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COMMISSION RELEASES 1997 REPORT ON US TRADE BARRIERS

Just before the August recess, the Commission published its 13th annual *Report on Barriers to Trade and Investment in the United States.*

Although the EU remains concerned at the persistence of extraterritorial provisions in US law — especially with regard to Cuba, Iran and Libya — the report should be viewed in the context of the strong and growing Transatlantic relationship, the largest trade and investment relationship in the world.

Moreover, the **1995 New Transatlantic Agenda** (NTA) defined for the first time common objectives for joint EU-US action in a wide range of areas, including the expansion of world trade and economic growth, with a focus on strengthening the multilateral trading system. Since the NTA's launch, the EU and the US have worked through the World Trade Organization (WTO) to conclude an Information Technology Agreement and a Basic Telecommunications Services Agreement (see EURECOM, March 1997), which together liberalize approximately $1 trillion in goods and services. At present, both are working toward an ambitious WTO Financial Services Agreement (see EURECOM, July/August 1997). And in the OECD, the EU and the US are actively cooperating to finalize the Multilateral Agreement on Investment by 1998.

At the bilateral level, the recent Mutual Recognition Agreement (see EURECOM, July/August 1997), the Customs Cooperation and Mutual Assistance Agreement and the Chemical Precursors Agreement (see EURECOM, June 1997) clearly illustrate that Transatlantic trade barriers continue to come down.

Notwithstanding such progress, however, there are still a number of problems affecting EU firms on the US market. In particular, the EU opposes the **extraterritorial provisions of certain US legislation** which hamper international trade and investment by seeking to regulate EU trade with third countries conducted by companies outside the US. The most prominent examples of this are the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, which is the latest in a series of measures the US has taken since it first proclaimed a trade embargo against Cuba in 1962, and the Iran-Libya Sanctions Act (ILSA). The recent EU-US Understanding concerning the Libertad Act, the ILSA and the EU's WTO case against the Libertad Act charts a course for a longer-term solution to these issues (see EURECOM, May 1997).

In **public procurement**, an unwelcome new development is the **introduction of sub-federal selective purchasing laws** restricting the ability of EU and other companies doing business with specific countries to bid for contracts in various States and cities. The Massachusetts Burma law is an example of "this worrying new trend": it limits the access of EU and other suppliers to Massachusetts procurement contracts, resulting in a *de facto* reduction of the US sub-federal offer under the WTO Government Procurement Agreement. Other selective purchasing laws have been adopted in several cities (including New York) and in states such as Connecticut, California and Texas.

While the EU fully respects the right of Massachusetts and others to take direct action in support of human rights — the EU itself has taken a strong stance against the Burmese government (see EURECOM, April 1997) — the proliferation of these initiatives indicates a disturbing trend toward sub-federal entities regulating the behavior of economic agents beyond US territorial jurisdiction. Quite apart from the strict legality of these such actions, they are clearly disrupting normal international economic relations.

Unilateralism in US trade legislation also remains a matter of concern. Despite its extensive use of the new WTO dispute settlement mechanism, the US retains the possibility to take unilateral trade measures which run counter to internationally agreed trade rules under the WTO.

Indicating that there are still some bilateral problems to iron out, the 50-page report covers the entire trade spectrum: tariff barriers, non-tariff barriers, investment-related measures, intellectual property rights and services. It is available over the Internet at: *http://europa.eu.int/en/comm/dg01/eu-us.htm.*

BOEING/MDC MERGER CLEARED (WITH NOTABLE CONDITIONS)

While movies like "Air Force One" fared well at the box office this summer, the EU's decision on the Boeing and McDonnell Douglas (MDC) merger took the sweepstakes as the summer's most-watched suspense drama. All the elements were in place: controversy, conflict, brinkmanship and a last-minute concession yielding a (largely) happy ending.

Subject to commitments made by Boeing, the Commission formally declared the merger compatible with the EU's single market on July 30 (see EURECOM, April 1997).

In its five-month investigation under

the EU's Merger Regulation, the Commission found that the proposed merger would lead to a significant strengthening — from 64% to 70% — of Boeing's already dominant position in the worldwide market for large commercial aircraft. The merger would further enhance Boeing's ability to enter into long-term exclusive supply deals (a real sticking point), and it would also confer advantages in the commercial aircraft sector through "spillover" effects (i.e. R&D, technology transfer) from MDC's defense and space activities.

After intensive negotiations with the Commission, Boeing offered the following commitments to resolve these competition problems: **1)** the cessation of existing and future exclusive supply deals like those recently concluded with American, Continental and Delta Airlines; **2)** keeping the Douglas Aircraft Corporation (the commercial aircraft division of MDC) a separate legal entity from the merged company for a period of 10 years; **3)** the licensing of patents to other jet aircraft manufacturers; **4)** commitments not to abuse relationships with customers and suppliers; and **5)** an annual report to the Commission on military and civil aeronautics R&D projects benefitting from public funding.

