RELEASED IN FULL

PAGE 01  STATE 119963  ORIGIN EB-08

INFO LOG-00  COPY-01  ADS-00  IO-19  ARA-00  COME-00  ITC-01
STR-17  /046 R
DRAFTED BY:  EB/OT/ODC:TWHITE
APPROVED BY:  EB:DLAMB, ACTING
ARA/BR:ETAYLOR  EB/OT/ODC:WWALLER
EB/IFD/BP:PWOODRING  EB/TC:AHOLLICK, ACTING

O 212213Z APR 87
FM SECSTATE WASHDC
TO AMEMBASSY BRASILIA IMMEDIATE
INFO AMCONSUL SAO PAULO IMMEDIATE
AMCONSUL RIO DE JANEIRO IMMEDIATE
USMISSION GENEVA IMMEDIATE

E.O. 12356:  DECL:  OADR
TAGS:  EIND, ETRD, BR
SUBJECT:  EB ASSISTANT SECRETARY MCMINN'S MEETING WITH
BRAZILIAN AMBASSADOR MOREIRA: PHARMACEUTICALS,
4/16/87

REF:  BRASILIA 4310

1. CONFIDENTIAL - ENTIRE TEXT.

2. SUMMARY. EB ASSISTANT SECRETARY MCMINN MET WITH
BRAZILIAN AMBASSADOR MOREIRA AT THE LATTER'S REQUEST
APRIL 16 TO DISCUSS THE IMPENDING PMA SECTION 301
PETITION ON PHARMACEUTICAL PATENT PROTECTION. MOREIRA
OUTLINED SERIOUS GOB CONCERN OVER THE MOVE, STRESSING
PROGRESS MADE ON NON-PATENT PHARMACEUTICAL ISSUES AND THE
EFFECT A NEW 301 CASE COULD HAVE ON BILATERAL ECONOMIC
RELATIONS. AS MCMINN STRESSED THE IMPORTANCE USG PLACES
ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AND THE
CONFIDENTIAL

PAGE 02  STATE 119963

NEED FOR GOB TO TAKE ACTION TO PROTECT PHARMACEUTICALS.
MOREIRA OFFERED NO EVIDENCE THAT GOB IS CONSIDERING SUCH

Current Class: CONFIDENTIAL

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

UNCLASSIFIED
ACTION. END SUMMARY.

3. AMBASSADOR MOREIRA CALLED ON ASSISTANT SECRETARY MCCMNN APRIL 16 TO DISCUSS THE PHARMACEUTICAL ISSUE AND PMA'S INTENT TO FILE A PETITION AGAINST BRAZIL UNDER SECTION 301 OF THE 1974 TRADE ACT. MOREIRA OPENED THE MEETING BY NOTING THAT HE HAD COME TO REEMPHASIZE GOB CONCERNS EXPRESSED DURING PAULO TARSO'S APRIL 15 MEETING WITH AMBASSADOR SHLAUDEMAN (REFTEL). HE ADDED THAT HE HAD OUTLINED GOB THINKING DURING A PHONE CALL EARLIER IN THE DAY TO DEPUTY USTR MICHAEL SMITH AND DURING A LUNCH WITH DEPUTY SECRETARY WHITEHEAD SEVERAL WEEKS EARLIER.

4. MOREIRA REFERRED TO BILATERAL CONSULTATIONS ON PHARMACEUTICAL ISSUES HELD IN NOVEMBER 1986 AND LAST MONTH. THE IMPENDING PMA 301 PETITION CONCERNS BRAZIL FOR THREE REASONS. FIRST, THE GOB IS AWARE OF INDUSTRY COMPLAINTS AND HAS TAKEN IMPORTANT STEPS TO IMPROVE THE SITUATION. SECOND, THE PETITION, WHICH PURPORTS TO ADDRESS AN UNFAIR TRADE PRACTICE, IS ITSELF UNFAIR SINCE BRAZIL HAS TAKEN POSITIVE ACTION. THIRD, A 301 PETITION WOULD COMPLICATE BILATERAL RELATIONS, GIVEN THE GENERAL ECONOMIC AND POLITICAL ENVIRONMENT, AT A TIME WHEN BRAZIL IS INVOLVED IN THE PROCESS OF WRITING A NEW CONSTITUTION.

