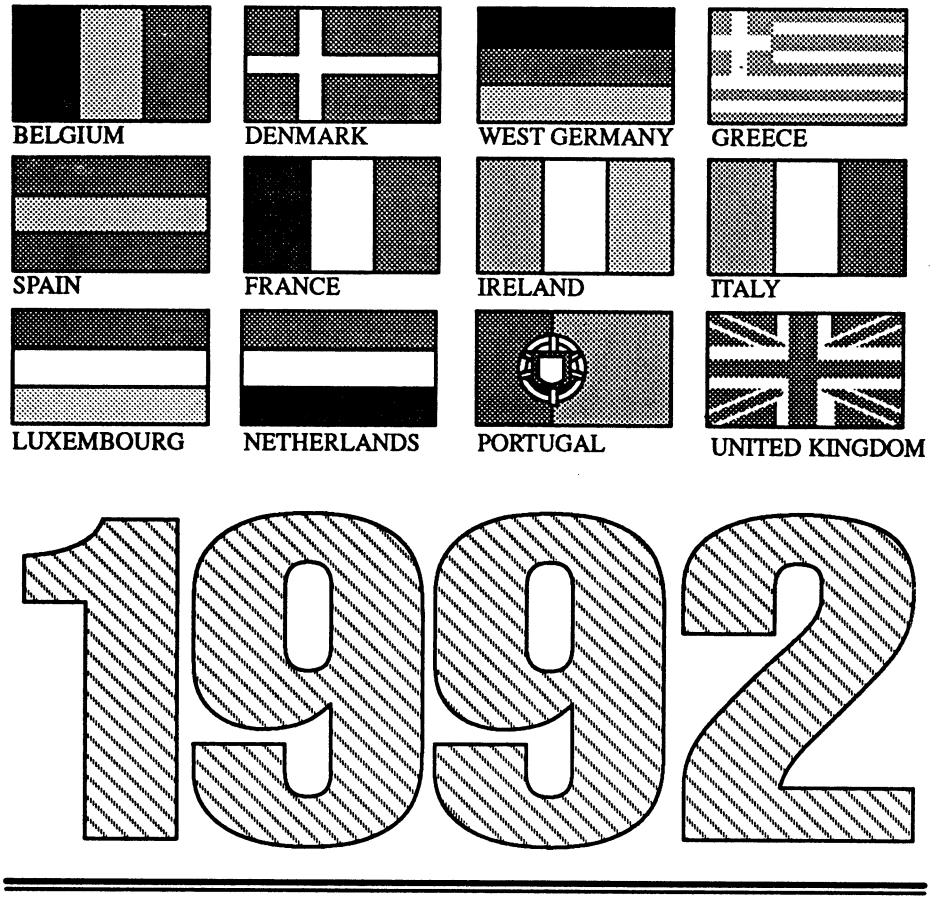

THE EFFECTS OF GREATER ECONOMIC INTEGRATION WITHIN THE EUROPEAN COMMUNITY ON THE UNITED STATES:

FOURTH FOLLOWUP REPORT

Investigation No. 332–267

USITC Publication 2501

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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PREFACE

This report is one in a series of reports that the U.S. International Trade Commission (Commission) has prepared in response to a congressional request. On October 13, 1988, the Commission received a joint request from the House Committee on Ways and Means and the Senate Committee on Finance (presented as appendix A) for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to provide objective factual information on the European Community's (EC) single market initiative and a comprehensive analysis of its potential economic consequences for the United States.

The committees requested that the Commission study focus particularly on the following aspects of the EC's 1992 program:

1. The anticipated changes in EC and member-state laws, regulations, policies, and practices that may affect U.S. exports to the EC and U.S. investment and business operating conditions in the EC;
2. The likely impact of such changes on major sectors of U.S. exports to the EC and on U.S. investment and business operating conditions in the EC;
3. The trade effects on third countries, particularly the United States, of particular elements of the EC's efforts; and
4. The relationship and possible impact of the single-market exercise on the Uruguay Round of GATT Multilateral Trade Negotiations.

The committees also stated in their letter that "Given the great diversity of topics which these directives address, and the fact that the remaining directives will become available on a piecemeal basis, the Commission should provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with followup reports as necessary to complete the investigation as soon as possible thereafter." In response to the request, the Commission instituted investigation No. 332-267 on December 15, 1988. The report was issued in July 1989, and the first, second, and third followup reports were issued in March 1990, September 1990, and March 1991, respectively.

Followup reports have essentially followed the format of the initial report, and have included summaries of the developments addressed in previous reports as well as discussions of developments during the period under review, as appropriate. In addition, the first followup report contained expanded coverage of the social dimension of integration, local-content requirements, rules of origin, and directive implementation by member states. Subsequent reports have continued to address both the social dimension and member-state implementation. The second followup report contained special chapters on research and development and three industry sectors—automobiles, chemicals and pharmaceuticals, and telecommunications. The third followup report included a special discussion of the effects of the EC 1992 program on the U.S. value-added telecommunication and information services industry. This report is the fourth followup report and covers developments during 1991.

Copies of the notice of the fourth followup report were posted at the Office of the Secretary, U.S. International Trade Commission, Washington, DC. The notice was published in the Federal Register (56 F.R. 24411) and is included in appendix B of this report, along with the original Federal Register notice and previous followup report notices.

CONTENTS

EXECUTIVE SUMMARY

The European Community (EC), as it is known today, was created by the merging of three original communities: the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (Euratom). The Treaty Establishing a Single Council and a Single Commission of the European Communities was signed in 1965, effectively completing the formation of the EC.

Initially, the EC established itself as a customs union, eliminating internal customs duties and establishing common external duties as of July 1, 1968. However, internal trade continued to encounter numerous nontariff obstacles. Some of these barriers predate the formation of the EC, and others have arisen as EC countries have attempted to insulate particular industries or products after internal duties were eliminated. These protective measures and the costs associated with them contributed to "Eurosclerosis," or economic stagnation, and affected the global competitiveness of EC nations.

A recognition of these costs and the desire to create a truly integrated internal market in the EC were at least partially responsible for the White Paper, which launched the 1992 program. Issued by the EC Commission in June 1985, the White Paper contained broad goals for the integration program and set a date of December 31, 1992, for the complete elimination of physical, fiscal, and technical barriers to trade among the member states. Dismantlement of these barriers was to be accomplished through the issuance of approximately 282 directives.

This report, which covers 1991, is the fourth update in a series of USITC reports that has monitored the issuance of these directives and assessed their impact on U.S. trade and investment. Each report addresses three major areas: (1) a background on and description of the operation of the 1992 program and a review of U.S. trade patterns with the EC; (2) information on and an analysis of the possible effect on the United States of directives issued or proposed during the period covered; and (3) an analysis of the implications of the 1992 program for the Uruguay Round and other member-state obligations and commitments to which both the EC and the United States are parties. A summary of the developments discussed in previous reports introduces each chapter, as appropriate. In addition, this report highlights several key developments in 1991.

First, as the EC Council nears adoption of almost all of the 1992 directives, member-state implementation of these measures has become an increasingly important issue. The degree to which member states comply with the intent of the EC directives is embodied in their national implementing legislation and in the administration of these laws. Furthermore, certain member states are not implementing the directives in a timely manner. This report includes for the first time a chapter covering implementation exclusively. In addition, three case studies provide illustrations of the member-state implementation process.

Also, the year 1991 marked significant progress towards the establishment of an economic and monetary union (EMU). In December 1991, at the semiannual summit of EC heads of state in Maastricht, the Netherlands, EC leaders initialed the Treaty of European Union. This document outlined the steps necessary to achieve EMU as well as political union. Chapter 4 describes the three-stage process aimed at achieving more binding economic and monetary ties under EMU by the end of the decade and analyzes the implications for the United States.

Finally, efforts to "deepen" the EC, as embodied in the Treaty of European Union, were matched by efforts to "widen" or enlarge the EC. Many third countries have pursued closer ties with the EC. Indeed, in October 1991 the EC and the European Free Trade Association (EFTA) agreed to form a European Economic Area (EEA). If ratified, most of the EC 1992 measures would eventually apply to the 7 EFTA member countries as well as to the 12 EC member states. The chapters in part 2 of this report note those internal market directives that will eventually apply to the EFTA under the EEA. In addition, the introductory chapter places the EC 1992 program in the context of the EC's broader agenda, which expands the notion of EC 1992 both geographically and conceptually.

The highlights of the report are summarized below.

Introduction, Background, and Special Topics

Introduction to the EC 1992 Program

With less than 1 year to meet the December 31, 1992, deadline for completion of the EC's internal market, the EC still has much to accomplish. As of April 14, 1992, the EC Council had adopted 225 of the 282 measures that form the Internal Market Program as set out in the 1985 White Paper and its updates. As of December 1991, all member states had fully transposed, or incorporated into national law 56 of the 136 single-market directives for which the implementation deadline has passed.

During 1991, expansion of the concept of EC 1992 was increasingly evident. On the one hand, efforts to extend EC integration to a wider geographic area were addressed in the EC-EFTA agreement to form an EEA. In addition, many non-EC countries—such as some of those in the EFTA and in Central and Eastern Europe—pursued Community membership to take full advantage of the economic benefits of the single market. On the other hand, the Treaty of European Union approved by EC leaders at the Maastricht summit expanded the concept of EC 1992 from merely economic integration to political, social, and deeper economic and institutional ties. The treaty commits the 12 member states to both EMU and political union. Political union envisions common foreign and defense policies, as well as institutional reform, among other things.

The EC is an important market for U.S. firms. In 1991, the EC remained the United States' largest trading partner, accounting for roughly 21 percent of total U.S. trade. More than 24 percent of total U.S. exports headed to the EC in 1991, ranking the Community number one as a destination for U.S. exports. Furthermore, the U.S. trade balance with the EC improved dramatically; the United States registered a bilateral surplus of $12.5 billion in 1991, compared with a surplus of $2.3 billion in 1990 and a deficit of $1.5 billion in 1989.

Total foreign direct investment in the EC during 1990 overtook total foreign direct investment in the United States for the first time since the end of the 1970s. Among other things, this change reflects both the slowdown in the U.S. economy, which has reduced its attractiveness to external investors, and the 1992 single-market program, which has increased the attractiveness of the EC market. As a share of total U.S. direct foreign investment, U.S. direct investment in the EC climbed from 38 percent in 1986 to 41 percent in 1990, or from $99.6 billion to $172.9 billion.

Review of Customs Union Theory and Research on the 1992 Program

Customs union theory predicts that the EC 1992 program will expand trade within the EC. However, theory alone cannot predict whether trade with nonmember countries will increase or decrease. The reduction of internal trade barriers under the 1992 integration program will create trade among EC member countries at the expense of less efficient domestic producers. In addition, internal trade liberalization will tend to increase trade among EC countries at the expense of existing trade with more efficient producers in the United States and other nonmember countries. However, producers in nonmember countries are likely to benefit if the EC 1992 program boosts growth in the EC.

Recent research on the EC 1992 program contends that the external effects of the program depend significantly on the magnitude of the so-called growth bonus associated with the single market and on the future course of the EC's trade and financial policies regarding the rest of the world. It is also argued that the EC Commission's estimate of traditional gains from trade due to the 1992 program falls short of the actual gains because the EC Commission did not take into account the effect that barriers in markets for factors of production (e.g. labor and capital markets) have on multinational corporations and trade within firms. In addition, research suggests that the removal of barriers within the EC, along with any growth, will directly benefit U.S. firms with a presence in Europe.

Implementation

Most of the legal measures that make up the 1992 integration program are directives that are binding on each member state as to the result to be achieved but leave the method of compliance up to the member state. Therefore, an important part of the 1992 program is the implementation by EC member states of directives issued by the EC Commission and Council.

The EC Commission, charged with monitoring the progress of implementation, has repeatedly warned that many member states are slow to implement directives. Implementation rates vary among member states, with Denmark being the most successful at promptly transposing directives into national law and Italy generally the least successful. The EC Commission has sought to improve implementation by accelerating legal proceedings against recalcitrant member states and educating member-state governments and citizens about the need for implementation.

The recently signed EEA Agreement significantly expands the scope of implementation under the 1992 integration program, because the seven EFTA countries have undertaken to transpose into their national laws the majority of the directives that make up that program.

This report examines in detail the member-state implementation process of three directives or classes of directives: the Broadcasting Directive; the so-called "new approach" standards directives; and the Supplies, Works, and Remedies Directives in the area of public procurement. Differences in member-state interpretation have emerged. For example, the Broadcasting Directive—one of the EC directives that has received the most attention in the United States—seeks to have member states ensure that their television broadcasting contains a minimum content of programming made in the EC. Germany, stressing that the minimum-content provision is voluntary, has not fully implemented that provision. France has imposed minimum-content requirements with respect to both EC and French works. The other member states have implemented the directive using a wide range of definitions of minimum content. Also, with respect to the Supplies and Works Directives, most member states have transposed them into national laws, but the EC Commission has indicated that only one member state has done so correctly. On the other hand, in standards, delays in implementation have resulted from the lengthy and overtaxed process of developing standards in the regional standards-making bodies, rather than from the actual member-state transposition process itself.

Economic and Monetary Union

During 1991, the EC moved closer to its goal of EMU. Among other things, full EMU will result in the creation of a single currency and an EC central bank and greater coordination of national economic policies. The EC has established a three-stage process to achieve EMU.

Stage I of EMU, which began on July 1, 1990, required members to dismantle all controls on capital movements and to strengthen economic and monetary policy coordination. More difficult to achieve will be the final two stages toward monetary union. As determined at the Maastricht summit in December 1991, stage II will begin on January 1, 1994, with the establishment of the European Monetary Institute (EMI), which will manage the national currency reserves that EC central banks will transfer. By December 31, 1996, the EC Council will consider reports on the progress towards EMU from the EMI, the EC Commission, and the European Parliament. The Council will then determine the eligibility of the member states to join the common currency on the basis of convergence criteria agreed to at Maastricht. If a majority of member states meet the criteria, those countries could begin stage III of full EMU as early as 1997. Otherwise, only those countries meeting the standards would adopt the new currency in 1999, with the others following at a later date. As of now only France, Denmark, and Luxembourg meet the convergence criteria.

The EC Commission expects that an EMU would stimulate foreign direct investment in the EC, would promote trade within the EC, would enhance the integration of European energy and transportation markets through increased incentives for cross-country investment, and could boost long-term growth within the Community. However, the transitional problems already evident suggest that the drive to EMU may not necessarily be either smooth or on schedule.

Little research has been done on the effects of EMU on U.S. interests. However, EMU is likely to lead to the following effects relevant to the United States:

1. Reduced use of the dollar as a vehicle for trade invoicing and asset holding in third markets in favor of the ECU;

2. Because of this change, increased transaction costs and exchange-rate risk for U.S. firms engaged in international trade outside of Europe, but reduced transaction costs and exchange-rate risk for U.S. subsidiaries operating in Europe, with somewhat ambiguous effects on U.S. exporters to the EC;

3. A small appreciation of the ECU, implying a small depreciation of the dollar against major trading partners, including the EC;

4. Some reduction of U.S. leverage in international economic policy negotiations and coordination in favor of the EC; and

5. Greater likelihood of economic policy coordination among the major industrialized economies.

The effects of EMU on U.S. international policy operations are difficult to judge. On the one hand, increasing use of the ECU in world markets at the expense of the dollar may, over time, imply some loss of prestige and leverage in international negotiations for the United States. On the other hand, reducing the number of major players in the world economic and political system by replacing the separate interests of the 12 EC member states with a unified voice is likely to lead to a greater ability to coordinate international policy.

Anticipated Changes in the EC And Potential Effects on the United States

Standards, Testing, and Certification

Efforts to harmonize product standards and testing and certification procedures continued throughout 1991 as the EC prepared for the 1992 deadline. The EC took steps to improve the coordination of European regional and international standards development work and examined ways to speed the drafting of European standards. The Community also made progress in defining product conformance procedures, building an institutional basis for internal cooperation on testing and certification matters, clarifying the meaning and use of the CE mark of conformity, and refining its thinking on the circumstances in which it would permit bodies located outside the EC to conduct certain tests and approvals. The EC was less successful at achieving implementation of standards directives, primarily because of a backlog in the standards development process. By yearend, this had emerged as a significant concern both within and outside the EC.

The progress made in EC acceptance of international standards and in U.S.-EC cooperation to strengthen the international standards system should quicken the EC standards-setting process and provide greater opportunities for participation by U.S. interests. The United States also made progress towards EC acceptance of U.S. tests and certificates. Although few final arrangements were reached, the United States and the EC clarified the possibilities and requirements for recognizing U.S. facilities as "notified bodies" through mutual recognition agreements (MRAs) and for permitting EC notified bodies to subcontract testing to U.S. facilities. Taken together, these developments should offer new and expanded opportunities for the United States to shape the outcome of the EC harmonization process and alleviate U.S. business concerns about testing-related barriers in the post-1992 market. On the other hand, implementation delays caused uncertainty among U.S. exporters and deferred anticipated gains from the removal of technical barriers among the EC member states.

Progress was also made in specific sectors, such as agriculture, processed foods, chemicals, pharmaceuticals, auto and auto parts, machinery, construction products, medical equipment, and telecommunications equipment and services. In the agricultural sector, the EC agreed to permit continued imports of U.S. softwood lumber that has not undergone prescribed procedures for killing harmful organisms until yearend 1992. However, the EC continues to block imports of meat from the United States because of sanitary and hormone-related concerns. Similarly, although the United States is concerned over the proposed data protection directive, other telecommunications-related directives are expected to liberalize the EC market for telecommunications equipment and services. In addition, the EC has moved to encourage environmentally responsible behavior by proposing new rules to limit packaging waste and to identify "environmentally-friendly" products and production facilities.

Public Procurement

All public contracts in the EC should soon be subject to procurement rules designed to remove longstanding barriers at the member-state level by increasing transparency and introducing nondiscrimination in all phases of public purchasing. Three directives have already entered into effect in most member states: Supplies, Works, and Remedies, which covers appeals procedures against discrimination in the award of public contracts. The Utilities Directive, which covers public purchases in the four so-called excluded sectors of water, energy, transport, and telecommunications, was adopted in 1990 and is scheduled to enter into effect in most member states in 1993. Since 1990, the EC's legislative process has addressed the final elements in the 1992 procurement program: the EC Council reached a common position on a directive covering public purchases of services, and the EC Commission proposed an amendment to the Utilities Directive that would extend its coverage to services contracts. In addition, the EC Council adopted a directive covering appeals procedures in the excluded sectors.

Both directives addressing services categorize services into priority and residual services. Priority services will be subject to all of the rules in the directives, whereas residual services will only be subject to some standards and transparency provisions. The EC Commission intends to determine in about 3 years whether residual services should be subject to the full directives or should be exempted from the procurement rules altogether.

The services provisions in the Utilities Directive currently provide a mechanism for the EC Commission to restrict third-country access to the EC market should the EC Commission determine that the third country does not provide equivalent market access. On the other hand, the current version of the Public Services Directive does not contain any provisions addressing third countries. The lack of such provisions has been interpreted to mean that member states can continue to treat third-country bids the way they always have, including in a discriminatory manner.

Nevertheless, opportunities for U.S. companies to sell services to EC public authorities should increase as a result of the two services directives as well as a trend by EC member-state governments to increasingly contract out services. U.S. firms based in the EC would benefit most, since local presence is often a determining factor in winning service contracts.

The Internal Energy Market

During 1991, the EC completed the first major phase of its plan to create a single internal energy market by adopting the Natural Gas Transit Directive. Both natural gas and electricity are now able to cross national boundaries under transparent pricing schemes. The Community also began to debate the EC Commission proposal to further liberalize the energy market by limiting monopoly rights and providing third-party access (TPA) to natural gas and electricity networks.

This proposed liberalization has engendered considerable controversy in the EC. Proponents expect TPA to decrease energy prices and thus improve the competitiveness of EC industry. Opponents caution that the revised structure may destabilize energy contracts, threatening the security of supply and ultimately raising energy prices. If the proponents of TPA are successful, the package of liberalization directives will be implemented by early 1993.

