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DEPARTMENT OF COMMERCE

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INCOMING TELEGRAM

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INFO CGEN-01 OPS-01 3350-01 RFM-01 3000-01 104-01 3140-01
6410-01 4120-01 5000-01 4121-02 6240-01 6241-01 3130-01
6242-01 4310-02 NTIS-01 4200-01 4212-02 5100-01 4330-01
5300-01 AMAD-01 5120-01 6600-02 PTO-01 4332-01 6710-01
6720-01 6730-01 5130-01 5200-01 6910-01 5310-03 6920-02
6420-01 4122-01 5110-02 6810-01 5220-01 6430-02 5230-01
6200-01 6440-01 NTIA-04 4110-01 5121-01 6450-01 OPTI-01
6331-01 BE5-01 /063 AB AMA

BRAZIL'S "MARKET RESERVE" POLICY. SHOULD BRAZIL REVERSE ITS ACTION AND LIVE UP TO ITS COMMITMENTS TO THE U.S., I WILL BE PREPARED TO LIFT THESE SANCTIONS.

BRAZIL IS A GOOD FRIEND OF THE UNITED STATES AND WE SUPPORT THE STEPS IT IS TAKING TO RESTORE ITS DEMOCRATIC INSTITUTIONS. BUT BRAZIL IS ALSO A MAJOR BENEFICIARY OF THE GLOBAL TRADING SYSTEM, THE OPENNESS OF WHICH CANNOT BE MAINTAINED IF MARKETS ARE DELIBERATELY CLOSED, AND POLICIES INCOMPATIBLE WITH A MORE FREE AND OPEN TRADING SYSTEM ARE ESTABLISHED.

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ANCONSUL PORTO ALEGRE IMMEDIATE 0000
ANCONSUL RECIFE IMMEDIATE 0000
RUEHGV/MISSION GENEVA IMMEDIATE 0000
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UNCLAS STATE 354089

2. FOLLOWING IS TEXT OF WHITE HOUSE FACT SHEET DISTRIBUTED CONCURRENTLY WITH THE PRESIDENTIAL STATEMENT:

BACKGROUND

IN SEPTEMBER 1985 PRESIDENT REAGAN INSTRUCTED THE U.S. TRADE REPRESENTATIVE TO INITIATE AN INVESTIGATION INTO BRAZIL'S INFORMATICS POLICY UNDER SECTION 301 OF THE TRADE ACT OF 1974. THE PRESIDENT CITED BRAZIL'S MARKET RESERVE POLICY, ADMINISTRATIVE BURDENS ON IMPORTS, PROHIBITION OF FOREIGN INVESTMENT, AND LACK OF COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE AS MAJOR GROUNDS FOR THE COMPLAINT. IN

E.O. 12356: N/A
TAGS: ETRD, US, BR
SUBJECT: SECTION 301 RETALIATION AGAINST BRAZIL ON INFORMATICS: PRESIDENTIAL STATEMENT AND WHITE HOUSE FACT SHEET

IN DECEMBER 1986 THE PRESIDENT SUSPENDED THE MARKET RESERVE AND ADMINISTRATIVE PORTIONS OF THE SECTION 301 CASE IN RESPONSE TO BRAZIL'S COMMITMENT TO IMPLEMENT ITS LAW IN A MORE CLEAR MANNER, AND NOT TO EXTEND MARKET RESERVE REQUIREMENTS TO NEW AREAS, NOR BEYOND 1992, WHEN THE MARKET RESERVE POLICY IS SCHEDULED TO EXPIRE. HE ALSO INSTRUCTED U.S. TRADE REPRESENTATIVE CLAYTON YETTER TO MONITOR THE RELEVANT COMMITMENTS.

