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SIGNING OF US IRAN/LIBYA SANCTIONS ACT DRAWS EU PROTEST

Despite the clearly registered opposition of the EU (see EURECOM, June 1996) and other countries, US President Bill Clinton signed the D'Amato Bill on sanctions against new investments in the oil industries of Iran and Libya on August 5.

Although the EU fully supports the US in its fight against terrorism, and is ready to cooperate at a multilateral level to combat terrorist activity in all forms and whatever its source, it believes the D'Amato bill goes in the wrong direction.

"(The D'Amato bill) establishes the unwelcome principle that one country can dictate the foreign policy of others, and disturbs the unity of purpose between allies that is so necessary if we are to stamp out terrorism successfully together," commented EU Trade Commissioner Sir Leon Brittan.

According to EU Energy Commissioner Christos Papoutsis, the D'Amato Bill will create serious problems for the European oil industry. New investment and deliveries of technical equipment — both made "illegal" under the US legislation — are vital for the further development of oil and gas reserves in these two countries. And the EU depends on imports for 80% of its oil needs, of which Iran and Libya together supply 20%. The US, on the other hand, depends on imports for 50% of its oil consumption, with most of it coming from non-targeted countries like Mexico, Venezuela, Saudi Arabia, Nigeria and Norway.

The Commission fails to see why the US needs to hit out at its friends while targeting its adversaries. For good reason, the US would not accept such legislation from any other country.

In response, the Commission and the Irish EU presidency have made an official demarche to the US Administration protesting the signing of the sanctions legislation. The EU intends to defend its rights and interests if they are jeopardized by the Act, and reserves the right to challenge it in the appropriate international fora.

EU PREPARES RESPONSE TO US HELMS-BURTON ACT

While welcoming US President Clinton's six-month suspension of the right to bring an action under Title III of the Helms-Burton Act (see EURECOM, May 1996) — which allows US citizens to sue foreign companies for "trafficking" in expropriated property in Cuba — the Commission warned that the extraterritorial nature of the law remained in place and that EU firms were already suffering from its effects.

The Helms-Burton Act has provoked worldwide condemnation by seeking to impose US policy toward Cuba on the US' partners and threatening reprisals if they do not oblige. For this reason, the EU has consistently and vehemently opposed the legislation, believing it to be in serious breach of the US' international obligations.

Other features of Helms-Burton, like Title IV, under which businessmen and their families can be barred from the US, remain intact and have already been applied. And Title III has not been waived (as it could have been), but merely suspended for six months.

Responding to the Council's unanimous condemnation of the law and to protect European economic interests, the Commission has formally proposed an **anti-boycott regulation** to neutralize the impact of the US Helms-Burton law and any other similar legislation (see above piece). The proposal would prevent European companies from complying with Helms-Burton and enable them to recover amounts awarded against them by US courts as a result of the law. Requiring unanimous approval by the Council, the regulation would be fully binding on all EU member states, covering any natural or legal person, private or public, resident or incorporated in the EU. Member states themselves would be responsible for imposing "effective, proportional and dissuasive" penalties on companies found in violation of the regulation. A final decision is expected by early October at the latest.

In addition, the Commission has begun gathering information to create a "watch list" of US citizens and companies that file law suits against European firms.

THE EU'S VIEW ON US TRADE BARRIERS

Speaking of trade disputes, the Commission recently released its 12th annual Report on US Barriers to Trade and Investment.

Not surprisingly, and in line with the previous two items in this issue, the report stresses that the EU remains opposed to **extraterritorial and unilateral elements**

in US trade legislation. In the main, however, the report emphasizes how the EU-US relationship will become far closer than before under the **New Transatlantic Agenda** (see EURECOM, December 1995), which is working to reduce or eliminate remaining barriers to economic activity between the two regions. This is leading to a series of specific initiatives that would, for example, allow EU bodies to certify products for conformity with US standards (and vice-versa), make regulators more aware of the trade and investment consequences of their decisions, simplify customs procedures and promote cooperation in science and technology.

Further, many previous problem areas have been resolved as a result of the Uruguay Round trade agreement. It has brought down tariffs between the EU and the US while building a framework of multilateral rules, disciplines and dispute settlement procedures, giving both sides an alternative means to settle their differences.

Despite the report's positive tone, however, the Commission identifies a number of nagging problem areas. The EU remains concerned over the US' excessive use of the **principle of national security** as a disguised form of protectionism, especially in relation to the application of import, export, procurement and investment restrictions.

In **procurement,** the EU and US have substantially increased access to each other's public tenders in a bilateral accord that goes even further than the Uruguay Round agreement. Nonetheless, EU companies still face a wide variety of **"Buy America" clauses,** including new ones for federally funded infrastructure projects.