The reaction of U.S. industry has been mixed. Energy-intensive companies with EC subsidiaries—such as the fertilizer, glass, and chemical industries—generally support TPA in the hope that it may lower energy costs and improve purchasing flexibility. U.S. exporters of power plant equipment may also realize benefits as the EC energy sector expands to include new producers and suppliers with equipment needs and as the requirements of liberalization promote investment in more efficient equipment. However, U.S. energy producers and suppliers tend to be concerned about the possible negative effects of TPA on long-term energy supply and investment in Europe.

Financial Sector

Western European financial markets are undergoing momentous change. EMU will eventually fully integrate member-state monetary policies and currencies. Moreover, if the EEA agreement of October 1991 is implemented, 7 EFTA nations will join the 12 EC member states in this liberalized financial marketplace, serving a total population of some 380 million.

However, even without the impetus of EMU or the EEA, it is clear that the EC 1992 financial services directives already promulgated by the EC Council portend a significant transformation of European financial markets. For the first time, banks, securities houses, and insurance firms will be permitted to operate on an EC-wide basis, and will need only one license from the appropriate regulators in their home EC member country to do so.

Banking directives to achieve these ends are largely in place and are scheduled to take effect throughout the Community on January 1, 1993. In the insurance sector, marked progress was made during the past year; the EC Commission proposed the Third Life Insurance Directive in April 1991 and the EC Council reached a common position on the Third Nonlife Insurance Directive in February 1992. However, the EC Commission lost two potentially significant cases before the European Court of Justice dealing with the taxation rights of EC member states in regard to life insurance and pensions. These decisions could adversely affect the intra-EC liberalization process in life insurance. In the securities sector, disagreement continues on an important directive permitting EC-wide operations with one licence. The relatively slow progress of trade liberalization in the insurance and securities sectors compared with the banking sector could grant some temporary commercial advantages to EC member states that permit universal banking systems, which may offer both insurance and securities services.

The EC 1992 program for financial services has raised interest and concern in the United States. EC capital markets and financial firms are likely to become relatively more competitive and efficient. Liberalized and open financial and capital markets in the EC should create business opportunities for U.S.-based financial services firms operating in the EC market. However, application of the reciprocity provisions in the EC financial services directives may have the effect of restricting future market access of U.S. firms. Nonetheless, the EC 1992 program has already been a factor in the pronounced increase of mergers and acquisitions activity throughout the European financial sector. Financial institutions are growing both larger and more pan-European—a trend that will affect their global competitiveness. All of these developments could prompt consideration of whether reform of the U.S. financial regulatory system is appropriate in order to enhance U.S. global competitiveness.

Customs Controls

The EC Commission's objective of abolishing internal frontier checkpoints, thereby permitting the free movement of goods and people among the member states, has been a fundamental aspect of the integration program. Because customs officers collect duties, statistics, and taxes and enforce regulatory measures of other government entities, agreed alternatives to border formalities have had to be developed that permit adequate achievement of noncustoms responsibilities and protect member-state fiscal and security interests. Regulations to eliminate voluminous documentary requirements, to standardize customs procedures, and to provide mechanisms for issuing consistent tariff classification rulings have been adopted or, in some cases (e.g., taxation and standards), await completion of related work. These regulations have been drafted with a view toward controlling goods and people crossing external frontiers of the EC while facilitating free circulation internally. Although the majority of Community measures in the customs area are issued as regulations and are thus directly applicable in the member states, EC institutions are still called upon to resolve member-state interpretative disputes and questions.

The elimination of internal border controls will benefit firms and individuals within and outside of the EC by reducing delays and costs. However, the U.S. Government will need to decide whether to treat the EC as one country for customs/tariff purposes or to continue present practices.

The shift to controlling movement at external frontiers has also prompted new attention to issues pertaining to individuals who wish to travel to, work in, or reside in member states other than their own. National legal regimes on immigration, asylum, arms control, drug trafficking, and anticrime efforts are beginning to be harmonized to take into account the realities of free circulation. Aspects of this work have posed policy and coordination problems, and some member states continue to express concerns about relinquishing sovereignty and hampering enforcement. Along with free movement of people is the related issue of freedom to work at one's trade or profession, involving first the mutual recognition of qualifications and later the harmonization of curricula and training requirements. Progress in this area has been slow and uneven, with several professional and vocational fields still not covered by Community measures (especially with

respect to those areas of work covered by shorter training programs). In the member states, implementation is far from complete. Moreover, a large volume of complaints and litigation about discrimination and similar problems continues. Once these matters are resolved, these measures will chiefly benefit EC nationals, along with the small number of foreign holders of EC credentials.

Transport

The two major objectives of EC transportation initiatives are (1) to create a unified transport market among the EC member states and (2) to decrease economic regulation of transportation services. Actions that the EC had previously taken to implement the first objective include simplifying border-control measures pertaining to road transport and harmonizing technical and safety standards pertaining to air transport and trucking. With respect to the second objective, the EC had previously limited the power of individual member states to veto intra-EC passenger air fares, restricted the scope of capacity-sharing arrangements in passenger air transportation, permitted EC-based carriers greater flexibility in offering air cargo services between different EC member states, and increased the maximum number of authorizations each member state could grant to its trucking companies for Community transport.

During 1991, the EC Commission proposed a "third liberalization package" in air transport. This package of proposals would restrict member states' ability to disapprove new passenger fares proposed by carriers for air transportation within the EC. It would also accord to EC-based carriers, with some exceptions, full and free access to intra-Community air routes. In a separate initiative, the EC Commission also introduced a proposal to establish uniform standards for the licensing of air carriers within the EC.

The carrier-licensing initiative may affect U.S. industry. Industry officials believe that this proposal, by indicating that a carrier with up to 49 percent non-EC ownership could still be licensed as an EC-based "Community carrier," could allow greater U.S. investment in EC airlines than is permitted under current law. More generally, creation of a unified EC air-transport market is likely to have long-range effects on the manner in which the U.S. Government obtains traffic rights for U.S. airlines between the United States and points within the EC. Indeed, in 1991 the U.S. Government engaged in preliminary discussions with officials of the EC Commission's Transport Directorate exploring the possibility of an agreement to liberalize air cargo operations between the United States and the EC.

Major 1991 initiatives in the surface-transport sector included a proposal by the EC Commission to eliminate quantitative restrictions and permit cabotage (intra-EC) operations in road transport and a regulation by the EC Council permitting cabotage in inland waterway transport. None of the 1991 surface-transport initiatives addressed third-country issues.

Competition Policy and Company Law

The most significant development in the area of competition law has been the success with which the EC Commission has implemented the Merger Regulation. Over 70 mergers have been notified to the Directorate General responsible for competition, and the merger authorities have met the stringent deadlines for reviewing those mergers in every case. The EC Commission has rejected only one proposed merger, the purchase of a Canadian subsidiary of a U.S. company by a French and Italian consortium. The rejection was based on competition criteria rather than on industrial policy grounds. The transnational nature of merger policy apparent in the rejected, and other, mergers was the catalyst for a 1991 agreement between the United States and the European Community concerning the enforcement of competition laws, as well as the inclusion of competition policy in the EEA Agreement.

By contrast, the EC Commission's efforts to harmonize laws governing the creation and governance of companies have shown little progress. There appears to be little momentum behind most of the proposed company law directives, with the possible exception of the Regulation and Directive establishing a European Company.

Taxation

During 1991 and early 1992, further progress was made with respect to harmonization of value-added taxes (VAT) and excise duties and liberalization of travelers' allowances, but little progress was made on the two company taxation directives proposed in 1990 or the proposed directive on taxation of savings interest. Tax measures will likely benefit firms, including U.S.-based firms, that operate or plan to operate in more than one EC member state.

In June 1991, political agreement was reached on VAT rates, and in December 1991, the Economic and Financial Council of Ministers (ECOFIN) formally adopted a directive providing for an interim VAT system. In January 1992, a regulation was adopted providing for cooperation between member-state tax authorities on VAT to avoid possible tax evasion.

Political agreement was reached on most excise duty rates in June, and agreement was reached on the remaining rates in the fall. In December, political agreement was reached by ECOFIN with respect to a directive on a system of excise duties, and the directive was formally adopted at the February 1992 Council meeting.

Travelers' allowances were liberalized effective July 1, 1991, but with derogations for Denmark and Ireland through yearend 1991. In December, these derogations were modified to further liberalize the restrictions on personal travellers and were extended through yearend 1992.

Residual Quantitative Restrictions

The EC Commission intends to eliminate residual national quantitative restrictions (QRs) by the end of 1992. With the exception of automobiles, the EC Commission has not yet identified those sectors currently with member-state QRs that would be subject to an EC-wide quota.

In July 1991, the EC and Japan reached an agreement that will eliminate member-state restrictions on imports of Japanese vehicles by December 31, 1992. In return, Japan will limit its automobile exports to the EC to 1.23 million vehicles annually during a 7-year transition period. During this transition period, imports of Japanese vehicles in those five member states that currently impose auto QRs—France, Italy, Spain, Portugal, and the United Kingdom—will be permitted to rise to set amounts under a system of subquotas. Differing interpretations remain between the EC and Japan regarding the issue of whether production from Japanese transplants in the Community are included under the overall ceiling on Japanese imports.

Although there are currently no official local-content requirements on automobiles in the EC, if they were instituted, Japanese-owned automakers in the United States could face barriers in exporting to the EC. Also, U.S. producers could be affected, since their vehicles contain Japanese parts and many U.S. firms have production arrangements with Japanese companies.

With regard to other ongoing actions, the EC Commission is drawing up guidelines on import arrangements for bananas, which are currently subject to national QRs. Also, in December 1991, the EC signed association agreements with Czechoslovakia, Hungary, and Poland. These agreements will facilitate trade and economic cooperation between the three countries and the EC and will provide specific timetables for the elimination of quantitative restrictions.

Intellectual Property

The EC is establishing Community-wide regimes or partial harmonizations of national laws on intellectual property as part of the EC 1992 program. In 1991, the most important development in this area was the EC Council's adoption of a directive on the protection of computer software. Also notable was the EC Council's agreement on a common position with respect to the proposed regulation on the supplementary protection certificate for medicinal products.

Other important developments included the EC Commission's proposal for a directive on copyright and neighboring rights applicable to satellite broadcasting and cable retransmission and the EC Council's rejection of the EC Commission's proposed decision that would require member-state adherence to the Berne and Rome Conventions on copyright and neighboring rights. The EC Commission also issued a Green Paper on industrial designs.

At least some progress is being made with respect to other pending intellectual property initiatives, including the proposed Community Patent Convention. Further initiatives, particularly in the copyright area, are anticipated, since by early 1992 the EC Commission had proposed new directives on the protection of data bases and on copyright term.

In general, EC actions are expected to strengthen the protection of intellectual property in the Community and thus benefit U.S. trade and investment.

The Social Dimension

The "social dimension" of EC 1992 refers to the efforts to harmonize different EC member-state policies on labor markets, industrial relations systems, occupational safety and health regulations, social welfare, and social security systems.

During 1991, the EC Commission continued to draft the proposals called for in the Social Charter action program. The EC Commission has completed drafting most of the 47 measures outlined in the action program. Generally, adoption of the less controversial directives, such as those confined strictly to worker safety and health matters, is proceeding without incident. Many of the other social dimension measures, however, are stalled at the Council level, in large part due to the United Kingdom's opposition. At the Maastricht summit, the Council attempted to alleviate this situation by adopting a social protocol binding only on the other 11 member states. However, the legality of this protocol has been questioned by the EC Commission.

U.S. industry representatives have continued to monitor the proposals for EC directives addressing labor relations. These representatives have been particularly concerned about any extraterritorial effects that such directives could have on U.S. firms. The EC Commission recently proposed an amendment to its Collective Redundancies (layoffs and reductions in force) Directive, which would subject certain redundancies decisions made at a company's headquarters to worker consultation and negotiation. This proposed amendment would apply to certain decisions made at the U.S. headquarters of EC subsidiaries, and therefore could have the type of extraterritorial effects opposed by U.S. industry.

EC Integration and Commitments in the Uruguay Round and OECD

The United States and other countries have been concerned that the EC 1992 program could precipitate a "turning inward" of Europe that would result in increased protectionism or discrimination against non-EC exports. The EC has sought "reciprocal" treatment for areas such as government procurement and standards testing, whereas the United States has supported dealing with such issues in the multilateral forum of the Uruguay Round held under the auspices of the GATT. According to the United States, such a multilateral venue would ensure as broad a consideration as possible for issues encompassing national treatment, transparency, local-content rules, and quantitative restrictions.

With similar goals of economic liberalization, the EC 1992 program and the Uruguay Round may overlap in a number of areas, but the final effect of one upon the other will not be known until each is wholly adopted and implemented. Nonetheless, parallels between certain policy positions of the EC at the Community level and at the GATT can be identified. In the field of public procurement, the EC is pressing for changes in the GATT Government Procurement Code that the EC has already included within the sphere of its Community-level legislation. In standards, the EC is seeking to extend the scope of the GATT Standards Code beyond central government obligations to cover "subcentral" governments in regions and States as provided for already in Community-level rules, as well as to cover private-sector standards bodies. For intellectual property, the EC seeks to set up common rules for protection and enforcement of intellectual property rights as shown at both the Community level and in the GATT forum.

PART I
INTRODUCTION, BACKGROUND, AND SPECIAL TOPICS

CHAPTER 1
INTRODUCTION TO THE EC 1992 PROGRAM

CONTENTS

CHAPTER 1
INTRODUCTION TO THE EC 1992 PROGRAM

The European Community has embarked on an ambitious program designed to stimulate growth and international competitiveness through further integration of the EC internal market. This integration program is scheduled to be completed by yearend 1992.

Developments Covered in the Previous Reports

Background

The EC's plan to create a single internal market was envisaged over 30 years ago in the EC's charter, the Treaty of Rome. The Treaty of Rome established a customs union and required member states to eliminate intra-Community quantitative restrictions and all measures having an equivalent effect. However, stagnating growth, high unemployment, and increased import competition raised domestic pressures for protectionist measures and reduced the momentum toward further integration among the member states. Not until the early 1980s did "Eurosclerosis," reduced European competitiveness, and the increasing ineffectiveness of the EC institutions prompt member-state governments to seek greater mutual cooperation.

In June 1985, the EC Commission issued a White Paper report entitled "Completing the Internal Market" that outlined a detailed plan for the removal of all obstacles to the free movement of goods, people, services, and capital by December 31, 1992. As of yearend 1990, the EC Commission had transmitted to the EC Council proposals covering all of the 282 measures listed in the White Paper and its updates. Also, by the first quarter of 1991, the EC Council had formally adopted 186, or 66 percent, of these measures.

Progress on the EC single-market program and the development of relations with third countries have become inextricably linked. The rapid changes in Eastern and Central Europe and German reunification have encouraged efforts to "deepen" the EC 1992 process by intensifying cooperation among the existing 12 EC member states in all spheres—political, social, monetary, and defense, as well as economic. In December 1990, two intergovernmental conferences convened to work toward economic and monetary union (EMU) and political union, respectively.

Alongside the efforts to deepen the EC have been pressures to widen or enlarge the Community. Some non-EC European nations are seeking membership in the EC in order to take full advantage of the benefits of the internal market. Members of the seven-nation European Free Trade Association (EFTA) as well as countries in Central and Eastern Europe and the former U.S.S.R. have made known their desire to become EC members. Furthermore, on June 20, 1990, concerned that the internal market program could adversely affect their special relationship with the EC, the seven EFTA nations launched formal negotiations with the EC to create a European Economic Area (EEA) and realize the free movement of goods, services, people, and capital between the two blocs.

Trade and Investment

In order to promote U.S.-EC trade and investment and to allow concerns to be expressed on commercial and business activity in the EC, two new trade organizations were established in August 1990. A number of major U.S. and EC multinational firms formed the European Community Chamber of Commerce in the United States (ECCC). Offices of the organization are located in Washington, DC, and in Brussels. The second organization, known as the European-American Chamber of Commerce (EACC), was formed as a consolidation of 11 bilateral EC Chambers of Commerce.

Developments During 1991

Introduction

With less than 1 year to meet the December 31, 1992, deadline for completion of the EC's internal market, the EC still has much to accomplish. As of April 14, 1992, the EC Council had adopted 225 of the 282 measures that form the internal market program as set out in the White Paper and its updates.[1] Roughly 20 percent of the measures remain to be adopted. Those measures still pending are among the most contentious ones, including harmonization of company law, removal of tax barriers, free movement of labor, and elimination of border controls.[2]

In addition, implementation of EC directives by the member states remains a major stumbling block to completing the internal market program on time. When the White Paper was initially issued in 1985, attention was focused on the EC Council and its efforts to adopt the 282 single-market measures that constitute the EC 1992 integration program. As more and more measures have been adopted, however, attention has shifted to the 12 member states and their progress in incorporating or "transposing" EC directives into national law. National implementation and proper compliance with EC legislation are said to be the "Achilles' heel"[3] of the single-market program.[4]

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[1] EC Commission data base Info 92, April 14, 1992. The Council had, as of April 14, 1992, also partially adopted four measures and reached common positions on four more.

[2] EC Commission, *Sixth Report of the Commission to the Council and the European Parliament Concerning the Implementation of the White Paper on the Completion of the Internal Market*, COM(91) 237, June 19, 1991, annex 2.

[3] U.S. Chamber of Commerce, International Division, *Europe 1992: A Practical Guide for American Business*, 1991.

[4] For more information on the status of member-state implementation, see chapter 3 of this report.

EC officials have been reluctant to project a realistic completion date for the single-market program beyond the existing December 31, 1992, deadline. EC Commission President Jacques Delors, for example, has reaffirmed his belief that, despite major obstacles, legislative work on the single market program will be complete by the end of 1992.[5] It is generally recognized, however, that even if the EC Council is successful in adopting the remaining White Paper measures, member states will not have sufficient time to transpose the remaining directives[6] before yearend 1992.[7] By some reports, the EC Commission has already resigned itself to the fact that the single market will not be completed by the established deadline. Nonetheless, the EC Internal Market Council, in a September 1991 meeting, took action to speed up the integration process by organizing a troika of internal market, finance, and agriculture ministries to push key legislation through the system.[8] Moreover, the United Kingdom, which will assume the EC presidency for the second half of 1992, has indicated that much of the remaining legislation could be set aside in order to ensure completion of the single market.[9]

The presidency of the EC Council changed hands according to treaty provisions, with Portugal succeeding the Netherlands to the chair for the first half of 1992. Portugal has stated that it will give priority to the following: implementing the measures agreed to at the Maastricht summit (see below); overseeing debates on a new financial structure for the EC; dealing with reform of the common agricultural policy (CAP); ensuring the completion of the single market; and meeting the challenge of EC membership enlargement.[10] The overwhelming scope of this agenda has implications for the single market program. The need to move expeditiously on matters outside the White Paper may increasingly sidetrack the Community's attention from completion of the single market program.

[5] U.S. Department of State Telegram, "Delors' Wishes for 1992: 'A Year of Transition'," Jan. 28, 1992, Brussels, message reference No. 01230.

[6] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991.

[7] As a practical matter, a directive usually takes 1 to 3 years to be fully implemented in a member state. See U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991, pp. 1-5 to 1-7.

[8] "Internal Market Ministerial: Bid to Speed Up Work for 1993," *European Report*, No. 1704 (Sept. 18, 1991), Internal Market, p. 6.

[9] John Redwood, British Minister of Corporate Affairs, as cited in Mark M. Nelson, "EC Renews its Focus on Final Construction of the Single Market," *Wall Street Journal Europe*, Jan. 17-18, 1992.

[10] "EEC Council: Portugese Presidency Seeks to Build Upon Maastricht Agreement," *European Report*, No. 1731 (Dec. 21, 1991), Institutions and Policy Coordination, p. 2.

Deepening Versus Widening

An issue of particular significance to completion of the internal market is that of *deepening* the European Community—creating more binding economic, political and institutional ties—as opposed to *widening* or enlarging EC membership. The problem of establishing the relative priority of these two alternatives has become increasingly difficult. European nations outside of the EC are anxious to join the EC to take full advantage of the economic benefits of EC 1992, whereas many EC member states prefer to deepen ties among themselves before the Community takes on new members.

