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# NEWS

## EC COMMISSION RESPONDS TO U.S. TRADE MEASURES IN TELECOMMUNICATIONS AND PROCUREMENT

The United States Trade Representative has announced its intention to prohibit awards of federal contracts for products and services from the EC, to take effect from March 22, 1993. (See details below.) This is the second aggressive trade measure in the first two weeks of the new Administration.

Sir Leon Brittan, EC Commissioner for External Economic Affairs, made the following statement:

"I cannot believe it is in anybody's interest, European or American, to attempt to deal with trade issues in this way. We do not accept this form of unilateral bullying - especially since there are on-going EC-US bilateral negotiations on telecommunication procurement and other issues within the Uruguay Round context. It is important to know that I raised this matter with Carla Hills, the former US Trade Representative, as early as January 2. Talks have continued since and have been constructive and my negotiators have fixed the next round of discussions with our US counterparts on February 16/17 in Washington. Throughout this dispute the Community has been seeking a fair agreement on all the issues. We proposed an interim agreement on a range of issues, which would have substantially held the current position until the whole matter was resolved. That proposal was not accepted. We have also tabled a comprehensive document to resolve all outstanding issues, to which the US has not yet responded.

We are deeply concerned about a number of protectionist US policies in the procurement area:

- **The Buy American Act**, which imposes a strong and mandatory price preference on products of US origin.
- **Sub-Federal procurement**, which discriminates against non-US bids for contracts tendered by states, municipalities and other lower levels of government.
- **Access to utilities markets**, such as urban transport, airports and water supplies, which are not open on the US side. We also want fair play on telecommunications.

On the other hand, the EC's "Utilities" Directive that the US is complaining about is quite the reverse of a protectionist device. It actually offers increased liberalization of procurement in the Community's markets, and opportunities for US firms that did not exist before. If our concerns about US procurement practices are met, the EC would readily cease to apply the much more limited provisions to which the US takes exception.

I will be raising this issue with Michael Kantor, US Trade Representative, in Washington on February 11. I shall urge him to work with me to reach a deal that averts the risks threatened by this latest US measure. The only way to resolve trade problems of this type is through balanced concessions, determined diplomacy and multilateralism, the route the European Community is following."

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### Details of the US Measures as announced today by USTR

The United States Trade Representative (USTR), Mr. Kantor, today announced the Administration's intention to prohibit awards of contracts by Federal Agencies for products and services from some or all of the member states of the European Community (EC), to take effect with respect to US issuances of solicitation published on or after March 22, 1993. The action will be imposed under authority of Title VII of the Omnibus Trade and Competitiveness Act of 1988. Kantor also requested public comment on this sanction by March 5, 1993, as well as on additional possible actions to be taken in response to EC discrimination against US businesses in government procurement.

Notice of this action will be published in the Federal Register on or about February 4, 1993. The notice will further request public comment concerning the costs and benefits of continued US participation in the GATT Agreement on Government Procurement (The "Code"), in connection with a US Government study of the desirability and feasibility of withdrawing from the Code, which is now being initiated.

Purchases covered by the Code and purchases by US Government Agencies in support of US national security interests, including all purchases by the Department of Defense, will be excluded from the prohibition on awards for EC products and services. Also excluded will be specific procurements or classes of procurements where public health, safety, or public interest considerations require such exclusions. This action will not be taken if the discrimination identified in the April 22, 1992 Title VII identification is eliminated prior to the scheduled imposition of the action, or if the President determines such action to be contrary to the national interest.

## **EC-U.S. PROCUREMENT AND TELECOMMUNICATIONS**

### Background

Discussions on the multilateral liberalization of the telecommunications equipment market have been conducted within the framework of the GATT Government Procurement Agreement. When, at the end of 1990, there was an impasse in these discussions because the US was not willing to include its telecommunications operators within the scope of the Agreement, a new forum was created to continue negotiations on a bilateral basis. Despite the fact that these negotiations were underway, on February 21, 1992, the US Administration announced that it had placed the European Community on a list of trading partners discriminating against the US in their government procurement practices and threatened to impose sanctions upon entry into force of the EC "Utilities" Directive on January 1, 1993. Under the threat of trade sanctions under Title VII of the 1988 US Trade Act, the United States sought modifications to the Directive in order to increase access for US companies bidding for contracts in the EC.

