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UNITED STATES - MEASURE AFFECTING GOVERNMENT PROCUREMENT

Request for Consultations by the European Communities

The following communication, dated 20 June 1997, from the Permanent Delegation of the European Commission to the Permanent Mission of the United States and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the United States pursuant to Article XXII of the Government Procurement Agreement (GPA) and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes regarding the Act Regulating State Contracts with Companies doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (Chapter 130 of the Acts of 1996). This Act provides, in essence, that public authorities of the Commonwealth of Massachusetts are not allowed to procure goods or services from any persons, whether US or foreign, who do business with Burma (Myanmar).

The European Communities consider that, as Massachusetts is covered under the US offer to this Agreement, the measure described above violates the obligations of the US under the GPA: specifically, the European Communities are of the view that the Massachusetts legislation contravenes, though not necessarily exclusively, the following provisions of the GPA: Article VIII(b), given that it imposes conditions on a tendering company which are not essential to ensure the firm's capability to fulfil the contract; Article X as it imposes qualification criteria based on political rather than economic considerations, and Article XIII to the extent that the statute allows the award of contracts to be based on political instead of economic considerations.

This measure also appears to nullify or impair the benefits accruing to the European Communities under this Agreement, particularly as it limits the access of EC suppliers to procurement by a sub-federal authority covered by the Government Procurement Agreement in such a way so as to result in a de facto reduction of the US sub-federal offer under the GPA.

The European Communities additionally consider that this measure has the effect of impeding the attainment of the objectives of the GPA, including that of maintaining a balance of rights and obligations.

The European Communities are also very concerned by the recent proliferation of similar initiatives taken or proposed by Massachusetts and other sub-federal authorities.

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This request for consultations is without prejudice to the potential pursuit of actions under the General Agreement for Trade in Services.

I look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.