The debate over whether widening or deepening the EC has priority will likely continue for some time. For the moment, however, it seems clear from the results of the Maastricht summit that the current 12 member states of the EC are set on first strengthening the existing structures of the EC before making attempts to expand the Community to a membership of 19 or 24.[11] One of the principal tasks that faced the participants in the Maastricht summit was to update EC institutional structures, such as the European Parliament and the EC Council, that were built for the original 6 member countries but that no longer work for the current 12 member states. Thus, further enlargement of the EC is unlikely until the Community's current institutional structure can be altered to accomodate a larger membership without sacrificing the progress made on integration over the past 30 years.

Widening: EFTA, the EEA, and Eastern Europe

The EFTA consists of seven countries—Austria, Finland, Iceland, Norway, Sweden, Switzerland, and Liechtenstein. Cooperation between EFTA and the EC has traditionally been close because of shared objectives (the promotion of free trade) and geographic proximity.[12] Concern that its firms could become less competitive vis-a-vis EC firms after the internal market is complete has pressured EFTA to increase integration and cooperation with the EC.

The concept of a European Economic Area (EEA) that would join the EC and EFTA was initiated by the Luxembourg Declaration at the first EC-EFTA Ministerial-level meeting in 1984. The purpose of the EEA is to enable, to the greatest possible extent, the free movement of goods, persons, services and capital between the 19 EC and EFTA countries.[13] Reportedly,

[11] Romain Leick and Marion Schreiber, "Interview With EC Commission President Jacques Delors," *Der Spiegel*, Oct. 14, 1991, pp. 20-24.

[12] For further information on the EEA, see "Trade and Cooperation EC-EFTA," *European Update*, West Publishing Co., 1991 WL 11719 (D.R.T.) Oct.11, 1991, p. 12.

[13] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991.

the EFTA will accept in its entirety the *acquis communautaire*-the body of EC laws and rules relevant to the realization of the four freedoms cited above.[14] The EEA will cover most internal market measures except those dealing with taxation. EFTA countries will apply EC rules on state aid, transportation, competition, and on such social policy areas as consumer and environmental protection, statistics, public procurement, and company law. The EEA will not, however, bind the EFTA states to participate in EMU, political union, or the CAP.[15]

Formal negotiations on the EEA started on June 20, 1990, and were scheduled to end on June 25, 1991, to permit the implementation of the EEA Treaty beginning January 1, 1993, concurrently with the EC's single market program. After lengthy negotiations, a draft agreement was reached on October 22, 1991. The prospects for a final agreement diminished, however, after the European Court of Justice (ECJ) declared that the plan to set up a new court to settle disputes over EEA law would contravene EC law.[16] The EC Commission succeeded in negotiating a new EEA agreement to address this issue on February 14, 1992. The draft treaty was approved by the ECJ on April 10, 1992, but has not, at the time of this report, received approval from the European Parliament.[17]

The new agreement would establish a legal dispute settlement procedure, under which differences over judicial interpretation of EEA laws would go to a joint EEA political committee. Further, in the absence of any overall EEA court, both sides would exchange information on case law. The EFTA nations have also agreed to let the EC Commission and the ECJ deal with virtually any significant competition cases.[18]

In addition to receiving approval from the European Parliament, the EEA has to be ratified by all 19 participating countries. Austria and Sweden may accept the new treaty, for they see the EEA as a provisional arrangement leading to the full EC membership they expect to achieve by 1996. So might Finland, which recently applied to join the Community.[19] Norway and Switzerland, on the other hand, see the EEA as a long-term venture and their respective parliaments will be less likely to accept the jursidiction of the ECJ. If the EEA collapses, both Norway and Switzerland are likely to hasten moves toward applying for full EC membership, thus giving them representation in the EC decision-making process.

Another source of pressure for enlarging the membership of the EC has come from Central and Eastern Europe. Political and economic instability in many Eastern European countries and former Soviet republics has focused the attention of some EC members on the importance of aiding these nations in the process of integration with the world economy. Sir Leon Brittain, EC Commissioner for Competition, speaking before the European Parliament in May 1991, argued that enlargement of the Community and deepening of its ties are not mutually exclusive, and that the best way to assist Eastern European nations is to help them to attain EC membership.[20] Frans Andriessen, EC Commissioner for External Relations, has stated that the trend of former Communist countries to come back into the Western fold and to become part of the European integration plan should lead the European Community to review its policy on enlarging EC membership.[21] Poland, Hungary, and Czechoslovakia signed new, far-reaching Association Agreements[22] with the EC on December 16, 1991.[23] In addition, on November 4, 1991, the EC Commission received a Council mandate to begin negotiations with the Baltic states of Lithuania, Latvia, and Estonia on trade and cooperation agreements.[24]

Deepening: The Maastricht Summit

The forces behind deepening the European Community have been equally strong. Significant progress was made in cementing ties between the EC member states at the semiannual summit of the EC Heads of State and Government in Maastricht, the Netherlands, on December 9 and 10, 1991. The Treaty on European Union, officially signed on February 7, 1992, commits the 12 member states to both EMU and political union.[25] With regard to EMU, the EC leaders agreed to introduce a single currency (the ECU), establish a European System of Central Banks (ESCB), and create a European Central Bank (ECB).[26] The ECU will be introduced as the common currency no later than 1999; if a majority of the EC members meet

[14] Jacques Delors, "European Community and EFTA: The European Economic Area Becomes a Reality," *Target 1992*, Nov./Dec. 1991.

[15] "The European Economic Area: Towards a Single Market of 19 Countries," supplement to *European Report*, No. 1715 (Oct. 26, 1991).

[16] "Impasse on EEA," *European Report*, No. 1730 (Dec. 17, 1991), External Relations, p. 2.

[17] U.S. Department of State telegram, Apr. 13, 1992, Brussels, message reference No. 05176.

[18] Ibid.

[19] U.S. Department of State telegram, Mar. 18, 1992, Helsinki, Finland, message reference No. 02663.

[20] U.S. Department of State Telegram, "European Parliament Considers Community Enlargement," May 18, 1991, Brussels, message reference No. 06413.

[21] "Frans Andriessen Attaches Greater Importance to EEC Enlargement," *European Report*, No. 1701 (Sept. 7, 1991), Institutions and Policy Coordination, p. 1.

[22] These agreements will lead to free trade over 10 years, with the EC lowering its barriers to industrial imports more quickly (5 to 6 years) than the central Europeans will be required to do.

[23] "Europe Enters New Era With Association Accords," *European Report*, No. 1730 (Dec. 17, 1991), External Relations, p. 1.

[24] "Commission Gets Green Light to Negotiate Accords," *European Report*, No. 1718, Nov. 6, 1991, External Relations, p. 6.

[25] For a complete discussion of EMU and its implications for the United States, see chapter 4 of this report.

[26] "Success at Maastricht: A Landmark Summit," *European Community News*, No. 33/91, Dec. 11, 1991, p. 1.

the requirements for currency union—essentially a stable national economy and low inflation rates—introduction of the ECU could take place as soon as 1997.

On the political side, the EC agreed to a common security and defense policy with the Western European Union (WEU) at its core, a common visa policy, and a form of "European citizenship" that will allow EC citizens to vote in local elections outside of their native country. With regard to the particularly thorny area of social policy,[27] all the member states, except the United Kingdom, which rejected EC-imposed labor legislation, agreed to bring such social areas as health, education, environment, energy, culture, tourism, and civil protection under EC jurisdiction.[28]

Institutional changes were also agreed on during the Maastricht summit. The powers of the European Parliament, for example, were significantly expanded. Under the new treaty, the Parliament will be able to negotiate directly with the EC Council of Ministers on amendments to legislation and will have the power to veto single market laws and certain aspects of environmental legislation. The new treaty also adds to Parliament's powers by requiring parliamentary assent for (1) the objectives of the Structural Funds Program (regional aid), (2) the rights of European citizenship created by the treaty, (3) the harmonization of electoral systems for European elections, and (4) other international agreements, such as the EEA. Majority voting in the EC Council was extended to a broader range of legislative issues, including certain environmental, educational, health, and consumer protection matters. The president of the EC Commission will be appointed through a consensus of EC member-state governments after consultation with the European Parliament. The entire EC Commission will also be subject to a vote of confidence from the Parliament.[29]

Trade and Investment

Introduction

The European Community, as defined by its current 12 member states, remained the United States' largest trading partner in 1991, accounting for roughly 21 percent of total U.S. trade (tables 1-1 and 1-2). In terms of U.S. exports, the EC ranked first in 1991, a rank it has held since 1987. Canada and Japan ranked second and third, respectively. In terms of U.S. imports, the EC ranked third in 1991, with Canada and Japan ranking first and second, respectively. The EC consistently accounted for between 18 and 20 percent of total U.S. imports during 1987-91.

Trends in U.S.-EC Trade

The U.S. Trade Balance

The U.S. trade balance with the EC has steadily improved over the past 5 years, rising from a deficit of $22.9 billion in 1987, to a surplus of $2.3 billion in 1990, and a surplus of $12.5 billion in 1991 (figure 1-1). This strong U.S. trade performance with the EC, fueled in part by the depreciation of the dollar,[30] has contributed disproportionately to the improvement in the overall U.S. trade balance, which improved from a deficit of $158.2 billion in 1987, to a deficit of $82.2 billion in 1991.

U.S. Exports

Table 1-1 shows that U.S. exports to all markets amounted to $400.8 billion during 1991, representing an increase of $26.3 billion or 7 percent over 1990. Exports to the EC during 1991 amounted to $97.6 billion, or 24 percent of total U.S. exports. U.S. exports to the EC grew by 5 percent in 1991, lagging behind the 7-percent growth rate of U.S. exports to the world, but ahead of exports to both Canada and Japan.

The largest categories of exports from the United States to the EC during 1991 were transport equipment, including rail cars and airplanes; office machines and automated data processing equipment; electrical machinery, apparatus and appliances; power generating machinery and equipment; and miscellaneous manufactured articles (SITC divisions 79, 75, 77, 71, and 89, respectively). Total exports to the EC for these top five SITC divisions during 1991 amounted to $40.5 billion, representing nearly 42 percent of total U.S. exports to the EC. Primary markets for U.S. exports among EC member-states in 1991 were the United Kingdom, accounting for over 5 percent of U.S. exports to the world; Germany, 5 percent; France, 4 percent; and the Netherlands, 3 percent.

U.S. exports to the EC have climbed an average of 14.3 percent per year since 1987. This rise compares favorably with the growth of U.S. exports to the world as a whole, which averaged 13.2 percent per year over the same period.[31] Significantly, the growth of U.S. exports to the EC consistently outpaced that of exports to Canada, the United States' second-largest export market, with an 8.4-percent average growth rate per year, but nearly matched the growth of U.S. exports to Japan which averaged 14.4 percent during 1987-91.[32] The composition of U.S. exports to the EC did not change dramatically during 1987-91.

[27] For more information on the social dimension, see chapter 14 of this report.

[28] "Agreement Concluded Between the Member States of the European Community With the Exception of the United Kingdom," supplement to the *European Report*, No. 1728 (Dec. 11. 1991), pp. 11–14.

[29] "Official text of the European Union Treaty signed in Maastricht on February 7, 1992, by the European Community Heads of State and Government," supplement to the *European Report*, No. 1746 (Feb. 22, 1922).

[30] EC Commission, *Panorama of EC Industry, 1991*, p. 4.

[31] Official statistics compiled by the U.S. Department of Commerce.

[32] One possible explanation for this phenomenon lies in the relatively low level of U.S. exports to Japan at the beginning of this period.

Table 1–1
All commodities: U.S. exports to the EC and rest of world, by leading markets, 1987–91

(Thousand dollars)

Market	*1987*	*1988*	*1989*	*1990*	*1991*
European Community					
United Kingdom	13,140,470	17,255,779	19,642,736	22,236,156	20,911,121
West Germany	10,921,061	13,207,099	16,069,190	17,635,380	19,960,954
France	7,504,518	9,572,988	10,919,097	12,957,924	14,561,206
Netherlands	7,868,764	9,504,410	10,876,043	12,280,559	12,723,730
Belgium/Luxembourg	5,942,610	7,131,084	8,376,121	9,869,932	10,072,173
Italy	5,305,449	6,457,502	6,928,581	7,641,529	8,173,521
Spain	3,050,673	3,931,387	4,702,732	5,087,893	5,308,216
Ireland	1,752,008	2,104,344	2,389,077	2,436,350	2,567,120
Denmark	831,511	877,337	1,016,577	1,270,067	1,533,851
Greece	343,517	545,312	696,662	748,401	1,023,049
Portugal	569,497	718,383	907,894	895,335	762,649
Total	57,230,077	71,305,625	82,524,708	93,059,526	97,597,591
Rest of World					
Canada	57,001,048	68,243,191	74,977,469	78,217,958	78,711,789
Japan	26,903,632	36,041,575	42,764,273	46,138,436	46,144,069
Mexico	14,045,175	19,853,345	24,117,255	27,467,595	32,279,218
South Korea	7,486,064	10,381,436	13,207,742	14,073,883	15,211,098
Taiwan	7,019,239	11,599,286	10,974,696	11,141,956	12,718,074
Singapore	3,865,229	5,423,053	7,001,752	7,597,516	8,277,534
Australia	5,329,630	6,671,722	8,130,170	8,304,492	8,206,686
Hong Kong	3,746,011	5,356,076	5,892,622	6,081,398	7,358,398
Saudi Arabia	3,010,754	3,534,532	3,495,164	3,958,040	6,441,524
China	3,459,595	5,004,317	5,775,478	4,775,734	6,238,054
Brazil	3,889,272	4,106,260	4,636,110	4,876,461	5,945,134
Switzerland	2,479,298	3,276,890	4,119,530	4,069,927	4,896,123
Malaysia	1,867,298	2,052,982	2,710,709	3,169,302	3,777,593
Soviet Union	1,477,399	2,762,754	4,262,336	3,071,629	3,498,452
Sweden	1,770,747	2,542,386	2,998,921	3,264,878	3,177,184
All Other	43,278,458	52,190,895	51,844,014	55,267,913	60,363,883
Total	186,628,848	239,040,700	266,908,239	281,477,121	303,244,812
Grand Total	243,858,925	310,346,325	349,432,947	374,536,647	400,842,402

Note.—Due to rounding, figures may not add to totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

U.S. Imports

Table 1-2 shows that U.S. imports from all countries amounted to $483.0 billion in 1991, a decrease of 1.5 percent from the 1990 import total of $490.6 billion. Following the overall trend, U.S. imports from the 12 EC countries dropped by over 6 percent from 1990, totaling $85.1 billion in 1991, or 18 percent of total U.S. imports.

The five largest SITC commodity groupings of U.S. imports from the EC in 1991 were road vehicles; power generating machinery and equipment; miscellaneous manufactured articles; machinery specialized for particular industries; and electrical machinery, apparatus and appliances (SITC divisions 78, 71, 89, 72, and 77, respectively). These five groupings accounted for $28.5 billion, or 34 percent of total U.S. imports from the EC in 1991.

Growth of U.S. imports from the EC, averaging 1.5 percent per year during 1987-1991, has lagged far behind the 4.7-percent average growth rate for U.S. imports from all countries. Average growth in imports from the EC, during 1987-91, was also far below the 6.4-percent average yearly growth in imports from Canada, but just below the 1.9-percent level seen in imports from Japan.[33] The composition of U.S. imports from the EC has not changed dramatically in the past five years, although petroleum products and general industrial machinery (SITC divisions 33 and 74) have dropped out of the top five SITC import divisions to be replaced by power generating machinery and electrical machinery, apparatus, and appliances.

[33] Official statistics compiled by the U.S. Department of Commerce.

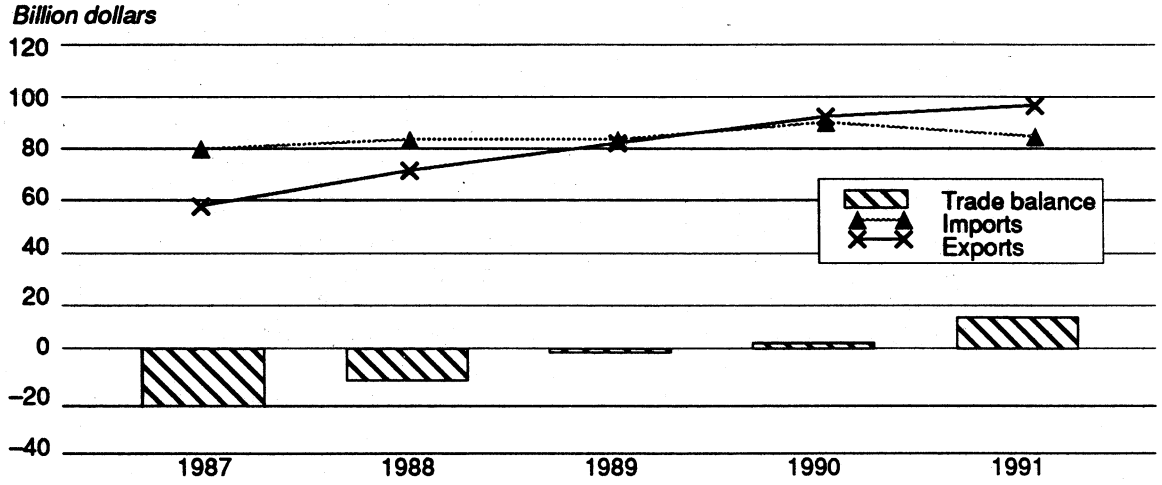
Table 1–2
All commodities: U.S. imports for consumption from the EC and rest of world, by leading markets, 1987–91

(Thousand dollars)

Market	*1987*	*1988*	*1989*	*1990*	*1991*
European Community					
West Germany	27,053,535	26,491,655	24,774,389	28,035,442	25,631,567
United Kingdom	16,930,902	17,752,304	17,924,428	19,928,916	18,152,227
France	10,501,843	11,910,300	12,666,411	12,794,916	13,231,284
Italy	10,819,220	11,459,798	11,785,957	12,576,638	11,617,897
Netherlands	3,941,770	4,532,008	4,734,241	4,935,263	4,826,206
Belgium & Luxembourg	4,135,233	4,492,625	4,541,556	4,563,714	4,105,343
Spain	2,792,105	3,145,993	3,253,897	3,259,100	2,812,527
Ireland	1,097,547	1,362,264	1,558,928	1,735,927	1,969,265
Denmark	1,777,546	1,665,879	1,526,625	1,668,701	1,654,219
Portugal	660,352	691,668	786,637	822,293	702,721
Greece	434,294	531,712	472,283	478,037	394,818
Total	80,144,348	84,036,204	84,025,352	90,798,948	85,098,074
Rest of World					
Canada	70,850,625	80,678,621	87,987,651	91,198,308	90,923,823
Japan	84,008,499	89,110,486	91,841,766	88,834,279	90,468,823
Mexico	19,765,789	22,617,177	26,556,570	29,505,962	30,445,131
Taiwan	24,575,682	24,710,730	24,203,285	22,566,115	22,941,568
China	6,243,877	8,412,930	11,859,172	15,119,852	18,855,041
South Korea	16,888,153	20,071,989	19,566,725	18,336,960	16,862,383
Saudi Arabia.	4,412,861	5,549,315	7,081,853	9,964,557	10,960,525
Singapore	6,178,365	7,958,537	8,886,073	9,784,855	9,903,329
Hong Kong	9,832,528	10,184,949	9,668,914	9,400,255	9,194,611
Venezuela	5,374,366	5,044,996	6,492,623	9,132,322	7,758,434
Brazil	7,612,206	9,058,916	8,483,765	7,762,112	6,760,533
Malaysia	2,884,574	3,697,181	4,668,791	5,223,815	6,073,511
Thailand	2,221,261	3,197,899	4,363,400	5,280,317	6,069,677
Switzerland	4,183,379	4,553,135	4,669,555	5,263,422	5,443,186
Nigeria	3,573,685	3,284,465	5,228,107	5,978,803	5,373,703
All Other	53,315,804	54,972,653	62,428,420	66,402,856	59,895,525
Total	321,921,654	353,103,981	383,986,670	399,754,791	397,929,804
Grand Total	402,066,002	437,140,185	468,012,021	490,553,739	483,027,878

Note.—Due to rounding, figures may not add to totals shown.
Source: Compiled from official statistics of the U.S. Department of Commerce.

