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US TRADE AND INVESTMENT BARRIERS: GOING NOWHERE FAST

In its *1998 Report on US Barriers to Trade and Investment,* the European Commission finds that European companies continue to face significant obstacles when trying to export to, or invest in, the US.

Largely an update of last year's list (see EURECOM, September 1997), this 14th annual report is a 53-page inventory of problem areas covering tariff barriers, non-tariff barriers, investment-related measures, intellectual property rights and services.

The Commission's critique is set against a contrasting background: on the one hand, the EU and the US have undertaken to reduce or, in some cases, to eliminate obstacles that hinder transatlantic commerce; on the other, current bilateral trade disputes (bananas anyone?) could damage the overall (and indisputably beneficial) EU-US trade and investment relationship, as well as the World Trade Organization's (WTO) credibility in trade dispute resolution.

While joint initiatives like the **Transatlantic Economic Partnership** (TEP) are a step in the right direction (see EURECOM, November 1998), especially with barriers of a regulatory nature, they are not enough to prevent new problems from emerging. For example, an unwelcome development is the introduction of **sub-federal selective purchasing laws** restricting the ability of EU and other companies doing business in specific countries to bid for contracts in various US states and cities. Such legislation has been adopted by the Commonwealth of Massachusetts in the case of Burma (which was recently struck down by a US Federal Court), as well as by 20 other cities and local authorities. These measures aim to regulate the behavior of economic operators that are outside US territorial jurisdiction and affect the conduct of normal international relations.

Among long-standing issues, **unilateralism in US trade law** remains a chief concern. Although the US has in practice made use of the new WTO dispute settlement system, it retains the possibility to take unilateral trade measures (as threatened in the EU-US banana dispute — see EURECOM, November 1998), in particular through the "Section 301" family of legislation. This approach casts doubt on US support for the multilateral rules-based system for addressing trade problems and can also lead to bilateral accords with discriminatory elements.

Consistent with previous years, the 1998 report identifies the **extraterritorial provisions of certain US legislation** — like the Helms-Burton and the Iran-Libya Sanctions Acts — as very damaging to international trade and investment, notwithstanding the important headway made toward resolving these disputes at the EU-US summit in London last May (see EURECOM, June 1998). Still, the EU-US "Understanding" needs the approval of the US Congress before it can take effect, and on-going discussions have not yielded satisfactory results.

To procure a paper copy of the 1998 report, send a request via e-mail to *help@eurunion.org.find.*

EU REQUESTS WTO PANEL ON US ANTI-DUMPING LAW

Among the various sticking points detailed in the 1998 US trade barriers report, the EU has just referred one to the WTO for resolution: the US' **1916 Anti-Dumping Act.**

Following a January 1997 complaint by the European Confederation of Iron and Steel Industry (Eurofer), the Commission has investigated the 1916 Act under the EU's Trade Barriers Regulation (see EURECOM, December 1996) and concluded that the legislation breaches WTO anti-dumping rules and threatens to disturb trade relations with the US. This is the first time the Trade Barriers Regulation has led to a formal WTO panel request.

In particular, the EU believes the 1916 Act violates the WTO Anti-Dumping Agreements since it allows federal courts to impose criminal penalties on importers, exposing them to treble damages. Under WTO rules, the only possible remedy to dumping is antidumping duties alone. Other US infringements of the Agreement include the lack of procedural rules, of a definition (and qualification) of the injury concept and of criteria for the calculation of "normal value".

Further, the EU is concerned about US industry's use of the 1916 Act to restrict access to the US market. This has been highlighted in a recent case initiated under the Act by a US steel producer against a subsidiary of a German steel company.

The EU has informed the US authorities of the 1916 Act's adverse trade effects and of its willingness to reach an amicable solution.

VIENNA WALTZ: EU SUMMIT DEFERS TOUGH DECISIONS

Rather than bog down in intractable negotiations — which is where things were heading — EU heads of state and government deferred difficult decisions on Agenda 2000 reforms at the European Council summit in Vienna on December 11-12. Nevertheless, they did set a concrete deadline for a comprehensive financial package (2000-2006) covering reforms of EU budget, agriculture and regional aid policies in order to facilitate enlargement: a special **March 24-25** (1998) **European Council meeting** in Brussels under the upcoming German Council presidency.

Recognizing that agreement on Agenda 2000 must be reached "as a whole" — and that it will also be extremely difficult to attain — the EU leaders invited all member states "to make their full contribution to achieving a fair, balanced and acceptable outcome based on solidarity and budgetary rigor."

