

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TN.64/NTB/20
19 June 1964

Special Distribution

Sub-Committee on Non-Tariff Barriers

Original: English

PREFERENCE FOR DOMESTIC PRODUCTS IN PURCHASES BY PUBLIC AUTHORITIES (UNITED STATES "BUY-AMERICAN" AND OTHER RESTRICTIONS)

Note by the United Kingdom Delegation

A. Nature of the non-tariff barrier

1. The "Buy-American" Act of 1933 requires that, as a general rule, only goods produced in the United States shall be acquired for public use. Foreign goods may however be purchased where the cost of domestic goods is unreasonable or when it is not inconsistent with the public interest to do so. The Act does not apply to purchases for use outside the United States.
2. The Act did not give any guidance to the interpretation of its provisions and Departmental policies varied widely. However in 1954, President Eisenhower ordered that the cost of domestic goods was to be considered as "unreasonable" when it was more than 6 per cent above the foreign cost; in cases where the goods are to be made in an area of high unemployment a figure of 12 per cent applied.
3. In late 1960, however, following the Presidential Balance of Payments Directive of 16 November 1960, a 25 per cent margin of preference was given to domestic suppliers for all off-shore requirements, although such purchases were not, in fact, covered by the Buy-American Act provisions. In July, 1962 the Defence Department ruled, in effect, that the margin of preference for their domestic requirements should hence forth be extended from 6 per cent or 12 per cent to 50 per cent. This was achieved administratively by a Directive requiring that every proposal for the purchase of foreign goods over \$10,000 for defence requirements should be referred to Washington for very high level approval. The Department has been applying a general "benchmark" of a 50 per cent preference for all off-shore purchases although on some occasions a higher preference has been accepted; and a similar preference is generally adopted for off-shore purchases by other United States Government purchasing authorities.
4. The United States Administration has amended the Armed Services Procurement Regulations so as to give formal expression to the 50 per cent preference. It is understood this amendment makes clear that the preference is intended as a temporary measure adopted in the interests of the United States balance of payments.

5. Certain other provisions prohibit the purchase of foreign goods by public authorities or recipients of public funds. These include legislation concerning loans for rural electrification and the "Berry Amendment" on procurement of food, clothing etc., for the armed forces.

6. Preferential treatment for American goods is also applied to sales in American Post Exchange (P.X.) Stores, which are required to price non-American goods at the local prices including duty, tax, etc., while American goods are sold duty-free.

7. Some of the most important States of the Union (see Annex) also have their own protectionist legislation requiring State and local authorities to give preference to domestic goods. In the case of California, this is an absolute prohibition on the purchase of foreign supplies. Many others adopt this system in practice.

B. Reasons for notifying the non-tariff barrier

8. Trade has been considerably disrupted by these preferences. It is naturally not possible to quantify the loss which may have been caused to United Kingdom exporters who may have failed to secure contracts through the operation of these measures or who may have come to the conclusion that it was not worthwhile to attempt to tender; in the latter category, H.M. Government knows of prospective tenders for at least \$35 million of which \$30 million was in the field of heavy electrical equipment alone, which were not submitted by United Kingdom manufacturers since the introduction of the increased preferences in July, 1962.

C. Changes which the United Kingdom wish to see made

9. The United Kingdom note that the Working Party of the OECD Trade Committee, in its draft report on United States Legislation and Regulations, Applicable to United States Government Procurement, expressed the view that there should be progressive steps to relax the impact of the United States balance-of-payments programme on foreign suppliers as their balance-of-payments position improved. The United Kingdom are of the opinion therefore that preferences accorded by the United States for domestic products purchased by public authorities whether for use off-shore or in the United States should be phased out and that the first step should be the early withdrawal of the 50 per cent margin of preference. Other non-tariff restrictions discriminating against public purchases of foreign goods should also be abolished.

Annex

STATES WHICH HAVE LEGISLATION GIVING DOMESTIC PREFERENCES

California

Iowa

Kansas

Louisiana

Maryland

Massachusetts

Montana

North Carolina

Oklahoma

Oregon

Washington

Wisconsin

Wyoming