Figure 1–1
U.S. trade with the EC, 1987–91



Source: Compiled from official statistics of the U.S. Department of Commerce.

Extra-EC Trade

Over the past 5 years, the EC has faced a steadily worsening balance of trade with the rest of the world (extra-EC) (figure 1-2).[34] The EC registered a global surplus of $9.1 billion in 1986.[35] This surplus, however, was a temporary phenomenon, and was reportedly caused by the 1986 crash in world oil prices.[36] The recovered growth that followed the decrease in world oil prices led to an EC trade deficit[37] of $56.6 billion in 1990.[38] Imports have increased more rapidly than exports partially because of the upsurge in demand in the EC internal market.[39]

Combined exports from all 12 EC member states to other member states as well as to third countries grew by 20 percent to $1,368 billion in 1990, compared with $1,136 billion in 1989 (table 1-3). The most important markets for EC exports outside of the Community in 1990 were the United States; the three EFTA countries of Switzerland, Austria, and Sweden; Japan; and the former U.S.S.R. (figure 1-3).[40] Combined, these countries accounted for over 48 percent of all extra-EC exports. Exports to Japan showed the greatest increase among these countries, rising by 24 percent in 1990 and by nearly 154 percent during 1986-90.[41] Growth in exports to the United States were on the other end of the spectrum, rising by only 13 percent between 1989 and 1990 and by only 31 percent during 1986-90. The five largest exporters among the EC member states in 1990 were Germany ($409.3 billion), France ($216.4 billion), the United Kingdom ($185.2 billion), Italy ($169.9 billion), and the Netherlands ($131.5 billion).

The EC member states imported from other member states as well as from third countries a total of $1,416 billion worth of goods and services in 1990, an increase of 21 percent over 1989 (table 1-4). The most important suppliers outside of the Community in 1990 were the United States, Japan, Switzerland, Sweden, Austria, and the former U.S.S.R. (figure 1-4). Combined, these 6 countries accounted for 49 percent of 1990 EC imports from sources outside the 12 member states. In terms of growth, imports from the former U.S.S.R. showed the greatest increase in 1990, jumping 31 percent over the 1989 level. Between 1986 and 1990, however, EC imports from Austria showed the greatest increase, rising by over 93 percent. From 1989 to 1990, EC imports from Sweden and the United States tied at 15 percent for the lowest rate of growth among the industrialized countries, whereas during 1986-90, growth in imports from the former U.S.S.R. came in last at 62 percent. The largest importers among the 12 member states in 1990 were Germany with $346.5 billion, France with $234.5 billion, and the United Kingdom with $223.0 billion.

Intra-EC Trade

One of the more significant trends in EC trade is the relative stability of intra-EC trade as a share of total EC trade with the world. Although there was a significant jump in intra-EC trade from 53 percent in 1985 to 57 percent in 1986 when Spain and Portugal joined the Community, intra-EC trade as a share of EC trade with the world climbed only 2 percentage points between 1987 and 1990 to 59 percent.

In 1986, 57 percent of total EC exports were bound for other EC markets. The percentage of intra-EC exports increased gradually to 61 percent in 1990 (figure 1-3). Intra-EC exports grew at an average of 16.4 percent during 1986-90, compared with an average growth rate of 11.8 percent for EC exports to countries outside of the Community. This disparity between intra- and extra-EC exports has had significant ramifications for the overall EC trade balance and is directly related to the single market program. According to the EC Commission, EC firms are seeking to reinforce their position in a fast-expanding internal market, rather than in foreign markets.[42] Germany, France, and the United Kingdom have thus concentrated their export development efforts within the EC, rather than in the United States, Canada, or Japan.[43]

Trends in intra-EC imports were much less dramatic than those seen in intra-EC exports. Imports of EC member states from other member states increased from roughly 57 percent of total EC imports in 1986, to 58 percent in 1990 (figure 1-4). Nevertheless, the 16.5 percent average growth rate of intra-EC imports during 1986-90 exceeded the 15.4 percent growth rate of EC imports from countries outside the Community.

EC Trade Statistics

An often ignored area of EC trade policy is that of the collection and dissemination of EC trade statistics. The general aim of the 1985 White Paper is the elimination of physical borders within the EC from January 1, 1993, onward. Consequently, frontier formalities, checks, and documentation (the latter being

[34] EC trade with the world is measured as a composite of the 12 member states' imports and exports with all countries outside of the Community.

[35] This figure excludes intra-EC trade.

[36] EC Commission, *Panorama of EC Industry, 1990*, pp. 13–14.

[37] Ibid.

[38] IMF, *Direction of Trade Statistics*.

[39] EC Commission, *Panorama of EC Industry, 1991*, p. 8.

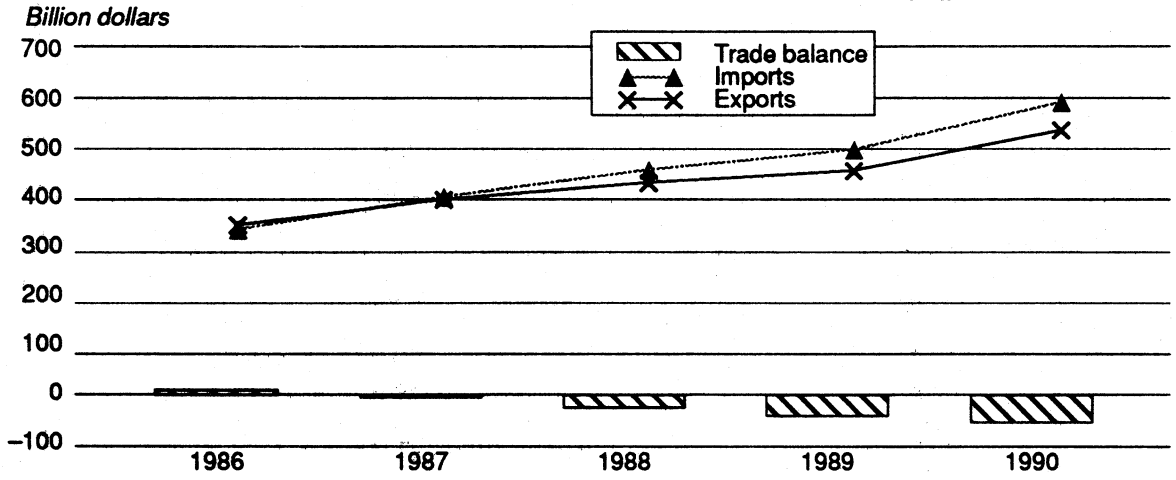
[40] IMF, *Direction of Trade Statistics*.

[41] As with U.S. exports to Japan, the dramatic level of growth in EC exports to Japan during 1986–90 is principally due to the relatively low level of exports at the beginning of this period.

[42] *Panorama of EC Industry, 1991*, p. 13.

[43] Ibid., p. 8.

Figure 1–2
EC trade with the world,[1] 1986–90



[1] EC trade with the world is measured as a composite of the 12 member states' imports and exports with all countries outside of the European Community.

Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1991.

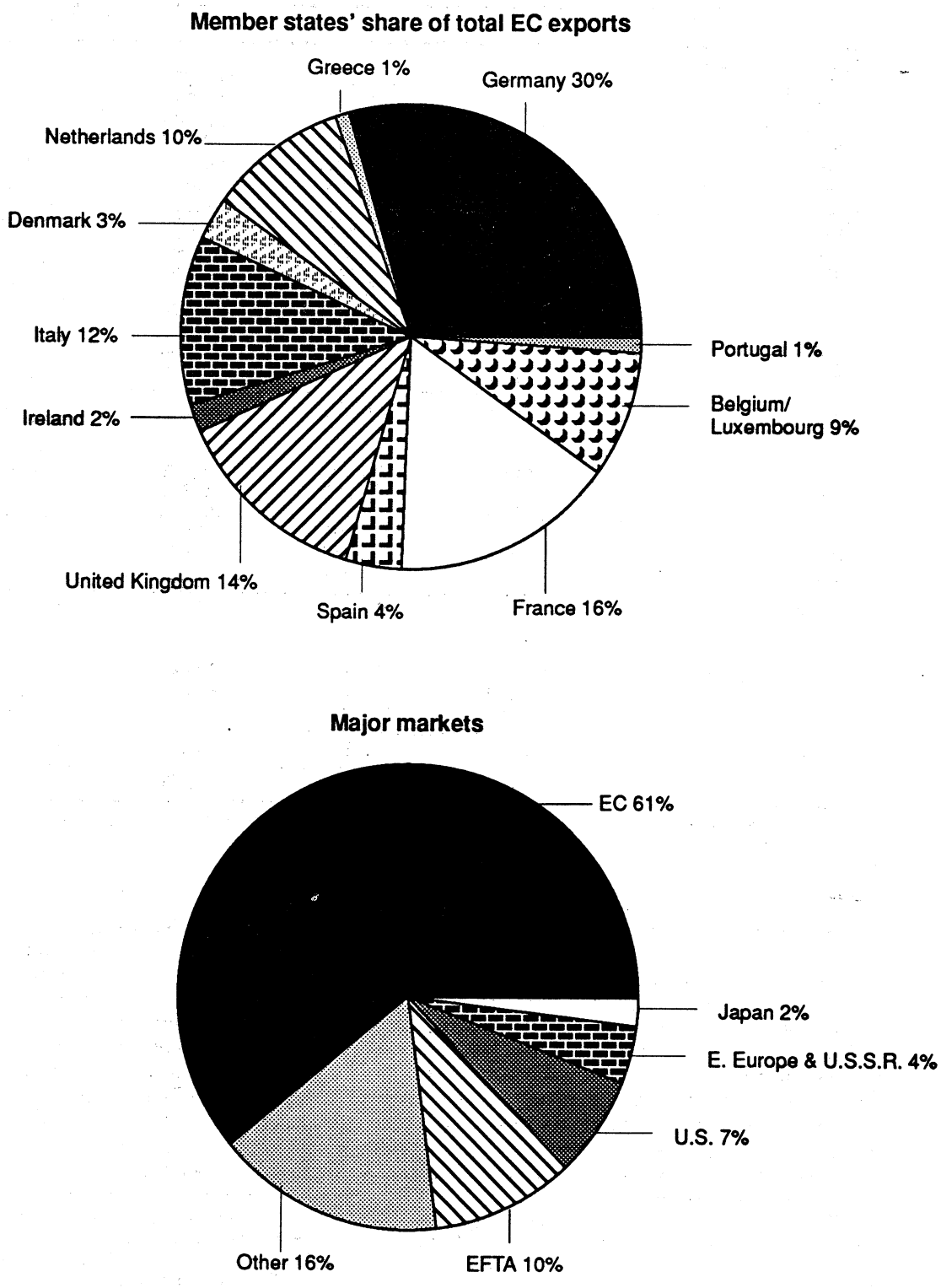
Table 1–3
All commodities: EC exports to the European Community member states and rest of world, by leading markets, 1986–90

(Million dollars)

Market	*1986*	*1987*	*1988*	*1989*	*1990*
European Community					
Germany	96,460	116,010	126,401	132,521	175,257
France	84,374	105,746	119,019	130,423	157,337
United Kingdom	62,808	77,088	91,568	97,372	108,404
Italy	52,752	67,424	76,019	82,200	98,270
Belgium/Luxembourg	50,511	61,514	68,956	71,618	88,653
Netherlands	52,273	63,627	69,720	73,118	86,930
Spain	19,232	28,950	35,775	41,856	53,247
Denmark	12,235	13,553	14,198	14,359	17,188
Portugal	5,676	8,671	11,258	12,995	16,296
Ireland	8,145	9,520	10,798	11,840	14,312
Greece	6,881	8,084	9,367	10,527	12,762
Total	451,348	560,187	633,078	678,827	828,655
Eastern Europe[1]	15,945	17,812	19,110	21,787	30,396
Soviet Union	9,689	10,640	11,943	13,744	19,177
Total	25,634	28,452	31,053	35,531	49,573
EFTA					
Switzerland	31,078	37,869	41,603	43,586	51,849
Austria	19,013	23,243	26,765	27,806	34,324
Sweden	18,832	23,337	24,947	26,467	30,104
Norway	9,874	10,964	10,097	9,432	11,776
Finland	6,474	8,137	9,197	10,345	11,641
Iceland	574	789	742	645	811
Total	85,845	104,339	113,351	118,281	140,505
Rest of World					
United States	73,969	82,905	84,576	85,705	96,545
Japan	11,333	15,749	19,867	23,235	28,729
All Other	148,346	165,913	182,889	194,141	223,885
Total	233,648	264,567	287,332	303,081	349,159
Grand Total	796,475	957,545	1,064,814	1,135,720	1,367,892

[1] Eastern Europe includes Poland, East Germany, Hungary, Czechoslovakia, Yugoslavia, Bulgaria and Romania.
Note.—Because of rounding, figures may not add to the totals shown.
Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1991.

Figure 1–3
EC exports to the world,[1] by sources and by major markets, 1990



[1] To other EC member states and to countries outside the European Community.
Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1991.

Table 1–4
All commodities: EC imports from the European Community member states and rest of world, by leading markets, 1986–90

(Million dollars)

Market	*1986*	*1987*	*1988*	*1989*	*1990*
European Community					
Germany	117,663	148,131	167,328	176,809	209,876
France	71,165	89,117	102,578	110,106	135,850
Netherlands	61,003	71,910	80,296	85,732	105,682
Italy	51,154	64,508	72,097	77,977	97,469
United Kingdom	49,526	60,498	66,762	71,544	90,476
Belgium/Luxembourg	49,806	61,344	68,465	72,568	88,359
Spain	16,951	22,490	26,359	28,817	38,135
Denmark	10,032	12,458	13,838	14,450	18,469
Ireland	8,749	11,429	13,537	14,444	17,154
Portugal	5,322	6,879	8,089	9,447	12,585
Greece	3,982	5,090	5,145	5,712	6,148
Total	445,353	553,854	624,494	667,606	820,203
Eastern Europe[1]	16,270	19,232	21,096	22,797	28,373
Soviet Union	13,231	15,022	15,171	16,434	21,456
Total	29,501	34,254	36,267	39,231	49,829
EFTA					
Switzerland	24,807	30,928	34,105	34,750	43,134
Sweden	19,091	23,312	26,385	28,230	32,536
Austria	13,763	17,580	20,015	20,861	26,595
Norway	12,115	14,107	14,831	17,149	20,948
Finland	7,145	9,244	10,880	11,159	13,602
Iceland	669	841	886	851	1,186
Total	77,590	96,012	107,102	113,000	138,001
Rest of World					
United States	57,135	66,690	79,443	91,249	105,290
Japan	34,003	42,117	50,201	52,562	60,805
All other	137,821	163,837	185,279	203,885	241,883
Total	228,959	272,644	314,923	347,696	407,978
Grand total	781,403	956,764	1,082,786	1,167,533	1,416,011

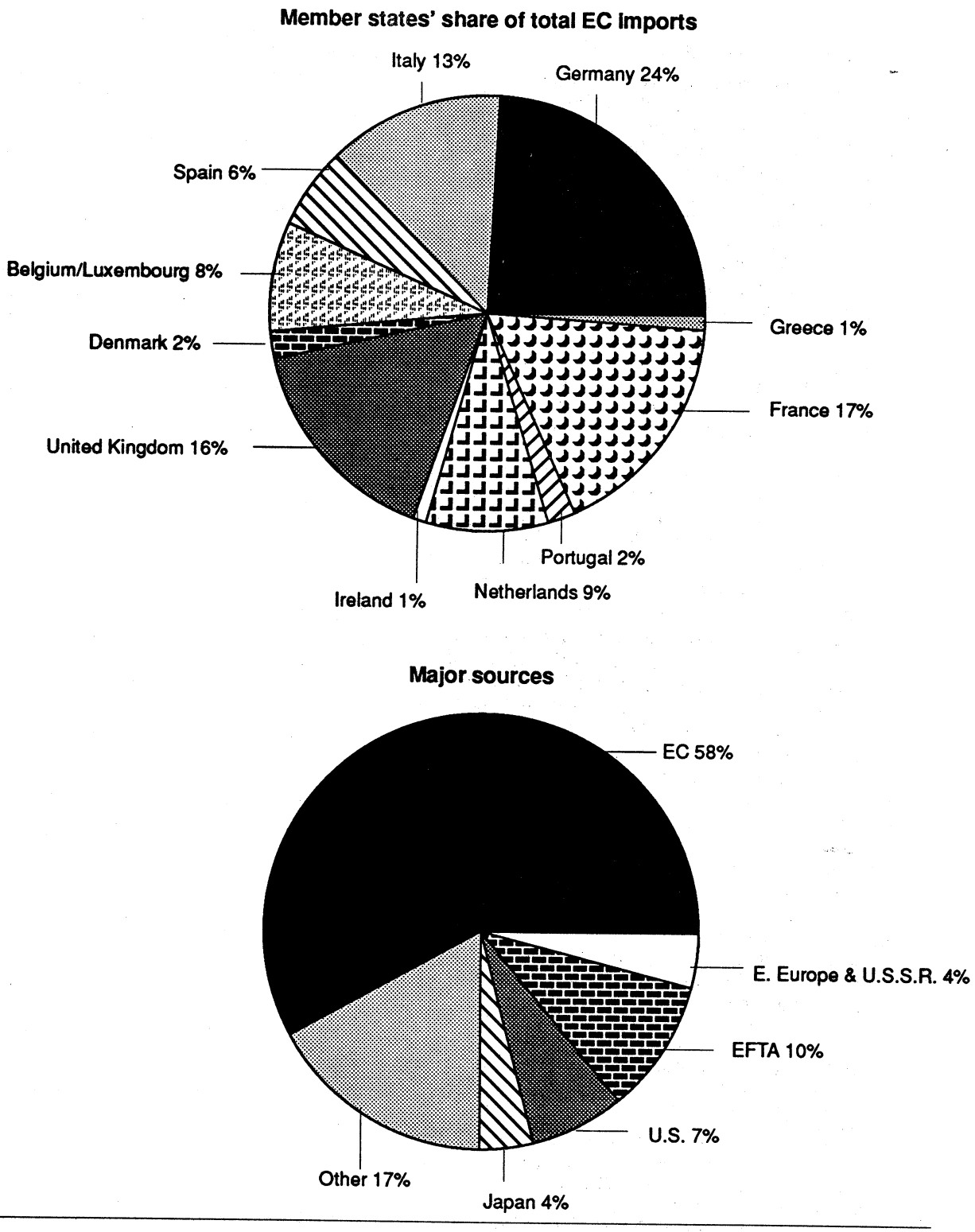
[1] Eastern Europe includes Poland, East Germany, Hungary, Czechoslovakia, Yugoslavia, Bulgaria, and Romania.
Note.—Because of rounding, figures may not add to the totals shown.
Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1991.

a tool for collecting trade information for statistical purposes) are supposed to disappear.[44] The EC Commission has made it clear that it does not want to place an unwarranted burden on EC firms by shifting the responsibility for collecting trade-related statistical information from the member-state governments to the private sector.[45] The EC Commission has also determined, however, that the continued collection of quality statistical information is necessary to permit European firms to make the most of the economic opportunities presented by the integrated market.[46]

On November 16, 1991, the EC Council adopted a regulation for the introduction of *Intrastat*, a new statistical collection system for trade between member states.[47] As it now stands, the *Intrastat* system will rely on importers and exporters to provide the data necessary to compile intra-EC trade statistics.[48] In addition, the *Intrastat* system will utilize existing value added tax (VAT) administrative networks as a means of periodically verifying trade data received from European companies.[49] This plan has caused some concern among private EC firms, which fear the

[44] *Opinion on the Proposal for a Council Regulation (EEC) on the Statistics Relating to the Trading of Goods Between Member States*, *OJ* No. C 159 (June 26, 1989), p. 16.
[45] Ibid.
[46] *Answer Given by Mr. Christopherson on Behalf of the Commission to Written Question No. 1939/88 Regarding a Ban on the Proliferation of Statistics*, *OJ* No. C 187 (July 24, 1989), p. 26.
[47] *Council Regulation No. 3330/91 of 7 November 1991, on the Statistics Relating to the Trading of Goods Between Member States*, *OJ* No. L 316 (Nov. 16, 1991).
[48] The proposed regulation would also allow private firms to hire third parties to compile the necessary trade statistics.
[49] *Regulation No. 3330/91*, p. 5.