During talks between the two sides on December 28/29, 1992, it became clear that a lasting solution was only possible within a few months. In the meantime on January 6, 1993, the two sides agreed to explore ways to come to a short-term settlement. This led to an EC offer for a significant interim package that would have created a breathing space to enable a longer-term solution to be found. This was rejected by the United States. The next round of the negotiations is fixed for February 16/17 in Washington.

### The Community's procurement policy

The Utilities Directive No. (90/531/EEC) opens up procurement practices in the four previously excluded sectors - water, energy, transport and telecommunications - to EC-wide competition. It prevents utilities in the Community from favoring national suppliers, lays down transparent procedures to follow in tendering for procurement, ensures non-discrimination between Community suppliers and, together with the Remedies Directive No. (92/13/EEC), enforces corrective action where necessary. With regard to goods and services originating in third countries, except where there has been an international agreement which grants comparable and effective access for Community undertakings to the third country concerned, Article 29 of the Directive renders it possible to reject such offers and requires Community preference where offers are equivalent (where the price difference does not exceed 3 percent). The entry into force of the Directive on 1.1.93 makes the EC's procurement policy substantially more open than before.

The Community's commitment to comparable, effective and lasting market access is demonstrated by its offer - in the context of negotiations for a new Government Procurement Agreement - to eliminate all discrimination regarding contracts in urban transport, ports, airports and heavy electrical equipment, as well as tenders put out by sub-federal authorities. The Community wants a similar commitment from the United States.

### The United States Buy American Act

The Community continues to express its concern at the protectionist impact of the Buy American Act. The Act imposes a mandatory price preference in favor of US origin products on all purchases by US federal agencies or those financed by federal funds. The basic preference of 6 percent is increased to 12 percent for purchases from small or minority owned businesses (in extreme cases, US small businesses can have as many as 5,000 employees). The preference can be increased by the US Congress permanently for a particular sector, or on an ad hoc basis in the annual budgetary procedure. Current preferences range from 25 percent for transport equipment and 50 percent for many purchases by the Department of Defense, rising to an absolute preference in some cases. For a product to be considered as having US origin, it must be "manufactured in the US" and 50 percent of its components must be US-made. In certain cases the requirement extends to sub-components and is higher than 50 percent, backed by stringent penalties. Under the US Trade Agreements Act, Buy American preferences are waived in favor of specific countries where a trade agreement so provides.

Recent examples of the protectionist impact of the Buy American Act include the purchase of a Sonar Mapping System by the National Science Foundation and the recently announced decision by the General Services Administration to overturn the award of a Department of Defense contract to the electronics manufacturer Zenith on the grounds of foreign content of the products. The EC requested a GATT panel to examine the Sonar Mapping System purchase. In 1992 the panel found that the US had infringed the GATT Government Procurement Agreement by applying a Buy America provision. However, the adoption of the report remains blocked by the US. The failure of the US to permit the adoption of the panel report, the protectionist stance of the Buy American Act and US unwillingness to come forward with adequate proposals for the new Agreement raises questions over US commitment to achieving liberalization of government procurement.

Negotiations on the enlargement of the GATT Government Procurement Agreement have been made more difficult by the oft-repeated US claim to be providing a disproportionately large share of the benefits guaranteed under the present Agreement. The EC has disputed this claim, citing numerous exceptions under the US coverage as well as widespread failure to correctly implement the detail of the Agreement. US figures for contracts allegedly awarded under the Agreement do not, it has been pointed out, tally with the information provided in calls for tender published by the US authorities which often - as in the Sonar Mapping case - effectively exclude outside bidders.

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