5. MOREIRA OUTLINED GOB ACTIONS ON VARIOUS ASPECTS OF THE PHARMACEUTICAL ISSUE. ON MARKET RESERVE, PRESIDENT SARNEY HAS FIRMLY REJECTED ANY EXTENSION OF MARKET RESERVE TO PHARMACEUTICALS. ON PRICING, RECENT SIGNIFICANT PRICE INCREASES HAVE BEEN GRANTED TO THE INDUSTRY. THE GOB AIM, ACCORDING TO MOREIRA, IS TO ENSURE INDUSTRY PROFITABILITY WHILE AVOIDING UNCLASSIFIED.

CONFIDENTIAL

PAGE 03   STATE 119963

HYPERINFLATION. PHARMACEUTICAL COMPANIES IN BRAZIL HAVE REACTED FAVORABLY.

6. REGARDING NEW DRUG REGISTRATION, MOREIRA SAID THAT PAST ABUSES AND ACCUSATIONS OF THE EXISTENCE OF EXPERIMENTAL AND WORTHLESS DRUGS ON THE BRAZILIAN MARKET HAD LED TO THE DEVELOPMENT OF OVEREXACTING, RIGOROUS CRITERIA FOR DRUG REGISTRATION. THE SITUATION HAD BECOME A REAL PROBLEM AND DRUG SHORTAGES HAD ARisen. AS A RESULT, MOREIRA REPORTED THAT THE HEAD OF DIMED AND HER ENTIRE TEAM HAVE BEEN DISMISSED AND HAVE BEEN REPLACED
WITH OFFICIALS WHO WILL TAKE A MORE PRAGMATIC (ALTHOUGH STILL RIGOROUS) APPROACH. HE UNDERLINED THE FACT THAT THIS MOVE INVOLVED SOME POLITICAL COSTS.

7. THE FINAL ISSUE, ACCORDING TO MOREIRA, INVOLVES PHARMACEUTICAL PATENTS. HE STATED THAT "PERHAPS WE NEED MORE TIME." HE ARGUED THAT FOREIGN PARTICIPATION IN THE BRAZILIAN PHARMACEUTICAL INDUSTRY HAD INCREASED IN THE PERIOD SINCE BRAZIL ELIMINATED PRODUCT AND PROCESS PATENTS. THE INDUSTRY HAS SURVIVED, EVEN PROSPERED, AND HAS LEARNED TO LIVE UNDER THE CURRENT SYSTEM.

8. MOREIRA STATED THAT THE GOB IS READY TO STUDY THE ISSUE, NOTING, HOWEVER, THAT THE GOVERNMENT COULD NOT ACT UNILATERALLY. THE ISSUE COULD BE DISCUSSED UNDER THE BROADER UMBRELLA OF URUGUAY ROUND TALKS ON INTELLECTUAL PROPERTY RIGHTS, OR PERHAPS IN THE CONTEXT OF AN AMENDMENT TO THE PARIS TREATY. HE POINTED OUT THAT A LOCAL INTELLECTUAL RIGHTS ADVOCACY GROUP WAS PREPARING TO PRESENT A DRAFT STUDY TO THE BRAZILIAN GOVERNMENT.

9. MOREIRA ARGUED THAT NONE OF BRAZIL'S PHARMACEUTICAL POLICIES AND PRACTICES INVOLVE DISCRIMINATION AGAINST FOREIGN FIRMS. HE POINTED AGAIN TO THE PREDOMINANT FOREIGN SHARE IN THE INDUSTRY.

10. HE STATED THAT A 301 PETITION AT THE PRESENT TIME WOULD BE VERY DETERMINAL. IT WOULD INHIBIT BRAZILIAN EFFORTS TO IMPROVE INDUSTRY CONDITIONS AND WOULD BECOME A POLITICAL ISSUE AT A TIME OF INTENSE CONSTITUTIONAL ACTIVITY. MOREIRA WARNED THAT RESTRICTIONS COULD BE WRITTEN INTO THE CONSTITUTION WHICH WOULD BE VERY DIFFICULT TO REMOVE.

