

EURECOM

Monthly bulletin of European Community Economic and Financial News

VOLUME 4, NUMBER 3

MARCH 1992

EC STATEMENT ON US FDI POLICY

In a recent memo, the EC Commission expressed its growing concern over US policy on foreign direct investment (FDI), especially over certain provisions of the 1988 Omnibus Trade and Competitiveness Act, otherwise known as Exon-Florio. Exon-Florio provisions require all mergers and acquisitions by foreign firms in the US "affecting national security" to be screened by a committee; based on its recommendation, the US president could order a foreign investor to divest its assets.

While the EC does not contest a country's right to take measures to defend its "national security", the scope of Exon-Florio is extremely broad. Neither the statute nor the enabling US Treasury regulations define what is meant by "national security", and there is no time limit on presidential action. Further, such action is not subject to judicial review and compensation in divestment decisions is not foreseen.

Despite protectionist pressures, the US administration has largely applied this legislation without inhibiting FDI. Still, the EC believes that the uncertainties created by the law's wide and undefined scope could potentially damage business confidence. Already, these concerns have prompted EC investors to notify voluntarily proposed acquisitions to the Committee on Foreign Investment in the US for screening. In the future, if "national security" grounds are used for essentially protectionist reasons, the damage to the EC-US economic relationship and to the global economy could be very serious.

The huge growth in FDI flows in the last decade has greatly increased the economic linkages between the EC and the US. In 1990, Community investors owned more than half of the FDI stocks in the US, while US investors owned over two-fifths of EC FDI stocks. At historical prices, these investments are worth more than \$400 billion; at current prices their value is certainly much greater. As a recent US Commerce Department report pointed out, foreign-owned companies now account for an impressive share of total employment, value added, sales and research and development expenditure on both sides of the Atlantic. Furthermore, a very important percentage of the merchandise trade between the industrialized countries occurs between parent companies and their affiliates. In the US, this "relationship" accounted for one-fifth of total exports and one-third of total imports in 1990.

In the spirit of the EC-US Transatlantic Declaration of November 1990, both parties are already working together in the OECD and in the GATT to reinforce the principles of national treatment and non-discrimination in international trade and investment. The Community hopes that the US will be able to safeguard national security interests while ensuring that business can make investment decisions with the necessary degree of confidence.

EC TO ACCELERATE BAN ON CFCs

Following new scientific evidence on the destruction of the ozone layer, including predictions of a new ozone "hole" over the northern hemisphere, EC environmental ministers have unanimously agreed to accelerate the complete elimination of chlorofluorocarbons (CFCs) and other ozone-eating chemicals. Under the agreement (which now awaits enacting legislation from the Commission), CFCs, carbon tetrachloride, halons and methyl chloroform would be banned by the end of 1995, compared with the EC's original target dates of mid-1997 for CFCs, end-1997

for carbon tetrachloride and January 1, 2000 for halons (see EURECOM, January 1991).

In what EC Environmental Commissioner Carlo Ripa di Meana has described as "an escalation of virtuous behavior", Germany, Denmark, the UK and Luxembourg have already decided independently to bring their bans on CFCs forward to 1995. Further, the US has also moved to phase out ozone-depleting chemicals by the end of 1995, five years ahead of its previous deadline. Ripa di Meana said that the accelerated EC ban would provide for an 85% reduction in the specified chemicals by the end of 1993.

The EC will push for writing the new targets into the Montreal Protocol, the governing international

agreement on the ozone layer, at the next meeting of signatories in November. (The Montreal Protocol set 2000 as the target date for eliminating all CFCs). In addition, Ripa di Meana seeks controls on HCFCs (hydrochlorofluorocarbons), transitional substitutes for CFCs which are only about 5% as destructive to the ozone.

COURT OF FIRST INSTANCE ANNULS PVC CARTEL FINES

In a potentially far-reaching decision, the EC Court of First Instance recently annulled a 23.5 million ecu (1 ecu=\$1.23) fine imposed on 14 plastics firms by the Commission in 1989 for running an illegal cartel in PVCs (polyvinylchloride). According to the Court, the relatively new, lower arm of the EC Court of Justice that deals with competition and administrative cases, the Commission seriously breached correct procedure in issuing the fines.

The Court's ruling cited egregious inconsistencies between the different language translations of the decision and the original text agreed by the Commission, and the absence of "proper" signatures on the final documents. In essence, the Court has called into question the Commission's fundamental operating procedures which have been in use for the last 25 years and which were used in the PVC cartel decision.

If the ruling stands, thousands of similar EC decisions could be challenged, throwing the EC legal system into chaos. The Commission "does not share the Court of First Instance's interpretation", and is appealing the case to the EC Court of Justice.