Figure 1–4
EC imports from the world,[1] by markets and by major sources, 1990



[1] From other EC member states and from countries outside the European Community
Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1991.

additional burden of having to collect transportion, storage, and trade data for the *Intrastat* system.[50]

Investment

U.S. Direct Investment in the EC

Total foreign direct investment in the EC during 1990 overtook total foreign direct investment in the United States for the first time since the end of the 1970s.[51] This change reflects the slowdown in the U.S. economy, which has reduced its attractiveness to external investors. Another important factor in drawing direct investment to the EC has been the 1992 single-market program. Fear of being excluded from the EC market after the integration program is complete has apparently increased the willingness of U.S. and Japanese companies to earmark funds for European projects.

U.S. direct investment abroad[52] reached a cumulative $421.5 billion in 1990, an increase of $51.4 billion or 13.9 percent over 1989 (table 1-5).[53] The United States invested $172.9 billion in the EC, accounting for 41.0 percent of total U.S. direct investment abroad in 1990. Other significant recipients of U.S. direct investment in 1990 were Canada with 16.2 percent and Japan with 5.0 percent. In 1990, U.S. direct investment in the EC grew 15.6 percent, exceeding the overall U.S. direct investment growth rate of 13.9 percent, as well as that of 4.4 percent in Canada and of 13.6 percent in Japan.

The largest levels of U.S. direct investment in the EC were in the United Kingdom with $65.0 billion, Germany with $27.7 billion, and the Netherlands with $22.8 billion. The U.S. direct investment position in the EC was the greatest in the area of manufacturing, reaching a level of approximately $81.3 billion in 1990, an increase of nearly 15 percent over the 1989 level of $70.9 billion. Direct investment in manufacturing in 1990 made up approximately 47 percent of total U.S. direct investment in the EC, followed by finance, insurance, real estate and other service sectors with 24 percent of the total, and petroleum with 11 percent of the total. U.S. direct investment in the EC climbed steadily during 1986-90, growing an average of 15 percent per year, or slightly higher than the 13 percent growth rate of U.S. direct investment worldwide. As a share of total U.S. direct investment, direct investment in the EC climbed from 38 percent in 1986 to 41 percent in 1990. The relatively steady growth rate of U.S. investment abroad was more than doubled by the growth rate of Japanese foreign direct investment during 1986-90. According to statistics provided by the Japanese Ministry of Finance, Japanese direct investment abroad grew by an average of 31 percent per year between 1986 and 1990.[54] Japanese direct investment in the EC exceeded this overall level, growing an average of nearly 43 percent per year between 1986 and 1990, compared with an average growth rate of 39 percent per year in Japanese direct investment in the United States. The EC accounted for 12.6 percent of 1986 total Japanese foreign direct investment, which rose to 17.8 percent in 1990.[55]

EC Direct Investment in the United States

Foreign direct investment in the United States in the form of capital outlays by foreign countries amounted to $403.7 billion in 1990, an increase of roughly 8 percent over 1989 (table 1-6). Direct investment in the United States by the 12 EC member states was $229.9 billion in 1990, or roughly 57 percent of direct investment in the United States by all countries. The United Kingdom ranked first among all countries in its foreign direct investment position in the United States, accounting for 27 percent of the world total and 47 percent of EC total direct investment in the United States in 1990. Other significant EC holders of direct investment in the United States were the Netherlands with 28 percent of total EC investment, and Germany with 12 percent of total EC investment. Total EC foreign direct investment held in the United States in 1990 was nearly three times that held by Japan, and over 8 times that of Canada.

The largest areas of investment by the EC in the United States were manufacturing, petroleum, wholesale-retail trade, and services. The foreign direct investment position attained by the EC in manufacturing was $104.5 billion in 1989, which increased by 5 percent to $109.7 billion in 1990. EC direct investment in U.S. petroleum industry decreased by 4 percent from $32.2 billion in 1989 to $30.8 billion in 1990, while EC direct investment in the U.S. wholesale-retail trade industry increased by 5 percent from $22.6 billion in 1989 to $23.7 billion in 1990. The investment position held by the EC in services showed the largest change, however, jumping 58 percent from $12.9 billion in 1989 to $20.4 billion in 1990.

EC direct investment in the United States has grown by an average 17 percent per year since 1986, just slightly behind the 18-percent average annual growth rate of EC direct investment worldwide. Overall, EC direct investment in the United States, measured as a share of total EC foreign direct investment, first climbed to 61 percent in 1987, from 60 percent in 1986, and then steadily declined to 57 percent by 1990. Given the troubled state of the U.S.

[50] "1992 and Trade Statistics," supplement to *European Report*, No. 1715 (Oct. 26, 1991), p. 4.

[51] Bank for International Settlements, *60th Annual Report, 1986-90*, June 1991.

[52] "U.S. direct investment abroad" is generally regarded as the book value of U.S. direct investors' equity in, and net outstanding loans to, their foreign affiliates. A foreign affiliate is a foreign business enterprise in which a single U.S. investor owns at least 10 percent of the voting securities, or the equivalent.

[53] U.S. Department of Commerce, Bureau of Economic Analysis (BEA), *Current Survey of U.S. Business*, Aug. 1991.

[54] Japan Economic Institute, Report No. 23B, June 21, 1991, p. 12.

[55] Ibid.

Table 1–5
U.S. direct investment position[1] abroad, by partners and by industry sectors, at yearend 1989 and 1990

(Million dollars)

	All Industries	Petro–leum	Manu–facturing	Wholesale Trade	Banking	Finance	Other[2]
European Community in 1989:							
United Kingdom	59,827	9,147	19,087	2,466	3,449	23,102	2,577
West Germany.	24,550	2,672	15,784	1,296	1,508	2,352	938
Netherlands	18,133	1,008	6,845	2,452	177	6,463	1,188
France	14,069	1,024	9,085	2,548	216	643	553
Italy	10,294	404	6,639	1,458	277	1,053	465
Belgium	7,941	246	4,041	1,790	199	1,335	330
Spain	6,096	67	3,952	909	703	28	438
Ireland	5,522	–37	4,271	18	7	1,236	27
Denmark	1,234	(3)	263	482	35	240	(3)
Luxembourg	1,127	5	636	6	242	238	0
Portugal	488	60	237	107	30	(3)	8
Greece	264	(3)	79	56	43	(3)	29
Total, EC	149,545	14,801	70,919	13,587	6,886	36,721	6,632
Canada	65,548	10,676	31,593	3,850	967	11,712	1,273
Japan	18,488	3,284	9,721	3,338	150	1,492	504
All countries.	370,091	54,049	149,237	37,230	20,397	84,323	24,856
European Community in 1990:							
United Kingdom	64,983	11,331	20,636	2,746	3,575	23,071	3,624
Germany	27,715	3,136	17,489	1,505	1,694	2,863	1,028
Netherlands	22,778	1,636	8,144	2,490	169	8,642	1,697
France	17,134	(3)	11,051	3,025	174	960	375
Italy	12,971	605	8,535	1,677	361	1,005	788
Belgium	9,462	327	4,331	2,177	(3)	2,059	352
Spain	7,480	116	4,998	1,011	879	3	472
Ireland	6,776	–41	4,885	(3)	4	1,549	352
Denmark	1,633	(3)	286	566	(3)	295	96
Luxembourg	1,119	22	539	(3)	301	238	(3)
Portugal	590	(3)	285	110	(3)	(3)	(3)
Greece	300	37	84	71	81	(3)	(3)
Total, EC	172,940	18,761	81,264	15,420	7,504	40,718	9,273
Canada	68,431	10,691	33,231	4,131	1,057	12,025	7,295
Japan	20,994	3,419	10,623	3,820	200	2,240	694
All countries.	421,494	59,736	168,220	41,411	21,397	98,889	31,840

[1] Direct investment as measured by valuation adjustments plus capital outflows. Capital outflows are defined as the net equity capital plus reinvested earnings plus net intercompany debt. The overall position is also generally regarded as the book value of U.S. direct investors' equity in, and net outstanding loans to, their foreign affilliates. A foreign affilliate is a foreign business enterprise in which a single U.S. investor owns at least 10 percent of the voting securities, or the equivalent.

[2] Includes insurance, real estate, services, and other industries.

[3] Suppressed to avoid disclosure of data of individual companies.

Source: Official economic data compiled from U.S. Department of Commerce BEA statistics.

economy, lower interest rates, and slow predicted growth, it is likely that EC investment in the United States[56] actually decreased in 1991.[57]

[56] Official data on foreign direct investment in the United States in 1991 will not be available until August 1992.

[57] U.S. Department of Commerce, Bureau of Economic Analysis, informal communication with USITC staff, Mar. 2, 1992.

Intra-EC Investment Activities

Recent reports indicate that the EC was not immune to the slowdown in the world economy during 1990-91.[58] The Gulf War brought with it an increase

[58] *Council Decision of 29 July 1991 Adopting the Annual Economic Report 1990/91 on the Economic Situation in the Community and the Economic Policy Orientation for the Community in 1991*, COM (91) 464, pp. 19–20.

Table 1–6
Foreign direct investment position[1] in the United States, by partners and by industry sectors, at yearend 1989 and 1990

(Million dollars)

	All Industries	Petro-leum	Manu-facturing	Wholesale/Re-tail Trade	Banking	Finance	Other[2]
European Community in 1989:							
United Kingdom	105,511	16,545	51,798	6,992	2,356	2,415	25,406
Netherlands	56,316	9,889	23,709	5,933	3,130	1,870	11,786
West Germany	29,015	1,100	15,722	6,970	985	555	3,683
France	16,822	(3)	11,355	946	871	–840	1,137
Belgium	3,972	(3)	941	881	23	(3)	114
Italy	1,374	(3)	514	327	685	(3)	73
Ireland	1,218	8	174	5	(3)	(3)	21
Spain	646	–4	55	128	395	(3)	–1
Denmark	632	(3)	103	259	20	0	230
Luxembourg.	512	(3)	79	67	8	161	118
Greece	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Portugal	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total, EC	216,132	32,159	104,446	22,601	9,160	4,436	43,331
Japan	67,319	–35	13,978	22,483	4,959	9,407	16,527
Canada	28,686	1,233	9,934	1,658	1,759	1,913	12,190
All countries	373,763	37,201	151,820	55,310	18,638	16,837	93,955
European Community in 1990:							
United Kingdom	108,055	15,310	52,955	7,140	1,919	3,807	26,924
Netherlands	64,333	10,527	24,446	6,468	2,218	1,336	19,339
Germany	27,770	492	15,216	7,491	1,033	–1,092	4,630
France	19,550	(3)	14,692	691	1,206	–3,347	2,965
Belgium	4,230	(3)	1,473	1,036	–71	(3)	114
Luxembourg.	1,831	(3)	81	53	–7	(3)	224
Italy	1,552	78	552	115	699	(3)	131
Ireland	905	7	86	251	(3)	(3)	1
Spain	796	(5)	69	164	409	(3)	4
Denmark	772	(3)	126	291	50	0	282
Greece	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Portugal	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total, EC.	229,913	30,792	109,695	23,717	8,145	1,616	55,948
Japan	83,498	–38	15,169	28,272	6,025	10,402	23,668
Canada	27,733	1,417	9,327	1,719	1,824	1,760	11,685
All countries	403,735	38,004	159,998	61,996	19,089	13,075	111,574

[1] Direct investment as measured by valuation adjustments plus capital outflows. Capital outflows are defined as the net equity capital plus reinvested earnings plus net intercompany debt. The overall position is also generally regarded as the book value of U.S. direct investors' equity in, and net outstanding loans to, their foreign affilliates. A foreign affilliate is a foreign business enterprise in which a single U.S. investor owns at least 10 percent of the voting securities, or the equivalent.

[2] Includes insurance, real estate, services and other industries.

[3] Suppressed to avoid disclosure of data of individual companies.

[4] Data not available.

[5] Less than $500,000.

Source: Official economic data compiled from U.S. Department of Commerce BEA statistics.

in oil prices in 1990-91 and is also thought to have contributed to an erosion of business and consumer confidence. In the Community, real GDP is estimated to have increased by only 1.3 percent in 1991, less than half the rate of 2.8 percent recorded in 1990.[59]

Unemployment for 1991 is estimated to have increased to 8.7 percent, while inflation is thought to have remained broadly stable at a relatively high level of 5 percent. Growth in intra-EC investment continued to decline in 1991, dropping to an estimated 0.8 percent, compared to 4.3-percent growth in 1990 and 6.7 percent in 1989.[60]

[59] "Annual Economic Report 1991/1992: Forecasts for 1992/1993," *European Community News*, No. 32/91, Dec. 5, 1991.

[60] *Council Decision Adopting the Annual Report*, COM (91) 464, pp. 19–20.

Despite the current economic slowdown, stronger growth in the EC is predicted for 1992 and 1993. In 1992, the overall situation is expected to improve, with GDP growth reaching 2.25 percent.[61] Intra-EC investment growth is similarly expected to increase to 3.7 percent in 1992.[62] Henning Christopherson, EC Commission Vice President responsible for Economic and Monetary Affairs, recently stated that the recovery will be based on an increase in investment and consumption resulting from confidence generated by the realization of major EC projects such as the 1992 single market, the formation of an economic and monetary union, and a successful conclusion of the Uruguay Round.[63]

Precise data on the amount of intra-Community direct investment that occurred in 1990-91 are not available. A marked increase in intra-EC investment is, however, apparent during the period 1984-88. Between the years 1984 and 1986, when Portugal and Spain acceded to the EC, intra-EC investment increased 193 percent from ECU 4.3 billion ($3.4 billion) to ECU 12.6 billion ($12.4 billion). A further increase was seen in 1988, when intra-Community direct investment rose 52 percent, reaching ECU 19.1 billion ($22.5 billion).[64] Caution should be taken, however, when evaluating these figures as indicators of growth in intra-EC direct investment. Much of intra-EC direct "foreign" investment is in fact national capital, reconstituted in holdings in Luxembourg, the Netherlands, or London to take advantage of fiscal and regulatory regimes, and then reimported into the country of origin under a new flag. Both the outflow and inflow appear as direct foreign investment operations in the statistics.[65]

Mergers and Acquisitions

The prospect of the single market and the gradual disappearance of trade barriers have strengthened many EC companies' resolve to become more competitive.[66] The number of mergers and acquisitions has more than doubled in the EC since 1986, and a growing proportion of these are being carried out on an international scale.

A recent compilation of data shows the number of mergers and acquisitions that have taken place since 1986.[67] Among the top 1,000 European firms, total mergers (including majority acquisitions) reached 833 during 1989-90,[68] an increase of 25 percent over the 1988-89 level of 666 (table 1-7). Three-quarters of these mergers and acquisitions occurred in manufacturing industries, with a distinct pattern of cross-border deals. In most industry operations, there was an above-average increase in the number of those mergers or acquisitions in which the combined turnover of the firms concerned exceeded ECU 5 billion ($5.4 billion) during 1989-90. In the services sector, however, this phenomenon of "big" deals was confined to the banking sector. Most mergers and acquisitions took place in the four largest member states: Germany, the United Kingdom, Italy, and France. In Spain, the number of mergers also increased significantly.

The greatest number of acquisitions in 1989 and 1990 was in the chemical industry, amounting to a total of 148, an increase of 38 percent from the previous year's level of 107. This was followed by 102 mergers and acquisitions in the food industry and 79 in the paper industry. Other important sectors of industry that experienced a relatively large level of merger and acquisition activity were metal manufacturing with 64 cases, machine tools with 52 cases, electrical and electronics with 46 cases, and construction with 39 cases.

A significant trend during 1986-90[69] has been the increase of intra-EC mergers and acquisitions, relative to national mergers or "international" mergers (figure 1-5). In 1986 and 1987, of 415 EC mergers and acquisitions, intra-EC mergers accounted for roughly 22 percent of the total with national and international mergers accounting for 70 percent and 8 percent, respectively. By 1990, however, intra-EC mergers accounted for 41 percent of the total, with national and international mergers and acquisitions amounting to 39 percent and 20 percent, respectively. Among the foreign buyers, the most active countries were the United States, followed closely by Sweden, Japan, and Switzerland.

Strengthening of market position and development of commercial activities within the EC continue to provide the strongest motives for merger and acquisition activity and are mentioned in three-quarters of all cases surveyed.[70] It would therefore seem apparent that firms both inside and outside the EC are preparing for more competition and larger markets.[71] A particularly large surge in merger and acquisition activity during the first half of 1990, however, could have been prompted by the adoption of merger control regulations in the EC, which took effect in September 1990.[72]

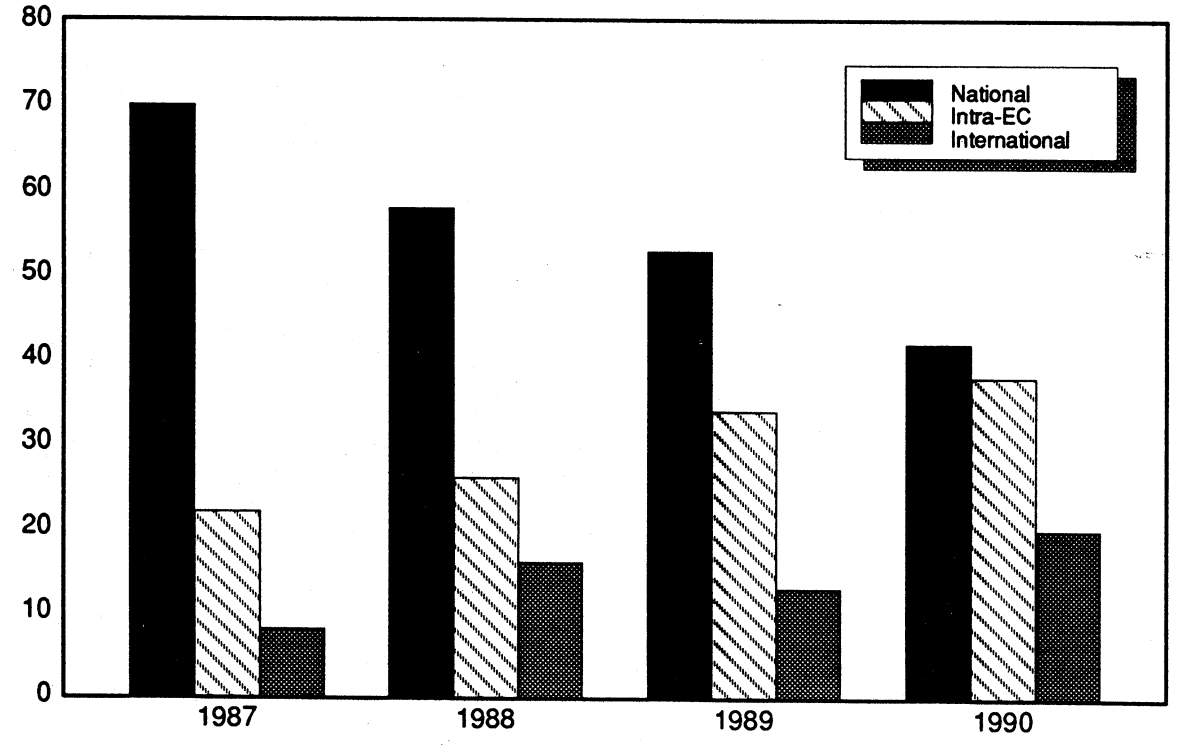
[61] "Annual Economic Report 1991/1992" *European Community News*, p. 1.
[62] *Council Decision Adopting the Annual Report*, COM (91) 464, pp. 19–20.
[63] "Annual Economic Report 1991/1992," *European Community News*, p. 1.
[64] Price Waterhouse, "Comparative Study on Direct EC Investment: 1984–1988," *EC Bulletin*, No. 94, May–June 1991.
[65] *Panorama of EC Industry, 1990*, p. 84.
[66] *Panorama of EC Industry, 1991*, p. 33.
[67] EC Commission, *XXth Report on Competition Policy* Published in conjunction with the *XXIVth General Report on the Activities of the European Communities 1990*), 1991.
[68] New investment activities reported in EC Commission, *XXth Report on Competition Policy*, are based on data for fiscal years June to May.
[69] New investment activities reported in EC Commission, *XXth Report on Competition Policy*, are based on data for fiscal years June to May.
[70] EC Commission, *XXth Report on Competition Policy*, 1991, p. 231.
[71] Ibid.
[72] Ibid.