1. FOLLOWING IS PRESIDENTIAL STATEMENT RELEASED BY THE WHITE HOUSE AT NOON, NOVEMBER 13:

I AM TODAY ANNOUNCING MY INTENTION TO RAISE TARIFFS ON BRAZILIAN EXPORTS TO THE U.S. AND TO PROHIBIT IMPORTS FROM BRAZIL OF CERTAIN COMPUTER PRODUCTS IN RESPONSE TO THE MAINTENANCE BY BRAZIL OF UNFAIR TRADE PRACTICES IN THE AREA OF COMPUTER PRODUCTS.

IN JUNE 1987 THE PRESIDENT SUSPENDED THE INTELLECTUAL PROPERTY RIGHTS PART OF THE SECTION 301 INVESTIGATION AFTER BRAZIL'S CHAMBER OF DEPUTIES PASSED LEGISLATION THAT WOULD PROVIDE COPYRIGHT PROTECTION FOR SOFTWARE, AND HE INSTRUCTED AMBASSADOR YETTER TO MONITOR THE BILL'S PASSAGE THROUGH BRAZIL'S SENATE. HE ALSO INSTRUCTED USTR TO CONTINUE TO NEGOTIATE THE INVESTMENT PARTS OF THE INVESTIGATION.

BRAZIL'S NATIONAL INFORMATICS POLICIES, IN PLACE SINCE THE 1970'S SEVERELY RESTRICT FOREIGN PARTICIPATION IN BRAZIL'S COMPUTER AND COMPUTER-RELATED MARKET. THE UNITED STATES HAS UNSUCCESSFULLY RAISED ITS CONCERNS

IN SEPTEMBER 1987 BRAZIL'S SECRETARIAT FOR INFORMATICS (SEI) REJECTED AGREEMENTS NEGOTIATED BETWEEN A U.S. SOFTWARE COMPANY AND SIX BRAZILIAN INFORMATICS COMPANIES FOR LICENSING ONE OF THE WORLD'S LEADING OPERATING SYSTEMS. SEI BASED THE REJECTION ON ITS DETERMINATION THAT A BRAZILIAN-MADE "FUNCTIONALLY EQUIVALENT" OPERATING SYSTEM ALREADY EXISTS.

WITH BRAZIL IN BILATERAL AND MULTILATERAL CONSULTATIONS SINCE 1983. IN SEPTEMBER 1985 I INITIATED AN INVESTIGATION OF THESE PRACTICES UNDER SECTION 301 OF THE TRADE ACT OF 1974, AND IN OCTOBER 1986 DETERMINED THAT BRAZIL'S INFORMATICS POLICIES WERE UNREASONABLE AND A BURDEN AND RESTRICTION ON U.S. COMMERCE. I SUSPENDED PARTS OF THIS INVESTIGATION AFTER BRAZIL MADE COMMITMENTS TO IMPLEMENT ITS "INFORMATICS" LAW IN A MORE FLEXIBLE REASONABLE, AND JUST MANNER.

EVEN THOUGH THE UNITED STATES HAS DEMONSTRATED THAT THE TWO OPERATING SYSTEMS ARE NOT SIMILAR, THE BRAZILIAN GOVERNMENT CONTENDS THAT THE BRAZILIAN PRODUCT IS ADEQUATE FOR ITS DOMESTIC MARKET. ON THIS BASIS, ANY SOFTWARE PROGRAM OR OPERATING SYSTEM COULD BE CONSIDERED "EQUIVALENT" TO THE BRAZILIAN PRODUCT. SEI'S DECISION SPECIFICALLY VIOLATES UNDERSTANDINGS REACHED WITH THE BRAZILIAN GOVERNMENT THAT SEI'S INTERPRETATION OF "FUNCTIONAL EQUIVALENT" SOFTWARE WOULD BE OBJECTIVE, AND THE DECISION ESTABLISHES A PRECEDENT WHICH EFFECTIVELY BANS U.S. COMPANIES FROM THE BRAZILIAN SOFTWARE MARKET. EXCEPT FOR MAINFRAMES, U.S. COMPANIES ARE ALREADY PROHIBITED FROM PARTICIPATING IN THE BRAZILIAN HARDWARE MARKET.

