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## EC RELEASES 1991 US TRADE BARRIERS REPORT

The European Community today issued its **1991 Report on US Trade Barriers and Unfair Practices** that impede EC companies from doing business in the United States.

The EC report - the sixth in a series - is an illustrative, non-exhaustive, but representative account of various unfair or discriminatory practices and provisions which run counter to the principles of international trade and to the multilateral commitments of the United States. One characteristic of a number of measures of particular concern to the Community is the US propensity to rely on unilateralist approaches to solve trade problems. As the report shows, the barriers occur in many areas of economic activity, including services, investment, telecommunications, public procurement and standard setting.

The report seeks, in the interest of transparency, to identify obstacles to trade and investment and other unfair practices which exist in the US. The US engages in a similar annual exercise with its **National Trade Estimate Report on Foreign Trade Barriers**. This can only serve to increase the level of understanding of each other's concerns. However, this should not be used as a justification for taking unilateral retaliation measures, clearly incompatible with the General Agreement on Tariffs and Trade (GATT), in the way the US report may be used (e.g. possible trade sanctions under "section 301" of the 1988 US Trade Act or similar provisions on intellectual property ("special 301") and on procurement.

The EC sees its own report as a first step towards the elimination of US barriers and unfair practices either through existing multilateral procedures, in the course of the Uruguay Round or through a bilateral dialogue between the Community and the United States. It is hoped that the new impetus to the process of bilateral consultation and cooperation provided by the recently adopted Transatlantic Declaration (EC News 41/90) will facilitate the removal of such barriers on both sides of the Atlantic.

It should be recalled that the US, like the Community, has repeatedly expressed its commitment to the free flow of trade and investment as an indispensable condition for sustained economic growth. This shared belief in the value of free economic exchange is largely reflected in practice. The EC and the US are each other's largest single trading partner: in 1990, two-way trade amounted to more than \$174 billion, while two-way direct investment added up to \$385 billion in 1989.

The Trade Barriers report, however, demonstrates that while the US is a comparatively open economy, it is not free of the type of trade and investment barriers which materially affect the interests of its trading partners and which it condemns in its own **National Trade Estimate Report on Foreign Trade Barriers**.

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It should be emphasized that not all of the problems described in the EC report are the deliberate result of protectionist-inspired policies or legislation. Some are certainly the unintended outcome of measures adopted for valid domestic reasons. Others arise from the differences which exist between the regulatory systems in the EC and the US. In an era of growing global economic interdependence, it is indispensable to encourage sustained effort to bring about a greater degree of convergence between regulatory systems on a multilateral basis.

Some of the problem areas described in the report are:

#### Unilateralism

The report demonstrates that provisions allowing for US unilateral action are found in many US laws. Such an approach is not compatible with the GATT and runs contrary to the kind of multilateral collaboration necessary to maintain a viable and expanding international trade regime.

Unilateralism generally takes the form of unilateral sanctions or retaliatory measures against "offending" countries and their companies doing business in or with the United States. As examples, the report cites Section 301 as amended by the 1988 Trade Act, as well as the Act's special provisions on intellectual property (so-called "special 301"), telecommunications and public procurement.

#### Extraterritorial Application of US Law

US legislation often attempts to extend the application of its provisions to persons, natural or legal, who are outside American jurisdiction.

Extraterritorial elements can be found in legislation on export controls, anti-drug measures, arms traffic and taxation and investment measures. The best way to make progress on these issues is through multilateral cooperation. As a matter of law and policy, the Community objects to the extraterritorial extension of US jurisdiction to activities within the jurisdiction of the EC.

#### Denial of National Treatment

The denial of national treatment or discrimination against foreign individuals, companies or products arises from provisions in a wide array of US legislation. Examples include "Buy American" restrictions; restrictions on procurement on foreign services and products (including sectors already covered in the existing GATT code); discriminatory taxation of foreign products, services or companies; and restrictions on foreign investors.

#### Abuse of National Security

The US attempts to justify a number of measures on the grounds of national security, a concept which is clearly stretched to unwarranted lengths to justify barriers in areas such as public procurement, services and investment. Such measures introduce additional elements of uncertainty to business decision-making.

State vs. Federal

Another difficulty for those doing business with the US is the increasing fragmentation of the US market and regulatory system and the seemingly growing number of barriers being encountered at the State rather than at the Federal level. This especially affects areas like public procurement, and is of particular concern to the EC because of the shift to higher spending at State rather than at Federal level.

Similarly, regulatory activity by the States in areas such as standard and environmental protection or taxation, as well as a wide array of restrictions on financial services, is causing difficulty to those trying to export goods to the US, provide services, or carry out direct investment projects.

The EC is concerned by this, in particular in view of the US refusal in the GATT and in the ongoing talks in the Organization for Cooperation and Development (OECD) on the reinforcement of the National Treatment Instrument, to give a clear undertaking that its States will be bound by any agreement. This is all the more striking as the EC proceeds with its Single Market program which implies a greater opening of the Common market.

Approximately 70 provisions are covered in the report.

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**Note: copies of the EC Report on US Trade Barriers may be picked up at the Reception Desk of the EC Commission Delegation, 2100 M Street NW, Suite 707, Washington DC 20037.**