Table 1–7
Mergers and acquisitions in the EC, involving the top 1,000 European firms, by industries, 1986–90

Sector	*1986/87*	*1987/88*	*1988/89*	*1989/90*
Manufacturing				
Food	52	51	76	102
Chemicals	71	85	107	148
Electrical and electronics	41	36	49	46
Machinery	31	38	55	52
Computers	2	3	4	2
Metal manufacturing	19	40	35	64
Vehicles	21	15	14	32
Wood, paper and furniture	25	34	61	79
Mining	9	12	19	19
Textiles and apparel.	6	14	20	13
Construction	19	33	39	39
Other Manufacturing	7	22	13	26
Distribution.	49	57	58	52
Banking	35	78	83	113
Insurance	28	40	33	46
Total	415	558	666	833

Source: EC Commission, *XXth Report on Competition Policy.*

Figure 1–5
Mergers and acquisitions in the EC: National, intra-EC, and international



Note: Fiscal years displayed are from June of the previous year to May of the current year.
Source: EC Commission, *XXth Report on Competition Policy.*

CHAPTER 2
REVIEW OF CUSTOMS UNION THEORY AND RESEARCH ON THE 1992 PROGRAM

CONTENTS

CHAPTER 2
REVIEW OF CUSTOMS UNION THEORY AND RESEARCH ON THE 1992 PROGRAM

Introduction

This chapter reviews recent economic research that focuses on the expected impact of completing the integration of the internal market within the European Community by December 31, 1992. Before this review the chapter discusses the underlying economic theory of market integration—customs union theory—and highlights the results of early research on the probable effects of the 1992 program.

Customs Union Theory

Customs unions are geographical trading areas wherein the member states reduce trade barriers among themselves and adopt common barriers against the rest of the world. The 1992 EC economic integration program contains elements of both reduced internal barriers and harmonized border policies against nonmember countries.

Economists have long understood the general effects of customs unions. As internal trade barriers are lowered, consumers in each member country find that imports from other member countries are now less expensive relative to both domestic products and imports from nonmember countries. Thus, consumers in each country may buy more imports from other member countries and decrease consumption of domestic products and nonmember imports. On the other hand, the creation of a customs union may result in an increase in trade with nonmember countries if the harmonized barrier against nonmember countries is lower than the average individual national barriers prior to the formation of the union. This increase in trade with nonmember countries will be at the expense of domestic production intended for domestic consumption.

The two primary trade effects of a customs union are (1) trade creation: the shift from consumption of domestic production toward consumption of member imports, and the production for export to other member countries and (2) trade diversion: the shift from trade with nonmember countries in favor of trade with member countries.

This conventional dichotomy serves to highlight the efficiency gains arising from trade creation, which shifts production toward low-cost member producers, and the offsetting efficiency losses from trade diversion, which shifts production away from low-cost producers in nonmember countries. Whether, on balance, economic welfare increases or decreases depends on the relative strength of the two effects and has to be assessed empirically.

Finally, customs unions tend to enhance competition by creating a larger market under liberalized trading rules. By allowing the factors of production, i.e., labor end capital, to move freely and seek more efficient locations, economies of scale and learning-curve effects can be realized in certain industries—in particular, those industries that tend to have high fixed costs. The achievement of size-related economies is one of the chief rationales offered for the EC integration plans. Moreover, to the extent that the customs union spurs additional economic growth related to scale or location economies, the member countries will become wealthier. This increase in wealth may, in turn, increase imports from nonmembers as member consumers spend their additional income.

Since the United States is outside of the EC, measures that reduce internal barriers but leave external barriers unchanged cause trade diversion, that is, increased trade among EC member states at the expense of trade between the United States and the EC. Diversion hurts both U.S. export producers, who lose export markets in the EC, and U.S. consumers, who must compete against increased internal EC demand for European exports. U.S. import-competing industries, however, benefit from trade diversion because European exports are diverted, to some extent, for internal EC consumption. On the other hand, measures that reduce the harmonized EC barriers against nonmember countries, including the United States, lower the price of U.S. goods in Europe and thus benefit U.S. exporters.

Early Research on the 1992 Program

Early research conducted for the Commission of the European Communities (EC Commission), in what is commonly referred to as the Cecchini Report, predicts that the total gains from completion of the internal market over the next 5 to 10 years would be an increase in EC Gross Domestic Product (GDP) of between 3.2 and 5.7 percent, a reduction of inflation of between 4.5 and 7.7 percent, an easing of domestic budget balances between 1.5 and 3.0 percent of GDP, and an easing of trade balances of between 0.7 and 1.3 percent of GDP. This research also estimates that the labor market would improve, with the creation of 1.3 to 2.3 million jobs in the EC as a whole over the next 5 to 10 years. However, it is expected that the unemployment rate would fall by only 1 to 2 percent during this period.

Recent Research on the 1992 Program

This section presents a review of recent economic research on the EC 1992 market integration program. In the first article, Shigehara (1991) argues that the external effects of the EC 1992 program depend significantly on the magnitude of the so-called growth

bonus associated with the single market and the future course of the EC's trade and financial policies relative to the rest of the world. Shelburne and Schoepfle (1990) assert that the creation of a single market in the EC will alter both the structure and the volume of U.S. exports and imports, causing some U.S. workers to face job dislocations and giving others increased opportunities. Ulmer (1990) addresses the economic impact of the single-market initiative on the United States and points out that each of the EC countries still has a tangle of rules and regulations pledged to be swept away at the end of 1992. Baldwin (1990) argues that the Cecchini Report underestimates the true gains from trade due to the 1992 program because the EC Commission did not take into account the effect of certain barriers on the factors of production (principally labor) that affect multinational corporations and their intrafirm trade. Jacquemin and Sapir (1991) claim that both internal and external liberalization are necessary to realize the full benefits of the post-EC 1992 single market. Woolcock (1990) asserts that the removal of barriers within the EC, in conjunction with any growth, will directly benefit U.S. firms with a presence in Europe. Yannopoulous (1990) argues that the more decisive influence of eliminating nontariff barriers in the EC will result in more direct investment into the EC both by member states and third countries. Finally, Winters (1992) argues that the EC 1992 program will have its main impact through international trade.

Kumiharu Shigehara

In his article, "External Dimension of Europe 1992: Its Effects on the Relationship Between Europe, the United States and Japan," Shigehara examines the impact of EC 1992 on the economic and financial relationships among Europe, Japan, and the United States. He asserts that the external effects of the EC 1992 program depend significantly on the magnitude of the so-called growth bonus associated with the single market and on the future course of the EC's trade and financial policies regarding the rest of the world.

Shigehara states that trade diversion away from non-EC producers toward EC producers is an inevitable result of the single-market initiative. He states that this diversion will occur because higher cost producers within the EC will benefit from the elimination of internal EC barriers. He argues that trade will be diverted even if, as the EC Commission maintains, the average level of external protection for the EC remains unchanged. Shigehara notes that a key question for non-EC producers is the extent to which the trade diversion will be offset by expansion of extra-EC trade as a result of faster income growth linked to the integrated market. As a rough estimate, Shigehara points out that his calculations suggest that EC imports from the rest of the world will decline by 2.4 percent as a combined result of both the trade-diversion effect and the expected growth effect of the EC 1992 program.

Shigehara raises several concerns about the single-market initiative. First, he is concerned about how industrial reorganization will proceed in the EC. He notes that an essential source of increased efficiency and competitiveness will be the achievement of greater scale economies as the number of EC firms is reduced in certain industries. He wonders if long-term economic benefits may be subordinated to short-term sociopolitical requirements in individual countries or regions that may be losers in the process. Second, he is concerned about the actual degree of protection present in the EC market. He points out that nontariff barriers such as voluntary export restraints, antidumping actions, and industrial subsidies seem to be on the rise. This raises the concern about the credibility of the EC's policy of not raising the overall level of protection in effective terms. Third, Shigehara notes that there is a risk that the EC's trade policy may distort the international flow of direct investment and thus impede the efficient allocation of worldwide resources.

Shigehara also discusses the external financial aspects of the EC 1992 program. He notes that two essential elements of the single market are the liberalization of international capital flows and the freedom of banks to provide a wide range of financial services within the EC. He asserts that the economic gain from such actions in the EC should come largely from increased competition, including competition from foreign banks. He points out that one aspect of the EC's external policy that has given rise to concern in both the United States and Japan is the treatment of foreign banks in the EC after 1992. In particular, the main concern is the "reciprocity clause" in the Second Banking Coordination Directive. The final version of the Second Banking Coordination Directive stipulates that whenever it appears that a country is not granting EC banks equivalent access in that country's market, the EC Commission may initiate procedures to remedy the situation or, in certain cases, may limit or suspend the request for an EC banking license. Shigehara points out that it is not clear how the EC's principle of reciprocal national treatment will be implemented in specific circumstances after 1992. However, in connection with the Second Banking Coordination Directive, Shigehara notes that many in the United States support eliminating the current restrictions on interstate banking in the United States, since doing so would improve the international competitiveness of U.S. banks and position them more advantageously for the post-1992 EC.

Robert Shelburne and Gregory Schoepfle

In their article, "The European Community 1992 Program and U.S. Workers," Shelburne and Schoepfle discuss the major themes brought out in a conference on the topic of European economic, political, and social integration and its implications for U.S. workers. They note that the creation of a single market in the EC will alter both the structure and the volume of U.S. exports and imports, and thus cause some U.S. workers to face job dislocations and give others increased

opportunities. Another area of concern is that the EC 1992 program will make the EC an attractive place to invest and could thus displace investments in the United States.

It was suggested at the conference that the impact of EC 1992 on U.S. trade flows and the U.S. labor market is likely to be only minor to moderate. In particular, the overall decrease in U.S. exports to the EC in the near term is projected to be 2.4 percent because of the likely increase in trade within the EC as the single market is liberalized. In the longer term, however, increased growth in the EC is also likely to result in increased trade with the United States. The consensus at the conference was that the United States will likely face increased competition because of the EC 1992 program but that significant changes in aggregate U.S. employment and wages are unlikely. However, some unskilled U.S. workers may experience a small decline in employment and wages.

Three individual sectors were singled out at the conference for further analysis: automobiles, electronics, and mass media and entertainment. These sectors were chosen because they typify various potential trade problems, not because they are the sectors most likely to be affected.

The automobile industry is of particular interest because it is subject to a number of EC regulations that are discriminatory in nature. For example, many EC countries have import quotas on Japanese cars. The EC is planning to replace these national quotas with new nationally-based limits and with a Community-wide restriction. It was pointed out at the conference that the main issue of concern to U.S. labor is whether cars assembled in the United States that use Japanese components are to be included in the EC's quota on car imports from Japan. It was argued at the conference that as long as imports from the United States do not disrupt the EC market, they are likely to be exempt from the restrictions.

According to conference participants, workers in the U.S. electronics industry are concerned about developments in the EC because the EC is their largest export market and numerous discriminatory trade practices have been implemented. Discussion focused on the semiconductor market, because several EC policies might decrease U.S. employment in that sector. In particular, several policies would have the net effect of requiring U.S. firms to establish plants within the EC despite current excess capacity in the United States. A couple of examples include high EC tariffs on semiconductors (14 percent) and the proposed high level of EC content required to win EC government contracts.

The entertainment and mass media industries were discussed at the conference because there are several ways in which policies resulting from EC 1992 could harm U.S. employment in these industries. Specifically, the EC has passed a directive requiring broadcasters to preserve at least 50 percent of the programming for European works "where practicable." However, the overall conclusion of the conference was that the so-called Broadcast Directive would not significantly affect U.S. employment in these industries for several reasons. First, EC production capacity will be strained to keep up with the demand for new programming as the Europeans introduce new television channels, and sizable imports will be needed to satisfy this demand. Second, EC programs are not likely to become popular in the United States, because U.S. consumers have an aversion to dubbed or subtitled programming. Finally, the conference participants concluded that the large market for English-language entertainment will continue to maintain demand for U.S. firms. Given this growing market, U.S. firms are likely to maintain an advantage over their European counterparts because in general the former are perceived to produce higher quality programming.

Melville Ulmer

In his article, "The Impact of 1992 Europe on the United States' Economy," Ulmer addresses the economic impact of the single-market initiative—in particular, its impact on the United States. He points out that each of the EC countries still has a tangle of rules and regulations pledged to be swept away at the end of 1992.

Ulmer has several concerns. He asserts that Europe has always tolerated large industrial cartels, which he claims are extending across the EC's internal national borders. Also, he notes that the original and fundamental reason for establishing the EC was to provide for free trade within the Community. He states that no specific mention has been made of external barriers to trade. He notes that the EC Commission has indicated that it will consider this issue after 1992, but meanwhile, imports from nonmembers face formidable obstacles.

Ulmer notes that, with the completion of the single market, Western Europe can hardly help but grow more prosperous. As a consequence, the United States may find better markets for its exports. According to Ulmer, the EC's plans have shown little evidence to suggest more liberal trade with the rest of the world. Ulmer wonders whether the EC will use the same "predatory" formula in trade with the United States as he claims Japan did, given the EC's new-found common tariff wall. He points out that in the 1980s exports to the United States from the EC rose significantly while exports from the United States to the EC rose less. Moreover, he points out that the EC restricts its public procurement and subjects many of its imports to high tariffs, quotas, local-content requirements, and various quality standards.

Ulmer for several reasons does not think that a "fortress Europe" will emerge; however, he argues that, on the evidence, one cannot rule out some approximation of that outcome. He concludes by pointing out that there is a common realization on both sides of the Atlantic of mutual dependency, and he hopes that on balance the EC 1992 program will benefit both the EC and the United States.

Richard Baldwin

In his article, "Factor Market Barriers Are Trade Barriers: Gains From Trade From 1992," Baldwin argues that trade barriers in markets for factors of production (e.g., labor and capital markets) can raise the operating costs of multinational corporations (MNC) and consequently raise the cost of intrafirm trade. For example, the employment of foreign nationals in management or skilled positions is frequently subject to restrictions, higher levels of taxation, and bureaucratic delays. In addition, there are several restrictions and costly regulations governing the control and ownership of assets by foreign firms. Furthermore, differences in laws concerning patents, licensing, franchising, and other forms of vertical integration can inhibit trade-related MNC activity. The net effect of these barriers is to raise the cost of providing downstream services where the local firm has foreign ownership.

Factor market trade liberalization, as envisioned in the EC 1992 program, can result in gains from trade, even in goods currently traded freely. Moreover, one empirical implication of his analysis is that the Cecchini Report underestimates the true gains from trade due to the 1992 program because the EC Commission did not take into account the effect that factor market barriers have on MNC and intrafirm trade.

Alexis Jacquemin and André Sapir

In their article, "Europe Post-1992: Internal and External Liberalization," Jacquemin and Sapir (1991) assert that a combined internal and external liberalization is necessary to realize the full gains of the post-EC 1992 single market. Moreover, they note that the combination of internal and external liberalization may be superior to internal liberalization alone if the external aspects exert an appreciable competitive impact.

In one of their earlier papers, they find empirically that only imports from outside of the EC exert a significant competitive effect on EC profit margins. They also point out that other researchers have concluded that the elimination of intra-EC barriers should increase extra-EC imports more than intra-EC imports. Hence, they state that the main competitive pressure, both actual and potential, will come from the rest of the world rather than from the EC.

Stephen Woolcock

In his article, "U.S. Views on 1992," Woolcock examines the impact of the single-market initiative on U.S. trade. He states that the removal of barriers within the EC, in conjunction with any growth, will directly benefit U.S. firms with a presence in Europe. He points out that U.S. MNCs stand to gain more from EC 1992 than do smaller companies with no EC presence. He argues that this situation creates "insiders" and "outsiders." He asserts that the insiders are very positive about EC 1992 and have difficulties with only a few areas. On the other hand, he states that outsiders generally are more skeptical, if not negative, about the 1992 process.

Woolcock addresses several other issues that have arisen from the EC 1992 process. He notes that U.S. financial institutions feared the reciprocity provisions of the Second Banking Coordination Directive. The EC modified its original provisions and reassured the United States that the EC Commission would not demand mirror image legislation. He points out that action by the EC helped ease the tensions in the United States about a potential "fortress Europe." He notes that another area of concern is the idea of forced investment in the EC. He states that some U.S. firms feel under pressure to invest in the EC when they would not otherwise do so. Woolcock points out that this problem is generally not felt by insiders but that future tensions are more likely to come from outsiders or from U.S.-based Japanese firms that export products to the EC.

Woolcock notes that there is general support for opening public procurement markets. However, he states that there is concern with the third-country provisions for the excluded sectors. These provisions require 50-percent EC content and provide for a 3-percent EC price preference. He notes that the United States has difficulty accepting these provisions, but in return for easing them the EC wants the United States to liberalize its state and local procurement practices. He points out that the United States' reluctance to implement this proposal could precipitate trade tensions.

George Yannopoulous

In his article, "Foreign Direct Investment and European Integration: The Evidence From the Formative Years of the European Community," Yannopoulous examines the expected impact of the EC 1992 program on foreign direct investment in the EC. He asserts that the more decisive effect of eliminating nontariff barriers in the EC will be increased direct investment into the EC by both member states and third countries. He states that given the nature of eliminating nontariff barriers within a customs union, the trade-diverting effects of EC 1992 should be less than the elimination of a tariff of equivalent size.[1] Also, he points out that with the decrease in market fragmentation, firms will be more eager to carve out new markets for themselves as a defense against rivals from other countries. However, he notes that the increase in uncertainty about future market access after completing the single market can encourage strategic investment in the EC and result in excess capacity inside the common market.

[1] This occurs because when nontariff barriers are eliminated for member trade in a customs union, the rest of the world can also have access to the benefits arising from their removal.

L. Alan Winters

In his article, "The Welfare and Policy Implications of the International Trade Consequences of '1992'," Winters argues the EC 1992 program will have its main impact through international trade. Winters asserts that given the difficulty of quantifying the effects that trade diversion caused by EC 1992 may have on imports from outside the EC, the EC Commission's estimate of 2.5-percent trade diversion of non-EC imports is too high. He states that the EC Commission has stressed the need for increased competition within the EC and has pursued the internal competition provisions of the EC 1992 program fairly vigorously. He argues that the most effective competition comes from outside the EC, and therefore, fortress Europe must not emerge.

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CHAPTER 3
IMPLEMENTATION

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IMPLEMENTATION

Developments Covered in the Previous Reports

As the EC Commission, Parliament, and Council complete more and more of their work on single-market measures, the issue of implementation of those measures by EC member states assumes greater importance. Some internal-market measures are regulations, recommendations, and decisions, which generally take effect immediately upon their issuance in all affected member states, but the vast majority of measures are directives, which take effect only when they are "transposed" into member-state law.

