



# european community

# NEWS

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## BACKGROUND NOTE

### **DETAILS OF THE EC/US PARTIAL AGREEMENT ON PUBLIC PROCUREMENT**

During the negotiations it became clear that the prime concerns of the United States and the European Community were as follows: the US had wished to achieve full access to the EC's telecommunications and heavy electrical equipment markets, while the EC had sought to achieve access to America's publicly owned electrical utilities sector and to contracts which are predominantly managed by the US states and municipalities at a sub-federal level, including transport and water.

The agreement reached by Sir Leon Brittan and Ambassador Mickey Kantor therefore represents a partial agreement, as it would guarantee US access to the EC's electrical equipment market but not to telecommunications, while the EC wins access to US federal electrical utilities, as well as eventual access to sub-federal contracts.

The United States will still impose sanctions, although they will be substantially reduced. This means the US Trade Representative will withdraw the list of measures announced in the Federal Register (non-allowance of EC bids for contracts tendered in sectors not covered by the Gatt procurement code, minus a list of certain ministries and agencies), replacing it with a list of measures whose economic impact will be considerably smaller. The EC's Council of Ministers will be free to decide how it reacts when it sees the eventual extent of the US sanctions.

The main points of the agreement:

Both sides would agree to:-

- Remove all remaining limitations to each other's companies bidding for contracts to supply goods, works and services to central government (US: Federal) agencies, known as 'Category A' agencies (this of course does not include utilities). This will open up a huge market for all forms of service provision to government. At present there is balanced access to each others' government agencies for most goods contracts, but no services and works. This should ensure that, for example, problems such as the US sonar mapping contract, which recently brought the EC and US into confrontation in a Gatt Panel, should be available without question to EC bidders.

The United States would agree to:-

- Remove all restrictions, limits and discrimination against EC bids for tenders by the five publicly owned federal electrical utilities, plus the Tennessee Valley Authority. A large part of the US market for electrical utilities is in the private sector, and is already open to EC bidders
- Set in train a process which will lead to the eventual elimination of 'Buy American' provisions carried out at sub-federal level. This type of access already exists in the EC. The US Administration will therefore approach the governors of all 50 states about the withdrawal of 'Buy American'. 33 of these have already expressed a general willingness to consider removing such restrictions, but these need firming up into genuine commitments. The other 17 will be asked by the Administration to join the same process.

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This is crucial for the Community, as most of America's tenders for contracts in ports, airports, urban transport and water supplies are offered out by the state and municipal authorities rather than the federal government (examples include the modernisation and extension of airports, the dredging and extension of ports, the building of highways, the building of metro systems and rapid transit railways, the construction of dams and the purchase of school buses. All these contracts are currently effectively closed to EC companies, which often have to be as much as 25% cheaper than their US competitors to win the deal). The federal authorities apply Buy American provisions on sub-federal authorities, often by making federal funding conditional on Buy American curbs being attached to the tendering procedures. This process will be assessed in one year's time.

This therefore marks the beginning of a process to remove 60 years of discrimination since Buy American laws came into force.

- The US Administration will also approach the largest US cities and municipalities (with a population of over half a million) to make the same commitments. In addition, they will approach the major utilities which are partly in public and partly in private hands.

The EC would agree to:-

- Disapply Article 29 of the EC Utilities Directive to US companies in the electrical equipment sector. The final decision rests with the the Council of Ministers, which would act on a proposal from the Commission.

Both sides would also:-

- Launch a joint, independent study to ensure that greater access to both EC and US procurement markets could be carried out in a comparable way. The terms of reference of this study will be agreed in advance, and will guarantee that relative access is measured in both qualitative and quantitative terms. The study will be jointly funded. The study will carry matters forward in two ways. First, in the light of its findings, the US Administration will introduce legislation binding the states and municipalities into commitments on revoking Buy American provisions. Second, the results of the study will act as a yardstick by which negotiations can continue on the opening up of sectors not covered by this agreement.

Either the US or the EC may revoke the agreement after one year if they consider that not enough progress has been made, for example on sub-federal commitments.

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