EEA GOES BACK TO COURT FOR FINAL CLEARANCE

Responding to demands of the European Parliament, the Commission has sent the reworked European Economic Area (EEA) treaty between the EC and EFTA (European Free Trade Association) back to the European Court of Justice for a second time. However, the Court will only review the chapters relating to judi-

ciary matters, which it ruled illegal under EC law last December, thereby holding up the accord's ratification process.

Under the revised agreement, which the EC and EFTA endorsed last month (see EURECOM, February 1992), the two sides agreed to live without an airtight guarantee of legal homogeneity in the EEA and to establish a joint arbitration panel to settle EEA-related disputes. The Commission and Court will deal with all competition cases involving both groupings, while an EFTA "Surveillance Body" will handle exclusively EFTA cases and less important cases where over one-third of sales occurs in EFTA territory.

Although the Commission was reluctant to send the revision back to the Court, Parliament's veto threat ensured that the Court got a second look. Parliament fears the revised accord will give the seven EFTA countries more powers than it possesses.

The Commission believes the Court will approve the revisions and foresees a decision within six weeks. Despite the additional delay, the Commission still considers the target date of January 1, 1993 for full EEA ratification possible. Swiss Economics Minister Jean-Pascal Delamuraz hopes, however, that the EC's need for "clarity in its affairs is realized before it is too late, before... the enthusiasm, the dynamism that we need to bring about this great work have become too dulled."

BRITAN DEFENDS EC MERGER REGULATION

At a recent Symposium of the Forschungsinstitut Wirtschaftsverfassung und Wettbewerb (Research Institute for Economic Affairs and Competition) in Innsbruck, Austria, EC Competition Commissioner Sir Leon Brittan defended the EC's current merger regulation and registered grave reservations about the need for an independent European Mergers Authority.

It has been suggested, particularly after the controversial De Havilland

decision (see EURECOM, October 1991), that the EC Commission is too susceptible to political pressures to be the ultimate arbiter of large EC mergers; an independent Mergers Authority, "free from political influence and objective in its decision-making", would be better. Sir Leon replied that "it is only by demonstrating the utmost intellectual integrity that we [the Commission's Merger Task Force] can win credibility." According to Sir Leon, the Commission has so far resisted all political pressures and has pursued a policy loyal to the regulation and to the concept of maintaining effective competition within its jurisdiction. Based on this performance, the case for change has not yet been demonstrated.

Sir Leon realizes that the issues at stake in a merger decision can never be simply technical; there will always remain an important element of judgement. Hence, pressures would exist for an independent Mergers Authority just as they do for the Commission at present. The members of an Authority would be chosen from the member states (like the Commission's Merger Task Force) and would be subject to the same national pressure as Commission members.

He also pointed out that even the most enthusiastic protagonists of a Mergers Authority do not suggest that it should have the last word. For example, even the German competition authority, the extremely independent Bundeskartellamt, can be overruled. While this may not be a problem in Germany, where commitment to competition policy has been a tenant of its post-war prosperity, there is not a comparable commitment to competition policy in the EC at large.

Often it is suggested that a European Mergers Authority should make its "objective" recommendation, but another body, either the Council or the Commission, should have the ultimate power to overrule the Authority. Sir Leon believes that allowing either body to override the Authority would ensure and legitimize the application of political factors in final

decisions. "If you give a body such as the Commission or Council the right to take the final decision, it is bound to want to exercise that right and to feel free to bring to bear considerations other than those of competition," said Commissioner Brittan.

In terms of practical difficulties, it took 16 years to achieve the current merger regulation: how long would it take to reach decision on an alternative method? And how long would it take to resolve the mundane question of where the seat of any new Authority should be? The European Environmental Agency, for example, has been held up for almost two years (and counting) on such an issue.

COMMON POSITION ON KEY INSURANCE DIRECTIVE

After a long delay in the European Parliament, EC Internal Market Ministers recently formalized a Common Position on the Third Non-Life Insurance Directive, sealing a political agreement reached last December (see EURECOM, December 1991).

A cornerstone for a single market in financial services, the directive would provide a system of "home country control", whereby insurance firms licensed in one member state could sell insurance products (except life insurance, which is the subject of separate legislation) anywhere in the EC without operating a branch in each EC country. It would also allow insurance firms to establish branches throughout the EC on the basis of a single license, and would permit Community citizens to shop for insurance policies across borders.

Although the legal barriers to cross-border insurance shopping will be eliminated by the directive, EC experts acknowledge that factors such as linguistic barriers and differing contract law in the member states will still inhibit consumer insurance purchases in other member states, at least initially.