A member state generally transposes an EC directive in one or more of three ways: (1) legislation passed by the national parliament, (2) a decree issued by the head of government or a government minister, and (3) a circular issued by a government minister or department.[1] The correspondence between EC language and national language need not be exact, because an EC directive is binding only in the result to be achieved and leaves the exact wording of an implementing law to each member state.[2] However, in some cases a member state considers the measure it has passed to be a proper way to implement, and the EC Commission disagrees. This disagreement is most acute in the case of administrative circulars, which often lack legally binding effect, thus leading the EC Commission to find them inadequate as implementation measures.[3]

Once the basic law or decree is issued, it must often be supplemented by administrative regulations that aid in enforcing the law. Moreover, government officials at the central, regional, and local levels must carry out the laws, decrees, and regulations properly. The EC Commission is becoming concerned about the stage beyond implementation, which can be called application, in which member states actually apply the implementing laws they have passed.[4] Application must be uniform across the EC.[5]

Failure at any point in that chain of implementation to carry out the letter and spirit of the EC's directives can reduce the effectiveness of the 1992 program. One industry source opined that it will take two generations to truly implement the single market, because so many complex problems and disputes will need working out. The EC Commission uses such instruments as infringement proceedings under article 169 of the Treaty of Rome and information dissemination to encourage implementation. The European Parliament has warned that failure of member states to ensure the completion of the integration program by the end of 1992 "will have serious repercussions on the Community's future progress towards a European Union."[6]

Developments During 1991

General Status of Implementation

As of December 18, 1991, 56 of the 136 single-market directives for which the implementation deadline has passed had been fully transposed by all member states. The status of implementation has improved since June 1991, when only 37 directives had been fully implemented.[7] EC Commission President Jacques Delors has stated that transposition of directives by member states is accelerating.[8]

However, the EC has stated that member states are finding it difficult to transpose into national law the most recent directives and has warned that the entry into force of increasingly complex directives may lead to increasing delays in implementation. The EC Commission, which is charged with monitoring implementation, intends to continue keeping a close watch on the progress of implementation. One encouraging sign the EC Commission has seen is a decline in the number of instances in which member states have failed to comply with judgments of the European Court of Justice concerning lack of implementation.[9]

As discussed in the previous report,[10] the EC Commission employs a variety of methods to

[1] EC Commission official, Directorate General (DG) XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[2] See, for example, *Commission v. Italian Republic*, Case No. 262/85, [1987-88 Transfer Binder] *Common Market Reporter* (CCH), par. 14,518, p. 18,963 (1987).

[3] EC Commission official, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[4] Member states "must not only adopt the necessary transposition measures but, above all, ensure that the Community rules are complied with." EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991, p. 1.

[5] EC Commission official, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

[6] European Parliament, *Resolution on the Sixth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law—1988*, *OJ* No. C 231 (Sept. 17, 1990) p. 232.

[7] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991, p. 3, Annex IV; U.S. Department of State Telegram, March 18, 1992, Brussels, message reference No. 03831.

[8] Jacques Delors, "1992: Une Année Charnière," speech presenting the EC Commission's Work Program for 1992 and the Delors II Package to the European Parliament, Feb. 12, 1992, p. 2.

[9] EC Commission, *Report on Implementation*, pp. 1 and 3.

[10] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991, p. 1-7.

encourage member-state implementation. Those efforts have continued over the past year. The EC Commission conducts regular meetings, approximately every 2 to 3 months, with member-state governments on a bilateral basis. These meetings address implementation problems and alert member states to upcoming directives. The Council of Ministers met twice in 1991 to review the status of implementation. The EC Commission considers that involvement of high-level policymakers in the process prompted France, Italy, Greece, and Spain to increase their efforts.[11] The EC Commission also regularly publishes detailed statistics on the status of implementation[12] and includes them in its Celex and INFO 92 computerized data bases. Publicizing those figures puts pressure on member-state governments to improve their implementation record. The EC Commission seeks to make available the texts of implementing measures but has been hampered by the large volume of measures, language difficulties, and the need to view the measures in the context of national law.[13] Further, the EC Commission wishes to continue its exchange program whereby officials of different member states can meet to discuss problems in implementation. The exchange program exhausted its funds in 1991, but the EC Commission hoped to relaunch it in early 1992.[14]

One problem not directly addressed by the EC Commission is the danger that a member state may fail to enforce the implementing legislation it has passed. After a member state is considered to have transposed an EC directive into national law, the EC Commission does not monitor compliance with the national legislation. At this stage, the EC is willing to respond to complaints that there is a problem with the implementing legislation. The EC would then take the problem up with the member state.[15]

Recent judicial decisions have strengthened the authority and discretion of the EC Commission in its dealings with member states. The European Court of Justice held in *Star Fruit Co. SA v. EC Commission* that the EC Commission cannot be compelled to bring an infringement action against a member state for failure to comply with treaty obligations.[16] In another case, the Court of Justice upheld the EC Commission's authority under article 90 of the Treaty of Rome to issue directives limiting the rights of public entities in the interest of greater competition. In rejecting France's challenge to EC Commission Directive 88/301 concerning telecommunications terminal equipment, the Court found that the EC Commission could take such action in the absence of action by the EC Council, and without the need to invoke article 169.[17] Finally, the Court recently provided member states with additional incentive to implement directives through its ruling that a member state's failure to comply with EC law can entitle a party injured by such noncompliance to damages.[18]

Implementation in Selected Sectors

According to the EC Commission, the problems of implementation arise mainly in the area of technical frontiers, such as standards, because many of the other measures, such as those concerning customs matters, are directly applicable without the need for implementation. However, the EC Commission has received reports that authorities in Belgium, Denmark, and Greece are continuing to carry out border checks on means of transport, in violation of the relevant EC directive.[19] In the area of veterinary and plant health controls, the rate of implementation has been generally good, although compliance with some recent EC directives has been "patchy," especially on the part of Belgium, Luxembourg, Ireland, and Italy. The EC Commission stresses that member states must not only pass implementing legislation, but must also apply the law through plans for eradication of diseases, adequate inspections, agreements with nonmember countries, and information-exchange networks.[20]

In the area of technical frontiers, implementation rates range from 65.1 percent for technical regulations to 37.5 percent for banking measures. Implementation of measures on technical harmonization and standards is proceeding well, except with regard to directives on the new approach to standardization, vehicle emissions, and foodstuffs. As to new approach directives, only Denmark, Germany, and the United Kingdom met the deadline for implementing the Construction Products Directive. Luxembourg has been very late in implementing the Toy Safety Directive, as have been Germany, Luxembourg, the Netherlands, Portugal, and the United Kingdom with respect to the directive on pressure vessels.[21]

Sectoral approximation of laws is proceeding to the EC Commission's satisfaction as to motor vehicles and

[11] The EC Commission particularly noted with approval that the French Government has taken steps to prepare its administration for upcoming EC developments. EC Commission, *Report on Implementation*, p. 15.

[12] The EC Commission's sixth annual report on implementation of the White Paper was issued in June 1991. The seventh report is expected to be available in May or June 1992. EC Commission official, interview by USITC staff, Oct. 1991.

[13] EC Commission, Report on Implementation, p. 13.

[14] EC Commission official, interview by USITC staff, Oct. 1991.

[15] EC Commission official, interview by USITC staff, Oct. 1991.

[16] Plaintiff sought to require the EC Commission to challenge, under article 169 of the Treaty of Rome, France's regime governing the banana market. Case 247/87 [1991], 1 CEC 273; *Common Market Reporter*, (CCH), Apr. 18, 1991, p. 5.

[17] *France v. EC Commission*, Case 202/88 (not reported), judgment delivered Mar. 19, 1991; Common Market Reporter (CCH), Apr. 4, 1991, p. 1. The article 90 dispute was also discussed in USITC, The Effects of Greater Economic Integration Within the European Community on the United States: Second Followup Report (investigation No. 332-267), USITC publication 2318, Sept. 1990, p. 1-6.

[18] *Francovich and Bonafici v. Italian Republic*, cited in EC Commission, Report on Implementation, *p. 3.*

[19] EC Commission, *Report on Implementation*, p. 3.

[20] Ibid.

[21] Ibid., p. 6.

pharmaceuticals, but measures on foodstuffs have not been implemented by all member states. Rules on public procurement and workers' movements are also not in compliance with EC rules in some member states.[22]

Banking has shown the worst rate of implementation, largely because of Italy, Greece, and Luxembourg. The directives on accounts of banks and branches are of most concern, whereas implementation is proceeding well with regard to the directives on own funds and the solvency ratio. Insurance and capital movements measures are proceeding well, but most securities directives are not. Directives on company law, intellectual property, and taxation are being implemented, but more work is needed in some areas.[23]

Implementation by EFTA Countries

Under the European Economic Area (EEA) Agreement signed on October 22, 1991, the countries of the European Free Trade Association (EFTA)[24] have undertaken to transpose into their own laws most of the directives issued by the EC, including the 282 single-market measures. The EEA Agreement contains exceptions, mainly with respect to measures relating to the Common Agricultural Policy. The new regime also includes special arrangements for certain sectors, such as food, fish, energy, and coal and steel, and some countries may obtain derogations to delay their implementation obligations.[25] Although the EEA was to come into effect on January 1, 1993, a dispute in the EC over the legal effect of the agreement put the arrangement temporarily on hold, and consequently the implementation process may be significantly delayed.

The Record of Individual Member States

Belgium

According to the EC Commission, Belgium had as of December 10, 1991, transposed 95, or 73 percent, of 130 applicable directives.[26] In response to the need to accelerate implementation, the Belgian Government created in 1987 a State Secretariat for Europe 92.[27] Belgium has encountered a number of obstacles to rapid implementation. One difficulty is the lengthy process needed for the codification of laws. This problem is exacerbated because in some areas, such as veterinary and phytosanitary regulations, Belgium is simultaneously transposing EC directives and codifying its own legislation.[28]

Also important is the increasingly decentralized structure of Belgium, which continues to hamper effective implementation. The three regions of Flanders, Wallonia, and Brussels must pass separate laws in order to fully implement each directive. The EC Commission has brought a number of infringement actions against Belgium in the European Court of Justice. Belgium's defense, which the Court has frequently ruled inadequate, is that the central government has little control over the regions. Particular areas of concern about failure to implement are the environment, education, and culture.[29]

Denmark

The EC Commission found that by December 10, 1991, Denmark had transposed 122 out of 129 applicable directives, or 94.5 percent.[30] Denmark continues to hold the best record among member states for implementation.[31] This is true even though normal legislative procedures are used to implement EC directives and no special provisions for rapid consideration exist or are thought necessary.[32] The Danish Parliament keeps in close contact with the ministries during the negotiation and adoption of a directive in Brussels, thus insuring that the Government as a whole is committed to directives when they are adopted. The EC Commission has found that Danish implementation is timely and that Danish transposition measures conform to the corresponding EC directives.[33]

The cost of Denmark's welfare system will not allow the Danish Government to reduce its level of value-added taxes (22 percent) to match that of the EC in general (average of 9 percent) and Germany in particular (15 percent). Because of this disparity, Denmark has been granted a derogation from certain single-market directives to allow a continuation of

[22] The rate of implementation varies from member state to member state. Of the 16 foodstuffs directives in force, Denmark has transposed 15, Greece 15, France 14, Belgium 13, with Ireland having the largest backlog. EC Commission, *Report on Implementation*, pp. 8-10.

[23] Ibid., pp. 10-12.

[24] The countries are Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, and Switzerland. David Martin, Vice-President of the European Parliament, "The European Economic Area and Its Implications for: the European Community; the European Free Trade Association; Eastern Europe; and World Trade," address, Nov. 11-14, 1991.

[25] Jacques Delors, "European Community and EFTA: the European Economic Area Becomes a Reality," *Target 92—Monthly Newsletter on the Single Internal Market*, Nov.-Dec. 1991.

[26] EC Commission, *Report on Implementation*, Annex IV. The number of applicable directives differs among member states, because not all directives affect every member state. Also, some member states have obtained derogations, or extensions of time, for implementing certain directives. See Appendix C.

[27] U.S. Department of State Telegram, Dec. 20, 1990, Brussels, message reference No. 19123.

[28] Implementing legislation is published in the *Moniteur Belge*, the Belgian official gazette, and becomes effective 15 days to 2 months after publication. Ibid.

[29] U.S. Mission to the European Communities, interview by USITC staff, Oct. 1991.

[30] EC Commission, *Report on Implementation*, Annex IV.

[31] U.S. Department of State Telegram, Nov. 1, 1991, Copenhagen, message reference No. 07658.

[32] U.S. Department of State Telegram, Jan. 18, 1991, Copenhagen, message reference No. 00453.

[33] EC Commission, *Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law—1990*, COM (91) 321, Oct. 16, 1991, p. 275.

quantitative restrictions on travelers' imports of beer and tobacco products after January 1, 1993.[34]

France[35]

France had transposed, as of December 10, 1991, 117 of 131 applicable directives, or 89.3 percent.[36] According to the EC Commission, France took effective steps in 1991 that resulted in a significant improvement in its rate of transposition of EC directives into national law.[37]

Germany[38]

The EC Commission found that as of December 10, 1991, Germany had transposed 99 of 130 applicable directives, or 76.1 percent.[39] The German Government is expected to seek passage in the first half of 1992 of major legislation implementing the EC financial directives, including the Second Banking Directive.[40]

The federal nature of the German regime continues to complicate the issue of implementation in Germany. The conference on political union held at Maastricht raised concerns among the German states, or Länder, about their own authority. The Länder want to preserve the powers they currently hold over such areas as education, and are seeking to have a strong subsidiarity clause added to any agreement on political union.[41]

Greece[42]

According to the EC Commission, Greece had by December 10, 1991, transposed 102 of 127 applicable directives, achieving a transposition rate of 80.3 percent.[43] The EC Commission has indicated that 1991 saw a significant improvement in Greece's implementation record.[44] Generally, Greece implements a directive by incorporating the text of the directive word for word into Greek law.[45]

Ireland

By December 10, 1991, Ireland had transposed 94 of 129 applicable directives, or 72.8 percent.[46] The EC Commission has found that Irish implementation is frequently tardy and that Ireland has attempted to implement directives by issuing administrative circulars, which lack the formality of laws or decrees desired by the EC Commission. When a directive is transposed, its entire text is generally incorporated into Irish law.[47]

Italy[48]

According to the EC Commission, as of December 10, 1991, Italy had transposed 70 of 131 applicable directives, yielding a rate of implementation of 53.4 percent, the lowest in the EC.[49] In principle Italy deals efficiently with implementation through its annual omnibus bill, formulated under the so-called La Pergola procedure. This bill collects all outstanding directives and implements them at once. In practice, additional steps are needed even after the bill is passed. Sources indicate that implementation continues to lag. According to the EC Commission, pressure to improve implementation is rising from various sources, including the EC, Italian firms, and the Italian public.[50] EC Commission President Jacques Delors has suggested that Italy's failure to properly implement directives could prompt other member states to refuse to allow Italian products into their markets.[51]

In December 1990, the Italian Parliament approved an omnibus bill authorizing the incorporation of 132 EC directives into Italian law. This bill provided a period of 1 year (ending January 27, 1992) in which the competent ministries were to issue the necessary regulations or decrees appropriate for the implementation of the subject directives for the final approval of Parliament. Few of these directives had completed the process of implementation by the beginning of 1992.[52]

The 1991 omnibus bill, which deals with 104 additional EC directives, including the Second Banking Directive, was passed by the Italian Parliament in February 1992.[53] As with the 1990 bill, approval

[34] U.S. Department of State Telegram, Nov. 18, 1991, Copenhagen, message reference No. 08047.

[35] Implementation in this member state was discussed extensively in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 1-11.

[36] EC Commission, *Report on Implementation*, Annex IV.

[37] EC Commission, *Sixth Report of the Commission to the Council and the European Parliament Concerning the Implementation of the White Paper on the Completion of the Internal Market*, COM (91) 237, June 19, 1991, p. 5.

[38] Implementation in this member state was discussed extensively in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 1-12.

[39] EC Commission, *Report on Implementation*, Annex IV.

[40] U.S. Department of State Telegram, Oct. 24, 1991, Bonn, message reference No. 30167.

[41] U.S. Embassy official, Bonn, interview by USITC staff, Nov. 27, 1991. Subsidiarity is an EC doctrine under which European and national authorities limit their exercise of power, leaving as much power to local authorities as possible.

[42] Greek implementation was discussed in detail in USITC, *EC Integration: First Followup Report*, USITC publication 2268, Mar. 1990, pp. 1-24 to 1-26.

[43] EC Commission, *Report on Implementation*, Annex IV.

[44] EC Commission official, interview by USITC staff, Oct. 1991; EC Commission, *Sixth Report*, p. 5.

[45] EC Commission, *Eighth Annual Report*, p. 278.

[46] EC Commission, *Report on Implementation*, Annex IV.

[47] EC Commission, *Eighth Annual Report*, p. 283.

[48] Italy's implementation was discussed in detail in USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 1-20 to 1-24.

[49] EC Commission, *Report on Implementation*, Annex IV.

[50] EC Commission official, interview by USITC staff, Oct. 1991.

[51] *European Report* No. 1742 (Feb. 8, 1992), Internal Market p. 9.

[52] U.S. Department of State Telegram, Jan. 17, 1992, Rome, message reference No. 00980.

[53] *European Report*, No. 1748 (Feb. 29, 1992).

signifies only the initial step in the lengthy process of bringing Italy into compliance with the single-market rules, since most of these directives will also require appropriate implementing decrees or regulations.[54]

Luxembourg

As of December 10, 1991, Luxembourg had transposed 88 of 128 applicable directives, or 68.7 percent.[55] The EC Commission has found that Luxembourg is making a special effort to transpose directives correctly, generally by incorporating virtually the entire text of each directive into national law.[56]

Netherlands

According to the EC Commission, the Netherlands had transposed by December 10, 1991, 96 of 130 applicable directives, for an implementation ratio of 73.8 percent.[57] The Dutch Ministry of Economic Affairs is responsible for dealing with most of the White Paper directives. Within that Ministry, the Department of Internal EC Affairs coordinates the implementation of those directives. Implementation is done by ministerial regulation, framework law, or ordinary law, depending on how much formality the particular directive requires.

The Netherlands has achieved only a moderate implementation rate, for a number of reasons. The Dutch Government has proceeded cautiously because of a desire to implement appropriately and effectively. Further, the passage of implementing legislation has been slowed by the addition of improvements and other projects. In addition, the Dutch processes for passing laws and regulations require the participation of several advisory bodies, such as the Council of State and the Social-Economic Council. This consultation procedure reportedly can slow the pace of implementation.

In order to pick up the pace, the Dutch Government has instituted new procedures to require earlier consideration of EC directives and streamlined review procedures.[58] Dutch Prime Minister Ruud Lubbers recently asked Parliament to allow his government to table implementing legislation either in one package or in non-amendable batches. Parliament rejected this proposal, but agreed to shorten the period of time needed to consult with advisory bodies such as the Council of State.[59]

The EC Commission has expressed concern that Dutch law, which permits authorities to grant significant exemptions, may allow authorities too much discretion in implementation. The EC Commission also has noted that Dutch implementation sometimes takes the form of plans, programs, and other nonbinding instruments, which the EC Commission considers to be inadequate.[60]

Portugal

Portugal had by December 10, 1991, transposed 108 of 131 applicable directives, or 82.4 percent.[61] Portugal's record has improved markedly in recent months as Portugal has risen from near the bottom of member states in implementation.[62] This progress was made in spite of the heavy backlog of preexisting directives that Portugal had to implement upon its accession to the EC. However, the EC Commission has cautioned Portugal against its practice of representing legislation that predates Portuguese accession to the EC as implementation measures, in disregard of the need to amend the legislation to conform to EC requirements.[63]

Spain

The EC Commission found that as of December 10, 1991, Spain had transposed 100 of 129 applicable directives, or 77.5 percent.[64] In addition to White Paper directives, Spain must implement all directives issued prior to Spain's accession to the EC. Spain has 10 years, until January 1, 1996, to complete implementation of this "Aquis Communautaire." Agriculture is the area in which Spanish implementation has the farthest to go, and Spanish authorities seek to accelerate implementation of agricultural directives so that Spain can complete its EC membership obligations before the 1996 deadline. Health and safety matters are also of concern because, although Spain is implementing EC directives in that area, bureaucratic procedures reportedly remain cumbersome.[65] However, Spain is seen as having made significant progress since it joined the EC in 1986.[66] Implementation of EC directives is not a special problem for Spanish authorities, because implementation is part of Spain's general process of liberalization that started with EC accession.[67]

As of December 1991, according to the Spanish EC Secretariat, 168 EC single-market directives and regulations were in force. Seven directives required no Spanish action, and 44 directives were not yet due to be implemented. Spain has been unable to transpose 25 directives on time.[68]

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[54] U.S. Department of State Telegrams, Jan. 17 and 28, 1992, Rome, message reference Nos. 00980 and 01550.

