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- Progress report

Delegations will find attached the declassified version of the above document.

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RESTREINT

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REPORT

from: Permanent Representatives Committee

to: Council

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I. INTRODUCTION

One of the objectives of the New Transatlantic Agenda (NTA) and the accompanying Action Plan between the European Union and the United States of 3 December 1995 is the conclusion of a comprehensive S/T Cooperation Agreement in 1997. On 3 April 1996 the Commission submitted a recommendation for a Council decision authorising the negotiation of such an agreement ⁽¹⁾. At its meeting of 24-27 June 1996 the Council authorised the Commission to enter into negotiations with the US for the elaboration of a S/T cooperation agreement on the basis of approved negotiating directives ⁽²⁾, in accordance with the procedure laid down in article 228 of the EC Treaty.

(1) Doc. 6449/96 RECH 50.

(2) Doc. 7800/96 RECH 76 USA 15.

II. PROGRESS OF NEGOTIATIONS

The progress achieved so far during the negotiations has been reviewed by the Permanent Representatives Committee on the basis of a report by the Article 228 Committee.

A strong willingness exists on both sides to come to an agreement. The reasons are primarily political as reflected in the priorities set out in the NTA, but also scientific, in view of the strong interest of researchers and industry to develop further the already strong transatlantic links in RTD matters. EU and US science cooperation involves some of the world's most advanced research institutions and distinguished scientists.

Significant progress has been achieved during the negotiations at technical level between the Commission and US experts. However, finalisation of a draft agreement has not been possible due to divergence of views on two questions relating, firstly, to the right of access to joint research activities and, secondly, to issues relating to Intellectual Property Rights (IPRs).

1. Participation in joint research activities (definition of "Joint research")

a) The EU position is based on the principle of mutual benefit as laid down in the Action Plan of the NTA and in the Community RTD framework programmes. It endeavours to ensure, as far as possible, reciprocal access and participation of EU and US researchers in each other's research programmes. It further seeks equitable and non discriminatory treatment of participants on either side.

Therefore, the EC considers that all EC and US research activities in the areas covered by the scope of the agreement ⁽³⁾ should, in principle, be open to joint collaboration under the terms of this agreement.

b) The US side, on the other hand, regards the new S/T agreement as an "umbrella", providing a framework within which joint research activities can be agreed upon on a case-by-case basis, subject to specific implementing arrangements. The US position is that the agreement cannot alter domestic US laws and regulations governing research programmes. These regulations leave it in most cases to the various US Research Agencies to decide on implementing arrangements. For this reason, the US proposes a definition of "Joint research" which introduces a supplementary condition whereby joint research must be designated as such in writing by the Parties or by their scientific organisations and agencies.

(3) The scope of the Agreement covers virtually all areas of research included in the 4th Framework Programme.

The Commission considers this as a potential source of discrimination since these Agencies could deny access of EU researchers to some US programmes. The Commission therefore aims at having accepted by the US side a more binding definition of "joint research" with less room for discretionary decisions, also to be fully reflected at the level of the principles upon which future cooperation will be based. It is fair to say that, when seeking a balance between EC and US participation, account must also be taken of the fact that the US would be opening up all of its federal programmes whereas for the Community it is only the Framework Programmes and not the bulk of European research which is conducted by the Member States themselves.

2. Intellectual Property Rights (IPR)

The second outstanding question relates to the protection of IPRs that arise out of research collaboration. The two main issues here are the following:

a) "Open/closed box" clause

- i) As stated in the draft IPR Annex to the Agreement, the question of exploitation of intellectual property should be dealt with in a technology management plan to be drawn up by the research partners. Disagreement exists between the EC and US negotiators regarding measures to be taken in cases where there emerges the possibility of exploitation of intellectual property in the absence, or before the elaboration, of such a technology management plan.
- ii) The EU position is that such exploitation should not be delayed unduly, otherwise it would be meaningless because rapid technological change would make it obsolete ("open box"). The US position, on the other hand, is that any exploitation by either party should be blocked until an agreement is reached ("closed box"). Disputes could be settled by means of agreed arbitration, preferably through UNCITRAL ⁽⁴⁾. The Commission recalled, however, that this question only concerns the hopefully rare cases where no technology management plan will have been agreed upon.

(4) United Nations Commission on International Trade Law.

b) Equity clause

- i) The essence of this clause, as proposed by the US side, is that if one EU Member State does not provide adequate IPR protection in a given area, and if no agreement can be reached on the allocation of rights, cooperation would be terminated and all the rights of exploitation world-wide would go to the US partner.
- ii) The EU position is that the level of IPR protection in the US and in the EU should be basically equivalent and for this reason such a clause has no place in the agreement. Moreover, this clause was not included in the agreement for cooperation in the peaceful uses of nuclear energy negotiated between the US and Euratom only last year (5). The Commission is of the opinion, however, that it has obtained a substantial modification in the US position which now accepts that, pending the outcome of discussions on the determination of the allocation of IPRs, the joint activity in question will be suspended or terminated at the request of either Party, and not cease automatically, as was originally proposed by the US.

Discussion on these two questions is still ongoing on the basis of new compromise proposals which have recently been put forward.

III. POSITIONS OF DELEGATIONS

Delegations have generally been supportive of the positions adopted by the Commission during the negotiation, which they consider to be generally in conformity with the negotiating directives approved by the Council in June 1996. They expressed the view that the Commission should continue the negotiations with the US authorities along the same lines, with a view to reaching mutually acceptable solutions to outstanding problems.

Whilst reaffirming the importance they attach to the timely conclusion of this agreement in accordance with the provisions of the Action Plan of the NTA of 3 December 1995, several delegations indicated that the agreement should be able to guarantee equality of rights of both the Parties, in particular as regards the right of access to each other's RTD activities and the right to exploit intellectual property.

(5) OJ L 120 of 20 May 1996, p. 23-25.

The Commission representative indicated that, although some important questions were still outstanding, significant progress has already been made during the negotiations and expressed optimism that an acceptable solution was feasible over the coming negotiating sessions. He indicated that the Commission was considering the most appropriate ways to secure a balanced approach of mutual rights and obligations in the context of the 5th Framework Programme on the basis of Article 130 j of the Treaty, when determining the rules for the participation of undertakings, research centres and universities.

IV. CONCLUSION

The Permanent Representatives Committee:

- noted the views of all delegations that the Commission should continue negotiations for this S/T agreement on the basis of the negotiating mandate;
- agreed to submit this progress report to the Research Council of 15 May 1997, so as to enable Council to review the progress in the negotiation of the S/T cooperation agreement with the US, with a view to the next Transatlantic Summit scheduled for 28 May 1997;
- took note that the Commission would present to Council an updated note on the state of progress, in the light of the ongoing discussions with the US partners.

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