In arriving at its decision, the Commission took into account concerns expressed by the US government on important US defense interests — to the extent consistent with EU law — and limited its scope of action to the civil side of the merger.

Commenting on a controversial aspect of the case — the potential conflict of jurisdiction between the EU and the US — EU Trade Commissioner Sir Leon Brittan said the following: "I have long believed that we need an international agreement on competition rules...There are bound to be more and more clashes when powerful competition authorities seek to deal with the same case."

EU PROMPTS CHANGE IN US TEXTILE RULES

The Commission's inventory of US trade barriers was made a little shorter recently thanks to successful actions under the EU's Trade Barriers Regulation (TBR) against US rules of origin on textile products (see EURECOM, December 1996).

In WTO dispute settlement consultations with the EU (which emanated from the TBR), the US Administration agreed to change immediately rules that formerly classified Italian scarves, German furnishings or British cotton goods as "Made in China" or "Made in India" merely because the raw material came from those countries — even if the articles were cut, bleached, dyed, shrunk printed and labelled in Europe. With a US guarantee that European exports will no longer be disrupted, the EU suspended its action before the WTO.

Prior to the Commission's intervention, European manufacturers feared that the US rules could result in quotas (to which certain countries' goods, e.g. China, are subject) or, worse, undermine their labels' quality reputation as a selling point with US consumers. This led to a complaint by Federtessile, the Italian textiles federation, to the Commission under the new TBR.

This was the first investigation carried out under the TBR which, as anticipated, has proven an effective instrument in addressing European industry's market access problems. Under the TBR, once a complaint is lodged, there is a clear, short timetable for each procedural step: first, a decision on a complaint's admissability; second, a report to the member states on the results of the investigation; third, recourse to international dispute settlement procedures; and last, implementation of an acceptable solution to the trade barrier in question.

WTO RULES AGAINST EU BAN ON HORMONE-TREATED MEAT

You win some, you lose some (and then you appeal). That is certainly the case with the recent WTO ruling against the EU's ban on imports of meat treated with growth-promoting hormones, which the EU will appeal (most likely later this month).

The WTO dispute panel agreed with the plaintiffs, the US and Canada, that the EU's ban, in effect since 1989, was not in conformity with a number of provisions of the WTO Agreement on Sanitary and Phytosanitary Measures.

In the Commission's view, the panel failed to properly take into account the large body of scientific evidence brought forward by the EU in support of its legislation. It is also concerned that the report's conclusions limit the right of governments to determine the level of protection they consider appropriate for their citizens.

If the EU loses the appeal, then the WTO's Dispute Settlement Body (DSB) could ask the EU to pay compensation to the US for the amount of lost US trade. If the EU refused that, the DSB could authorize US trade retaliation to the same amount.

EU CALLS FOR CHANGES TO US TELECOM RULES

The Commission recently urged the US government to reconsider draft rules incorporating the recent WTO Basic Telecommunication Services agreement into US law, saying that the current proposals put forward by the US Federal Communications Commission (FCC) discriminate against foreign operators.

In particular, the Commission is concerned that the FCC text on foreign participation in domestic telecoms maintains "broad and unclear public interest factors" like "law enforcement", "foreign policy", "trade concerns" and "very high risk to competition" in determining whether to grant or deny license applications.

The Commission warned the US that it risks violating its WTO obligations if the current proposals are not changed, and that the EU reserves its right to challenge the rules under the WTO.

Given the need to ensure prompt and full implementation of the WTO agreement and to provide the expected benefits to telecom users both in the EU and the US, the EU urges the FCC to alter its approach.

SPURRING USE OF THE EURO SYMBOL

Since the Dublin European Council in December 1996, the Commission has been using the following symbol to designate the single currency, the euro:

€

It has also been widely accepted by national administrations, central banks and the private sector, and European Monetary Institute has announced its support for the logo.

With this broad support, the Commission invites all currency users to employ the above logo whenever a distinctive symbol is needed for the description of monetary amounts in euro, like in price lists and invoices, checks or any other legal instruments.

The Commission has already started the registration process with the ISO, which is responsible for the standardization of glyphs/fonts, keyboards and character transmission codes, with a view to insert the symbol into computer systems. A prominent position of the euro logo on, for example, keyboards, will assist economic agents in the preparatory work for the introduction of the single currency. It will also promote the widespread use of the new symbol.

Designed by the Commission services, the symbol is inspired by the Greek letter epsilon, which refers to the cradle of European civilization and to the first letter in Europe, crossed by two parallel lines to indicate the stability of the euro.

The symbol does not affect the separate decision to use the three- letter code "EUR" for the euro in financial markets (see EURECOM, May 1997), just as the "USD" code is used alongside the US dollar's familiar $ symbol.