Having clearly stated the EU's top priority — employment — the Vienna European Council noted the substantial progress in creating jobs and reducing EU unemployment, now under 10% for the first time since 1992 (see "...IN BRIEF" section). More, however, needs to be done, building on the use of benchmarks and the highlighting of good practices found in member states' annual Employment Guidelines (see EURECOM, December 1997). Through additional "verifiable objectives and deadlines, both at European and national level, and common performance and policy indicators," the EU leaders soon want to reach **a European Employment Pact.** Accordingly, they invited agreement by the Commission and the member states "on the definition of all relevant indicators" in time for the EU summit in Cologne next June.

Following the recent controversies surrounding tax issues in the EU, the European Council clearly emphasized the need to combat harmful tax competition, but it also underscored that cooperation on tax matters is *not* aimed at uniform tax rates. As agreed in last year's landmark tax package (see EURECOM, December 1997), the goals of tax cooperation are to reduce distortions in the single market, to prevent excessive losses in tax revenue and to make tax structures more employment-friendly. EU leaders also welcomed the Code of Conduct Group's (business taxation) work on identifying predatory tax measures within the EU which may affect the location of business activity, encouraging it to wrap up the project by the Helsinki European Council next December.

With great satisfaction, the European Council hailed the "smooth" transition to the **third stage of Economic and Monetary Union** (EMU) on January 1, 1999 and the birth of the euro "in spite of turbulence on the world financial markets." This is a tribute to prudent economic policies in the context of EMU "which must be continued." The Vienna summit also confirmed that the **Danish krone** and the **Greek drachma** — two of the four "pre-in" currencies — will participate in the new exchange rate mechanism **("ERM II")** vis-à-vis the euro as of January 1, 1999. As to the **euro's external representation,** the European Council endorsed an ECOFIN Council proposal (instead of the Commission's concept — see EURECOM, November 1998), which foresees that the ECOFIN Council president (or, if the president is from a non-euro area member state, the president of the Euro 11), assisted by the Commission, shall participate in G-7 Finance meetings. The European Central Bank, as the competent body for euro zone monetary policy, should be granted observer status at the IMF board. Additionally, EU views on other relevant EMU-related issues would be presented at the IMF board by the EU member state holding the euro presidency, assisted by a Commission representative.

Taking an urgent tone, EU leaders stressed that member states need to implement timely plans for protection of their own infrastructure — especially transportation, energy and water supply networks — in light of **"Year 2000"** problems for computers (see EURECOM, March 1998). Hence, the Commission has been called on to convene a meeting of public infrastructure providers from the EU countries to ascertain the cross-border dependencies in these key areas. Awareness raising should continue across all sectors, however, focusing on the public sector and small and medium-sized businesses.

As usual, the EU leaders also covered a host of external relations issues. For a complete copy of the Vienna summit's conclusions, please go to: *http://europa.eu.int/council/off/conclu/dec98.htm.*

IN-DEPTH EU PROBE OF BT/AT&T VENTURE

After a preliminary probe, the Commission has decided to start an in-depth inquiry into a proposed joint venture (JV) between **British Telecommunications** (BT) and **AT&T,** two of the world's largest telecommunications operators, under the EU's Merger Regulation.

The JV in question would provide a broad range of advanced global telecom services to multinational corporate clients, as well as international carrier services to other carriers. It would comprise the bulk of the parent companies' international telecommunications facilities and related assets, including BT's existing Concert activities (see EURECOM, March 1998).

After its one-month preliminary inquest, the Commission has decided to open a second-phase inquiry into the JV's effects on several telecommunications markets — particularly in the UK — based on the following "serious" concerns:

- the parties combined market position in the provision of global telecom services to large multinational corporations and international carriers;
- the JV's potential creation or strengthening of a dominant position for certain telecom services in the UK;

- the possible coordination effects of the proposed JV in the UK between ACC, a wholly-owned subsidiary of AT&T, and between BT and Telewest, in which AT&T through TCI (see below) will have a jointly controlling stake.

Now the Commission has a maximum of four months to take a final decision on the concentration. Still, it is only a procedural step without prejudice to a final Commission ruling.

In a separate (yet related) case, the Commission has cleared **AT&T's acquisition of Telecommunications, Inc.** (TCI), a US company principally active in cable television networks around the world. It concluded that the merger would not give rise to any competition concerns in the EU due to the highly competitive nature of the markets in which they are active.

