

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers

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PROVISIONS IN FORCE IN THE UNITED STATES DESIGNED TO ENCOURAGE PURCHASES OF DOMESTIC PRODUCTS BY FEDERAL AND LOCAL AUTHORITIES

Note by the Delegation of the EEC Commission

A. Nature of the non-tariff barrier

In general, the provisions currently in force in the United States with respect to purchases by Federal and local public authorities are designed to give a substantial preference, if not an exclusive privilege, to domestic producers.

(a) At the Federal level

Under the "Buy American" Act of 1933, the Federal Government or agents of Federal public authorities must give preference to domestic suppliers over foreign suppliers unless the offering price is unreasonable or unless it would not be in the public interest to place the order with the domestic supplier.

Under Executive Order No. 10582 of 1954, the price is considered as unreasonable when it is 6 per cent (in certain specified cases 12 per cent) above the price offered by a foreign bidder.

The above-mentioned legislation applies only to purchases of goods for use within the United States. For purchases of goods intended for off-shore use, there should be no exceptions to the principle of free competition. Because of the United States balance-of-payments position however, a preference for domestic producers has been fixed even in this regard by the Defence Department so far as purchases within its jurisdiction in 1961 are concerned. Since 1962, this margin of preference has been about 50 per cent.

The same margin of preference has been applied by the Defence Department since August 1962 with respect to purchases of goods intended for use within the United States. The situation of foreign bidders is made still more difficult by other administrative provisions, such as the requirement that any proposal for purchasing foreign products of more than a certain value must be submitted to Washington for approval.

(b) At the regional level

Under the internal legislation of a number of States of the Union, the public authorities are obliged to make their purchases solely (as in the case of California) or by priority from domestic suppliers. So far as the Commission knows, the following States apply such legislation in this field: California, North Carolina, Colorado, District of Columbia, Florida, Iowa, Kansas, Louisiana, Massachusetts, Missouri, Montana, New Jersey, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Texas, Wisconsin, Wyoming. In Alabama and Maryland the preference is limited to certain products.

In some cases, when foreign products are permitted to compete with domestic products, formalities such as the verification of materials, etc., are designed to discourage the use of foreign supplies. For example, in 1961 the International Seaport of Miami (Florida) made acceptance of foreign sheet-piling subject to the weight of each piece being checked at the site.

B. Reasons for notifying the non-tariff barrier

The Commission considers that the legislation existing in the United States in this field would render meaningless any tariff concessions granted to the EEC on products purchased by government agencies.

Indeed, to consent to the granting of priority to national suppliers so long as their prices are not more than 50 per cent higher than the prices quoted by foreign suppliers, would in practice be tolerating the application of an additional 50 per cent customs duty on the imported product.

The psychological effect of this legislation is such that many interested parties no longer tender, considering their chances of success as being very slight.

The Commission wishes to emphasize that under Section 252 of the Trade Expansion Act, if legislation of this kind were applied by other countries, the United States Government would be authorized to withdraw or suspend tariff concessions exchanged in pursuance of that Act.

Furthermore, the administrative difficulties which affect foreign products competing in public tenders under the internal legislation of some States are contrary to Article VIII of the General Agreement.

The Commission has been informed of complaints over application of the above-mentioned provisions relating to a large number of products, including: orders of cables for the United States Army, aluminium products, asbestos-cement pipes, tarred string, sheet-piling constantly used in the marine sector, steel, construction machinery, tyres, heavy electric equipment etc.; the value of the orders and of any sales of products is often very high and of great interest from the commercial point of view.

C. Request by the Commission

The Commission requests the Sub-Committee to examine the non-tariff obstacles illustrated above. It hopes that the United States Government will recognize that such legislation is detrimental to any satisfactory balance of concessions and that in this spirit it will be disposed to make reasonable proposals during the discussions in the Sub-Committee on this matter, with a view to eliminating the discrimination thus created to the detriment of foreign products.