

EC STATEMENT ON US POLICY ON FOREIGN DIRECT INVESTMENT

The European Community and its Member States welcome President Bush's Statement of December 26, 1991, reaffirming the United States' support for a policy of free and open foreign direct investment, based on the principle of national treatment. In common with the US, it is the EC's wish to foster an open investment climate; national treatment is guaranteed at Community level by the provisions of article 58 of the Treaty of Rome.

The huge growth in foreign direct investment (FDI) flows in the last decade has greatly increased the economic linkages between the European Community and the United States. In 1990, Community investors owned more than half of the FDI stocks in the US, while over two fifths of American-owned FDI stocks were located in the Community. At historical prices, these investments are worth more than \$400 billion; but at current prices their value is certainly much greater.

As the US Commerce Department pointed out in a recent report, foreign-owned companies now account for an impressive share of total employment, value added, sales and research and development expenditure on both sides of the Atlantic. Furthermore, a very important percentage of the merchandise trade between the industrialized countries takes place between parent companies and their affiliates. In the US's case, this kind of trade amounted in 1990 to one fifth of total exports and one third of total imports.

In a world economy where goods and services are increasingly being offered on a global scale, enterprise can best flourish where companies have the ability to decide on commercial grounds where best to source their requirements, produce new goods and services and access their markets. Therefore, open investment regimes, like liberal trade rules, are fundamental to world business confidence. Such confidence can easily be damaged by "anti-foreigner" attitudes or by indications that governments and legislators, at federal or state level, are willing to respond to such attitudes by bringing in restrictive legislation.

In the past, the Community and its Member States have expressed concern over the many bills in the US Congress which would interfere in various ways with the free flow of FDI. These bills have attempted to impose ownership bans, local content or reciprocity provisions, discriminate against foreign-owned companies - for example, in the application of anti-trust laws - or extend existing restrictions supposedly to safeguard the "national security" in services or industrial sectors where the United States faces international competition.

These national security restrictions are the so-called "Exon-Florio" provisions (Section 5021 of the 1988 Omnibus Trade and Competitiveness Act). They require that all mergers and acquisitions affecting the US national security be screened by a committee; on recommendation by this committee the President may, if he wishes, order an investor to divest his assets.

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The Community and its Member States in no way contest the right of any country to take such measures as are necessary to defend its national security. However, the scope of "Exon-Florio" is potentially very wide. Neither the statute nor the US Treasury regulations implementing it, define what is meant by "national security", nor do they place any time-limit on Presidential action: such action is not subject to judicial review and no compensation is foreseen.

Despite protectionist pressure, the Administration has up to now sought to apply this legislation in such a way as to avoid inhibiting FDI. However, the Community believes that the uncertainties created by the wide and undefined scope of this legislation have the potential to damage business confidence. Already these uncertainties have left investors with little choice but to voluntarily notify proposed acquisitions for screening by the Committee on Foreign Investment in the US. Moreover, if in future the concept of national security were to be abused, by applying it to one or another key industrial sector for essentially protectionist reasons, the damage could be very serious indeed. That would be a major setback both to global economic recovery and to the economic relationship between the Community and the United States.

In the spirit of the Transatlantic Declaration on EC-US Relations of November 1990, the Community and its Member States and the US are already working together in the Organization for Economic Cooperation and Development (OECD) and in the General Agreement on Tariffs and Trade (GATT) to reinforce the principles of national treatment and non-discrimination in international trade and investment. In particular, both sides attach the greatest importance to a satisfactory outcome to the negotiations in the OECD on strengthening the National Treatment instrument and in the Uruguay Round of the GATT on Trade-Related Investment Measures (TRIMs).

The Community and its Member States hope that it will also prove possible for the United States to find means to safeguard national security interests while also ensuring that businessmen are enabled to take investment decisions with the necessary degree of confidence.

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