

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. WTO/D-88, WTO/D 95]

**WTO Dispute Settlement Proceeding
Regarding the Act Regulating State
Contracts With Companies Doing
Business With or in Burma (Myanmar)
Enacted by the Commonwealth of
Massachusetts on June 25, 1996**

AGENCY: Office of the United States
Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of separate requests for establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO), by the European Commission and Japan, to examine the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on June 25, 1996. The Massachusetts statute provides a ten percent bid preference on state government procurement contracts to firms (U.S. or foreign) not doing business with or in Burma. In this dispute, both the European Commission and Japan allege that the Massachusetts statute is inconsistent with obligations of the United States under the Agreement on Government Procurement (GPA). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by October 31, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to the Monitoring and Enforcement Unit, Office of the General Counsel, Attn: Massachusetts Burma Dispute, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., 20508, (202) 395-3582

FOR FURTHER INFORMATION CONTACT: John Ellis, Office of WTO and Multilateral Affairs (202) 395-3063 or Rhonda K. Schnare, Assistant General Counsel, (202) 395-3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on September 8, 1998, the European Commission and Japan submitted

separate requests for the establishment of a WTO dispute settlement panel to examine whether a Massachusetts law affecting state government procurement contracts is inconsistent with United States obligations under the Agreement on Government Procurement (GPA). This law requires all Massachusetts state agencies, when awarding government procurement contracts, to impose a ten percent price preference in favor of companies not doing business with or in Burma.

**Major Issues Raised by the European
Commission and Japan and Legal Basis
of Complaints**

The European Commission states that the law does not provide treatment no less favorable than that accorded to domestic services and suppliers and that it improperly limits access of EC suppliers to procurement by a sub-federal authority covered by the GPA. Specifically, the EC alleges that the statute is inconsistent with the obligations of the U.S. under Articles III, VIII(b), XIII:4(b) and XXII:2 of the GPA.

Japan contends that the Massachusetts statute improperly treats a locally established supplier less favorably than another locally established supplier on the basis of the degree of foreign affiliation or ownership and imposes conditions which are not essential to a firm's capability to fulfill the contract. Specifically, Japan alleges that the law is inconsistent with the obligations of the U.S. under Articles III:1 and III:2, VIII(b), and XIII:4(b) of the GPA.

**Public Comment: Requirements for
Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commentator. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitted believes that information or advice may qualify as such, the submitter—

(1) Must do designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED ON CONFIDENCE" in a contrasting color ink at the top of each page of each copy, and

(3) Is encouraged to provide a non-confidential summary of the information or advice. Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D-88, WTO/D 95) Massachusetts Burma Dispute) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Amelia Porges,

Senior Counsel for Dispute Settlement.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

**Approval of Noise Compatibility
Program, Terre Haute International
Airport-Hulman Field, Terre Haute, IN**

AGENCY: Federal Aviation
Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Terre Haute International Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On February 20, 1998, the FAA determined that the noise exposure maps submitted by the Terre Haute International Airport Authority under Part 150 were in

compliance with applicable requirements. On August 14, 1998, the Associate Administrator for Airports approved the Terre Haute International Airport-Hulman Field noise compatibility program. Twenty-four of thirty of the recommendations of the program were wholly or partially approved, and six were disapproved. The latter were disapproved pending submittal of additional information regarding a firm commitment for establishment of a second nighttime air cargo hub.

EFFECTIVE DATE: The effective date of the FAA's approval of the Terre Haute International Airport-Hulman Field noise compatibility program is August 14, 1998.

INFORMATION CONTACT: Prescott C. Snyder, Airport Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number (847) 294-7538/FAX Number (847) 294-7046. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Terre Haute International Airport-Hulman Field, effective August 14, 1998.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

Terre Haute International Airport Authority submitted to the FAA on November 14, 1997 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1996 through November 1997. The Terre Haute International Airport-Hulman Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 20, 1998. Notice of this determination was

published in the **Federal Register** on March 12, 1998.

The Terre Haute International Airport-Hulman Field study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 20, 1998 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained thirty proposed measures for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective August 14, 1998.

Outright or partial approval was granted for twenty-four of thirty specific program measures. Eight of twelve of the noise abatement measures, twelve of fourteen land use measures and all four of the program management measures were wholly or partially approved. The measures that were disapproved involved items associated with the establishment of a second night time air cargo hub. Pending submittal of additional information regarding a firm commitment for establishment of such a hub.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on August 14, 1998. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Terre Haute International Airport Authority.

Issued in Des Plaines, Illinois on September 23, 1998.

Pené A Beversdorf,

Assistant Manager, Chicago Airports District Office, FAA, Great Lakes Region.

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