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Executive Branch Identification
of Discrimination in
Foreign Government Procurement

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Before the
Subcommittee on Legislation and National Security
Committee on Government Operations
House of Representatives

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Mr. Chairman and Members of the Subcommittee: Thank you for asking us to testify on executive branch efforts to identify foreign discrimination in procurement under the Buy American Act of 1988.

This act, also known as Title VII of the Omnibus Trade and Competitiveness Act of 1988, requires the President to identify, in an annual report, countries that discriminate against U.S. companies in their government procurement practices. Countries identified in the report are subject to sanctions that would limit their access to U.S. government procurement, if negotiations to correct their inequitable practices are unsuccessful. The U.S. Trade Representative (USTR) is responsible for implementing Title VII and preparing the annual report.

In response to your letter of May 1, 1989, expressing concern about the implementation of Title VII, we recently completed our report titled International Procurement: Problems in Identifying Foreign Discrimination Against U.S. Companies (GAO/NSIAD-90-127, Apr. 5, 1990). In this report we assessed the availability and adequacy of information about foreign practices and reviewed executive branch efforts to gather this information for the President's first report.

The legally mandated efforts to identify countries that discriminate against U.S. companies were slow getting started. The fact that much of the 20 months available to conduct the

investigation was not used concerned us, because it is often difficult and time consuming to obtain evidence of foreign discrimination. Also, USTR decided to take a broad look at virtually every country around the world to identify potential discrimination; USTR did not focus its investigation on the most significant countries where the United States has the necessary leverage to effect change.

Information about foreign procurement practices falls into two broad groups: procurement covered by the GATT Government Procurement Code, and procurement not covered by the code.[1] Information on code-covered procurement is fairly comprehensive but it takes time and expertise to analyze. Information on non-code-covered procurement is often incomplete and uneven in quality. Much of the information collected in the past is anecdotal or general, based on industry complaints or other information-gathering activities on specific trade sectors. Some emerging areas, such as procurement of services and of military items, are especially difficult to investigate because they generally lack the transparency created by the predictable rules and open procedures such as those applicable to code-covered procurement.

We found that the U.S. government's ability to obtain information on foreign procurement practices has been hindered in the past by a lack of procurement expertise on the part of international trade

[1]General Agreement on Tariffs and Trade (GATT)

officials and by other resource constraints. Also, the fear of retaliation from foreign governments still exists, and U.S. companies have not come forward with many complaints, despite provisions for confidentiality.

To illustrate, the United States Trade Representative's annual National Trade Estimate Report on Foreign Trade Barriers, (NTE report) which was recently re-issued, describes discriminatory procurement practices. The NTE report depends on the same information-gathering methods as the Title VII report, but responsible U.S. officials do not consider the information in it adequate to identify countries for Title VII purposes. Nevertheless, USTR relied on these same methods and sources for the Title VII investigation.

As in most trade investigations, a Federal Register notice was used to gather much of the necessary detailed evidence from the private sector. Second, the investigation relied on Washington-based USTR and Department of Commerce country desk officials to provide any knowledge of procurement problems gained through their following code issues or from other overlapping trade investigations. And third, the investigation relied on a detailed questionnaire sent to U.S. overseas posts for information about each country's procurement procedures and laws.

After the investigation, the executive branch was required to identify countries for potential sanctions; decision-makers weighed the evidence against the discriminatory criteria specified in Title VII. However, a more in-depth investigation might have developed additional evidence important to the Title VII process.

We believe future USTR efforts should be more focused to make better use of available resources and expertise. Also, many of the countries investigated represent very small potential markets for U.S. companies. Therefore, in our report, we recommended that the United States Trade Representative narrow the scope of future Title VII investigations, before information gathering begins, to exclude those countries which the United States cannot realistically sanction because we buy very little from them.

We testified last year before this Subcommittee on the disappointing record of the GATT Government Procurement Code to open up international procurement markets to U.S. companies and to remedy the imbalance between U.S. and foreign code-covered procurement opportunities.[2] We believe successful completion of current negotiations to broaden the code to other areas, together with a more focused implementation of Title VII, will help achieve

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[2]International Government Procurement Issues (GAO/T-NSIAD-89-50, Sept. 27, 1989).

some long overdue progress in increasing U.S. sales to foreign governments.

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Thank you, Mr. Chairman, that concludes my remarks. I'll be happy to answer any questions you and the Subcommittee may have.