QUOTES

"I simply cannot agree with some arguments I have heard recently that, if the euro is delayed, the sky over Europe would crash down." Bundesbank President ***Hans Tietmeyer****.*

"The euro must not be talked out of existence in advance. That seems irresponsible to me." EU Commission President ***Jacques Santer****.*

"This was a vital battle in terms of competition policy." EU Commissioner ***Karel Van Miert****, commenting on the Commission's approval — with conditions — of the Boeing/McDonnell Douglas merger.*

"Tragically, Central Europe was denied the opportunity to play its part in the project of European partnership. But now, for the first time in its history, the Union has a real chance to speak for the greater part of Europe." British Foreign Secretary ***Robin Cook****.*

NO EROSION IN EU'S PUBLIC SECTOR

Despite impressions to the contrary, the state sector in the European Union is not in retreat. In fact, taxes and social contributions (TSC) in the EU attained a new record as a percentage of GDP in 1996, registering 42.4%. This compares with 41.7% in 1995 and 38.7% in 1980.

Among the EU member states (except Portugal and Greece, where data was unavailable), Sweden had by far the highest TSC ratio at 55.2%, followed by fellow Nordics Denmark (52.0%) and Finland (48.8%). Ireland (34.5%) edged out Spain (35.2%) and the UK (35.9%) for the lowest ratio. Once again, these bottom three were the only EU countries to come in under 40%.

Looking at the individual categories, the EU's total tax ratio was 27.2% of GDP in 1996, up slightly on 1995 (27.0%) and just off the 1989 peak of 27.3%. Denmark remained the EU's total tax champion at 50.4% of GDP — and the lowest for social contributions (1.7%) — primarily because almost all its social welfare is funded through taxes. It also had the highest ratio of taxes on wealth and income (31.6%) and of VAT (9.7%). Spain again had the lowest total tax ratio at 22.4%. At 19.5%, France had the EU's highest social contributions' ratio, but it also recorded the lowest ratio of taxes on wealth and income (10.0%).

Since 1985, the share of social contributions of employees has risen more than that of employers. In 1985, EU-wide, employers contributed 8.0% of GDP; in 1996, 8.3%. Over the same period, employees' share went from 4.3% to 5.1%.

...IN BRIEF

...While EU annual inflation edged up to 1.7% in July from 1.6% in June, it still remains close to the record low of 1.5% registered in May and April. In July 1996 it stood at 2.1%.

Austria (0.9%) has, for the moment, displaced Finland (1.1%) as the EU's lowest inflation country, with France not far behind (also at 1.1%). At the high end of the spectrum — and we're not talking hyperinflation here — are Greece (5.2%), the Netherlands and Denmark (both at 2.1%). Based on the July figures, 14 of 15 member states meet the Maastricht treaty's price stability criterion.

Although not strictly comparable with the EU's new European Index of Consumer Prices (EICP), annual inflation in the US and Japan fell to 2.2% and 1.9%, respectively, for the same period.

...Indicating the continuing trend toward further integration of European companies and markets, the Commission handled a record number of mergers and acquisitions cases under the EU Merger

Regulation in 1996. It received 131 notifications (1995: 114) and took 125 final decisions (1995: 109), which does not include an important number of significant cross-border concentrations that fell under the regulation's threshold. Since the Regulation's entry into force six years ago, the Commission has taken 508 final decisions, large numbers of which from some particularly dynamic business sectors like telecommunications, financial services, pharmaceutical, insurance and the media.

...Average per capita GDP in the 11 candidate countries for EU membership was only 32% of the EU average in 1995, but the wealth gap has narrowed slightly, reflecting a faster rate of economic growth in Central and Eastern Europe (1995: 5.2%) than in the EU (1995: 2.4%) for three years running. According to Eurostat, total GDP in the 11 applicant nations (Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Romania, Bulgaria, Lithuania, Latvia, Estonia and Cyprus) amounted to 9.1% of the EU total — just slightly more than that of the Benelux countries combined — with Poland accounting for 35%. Nearest to the lowest of the EU member states in terms of GDP per head (Greece, 65% of the EU average) was **Slovenia**, at 59%, while **Latvia** brought up the rear at 18% of the average EU level.

...The EU is a prime mover in the ongoing WTO financial services negotiations, and EURECOM makes it a point to follow its progress (see EURECOM, July/August 1997). For those interested in a private sector perspective, the Securities Industry Association has a website devoted to the WTO talks: *http://www.sia.com/intnl.html*.

...Niche Systems, in consultation with the Commission's NY office, is offering "Countdown to the Euro", a series of four executive seminars to help US and Canadian businesses to prepare for the euro, on October 20-23, 1997. Co-sponsored by the Financial Times, CODA Financials, the Journal of Business Strategy and The Profile Group, each day's seminar will address a different aspect of EMU: Treasury and Investment; Capital Generation, Risk Management and M&A; Accounting and Financial Systems; and Legal Issues and Consequences. For more information, please call (212) 686-4408 or visit Niche Systems' website at *http://www.nsinc.com*.

...**Correction:** In last month's issue, the contact number for the European Finance Convention's upcoming conference on the euro in New York on November 10-11 should have read 011-44 171 381 9291.

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