RECENT DEVELOPMENTS IN BRAZIL MAKE IT CLEAR THAT THESE COMMITMENTS ARE NOT BEING KEPT. IN PARTICULAR, THE BRAZILIAN GOVERNMENT HAS REJECTED EFFORTS BY AN AMERICAN SOFTWARE COMPANY TO LICENSE ITS PRODUCT IN BRAZIL, ASSERTING THAT A DOMESTIC COMPANY MAKES A PRODUCT THAT IS "FUNCTIONALLY EQUIVALENT." THIS DECISION ESTABLISHES A PRECEDENT WHICH EFFECTIVELY BANS U.S. COMPANIES FROM THE BRAZILIAN SOFTWARE MARKET. IT IS ALSO LIKELY TO INCREASE PIRACY OF FOREIGN SOFTWARE SINCE DEMAND FOR THE PROHIBITED PRODUCT WILL CONTINUE.

BRAZIL'S RECENT ACTION IS ALSO LIKELY TO INCREASE END-USER PIRACY OF FOREIGN SOFTWARE SINCE THE PROHIBITED PRODUCT IS NOT LEGALLY AVAILABLE AND DEMAND FOR CURRENT STATE-OF-THE-ART SOFTWARE WILL CONTINUE. END-USER PIRACY

IN RESPONSE TO THESE DEVELOPMENTS, I INTEND TO RAISE TARIFFS TO OFFSET THE LOST SALES OPPORTUNITIES FOR U.S. COMPANIES, ESTIMATED AT \$105 MILLION, AND TO PROHIBIT IMPORTS OF BRAZILIAN INFORMATICS PRODUCTS COVERED UNDER

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IS PERHAPS THE MOST DIFFICULT KIND OF PIRACY TO MONITOR OR ENFORCE. BRAZIL'S RECENT DECISION TO GRANT COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE WILL HAVE LITTLE EFFECT

THE PRESIDENT'S ACTION

THE PRESIDENT HAS DECIDED TO IMPOSE SANCTIONS ON CERTAIN BRAZILIAN EXPORTS TO THE UNITED STATES. A NOTICE WILL BE PLACED IN THE FEDERAL REGISTER NEXT WEEK LISTING PRODUCTS UPON WHICH SANCTIONS COULD BE IMPOSED. AFTER PUBLIC HEARINGS ARE HELD, THE ADMINISTRATION WILL SELECT A RETALIATORY LIST OF PRODUCTS. THE SIZE OF THE RETALIATION WILL REFLECT THE AVERAGE ANNUAL LOST SALES OPPORTUNITIES BY THE U.S. SOFTWARE INDUSTRY IN BRAZIL, ESTIMATED AT \$105 MILLION. IN ADDITION, THE ADMINISTRATION WILL RESTRICT IMPORTS OF INFORMATICS PRODUCTS FROM BRAZIL WHICH ARE COVERED UNDER THE BRAZILIAN MARKET RESERVE POLICY. ALTHOUGH BRAZIL DOES NOT EXPORT THESE PRODUCTS TO THE U.S. AT THIS TIME, THIS ACTION WILL PREVENT THE BRAZILIAN INFORMATICS INDUSTRY FROM ENTERING THE U.S. MARKET AS LONG AS IT IMPOSES A MARKET RESERVE ON COMPUTER SOFTWARE.

THESE SANCTIONS WILL NOT DEPRIVE U.S. CONSUMERS OF THE PRODUCTS AGAINST WHICH RETALIATORY ACTION WILL BE TAKEN. ALL PRODUCTS ON THE LIST CAN BE SUPPLIED BY DOMESTIC OR OTHER FOREIGN PRODUCERS. THE HIGHER TARIFFS, WHICH WILL ONLY BE PLACED ON IMPORTS FROM BRAZIL OF THESE PRODUCTS, WILL BE REMOVED WHEN IT HAS BEEN DETERMINED THAT THESE UNFAIR PRACTICES HAVE BEEN ELIMINATED.

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