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## U.S. FOUND IN VIOLATION OF GATT GOVERNMENT PROCUREMENT AGREEMENT

A panel of the General Agreement on Tariffs and Trade (GATT) has found that the United States authorities violated the Government Procurement Agreement (GPA) by applying a "Buy America" provision to the procurement of a sonar mapping system for use in the US Antarctic Survey. The GPA, to which the European Community and the United States are parties since 1980, forbids discrimination in the purchase of products by specified governmental agencies.

The background to the case is that the National Science Foundation was to finance the purchase of the \$2.5 million system with funds provided under a US Appropriations Act which imposed the Buy America condition.

The panel was appointed at the request of the Community following a complaint to the EC Commission by an EC supplier that the call for tenders clearly excluded bidders whose products had not been manufactured in the US.

The US has sought to argue that since the purchase took place in the context of the provision of an extensive range of services, it should not be considered covered by the provisions of the GPA, which principally covers the purchase of products. The EC has argued that the obligations of the GPA could not be avoided by bundling together an important product purchase and service procurement. The sonar mapping system is self-evidently a product covered by the GPA, and the Buy America requirement is consequently an infringement upon that Agreement.

The panel report has to be adopted by consensus by the GPA Committee. At yesterday's meeting, the US opposed the report on the grounds that it raises fundamental questions about the way certain US contracts are awarded. The Committee will return to the issue at its next meeting in June.

In parallel with the Uruguay Round, negotiations have been underway to enlarge the GPA to include services and construction as well as supplies, and to cover any government entity. The Community, seeking to extend the liberalization it is achieving under the 1992 single market program, has taken the lead in pressing for the broadest possible extension of the present Agreement and for suppression of the many discriminatory exceptions which are currently applied.

Specialists describe the sonar system as a hydrographic wide-swath sweep survey echosounder providing accurate bathymetric surveys with acoustic sea-floor imaging and terrain-following navigation capabilities. It is intended to be mounted in the hull of a research ice-breaker which will provide scientific support to the Antarctic Survey.

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Outside the military field, this item enjoys relatively few sales. For much of the past 20 years, the acknowledged market leader has been an American supplier, General Instruments Corporation. Since 1987, a European supplier, Atlas Elektronik GmbH, has achieved remarkable success, obtaining seven major sales in three continents, including two orders from the US. It is believed this may have prompted Congress' promotion of the Buy America requirement under the Appropriations Act.

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