In financial services, the EU is hopeful that ongoing reforms in the US will sweep away **inter-state restrictions** that currently impede access by foreign banks. However, US **sectoral segmentation rules** (i.e. the Glass-Steagall Act) remain in place, hindering the strategic decision-making of EU firms: link-ups between European banks and insurance companies face difficulties if both parties have US-based subsidiaries.

ATLAS TELECOM ALLIANCE (FINALLY) GETS GO AHEAD

After months of examination, the Commission has finally cleared the European telecom alliance between France Telecom (FT) and Deutsche Telekom AG (DT), known as Atlas, and for the global alliance between **Atlas** and Sprint Corporation, recently renamed **GlobalOne** (see EURECOM, November 1995).

In approving the alliance, EU Competition Commissioner Karel Van Miert underscored that the potential inclusion of various services and networks in the joint venture is tied to regulatory reform at the national level. For example, Atlas and GlobalOne's main data transmission services will be authorized as soon as Germany and France grant the first telecom licenses to operators of alternative telecom infrastructures (i.e. networks operated by utility and railway companies), which were officially liberalized on July 1, 1996. These licenses are expected to be awarded shortly.

Moreover, the Commission will review Atlas in 2001, which is the same time the joint venture between British Telecom and MCI will be reexamined.

To prevent abuse of dominant market positions in the run-up to full telecom liberalization in 1998, the Commission believes it is vital to attach strict conditions on agreements and alliances between dominant operators like DT and FT. As a fully competitive regulatory framework is established at the national and EU level, the Commission foresees a gradual phase-out of such restrictions.

Accordingly, the Commission has imposed the following conditions on the venture: FT and DT must allow non-discriminatory access to their networks to operators competing in low-level data services; they must treat all third-party competitors who want to use their facilities in a non-discriminatory manner; no cross-subsidies between the groups will be allowed, and Atlas and GlobalOne must have their own accounting systems; Atlas and GlobalOne must conclude separate contracts for FT and DT to act as their distributors in France and Germany; and FT must sell off INFO AG, an important competitor of T-Data on the German data network services market.

CIBA-GEIGY/SANDOZ MERGER PASSES MUSTER

The Commission recently announced that the proposed merger between Swiss pharmaceutical and chemical giants Ciba-Geigy and Sandoz to create **Novartis,** the world's second largest drugs group after Glaxco-Wellcome, is compatible with the single market (see EURECOM, May 1996).

Still awaiting approval by the US Federal Trade Commission, Novartis would become the worldwide leader in crop protection products, and the second largest global producer in the pharmaceutical, animal health and seed sectors. Although the Commission's investigations identified around 100 affected markets, it believes the merger is largely of a complementary nature. Even where markets overlap, market share additions would not create dominant positions.

In only one specific sector — products for the treatment of pet parasites (e.g. ticks and fleas) — did the Commission attach a condition. Because Novartis would control three of the five active ingredients available worldwide for anti-flea remedies, Ciba and Sandoz would have to grant non-exclusive licenses to competitors for methoprene, a particularly important ingredient.

In addition, the Commission closely examined the significant combined R&D potential of the merger. It found, however, that there would be enough firms with the necessary "critical mass" to compete against Novartis in this field.

WTO REPORT CONDEMNS JAPANESE LIQUOR TAX

European producers of whisky, vodka, brandy, gin and other spirits should receive a major boost to their sales effort in Japan following the publication of a World

Trade Organization (WTO) report which claims that Japanese liquor taxes discriminate against imported alcoholic drinks.

Stemming from a longstanding complaint by the European Commission, the WTO's (final) report fully vindicates the Commission's contention that European spirits face tax rates over six times higher than competing drinks produced in Japan, despite condemnation of the tax regime by a GATT disputes panel in 1987. The Commission argued that because foreign drinks exported to Japan were "directly competitive or substitutable" with Japanese products (like shochu), Japan was violating GATT rules by taxing them at different rates.

"These findings are very good news for the European drinks industry, and should help remove serious hurdles currently hindering their exports to Japan," said EU Trade Commissioner Sir Leon Brittan. "The EU fought in the Uruguay Round for effective dispute settlement mechanisms and intends to use them every time EU interests are threatened by discrimination. We believe the WTO's rulings are crucial to the credibility of the world trading system and should be accepted and respected promptly," he added.

In light of the report, the Commission will now carefully consider the most appropriate action vis-a-vis tax regimes in other countries, notably Korea and Chile, that it also considers discriminatory.

QUOTES

"The transatlantic community was the 'winning ticket' of the post- war era. It must continue to be the dominant force for global security, stability and open markets in the 21st century." German Foreign Minister ***Klaus Kinkel.***

"With the cold war over, trade agreements must stand or fall on their merits. They no longer have a security component. If we do not get reciprocity, we will not get freer trade." Acting US Trade Representative ***Charlene Barshefsky.***

"You can limit the movement of labor to capital, but not the movement of capital to labor." ***Andras Inotai****, head of the Hungarian government's EU working group, who believes investors in Europe are as likely to move east as jobseekers are to move west.*

"A small (EU) country's interest lies in moderately tighter integration, by which large countries can be tied to joint decision-making." Finnish Prime Minister ***Paavo Lipponen.***

"Organizing a monetary system around three great world currencies — the dollar, the yen and the euro — should make it less volatile than it is today." Former French president ***Valery Giscard d'Estaing.***

EU INVESTS MOSTLY IN ITSELF

The EU's 15 member states spread most of their foreign direct investment (FDI) among themselves rather than in the rest of the world according to a new study published by Eurostat, the EU's statistical arm.

