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 FM AMEMBASSY BRASILIA
 TO SECSTATE WASHDC PRIORITY 8744
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 AMCONSUL PORTO ALEGRE POUCH
 AMCONSUL RECIFE POUCH
 AMCONSUL SALVADOR DA BAHIA POUCH

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USDOC PASS USTR FOR CHRISTINA LUND

USDOC FOR 4330/IEP/WH/OSA/PETER FIELD

GENEVA FOR USTR

E.O. 12356: DECL: OADR
 TAGS: ETRD, GATT, BR; US
 SUBJECT: GATT/MTN: STANDSTILL AND ROLLBACK

REFS: A) BRASILIA 7768
 - B) BRASILIA 7699
 - C) GENEVA 5517 (NOTAL)

1. (C) - ENTIRE TEXT.

2. SUMMARY: AS ONE OF THE FOREMOST PROPONENTS OF A
 "STANDSTILL AND ROLLBACK" AS A CONDITION FOR THE NEXT

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GATT/MTN ROUND, BRAZIL COULD WELL FIND ITSELF HOIST ON
 ITS OWN PETARD SHOULD THE "ROLLBACK" APPLY TO ITS OWN

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UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: NORMAN M. BOUTON
 DATE/CASE ID: 19 DEC 2001 200000143

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POLICIES. THE EMBASSY BELIEVES THAT ANY COMMITMENT TO "ROLLBACK" GATT-INCONSISTENT MEASURES SHOULD APPLY TO DEVELOPED AND DEVELOPING COUNTRY ALIKE--AS BRAZIL HAS APPARENTLY PROPOSED--AND SHOULD PROVIDE AN ADDITIONAL INCENTIVE FOR AN EFFORT, HOPEFULLY MULTILATERAL, TO APPLY IT TO BRAZIL'S NUMEROUS GATT-INCONSISTENT TRADE RESTRICTIONS. END SUMMARY.

3. BRAZIL HAS BEEN PUSHING THE CONCEPT OF "STANDSTILL AND ROLLBACK" HARD IN THE PREPARATORY WORK FOR THE NEXT GATT MULTILATERAL TRADE NEGOTIATIONS (MTN) ROUND. BRAZIL'S STARTING POSITION (GATT PREPCOM (86)W/3 OF MARCH 20, 1986) APPLIED THE "STANDSTILL" TO ALL COUNTRIES BUT THE "ROLLBACK" ON MEASURES "INCONSISTENT WITH GATT OR NOT BASED ON SPECIFIC GATT PROVISIONS" ONLY TO THE "DEVELOPED CONTRACTING PARTIES IN FAVOR OF DEVELOPING CONTRACTING PARTIES". THIS POSITION WAS REITERATED IN THE BRAZILIAN (I.E., G-10) DRAFT DECLARATION FOR THE PUNTA DEL ESTE MINISTERIAL. HOWEVER, DURING A RECENT CONVERSATION (REF A), WE WERE TOLD THAT BRAZIL HAD MODIFIED ITS POSITION SO THAT THE "ROLLBACK"

WOULD APPLY TO BOTH DEVELOPED AND DEVELOPING COUNTRIES (WE HAVE NOT SEEN THE TEXT, HOWEVER). THIS WOULD BRING THE DEVELOPING COUNTRY COMMITMENT BETTER INTO LINE WITH THE G-9 DRAFT DECLARATION SUBMITTED TO THE PREPCOM ON JUNE 11, WHICH ALSO CALLED FOR THE COMMITMENT TO "STANDSTILL AND ROLLBACK" TO APPLY EQUALLY TO BOTH.

4. THE EMBASSY BELIEVES THAT MANY OF BRAZIL'S IMPORT RESTRICTIVE MEASURES ARE EITHER "INCONSISTENT WITH THE

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GATT OR NOT BASED ON SPECIFIC GATT PROVISIONS", TO USE THE BRAZILIAN PHRASEOLOGY. MANY OF BRAZIL'S SPECIFIC IMPORT RESTRICTIVE MEASURES ARE SET OUT IN THE TRADE ESTIMATES REPORT (THE 1985 VERSION AND THE SUGGESTED UP-DATE, SEE REF B). THE MOST PERNICIOUS INCLUDE:

A) THE LAW OF SIMILARS;

B) THE LIST OF PROHIBITED ITEMS, WHICH GOES FAR BEYOND WHAT CAN BE JUSTIFIED ON GROUNDS OF BALANCE-OF-PAYMENTS (ESPECIALLY IN BRAZIL'S CURRENT SITUATION), PUBLIC

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SAFETY OR HEALTH CONCERNS;

C) THE MARKET RESERVE AND RELATED RESTRICTIONS ON INFORMATICS PRODUCTS;

D) THE REQUIREMENT THAT 25 PERCENT OF VIDEOCASSETTE TITLES STOCKED BY DEALERS/VIDEO CLUBS BE BRAZILIAN-PRODUCED;

E) QUANTITATIVE RESTRICTIONS, SUCH AS THOSE ON SEEDS, APPLIED BY MEANS OF LICENSING PROVISIONS SO THAT THE IMPORTS DEPEND ON THE SIZE OF THE DOMESTIC CROP;

F) THE TAX ON FINANCIAL OPERATIONS (IOF), WHICH APPLIES TO THE FOREIGN EXCHANGE REQUIREMENT ON IMPORTS, AND WHICH ACCORDING TO THE 1985 TRADE ESTIMATES REPORT THE GOB HAD PROMISED TO PHASE OUT;

G) EXPORT SUBSIDIES. ALTHOUGH BRAZIL IS GENERALLY IN COMPLIANCE WITH ITS GATT COMMITMENT ON EXPORT SUBSIDIES, PRESSURE SHOULD BE MAINTAINED. EXPORT CREDIT SUBSIDIES HAVE RECENTLY EMERGED AS A PROBLEM; AND

H) INCENTIVES AVAILABLE ONLY TO "NATIONAL" FIRMS, WHICH

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AMCONSUL SALVADOR DA BAHIA POUCH

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WOULD SEEM LIKELY TO VIOLATE THE NATIONAL TREATMENT PROVISIONS OF THE GATT. THESE APPLY TO INFORMATICS PRODUCTS AND PLANS ARE UNDERWAY TO APPLY THEM TO FINE CHEMICALS AND PHARMACEUTICALS.

