

General Council
30 November 2011

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REVIEW OF THE EXEMPTION PROVIDED UNDER PARAGRAPH 3 OF GATT 1994

Response to Japan's Questions (WT/GC/W/648)

The following communication, dated 29 November 2011, is being circulated at the request of the Delegation of the United States.

Question 1

Again, we believe that this exemption is a serious deviation from the fundamental principles of the GATT. We would like to again ask you whether or not the US continues to see that the circumstances that necessitated this exemption more than 90 years ago still exist.

U.S. response:

- It is critical for U.S. shipbuilders to build commercial ships for this trade if a viable industrial base is to be maintained to meet future Navy requirements. Moreover, the Navy relies upon shipyards that perform commercial work for the Jones Act trades for day-to-day maintenance of naval and surge fleet vessels, such as the Ready Reserve Fleet.
- The conditions that create the need for the use of this exemption by the United States still exist. Since the United States invoked this exemption in 1994, there have been no amendments or measures adopted by the United States that would alter the U.S. position in conforming to coverage by the exemption, and the United States has every much the same need as it did in 1994 to maintain its shipyards' readiness to build and maintain naval vessels.

Question 2

At this time as Members confirm a commitment to avoiding protectionism, stressing the importance of the multilateral trading system for the global economy, the continuation of this exemption may be misused by other Members as an excuse for creating or maintaining trade barriers, which may interfere with strengthening of the WTO system. We would like to ask for the view of the US on this point.

U.S. response:

- As the United States has explained before, the provisions of paragraph 3 of the GATT 1994 are an integral part of the GATT 1994.

- With that in mind, it is unclear to the United States why Japan would believe that this particular WTO consistent practice is of concern as opposed to other WTO consistent measures of concern to Members, such as high market access barriers in areas such as agriculture.

Question 3

With regard to the level of the shipbuilding and maintenance capacity that is essential for US national security, we would like to reiterate our concerns that, 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, potentially making this view a mere formality. We would like to again ask for the view of the US on this point as well as whether or not the US has been taking or will be taking any actions for making these criteria clear and transparent.

U.S. response:

- Qualitative, not quantitative, assessments are made by the U.S. Department of Defense in conjunction with the Department of Homeland Security and other national security agencies. As the nature of the threats has changed over the years, the assessment of the level of security needed, and the means to achieve that level of security, is constantly being examined and refined. We do not share Japan's belief that a quantitative assessment would be useful. Different challenges require a different response; these cannot be meaningfully quantified.
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