Now that a Common Position has been reached, the directive should enter into effect in nine member states on schedule — July 1, 1994 — as determined last

QUOTES

*"Economic and currency union...will be an anchor of stability not only for member states, but for Europe as a whole." German Chancellor **Helmut Kohl**.*

*"The EMU is a stepping stone to political integration rather than an instrument to improve economic considerations...Progress is therefore highly dependent on an explicit and lasting political will to fulfill the agreed policy targets." Danish Central Bank Chairman and current head of the EC central bank governors committee **Erik Hoffmeyer**.*

"The Community should not pretend to want to control everything. Our concepts of future enlargement and of the European 'architecture', notably our links to Central and Eastern Europe,

*must fit into a global picture...There has to be room for the Russians, the Americans and the Japanese. It is not in the Community's interest to upset any balance." EC Commissioner **Henning Christophersen**.*

*"I cannot accept, and nobody can understand, that the Americans, having signed a multilateral GATT accord, should retain the right to take unilateral [trade] measures. It is like playing soccer and suddenly applying the rules of rugby to tackle opponents." EC Commission President **Jacques Delors**.*

*"We're not saying that only when all legal measures are adopted, all the frontier controls will disappear. It's the other way around. The frontier controls will disappear anyway." EC Internal Market Commissioner **Martin Bangemann**.*

December. Spain, Portugal and Greece would receive derogations (Spain until the end of 1996; Portugal and Greece until the end of 1998).

EC RESPONDS TO US THREAT ON PUBLIC PROCUREMENT

A US threat to impose unspecified sanctions on the EC on January 1, 1993 when new EC public procurement rules in the "excluded sectors" (energy, water, transport and telecommunications) take effect has drawn criticism from the Community.

The EC directive in question, adopted in 1990 (see EURECOM, April 1990), obliges public authorities in the "excluded sectors" to open contracts to EC-wide competition, but it calls for a Community preference if an EC bid is not over 3% more expensive than an equivalent non-EC bid. The directive also allows public entities to ignore third-country bids with a value of more than 50% from outside the EC.

From the start, the EC's preference clause in the "excluded sectors" directive

has been a bargaining chip in the Uruguay Round negotiations to combat national preferences in public procurement, such as "Buy America" clauses, on a multilateral basis.

The EC has repeatedly expressed its deep concern not only about the proliferation of Buy American provisions at the federal level, but also about the legislative barriers and discrimination directed against European suppliers at state and local levels.

"The disputed [EC] clause...should be seen in the context of the discriminatory Buy America Act and a host of other discriminatory procurement rules in the US," said an EC official. "The attempt by the US to gain negotiating leverage over the Community by threatening unilateral action unless US demands are met is not conducive to a successful outcome of these [GATT] negotiations."

According to the EC official, the recent decision by the City of Los Angeles to cancel a Japanese subway contract merely due to public pressure would not have been allowed under the EC legislation.

...IN BRIEF

...Italy has climbed out of last place in the EC member states' single market implementation standings. Heeding a warning from EC Commission President Delors in January for chronically lagging behind in transposing EC directives into national law, Italy has improved its overall rate to 73% after several years around the 50% mark. Now Luxembourg finds itself in last place with a 61% transposition rate, followed by fellow Benelux countries Belgium (64%) and the Netherlands (66%). Denmark retains its position as the most dutiful member state with an 84% rate. Although the member states' overall implementation rate has dipped to 72% from 77% in December, EC Internal Market Commissioner Martin Bangemann remarked that there has been a "net acceleration" because more directives have been decided on since then.

...The EC's January economic data is in and there's good news and bad. On the bright side, EC annual inflation eased to 4.7% from 4.8% in December and from 5.6% in January last year. Inflation rates were lower in all member states except Germany, the Netherlands, Ireland and Italy. On the darker side, reflecting slower EC aggregate economic growth, the EC's seasonally adjusted unemploy-

ment rate ticked up to 9.3%. This compares with 9.2% in December and 8.4% in January 1991.

...Euronews, Europe's multilingual alternative to CNN, will take to the airwaves next January 1. European governments (including some non-EC countries) and the EC have pledged financial support for the Lyon, France-based network. Euronews, which projects a potential audience of 23 million, says it needs public subsidies for 5 years to supplement advertising rev-

enue and contributions from 12 European broadcasters in order to establish itself firmly.

...On February 27, the EC and Estonia initialled a trade and cooperation agreement similar to agreements already signed between the EC and the two other Baltic states, Latvia and Lithuania. It is the first agreement between the Community and Estonia since the latter's independence was recognized by the EC in August 1991.

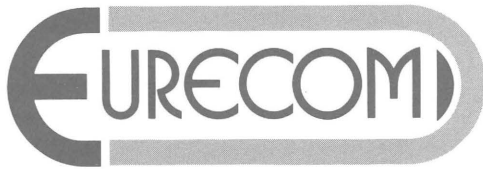
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