11. AS MCINN POINTED OUT THAT THE PLANNED PMA PETITION IS A PRIVATE SECTOR INITIATIVE WHICH OUR TRADE LAW PERMITS. SHOULD THE PMA PROCEED, THE ADMINISTRATION WOULD FOLLOW THE NORMAL 301 PROCESS AS PRESCRIBED BY THE LAW.

12. AS MCINN EMPHASIZED THAT INTELLECTUAL PROPERTY RIGHTS IS AN ISSUE WHICH HAS RECEIVED CONSIDERABLE
ATTENTION WITHIN THE ADMINISTRATION. THE PHARMACEUTICAL
PATENT ISSUE IN PARTICULAR HAS BEEN VERY VISIBLE, AND HAS BEEN FACTORED INTO U.S. POLICY INITIATIVES IN THE URUGUAY
ROUND, THE U.S. GENERALIZED SYSTEM OF PREFERENCES, AND
CONGRESSIONAL LEGISLATION. PROTECTION OF INTELLECTUAL
PROPERTY RIGHTS IS A KEY ISSUE FOR BOTH DEVELOPING AND
DEVELOPED COUNTRIES.

13. AS MCMINN DISCUSSED THE PMA’S PLANNED APRIL 21
FILING OF THE 301 PETITION. HE INFORMED MOREIRA THAT
USTR WAS AWARE THAT DATE WAS A BRAZILIAN NATIONAL HOLIDAY
AND HAD INFORMED PMA IN THE HOPES THAT A DIFFERENT DATE
WOULD BE CHOSEN. (FYI. DEPARTMENT HAS SINCE LEARNED
THAT PMA PLANS TO FILE ITS PETITION ON APRIL 23. END
FYI.)

CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 119963

14. AS MCMINN STRESSED THAT IT WOULD BE MOST UNFORTUNATE TO HAVE A SITUATION IN WHICH WE COULD NOT SUCCESSFULLY
RESOLVE THE PATENT ISSUE. THE PMA HAD PREVIOUSLY HELD OFF IN FILING A 301 PETITION, GIVEN ONGOING GOVERNMENT TO
GOVERNMENT TALKS. HOWEVER, THE INDUSTRY IS NOW DECIDED, AND THE QUESTION IS OUT OF THE ADMINISTRATION’S HANDS.
THE ISSUE IS NOT ONE WHICH CAN BE MASKED WITH CREATIVE LANGUAGE.

15. MOREIRA AGREED THAT THE TIMING WAS UNFORTUNATE, NOTING THAT THE DANGER EXISTED THAT A DISPUTE OVER
PHARMACEUTICALS COULD SPILL OVER INTO OTHER AREAS. ANY
ADDITIONAL TIME COULD BE IMPORTANT. MOREIRA CLAIMED THAT
U.S. SUBSIDIARIES IN BRAZIL RECOGNIZED PROGRESS MADE TO
DATE, AND DISAGREED WITH THEIR PARENT COMPANIES’
DECISIONS TO PROCEED WITH A 301 PETITION AT THIS TIME.
IN MOREIRA’S VIEW, THE EFFECT OF THE PETITION WOULD BE A
WORSENING OF THE CURRENT SITUATION FOR THE PHARMACEUTICAL
INDUSTRY IN BRAZIL.

16. COMMENT. THE BRAZILIANS ARE CLEARLY CONCERNED BY
THE PROSPECTIVE 301 ACTION. MOREIRA IMPLIED THAT THE PMA
PETITION COULD HAVE SERIOUS REPERCUSSIONS IN OTHER
ASPECTS OF OUR BILATERAL ECONOMIC RELATIONS. ABSENT FROM
HIS PRESENTATION, HOWEVER, WAS ANY INDICATION THAT BRAZIL
IS PREPARED TO GIVE SERIOUS CONSIDERATION TO
PHARMACEUTICAL PATENT PROTECTION. END COMMENT.

SHULTZ