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JAPAN - MEASURES AFFECTING THE PURCHASE OF TELECOMMUNICATIONS EQUIPMENT

Request for Consultations by the European Communities

The following communication, dated 18 August 1995, from the Permanent Delegation of the European Commission to the Permanent Mission of Japan is circulated in accordance with Article 4.4 of the DSU.

On behalf of the European Community, I hereby request consultations with Japan under Article XXII:1 GATT 1994 and Article 4 of the "Understanding on Rules and Procedures Governing the Settlement of Disputes" (hereinafter also referred to as the "Understanding") with respect to the agreement, reached between the Governments of the United States of America and Japan on 12 March 1994, regarding telecommunications (hereinafter "the IDO-Monitoring Agreement"). The agreement, which takes the form of an exchange of letters, concerns in particular the monitoring and overseeing by the Government of Japan of the completion of a letter of intent (LOI) from the Nippon Idou Tsushin Corporation (hereinafter "IDO") to Nippon Motorola Ltd. and Motorola Inc. (hereinafter "Motorola"), as well as deployment schedules attached thereto. It also includes a commitment by the Government of Japan to approve a request by IDO to reallocate certain radio frequencies, and to grant all necessary permits and licenses to IDO in order to enable it to fulfil its obligations under the letter of intent.

In 1988 the US Government complained that the North American TACS system was not available throughout the entire territory of Japan and, as a result, Motorola equipment could only be sold to one operator (DDI). After having published a set of retaliatory measures, on 28 July 1989 an agreement was reached between the US Government and the Government of Japan according to which the Government of Japan designated IDO to install a second analogue network based on the North American standard used by Motorola. The 1989 agreement also established the operator-supplier relationship between the two companies.

In the following years the US increased pressure on IDO to accelerate investment into this network leading finally to the 1994 LOI which commits IDO to speed up its investment into the Motorola-based analogue network, to buy a specified amount of network equipment from Motorola and devote at least two-thirds of its total advertising spending to the promotion of this infrastructure. In a letter to United States Trade Representative Kantor, the Japanese Ambassador Kuriyama declares that the Government of Japan will take "all available measures" to ensure that IDO complies with its commitments. In his response, United States Trade Representative Kantor declares that the US will not take sanctions under the 1988 Trade Act. The consultations and discussions between the EC and Japan, to date, have confirmed this understanding of the facts.

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The agreement excludes European suppliers of an important part of the Japanese mobile analogue equipment market. The Community is concerned that it may become an example for future US-Japan agreements whether in the telecommunications sector or in any other sector where the Japanese Government may be required to influence companies' purchasing behaviour. From the Community's point of view, this would cause an economic damage which would further increase the damage caused by the existing mobile telephone agreement. It could eventually discourage European companies to make business in Japan.

The European Community considers that the IDO-Monitoring Agreement may constitute a breach of Japan's obligations under the WTO, particularly those under Articles I and III and Article XVII GATT 1994, or that it would constitute a measure applied by Japan which, even if it would not conflict with the provisions of the WTO, might nullify or impair benefits accruing to the European Community thereunder.

By signing two international agreements with the US and by committing itself to take all available measures to ensure that IDO fulfils its commitments under the LOI, the Japanese Government apparently has made a requirement to the mobile operator to buy equipment from Motorola. Given that IDO operates in a regulated market, the Government of Japan has a wide range of "available measures" which could be used to ensure compliance. These measures can include delaying approval of proposed tariff changes, withholding support for financial subsidies and withdrawing the licence to operate a mobile telecom network. By making the threat of using these measures the Japanese Government would have prevented IDO from changing the LOI if it had later wished to do so as a result of unforeseen market developments. In addition, the Japanese Government offered certain advantages to IDO in return for the company's willingness to install the TACS-based system, as the allocation of additional frequency and financial support (as has been pointed out in the Japanese Government's position paper handed over to the Commission on 23 February 1994).

In the Community's view these measures would accord more favourable treatment to US products than to Community goods and therefore would be contrary to Article I (1) GATT 1994 in conjunction with Article III (4) GATT 1994. In addition, they would be in contradiction to Article XVII (1c) GATT 1994 which requires contracting parties not to prevent any enterprise under its jurisdiction to make purchases solely in accordance with commercial considerations.

Therefore, the European Community requests a meeting with the appropriate Japanese authorities to discuss the matter with a view to finding a mutually satisfactory solution in accordance with Article 4 of the Understanding.