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JAPAN - PROCUREMENT OF A NAVIGATION SATELLITE

Request for Consultations by the European Communities

The following communication, dated 26 March 1997, from the Permanent Delegation of the European Commission to the Permanent Mission of Japan and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with Japan pursuant to Article XXII of the Government Procurement Agreement and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes regarding a recent procurement tender published by the Ministry of Transportation (MoT) of Japan to purchase a multi-functional satellite for the installation of a Global Navigation Satellite System (MSAS) for Air Traffic Management.

Following the publication by the MoT of MSAS specifications in August 1996, the European Commission raised the concern on several occasions that these specifications refer explicitly to those of the US WAAS and that a more neutral formulation was requested allowing for extended interoperability. This would prevent European companies from being discriminated against and allow them to participate in the tender, if they wanted to do so.

When publishing a call for tender on 15 November 1996, no account was taken of the concerns raised by the Community. As a result, European bidders had no effective possibility of participating in the tender and were treated less favourably than suppliers of other Parties. This situation raises the question of compatibility of the above-mentioned tender and related measures with the Government Procurement Agreement (GPA), as MoT is covered under Annex I of Appendix I of Japan's commitments under this agreement. The European Community considers that the direct reference in the specifications of the tender to the US system is in contravention of the general provision on Non-discrimination under Article III GPA.

The Community considers, moreover, that the direct reference in the specifications of the tender to the US system is also in contravention of provisions concerning technical specifications as laid down in Article VI (3) GPA. This requires *inter alia* that technical specifications shall be in terms of performance rather than design and that there shall not be any reference to a particular trademark, design or type, etc.

Finally, since US WAAS specifications are not public, the reference to such specifications also appears to infringe Article XII (2) GPA. This provision requires that tender documentation shall contain all information necessary to permit suppliers to submit responsive tenders. Such documentation should include a complete description of any requirements, including technical specifications, which have to be fulfilled.

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