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REVIEW OF THE EXEMPTION PROVIDED UNDER PARAGRAPH 3 OF GATT 1994

Questionnaire to the United States from Japan

The following communication, dated 9 December 2009, is being circulated at the request of the Delegation of Japan.

Japan appreciates the information contained in the notification WT/L/746 submitted by the US in January this year pursuant to paragraph 3(c) of the GATT 1994 as well as the responses from the US to Japan's questionnaire WT/GC/W/580 at the time of the previous session of the review.

Japan, however, is of the view that the responses provided as of now by the US do not fully explain the need to continue this exemption measure. In addition, as the previous review in 2007 was conducted under the previous US administration and many changes have taken place in various areas since the new US administration took the office, it is Japan's view that sufficient explanation is needed regarding whether or not the US continues to see that the situation that necessitated this exemption still exists.

In this regard, Japan wishes to further contribute to the review process at this time by raising relevant questions as below. Japan would like to ask the US to respond to the following points in the form of a WTO official document within a reasonable period of time so that all Members can share the responses for their consideration.

Question 1

In light of the fact that the exemption is a serious deviation from the fundamental principles of the GATT and that it has been maintained for as long as 15 years, further continuing this exemption will harm the consistency of the entire WTO legal framework. Furthermore, its continuation may be misused by other Members as an excuse for creating or maintaining their trade barriers. What is the view of the US on this point?

Question 2

It is assumed that the US Jones Act has the effect of increasing physical distribution costs to the users of US domestic maritime transportation, especially in cases where shipping is the only economically reasonable means of transportation. Moreover, maritime is the only sector that is influenced by this peculiar regulation, unlike other modes of transportation such as air, rail and road where foreign-made aircraft, rolling stock and trucks can be used without any such restrictions. This means that competitive conditions are seemingly distorted among those transportation modes, and

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therefore, not only does the Jones Act affect the US maritime industry, but also it may even have a distorting effect on world trade, contrary to the spirit of trade liberalization under the WTO. What is the view of the US on these points?

Question 3

With regard to the level of the shipbuilding and maintenance capacity that is essential for US national security, the US responded to Japan's questionnaire in 2007 that it had no quantitative criteria and that it only had qualitative criteria. Unless quantitative criteria or other concrete grounds are objectively shown, the US remains able in practice to make unilateral decisions to maintain this exemption, since there is a very large amount of room for arbitrary decisions on whether or not the exemption is necessary. What is the view of the US on this point? What actions have been taken or will be taken by the US for making these criteria clear and transparent?

Question 4

With regard to "additional information on the use, sale, lease or repair of relevant vessels covered by this exemption" as stipulated in paragraph 3(c), the response by the US to Japan's questionnaire on this point in 2007 was that the US did not have a source for this information. Since the US is required to provide such information annually pursuant to the said paragraph, the US should find and ensure the means in order to obtain the "additional information" and make a submission of such information, which is also essential to prevent undermining the credibility of the GATT and the WTO system. What actions have been taken or will be taken by the US on this point?
