view. However, we would like to seek clarification on the United States announcement that business practices in foreign countries would, under certain circumstances, be challenged in U.S. courts if these practices harmed U.S. exports. Do you regard this compatible with the general principles of international law, and if so, on which grounds?

Answer:

The United States applies its antitrust laws to transnational conduct that has direct, substantial and foreseeable effects within U.S. commerce. This is a long-standing policy that reflects economic and business realities.

The United States Department of Justice announcement in 1992 returned enforcement policy to what it had been prior to 1988. It is consistent with many years of settled judicial interpretation of the reach of the Sherman Act as well as with the Foreign Trade Antitrust Improvements Act of 1982, which codified the jurisdictional scope of the antitrust laws. Hence, the 1992 announcement reflects a desire to cure a conceptual anomaly in enforcement policy rather than to bend antitrust law to different ends.

The essence of the 1992 policy is that, in appropriate cases, the Department of Justice will take antitrust enforcement action against conduct occurring overseas that restrains U.S. exports, whether or not there is direct harm to U.S. consumers, where it is clear that: (1) the conduct has a direct, substantial, and reasonably foreseeable effect on exports of goods or services from the United States; (2) the conduct involves anti-competitive practices that violate the United States antitrust laws - in most cases, group boycotts, collusive pricing, and other exclusionary activities; and (3) U.S. courts have

jurisdiction over foreign persons or corporations engaged in such conduct. The criteria for determining harm to U.S. exporters will be the normal antitrust criteria employed in examining domestic business practices that harm consumers, sellers or competitors. For example, the Department of Justice might take action against a foreign cartel aimed at limiting purchases from U.S. exporters or depressing the prices they receive, or a boycott of American goods or services organized by competitors in foreign markets.

In today's world it is the exception, not the rule, to find a modern antitrust law that applies only to conduct strictly confined within one's own borders. Indeed, the reach of our law is not dissimilar to that of European Union antitrust law. There is always some possibility of a jurisdictional conflict, of course, but the United States is careful to consult with the pertinent foreign governments to minimize potential conflicts; to that end, the United States adheres to a number of bilateral and multilateral understandings concerning antitrust cooperation and consultation. Accordingly, we firmly believe that the application of U.S. antitrust laws in this manner is consistent with recognized principles of international law.

#### SWITZERLAND

1. How do NAFTA rules of origin apply to clothing components which are shipped, say, from Europe to Mexico in order to be manufactured into suits for export to the United States? Will NAFTA, in such cases, affect current trade flows ?

Answer:

The NAFTA does not raise barriers to third country trade. Trade to and among the NAFTA countries at m.f.n. rates of duty is not affected by NAFTA rules of origin. Assuming that the garments in question are under a yarn forward rule of origin, the assembly of cut components does not confer NAFTA origin and therefore does not permit access to NAFTA preferential rates. However, access is provided up to certain annual quantities for cotton, wool and man-made fibre apparel that is manufactured (i.e. substantially transformed) in a NAFTA country from non-originating components through the Tariff Preference Level mechanism (formerly Tariff Rate Quotas under the CFTA). (Furthermore, not all garments are under a yarn forward rule of origin. Silk and linen apparel are under a single transformation rule of origin; as are men's dress shirts made from particular fabrics that the Swiss are competitive in.)

2. The Secretariat report (paragraph 292) mentions the establishment of the Interagency Group on Countertrade, whose task is to review U.S. trade policy on countertrade. What does this review encompass and what are the policy objectives of this body in terms of the basic philosophy regarding this type of trade?

Are countertrade operations guaranteed by the Eximbank?

Answer:

The chief concern of the United States in this area is with the trade constraints and economic inefficiencies involved in government mandated countertrade. The interagency study referred to in the report is still under review by the involved agencies. A completion date has not been established.

With regard to Eximbank guarantees, the Export Import Bank will review an application for a guarantee based on criteria of the financial soundness of the transaction. Under these circumstances, a transaction with a countertrade component is not automatically excluded.

3. Section 337 of the Tariff Act relating to "unfair practice investigations" allows the United States Government to request the USITC to investigate alleged violations of this provision. A GATT Panel ruled that Section 337 was inconsistent with GATT Article III.4. An interagency task force is currently attempting to address the Panel's recommendations. Does the Government intend to submit amendments to Section 337 to Congress simultaneously with the Uruguay Round implementing legislation? How likely is it that Congress will approve these amendments?

Answer:

The United States Administration is fully committed to securing enactment of legislation necessary for the implementation of the results of the Uruguay Round. Under our legislative process, there is a single vote on the entire bill. The fate of the amendments to section 337 would thus be the same as that of our efforts to implement the Uruguay Round.

4. The United States now uses seven different rules of origin systems apart from special trade rules which apply to textiles trade. The complexity of the rules can be used as an instrument of managed trade. Particular reference needs to be given to the North American Free Trade Agreement (NAFTA), but also GSP and CBI. Does the United States contemplate simplifying the origin rules system by, for example, returning to a single criteria such as change in tariff classification? Would not a simplification make rules of origin more trade-neutral and help U.S. exporters?

Answer:

The intent of the proposed U.S. rules of origin, which are intended to codify the effect of existing U.S. practice, is to simplify and clarify the rules as well as reduce the cost of origin determinations. It could certainly be argued that the codification of origin rules makes them more transparent and less variable, and therefore more "trade-neutral."