Based on 1994 data (the latest available) and excluding reinvested earnings, the report represents the first time Eurostat has published harmonized FDI statistics for all 15 member states.

EU firms invested 37.7 billion ecu (becu) within the Union in 1994 (1ecu=$1.25), around 80% more than extra-EU investment, which totaled 21.2 becu. Inward investment in the EU by third-country companies amounted to 20.9 becu.

Germany and the Netherlands are the top EU net direct investors (intra- plus extra-EU, outward minus inward) at 8.3 billion ecu each, followed by the UK at 3.8 billion ecu. Heading the list of net recipients are Belgium/Luxembourg (6 becu), Spain (4.7 becu) and Ireland (2.6 becu).

In terms of outward FDI, Germany is the biggest overall investor (14 becu) and the largest EU investor outside the Union (5.6 becu). The Netherlands takes second place at 12.1 becu, and is the top investor in its fellow EU partners (9.1 becu).

When it comes to attracting investment from abroad (both intra- and extra-EU), France is tops with 9.3 becu, followed by Spain with 8.2 becu. France also garners the most investment from other EU member states (6.8 becu). Belgium/Luxembourg draws the most direct investment from non-EU countries (2.8 becu), trailed closely by the UK (2.6 becu).

...IN BRIEF

...Despite growing competition from Asia, relatively low economic growth and high labor costs, Europe continues to attract the lion's share of US foreign direct investment (FDI) according to a report by Deloitte & Touche Consulting Group. In 1995, Europe garnered 52% of the record $97 billion invested abroad by US companies. Surprisingly, **Sweden** was the top recipient of **US manufacturing FDI** ($9bn), aided in large measure by Upjohn's $7bn takeover of Pharmacia, a Swedish pharmaceutical firm. The UK, always a leading destination for US manufacturing investment, followed at $3.5bn.

The primary reasons for Europe's continued attractiveness: US firms' already extensive commercial links to Europe, relatively low commercial risk and proximity to the emerging markets of Central and Eastern Europe. "A country's ability to meet worldwide best- practice standards is more critical for competing in the global market than accessing cheap labor," said the report.

...A key vehicle for direct investment in Europe has been cross- border mergers and acquisitions (M&As). The number of cross-border M&As targeting an EU enterprise was almost 1,700 in 1995, confirming the growth trend which started again in 1994, but still short of the historic peak reached in 1990 (over 2,000 deals). In value terms, however, 1995 was a record year

with 57 billion ecu in M&A deals, compared with the previous high of 52 billion ecu in 1989. The highest value operations involved mainly US and European companies. There is also a clear North-South divide in European M&As. Not only does M&A activity in the UK, Ireland and the Netherlands far exceed the economic weight of these countries relative to the aggregate EU economy, but they are also net purchasers. On the other hand, companies in Spain, Portugal, Greece and Italy are far less active than the size of their economies would suggest. And these southern member states' firms are more often targets than bidders.

...The Commission clamped down on EU countries not properly applying EU law in 1995, taking some 5,608 actions against member states' infringements compared with 4,800 in 1994. Among the member states, **Denmark** remained the most diligent in applying EU law with a 97.9% notification rate (as of December 31, 1995), followed closely by the Netherlands (97.2%) and the UK (95%). Luxembourg, Spain, Sweden, Germany, Ireland and France all exceeded the EU average of 90.7%. Finland brought up the rear at 70.5%, but this was mostly due to difficulties in transposing directives in the Åland Islands, which enjoy a special degree of autonomy. Austria (84.2%) lagged behind on account of delays in notifying agricultural legislation.

...To prevent anti-competitive practices in the mobile phone sector, and to avoid splintering the market along national lines, the Commission has warned GSM mobile phone producers and network operators to limit the use of a locking feature that effectively ties consumers to one network. While the "SIM lock" deters theft when a handset is not in use, it locks the handset to a particular service provider. The Commission wants manufacturers only to supply SIM locked handsets which can be unlocked by consumers themselves. It also wants network operators to advise customers that phones can be unlocked from a particular service on demand.

...A. Vernon Weaver, an investment banker from Arkansas who also served as head of the US Small Business Administration during the Carter Administration (1977-81), is the new US Ambassador to the EU. He replaces Stuart Eizenstat, who is now US under secretary of commerce and President Clinton's special envoy on Cuba.

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