5. THE EMBASSY BELIEVES THAT WE OUGHT TO BE ABLE TO USE THE GATT, AND ESPECIALLY THE CURRENT FERMENT OVER "STANDSTILL AND ROLLBACK", TO ADVANCE OUR INTERESTS

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VIS A VIS THESE BRAZILIAN PRACTICES. FOR INSTANCE, WE COULD USE A "STANDSTILL" COMMITMENT AS AN OPPORTUNITY TO ATTACK NEW MEASURES ON PHARMACEUTICALS AND FINE CHEMICALS, OR AGAINST OTHER MEASURES THE GOB MAY CONTEMPLATE TO PROMOTE "NATIONAL" INDUSTRIES. IF A CREDIBLE "ROLLBACK" COMMITMENT EMERGES FROM THE PUNTA DEL ESTE MEETING, THIS TOO COULD BE USED AS AN ADDITIONAL ARGUMENT TO PRESSURE THE GOB TO ELIMINATE ITS GATT-INCONSISTENT PRACTICES. AND FINALLY, IF WE SHOULD DECIDE THAT UNDER ANY LIKELY SCENARIO WE SHOULD NOT CHALLENGE BRAZILIAN PRACTICES IN THE GATT, PERHAPS WE COULD SELL OUR FORBEARANCE TO THE GOB FOR SOMETHING WE WANT, SUCH AS BRAZILIAN ACQUIESCENCE IN GATT NEGOTIATION OF NON-TRADITIONAL SUBJECTS.

6. ON BALANCE, THE EMBASSY BELIEVES THAT THE USG, HOPEFULLY IN CONCERT WITH OTHER AFFECTED COUNTRIES, SHOULD CHALLENGE BRAZIL'S GATT-INCONSISTENT MEASURES MORE AGGRESSIVELY IN THAT FORUM. THE "STANDSTILL AND ROLLBACK" COMMITMENT PROVIDES AN ADDITIONAL IMPETUS

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AND OPPORTUNITY FOR THIS. BRAZIL'S INSISTENCE ON THE IMPORTANCE OF THE "STANDSTILL" AND ITS ACQUIESCENCE IN APPLYING THE "ROLLBACK" TO DEVELOPING COUNTRIES SHOULD EVEN GIVE US A BIT OF HIGH MORAL GROUND.

7. IN OUR VIEW, THE LAW OF SIMILARS IS THE MOST ONEROUS OF THE GOB'S GATT-INCONSISTENT MEASURES. WE BELIEVE IT IS VULNERABLE UNDER THE GENERAL AGREEMENT AND THAT THE USG OUGHT TO COMMENCE GATT ACTION ASAP. AN EVENTUAL GATT PANEL FINDING UNFAVORABLE TO BRAZIL WOULD INCREASE USG LEVERAGE ON THE GOB TO ELIMINATE APPLICATION OF THE LAW OF SIMILARS TO MEET ITS "STANDSTILL AND ROLLBACK" COMMITMENT. (THE WORST WE

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CAN DO IS TO CONTINUE THE STATUS QUO.)

8. A "STANDSTILL AND ROLLBACK" COMMITMENT WHICH APPLIES TO ALL GATT/MTN PARTICIPANTS WOULD ALSO PROVIDE AN OPPORTUNITY TO PRESS THE GOB TO EITHER ABOLISH ITS PROHIBITED IMPORTS LIST OR TO MAKE IT GATT-CONSISTENT--HOPEFULLY BASED ON SOMETHING MORE RELEVANT THAN ARTICLE XII BALANCE-OF-PAYMENTS JUSTIFICATIONS. IN ADDITION, WE COULD USE A BALANCED "STANDSTILL AND ROLLBACK" COMMITMENT TO GO AFTER THE REST OF BRAZIL'S GATT-INCONSISTENT TRADE MEASURES, SUCH AS THE VIDEO-CASSETTE QUOTAS WHICH ARE AN ANATHEMA TO THE MOTION PICTURE EXPORT ASSOCIATION OF AMERICA. WE NOTE THAT THE USG HAS INCLUDED NOTIFICATION OF BRAZIL'S INFORMATICS MEASURES TO THE GATT AND INSURING GATT-CONSISTENCY OF ITS SUBSIDIES IN ITS LIST OF POSSIBLE GOB ACTIONS ON OUR BILATERAL INFORMATICS PROBLEMS.

9. COMMENT/ACTION REQUESTED. THE EMBASSY WOULD APPRECIATE WASHINGTON AGENCIES' VIEWS ON BRAZIL'S GATT-INCONSISTENT TRADE MEASURES AND WHETHER A BALANCED "STANDSTILL AND ROLLBACK" COMMITMENT IN THE NEXT GATT/MTN ROUND WOULD ASSIST US IN REMOVING OR AMELIORATING SUCH MEASURES. WATSON

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