QUOTES

"We are deaf to political pressure, but we are not blind to facts and arguments." Bundesbank President ***Hans Tietmeyer*** *commenting on the coordinated cuts in short-term interest rates conducted by the 11 central banks of the euro zone on December 3.*

"What I find remarkable and gratifying is that the liquidity crisis we have had in Asia, Latin America and the US, and to some extent in Europe, has caused no tension inside the participating countries of EMU. And the same is true for short-term interest rates." ECB President ***Wim Duisenberg.***

"It is time to get some maturity into our relationship with Europe. We gain absolutely nothing by losing that sense of balance in the debate. Naturally, if Europe proposes something foolish, I will work to stop it. If necessary, I will do it alone. But I don't start from there. I don't go to every summit or meeting asking how many times I can use the veto." UK Prime Minister ***Tony Blair*** *in an article to The Times of London after the EU summit in Vienna.*

"The cost of almost every aspect of doing business in Europe, from telephone calls, through air travel and water charges, to the social overheads of labor, is way, way too high." Ford Chairman ***Sir Alex Trotman.***

"We have changed the way we look at Europe. From the portfolio management point of view, we have gone from looking at countries to looking at industries." ***Gilman Gunn****, portfolio manager, Evergreen International Equity Fund.*

A LEGAL FRAMEWORK FOR E-COMMERCE

To reap the full benefits of electronic commerce, in particular its job creation potential, the Commission has proposed a directive to establish a coherent legal framework for its development within the single market.

"The single market's legal framework, combined with the single currency, provide the European Union with a unique opportunity to facilitate the development of electronic commerce," commented EU Single Market Commissioner **Mario Monti.**

The proposed directive would ensure that all "information society" services — both business-to-business and business-to-consumer, including those provided free of charge (i.e. those funded by advertising or sponsorship revenue) — benefit from the single market principles of free movement of services and freedom of establishment throughout the EU, as long as they comply with home country laws. Specific harmonized rules would be established only in those areas essential to the provision (and "consumption") of such services in the EU, irrespective of borders. These include: the definition of where operators are established; electronic contracts (see EURECOM, June 1998); liability of intermediaries; dispute settlement; and the role of national authorities. In other areas, the proposal would build on existing EU instruments, and would rely cooperation between the member states. And it would apply only to service providers established within the EU.

Examples of sectors and activities that would be covered include on-line newspapers and data bases, on-line financial services, on-line professional services (such as lawyers, doctors and real estate agents), on-line entertainment services (like video on demand) and Internet service providers.

Global electronic commerce is growing extremely fast and could be worth 200 billion ecu (1 ecu=$1.18) by the year 2000. Worldwide, 86 million people were connected to the Internet at the end of 1996, and by 2000, the forecast is 250 million individuals. Within the EU, jobs created through information society-related activities between 1995-97 have been estimated at more than 400,000, which equates to one out of four jobs created in the EU as a whole.

...IN BRIEF

...Eurostat has just published the third edition of *Social Portrait of Europe,* a review of current social trends in the EU member states. It clearly confirms Europe's "demographic time bomb": the EU population of 60 and over is expected to rise by 37% between 1995-2020, while the EU's birth rate continues to fall. Life expectancy is also still on the rise: baby girls in the EU can expect to live 80.5 years, baby boys to 74 years. However, although two out of three Europeans think they are in good health, one in three men and one in four women develop cancer before the age of 75. Further, an average of 29% of the population aged 15 and over smokes every day.

In terms of work, relatively new forms of employment across the EU — part-time work, fixed-term contracts and a wider range of working hours — have arisen, resulting in a more flexible labor market over the last 10 years. With few exceptions, any EU employment increases are attributable to the rise in part-time jobs, either voluntary or not, for both men and women. But stress levels are higher: more than one in four employed persons reported suffering from work-related stress in 1996. In every member state and across all sectors, women earn less than men.

...As cited at the Vienna European Council, **EU15 average annual unemployment** remained at **9.8%** in October (around 16.8 million people), the same as in September, when it fell below 10% for the first time in six years. This compares with 10.6% in October 1997. Euro-zone unemployment dropped in October to 10.8% from 10.9% in September (October 1997: 11.6%). As usual, **Luxembourg** had the lowest unemployment rate at **2.2%**, followed by the **Netherlands** (3.7%), **Denmark** (4.2%) and **Austria** (4.4%). **Spain's 18.2%** was still by far the highest, but it was two percentage points lower than in October 1997. Big declines were also recorded over the year in **Portugal** (6.5% to 4.5%) and **Sweden** (9.5% to 7.5%).

...The Commission has launched a new unit dedicated to tackling cartels, indicating the priority it is giving to pursuing and eliminating cartels, "which are one of the most harmful restraints of trade." Where cartels operate, consumers pay higher prices than they would under real competition, and they do not benefit from the technological improvements companies have to make when they are truly competing for business. The new service brings together some of the Commission's most experienced officials in the field of cartel investigations within Directorate-General IV (competition policy).

...The December 18 EU-US summit in Washington, DC takes place too late for this month's issue, but we will report on it in January and update the (currently stalemated) EU-US banana dispute as well.

...For address changes and/or follow-up inquiries to EURECOM issues, we now have our own e-mail address: ***eurecom@usany.eudel.com.***

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