[55] EC Commission, *Report on Implementation*, Annex IV.

[56] EC Commission, *Eighth Annual Report*, p. 285.

[57] EC Commission, *Report on Implementation*, Annex IV.

[58] U.S. Department of State Telegram, Dec. 4, 1990, The Hague, message reference No. 09411.

[59] *European Report*, No. 1744 (Feb. 15, 1992), Internal Market p. 18.

[60] EC Commission, *Eighth Annual Report*, p. 287.

[61] EC Commission, *Report on Implementation*, Annex IV.

[62] U.S. Department of State Telegram, Mar. 14, 1991, Brussels, message reference No. 03408.

[63] EC Commission, *Eighth Annual Report*, p. 288.

[64] EC Commission, *Report on Implementation*, Annex IV.

[65] U.S. Department of State Telegram, Nov. 8, 1991, Madrid, message reference No. 12898.

[66] U.S. Embassy official, Madrid, interview by USITC staff, Oct. 1991.

[67] Spanish Ministry of Industry, Commerce, and Tourism official, Madrid, interview by USITC staff, Oct. 1991.

[68] U.S. Department of State Telegram, Dec. 23, 1991, Madrid, message reference No. 14714.

United Kingdom[69]

As of December 10, 1991, the United Kingdom had transposed 110 of 129 applicable directives, achieving a rate of implementation of 85.2 percent.[70]

Case Study in Implementation: the Broadcasting Directive

In view of the importance of implementation to the 1992 program, it would seem desirable to report in detail on how each White Paper directive is being implemented in each member state. However, with over 100 directives that should already have been implemented in 12 member states, and with almost 200 more directives nearing the date for implementation, any attempt to follow all implementing measures would be unfeasible. Consequently, a small number of key directives and member states have been selected for detailed study. Although how one directive is implemented may not indicate exactly how another will fare, case studies do tend to illuminate the general nature of, processes for, and problems associated with implementation. One case study appears below. Two others, covering the new approach to technical standardization and public procurement, appear respectively in chapter 5, "Standards, Testing, and Certification," and chapter 6, "Public Procurement and the Internal Energy Market."

The Text of the Broadcasting Directive

EC Council Directive 89/552/EEC of October 3, 1989, concerns "the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities."[71] The directive covers a number of topics related to television broadcasting, including the promotion of independent television producers and the restriction of advertising time and content. The portion of the directive that has caused the greatest concern among U.S. industry sources is article 4. The first paragraph of that article provides—

> 1. Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.[72]

Article 4 further provides that the EC content of a member state's broadcasting cannot be lower than the level it reached in 1988, or 1990 for Greece and Portugal. Member states are to report to the EC on the EC content of their programming, and the EC Commission will review article 4's implementation 5 years after October 3, 1989, the adoption date of the directive. Article 5 establishes a minimum level of 10 percent of broadcast time to be devoted to independent producers, again "where practicable." Article 3 permits member states to pass stricter rules than those contained in the directive.

Article 25 of the directive sets an implementation deadline of October 3, 1991. By that date, all member states were required to "bring into force the laws, regulations and administrative provisions necessary to comply with this Directive."[73] Member states were also required to promptly notify the EC Commission of such implementation measures and to give that body the texts of the main provisions of such measures.

Mandatory Versus Voluntary Implementation

U.S. industry sources characterize the minimum-EC-content provision of article 4 as a quota and tend to view it as a mandatory requirement for member states.[74] EC officials assert that the provision is voluntary, because it contains the phrase "where practicable." At the time the directive was issued, the EC Commission and Council jointly declared that the minimum-content provision was EC policy but not a legal requirement. However, the EC Commission reserves the right to propose more binding legislation in its 5-year review under paragraph 4 of article 4.[75]

In spite of the EC's assurances about the voluntary nature of the minimum-content rule, one aspect of article 4 is clearly not voluntary. By its terms, paragraph 2 of the article requires that the EC content of a member state's broadcasting must not fall below the average it attained for 1988.

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[69] Implementation in this member state was discussed extensively in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 1-16.

[70] EC Commission, *Report on Implementation*, Annex IV.

[71] *OJ* No. L 298, (Oct. 17, 1989), p. 23. The text of the directive was discussed in detail in USITC, Effects of EC Integration, USITC publication 2204, July 1989, p. 6-22, and USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 6-112.

[72] *OJ* No. L 298, (Oct. 17, 1989), p. 26. Article 6 defines the term "European work" to include television programs produced entirely within the EC and some others such as coproductions of EC and non-EC producers.

[73] Ibid., p. 30.

[74] See, e.g., response, dated Oct. 18, 1991, of the Motion Picture Association of America, Inc. (MPAA) to the Commission's notice of investigation No. 332-267, *The Effects of Greater Economic Integration Within the European Community on the United States*, 56 F.R. 24411 (May 30, 1991). Attached to the response was the *Request of the Motion Picture Association of America, Inc. for Designation of the European Community as a "Priority Country" Under Section 182 of the Omnibus Trade and Competitiveness Act of 1988*, filed with the United States Trade Representative (USTR) on Feb. 15, 1991. See also *Los Angeles Times*, Dec. 5, 1990, p. F2.

[75] *European Report*, No. 1528 (Oct. 4, 1989).

The U.S. concern over the Broadcasting Directive relates to the Uruguay Round of trade negotiations. The United States has attempted to raise the issue of trade barriers designed to protect national culture in the Round, and the EC has opposed the move.[76] Shortly after the directive was adopted, the U.S. filed a challenge to the directive's minimum-EC-content provision with the GATT.[77]

Legal Implementation

France

France has been one of the strongest advocates of minimum-EC-content requirements for television broadcasting. Even before the Broadcasting Directive was issued, France had a quota on the foreign content of television broadcasting. On January 17, 1990, then-Prime Minister Rocard issued Décrets (decrees) Nos. 90-66 and 90-67 to implement the EC directive.[78]

France's pre-existing broadcasting legislation, which went into force in October 1986, required simply that "a majority of movies and audiovisual works broadcast on French networks be produced originally in French and originate in the EC."[79] Decrees 90-66 and 90-67 supplement the 1986 legislation by setting specific quotas, at higher levels than those called for by the EC directive. Under the decrees, 60 percent of transmission time and 60 percent of cinematographic and audiovisual works aired are reserved for EC works. Fifty percent is reserved for French works. Starting on January 1, 1992, the quotas apply to prime time as well as to total transmission time.[80] The decrees also imposed new production and investment obligations on all French regular and cable television networks, including the requirement that those networks spend 15 percent of their net turnover on the production of French programs and that they air 120 hours per year of new French programs.[81]

The decrees engendered debate within the French industry. Independent producers and private broadcasters argue that France's new broadcasting legislation threatens their economic survival by introducing broadcasting and production quotas that they cannot comply with and that go beyond what is called for by the EC directive. French artists, on the other hand, want strict enforcement of the law. France's three private networks have stated that they will have no alternative but to violate the quotas and pay the fines.[82] One major French television station that failed to meet the quota was fined approximately $11 million.[83] Fines could result in bankruptcy for loss-incurring La Cinq and M6, which barely meet the current broadcasting requirements. Their goal reportedly is to survive until the 1993 legislative elections in the hope that they will bring about a more sympathetic government. After January 1, 1992, none of the major networks are expected to come close to meeting French broadcasting requirements during prime time, with the exception of Government-owned FR3.[84]

France's only profitable major television station, private TF1, appealed to the EC Commission to protest the increasing constraints on French programming. Formal legal proceedings against the French Government were cut short by a compromise between the French Government and the EC Commission. France agreed to lower to 40 percent its 50-percent French broadcasting quota and to include European fiction in its requirement that networks broadcast 120 hours of new French programming a year. The EC Commission assured the French Government that the other obligations stemming from the French decrees could remain intact.[85] According to the Motion Picture Association of America, Inc. (MPAA), this approval is important because the French quotas discriminate against other EC countries as well as against non-EC countries.[86] To incorporate the modified decrees into French law, the Council of Ministers approved on September 25, 1991, a new broadcasting bill. The bill presented to the Senate in early November 1991 was limited to the broadcasting quotas resulting from the EC compromise. The new bill only makes reference to the new 40-percent French and 60-percent "European" (and no longer just EC) quotas, thus eliminating from the discussions all the other requirements. The Senate approved the new bill on November 14, 1991, reportedly under pressure from five unions and associations of French artists, which actively promote a strict enforcement of existing French regulations.[87]

The passage of legislation probably will not end the debate over quotas in France. The Communication Ministry must issue decrees implementing the new bill. Communication Minister Georges Kiejman is said to be working on a reform of broadcasting and production quotas adaptable to each network according to such

[76] Request of the MPAA; Los Angeles Times, *Dec. 5, 1990, p. F2.*

[77] USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 6-114.

[78] *Journal Officiel de la République Francaise*, Jan. 18, 1990, p. 757; *Request of the MPAA*, p. 12. The decrees were also signed by the Minister Delegate to the Minister of Culture, Communication, Major Works, and the Bicentennial in Charge of Communication, as well as by the Minister of Culture, Communication, Major Works, and the Bicentennial. Those officials are responsible for carrying out the decrees.

[79] U.S. Department of State Telegram, Nov. 26, 1991, Paris, message reference No. 31939.

[80] Décret No. 90-66, Jan. 17, 1990, *Journal Officiel de la République Française*, Jan. 18, 1990, p. 758, arts. 7-10. Prime time is defined as between 6 p.m. and 11 p.m. each day and between 2 p.m. and 6 p.m. on Wednesdays. Ibid., art. 9.

[81] Décrets Nos. 90-66 and 90-67, Jan. 17, 1990, *Journal Officiel de la République Française*, Jan. 18, 1990, pp. 757 and 759; U.S. Department of State Telegram, Nov. 26, 1991, Paris, message reference No. 31939.

[82] U.S. Department of State Telegram, Nov. 26, 1991, Paris, message reference No. 31939.

[83] *Request of the MPAA*, p. 13.

[84] U.S. Department of State Telegram, Nov. 26, 1991, Paris, message reference No. 31939.

[85] Ibid.

[86] *Request of the MPAA*, p. 13.

[87] U.S. Department of State Telegram, Nov. 26, 1991, Paris, message reference No. 31939.

criteria as its turnover, its specific prime-time slots, and its audience share. This solution of "flexible" quotas was reportedly also favored by Prime Minister Pierre Bérégovoy and could be included in future implementing decrees. However, Minister of Culture Jack Lang expressed opposition to the concept.[88]

Germany

Germany did not implement article 4 of the Broadcasting Directive by October 3, 1991. The immediate obstacle to implementation was a lawsuit filed in the Federal Constitutional Court (*Bundesverfassungsgericht*) by Bavaria. As a State, or Land, of the Federal Republic, Bavaria argues that television broadcasting is an activity governed by the Länder and therefore is outside the jurisdiction of the Federal Government. In any event, that Government reportedly considers article 4's requirements to be voluntary rather than mandatory and does not intend to implement those requirements.[89]

The United Kingdom

The United Kingdom had a quota of about 13 percent on foreign content already in place when the directive was issued.[90] The British Government has passed legislation implementing the directive.[91] Implementation is being effected by a mixture of administrative and statutory measures. Such issues as reporting and licensing requirements for stations and guidelines for reporting revenue are handled by administrative circulars.[92] When statutory measures were deemed necessary, they were included in the Broadcasting Act of 1990.[93]

The 1990 broadcasting bill requires that "a suitable proportion" of television programs broadcast in the United Kingdom be produced locally and that a "proper proportion" be of European origin. This requirement formalizes an existing practice of limiting the number of non-European programs on British television in accordance with an informal local content quota agreement. The provision's practical effect may be to relax those limits somewhat, given the EC's "where practicable" 50-percent quota. However, it does, for the first time, formally impose legal quotas.[94]

In a 1991 auctioning of licenses for private commercial Channel 3 TV, U.S. pressure was successful in changing the British quota. In the United Kingdom, foreigners may hold only minority ownership of a license. In that instance, the tender documents originally provided for a 75-percent EC-content quota. After the United States protested, the tender document was amended to provide for 50-percent EC content, the same as in the Broadcasting Directive. This British example will probably not be copied in other EC member states, because they do not auction licenses as in the United Kingdom.[95]

Other Member States

Some member states opposed issuance of the directive. Denmark voted against it in Council because the Danish Parliament did not recognize the EC's authority in the cultural field. Belgium also voted in the negative. The Netherlands initially opposed the directive, but voted affirmatively after the EC Commission pledged to insure that other member states did not violate Dutch law by broadcasting to Dutch viewers.[96]

Belgium voted against the Broadcasting Directive because its provisions were not, in the country's view, strong enough to protect the fledgling film industry in Flanders. Since broadcasting is considered in Belgium to be a cultural matter, it falls within the purview of Belgium's two communities, the Flemish and the French-speaking. The Flemish and Francophone regions have local-content broadcasting requirements for private television stations operating in those areas. The Flemish community amended its 1987 broadcasting decree on May 8, 1991, and the Francophone community likewise amended its 1987 decree on July 19, 1991, to comply with the Broadcasting Directive.[97]

The EC has taken Wallonia to the European Court of Justice concerning these requirements. Distributors of U.S. films in Belgium, as well as distributors of other films, are required by a Belgian court ruling to supply copies of a new film to small theaters for release within a few weeks of the showing of the film by large theaters. Although this practice does not discriminate against U.S. producers, the requirement does increase their costs through their having to make and supply additional prints.[98]

Ireland passed national legislation to implement the Broadcasting Directive effective October 3, 1991. In most respects, Irish law follows the language of the directive.[99] Italy, Luxembourg, Portugal, and Spain have also passed legislation implementing the directive.[100] However, as of December 19, 1991, the

[88] Ibid.
[89] U.S. Embassy official, Bonn, interview by USITC staff, Nov. 27, 1991.
[90] USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 6-112.
[91] *Request of the MPAA*, p. 12.
[92] U.S. Embassy official, London, interview by USITC staff, Oct. 25, 1991.
[93] Information provided by British Department of Trade and Industry, Oct. 21, 1991.
[94] U.S. Department of State Telegram, Nov. 4, 1991, London, message reference No. 20121.
[95] U.S. Embassy official, London, interview by USITC staff, Oct. 1991.
[96] *European Report*, No. 1528 (Oct. 4, 1989).
[97] U.S. Department of State Telegram, Dec. 10, 1991, Brussels, message reference No. 16220.
[98] U.S. Department of State Telegram, Oct. 30, 1991, Brussels, message reference No. 14176.
[99] U.S. Department of State Telegram, Jan. 30, 1992, Dublin, message reference No. 00507.
[100] *Request of the MPAA*, p. 12; EC Commission official, interview by USITC staff, Oct. 1991.

EC Commission stated that only the measures of Italy, Luxembourg, Portugal, and the United Kingdom had fully transposed the Broadcasting Directive.[101]

Italy already had a 40-percent quota in place when the directive was passed.[102] The Italian legislation measures EC content according to percentage of total feature films, rather than according to percentage of transmission time, which is how the directive operates.[103] In August 1990, Italy passed a law requiring that 40 percent of the broadcast time devoted to feature films be reserved for European works, half of which must be Italian.[104] Over 3 years, the percentage reserved for European works increases to 51 percent.[105]

In the Netherlands, implementation of the Broadcasting Directive is overseen by the Media Department of the Ministry of Welfare, Health, and Culture (WVC). The Dutch Parliament is considering "framework legislation" that would authorize the changes to Dutch law needed to implement the directive. The relevant statutes are the Media Act of 1987 and the Civil Code. A new article 71G of the Media Act would help establish a Dutch national commercial broadcast network. The Netherlands already complies with most of the directive's provisions with respect to advertising.[106]

The WVC considers the Netherlands to be essentially in compliance with the minimum-EC-content requirement. Article 54 of the Media Act reads "The Foundation [of Dutch national broadcasters] and the public broadcast organizations devote at least half of their transmission time to broadcasting of programs produced in house or commissioned by them."[107] The WVC construes this language as referring to programming of Dutch origin. The Dutch intend to further conform their law to the directive by amending article 54 to specify that the quota applies to "European" production. Twenty percent of the quota amount would be reserved for works by producers independent of the national broadcasters. The WVC attributes delay in Dutch implementation of the directive to lengthy parliamentary debates and procedures. The issues of sponsorship and the establishment of a commercial broadcast network accounted for much of the debate.[108]

Portugal passed a media law in July 1990. This law provided for the establishment of the first two commercial channels in the country, and, citing the Broadcasting Directive, set up a quota requiring that 40 percent of programming must be in Portuguese. Thirty percent of that percentage must be of Portuguese origin.[109]

Even before the directive was issued, Spain had a quota on the foreign content of television broadcasting.[110] In 1988, Spain passed legislation requiring that 40 percent of commercial programming must be of EC origin. Of that percentage, 55 percent must be in Spanish. Moreover, 40 percent of commercial films broadcast each month must be of EC origin, half of which must be produced in Spanish.[111] Spain also has restrictions on foreign ownership of the three private television concessions allowed. These restrictions are aimed at developing the local Spanish program industry and encouraging Spanish-language productions. Although the principal Government-owned television networks show more U.S. programs than the quota restrictions on private channels would permit, observers are concerned that the Government networks may eventually attempt to limit non-EC programming to a share comparable with the quota for private television. Spain continues to enforce screen quotas requiring cinemas to show 1 day of EC films for every 2 days of non-EC films.[112]

U.S. industry is concerned that the directive may have effects even outside the EC. The directive is based on the European Convention on Transfrontier Television, which binds the 16 member states of the Council of Europe and 2 other countries to provisions similar to those in the directive.[113] Turkey, which is interested in joining the EC, is considering imposing a 75-percent quota for Turkish productions.

Implementation in Practice

When the directive was issued, EC Commission Vice President Franz Andriessen stated that the 50-percent target would permit U.S. firms to actually increase their exports because U.S. content of EC broadcasting was then averaging 40 percent. However, that average masks significant variations among member states. French producers have at times accounted for 80 percent of French programming, whereas other member states have tended to acquire more than half their programming from outside the EC.[114] One survey found that, in 1988, 72 percent of

[101] EC Commission, *Report on Implementation*, p. 11.
[102] USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 6-112.
[103] *Request of the MPAA*, p. 11.
[104] Law No. 223 of Aug. 6, 1990, *Gazzetta Ufficiale*, Aug. 9, 1990.
[105] *Request of the MPAA*, p. 13.
[106] U.S. Department of State Telegram, Nov. 22, 1991, The Hague, message reference No. 08873.
[107] Ibid.
[108] Ibid.
[109] *Request of the MPAA*, p. 13.
[110] USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 6-112.
[111] *Request of the MPAA*, p. 13.
[112] U.S. Department of State Telegram, Nov. 8, 1991, Madrid, message reference No. 12898.
[113] On June 3, 1991, Cyprus became the 18th country to sign the convention. Other countries that have signed but not ratified are Austria, France, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and Yugoslavia. San Marino and Poland have ratified the convention. U.S. Department of State Telegram, June 6, 1991, Strasbourg, message reference No. 00152; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 6-112.
[114] *Los Angeles Times*, Dec. 5, 1990, p. F2.

European television stations broadcast more than 50-percent European content.[115]

The MPAA claims that the issuance of the directive, even before implementation, has hurt sales in the EC, as European broadcasters become uncertain about their ability to buy non-EC programs. According to the MPAA, U.S. sales in France, the strongest advocate of quotas, fell by 51.8 percent between 1988 and 1989, and one British television channel increased the EC content of its programming by more than 200 percent. Similar trends were reported in Italy.[116]

[115] Bureau d'Informations et de Prévisions Economiques (BIPE), *European Programme Content in the Broadcasts of European Television Channels in 1988* (Sept. 1989), cited in *Request of the MPAA*, p. 20.

[116] *Request of the MPAA*, pp. 10-11.

CHAPTER 4
ECONOMIC AND MONETARY UNION—IMPLICATIONS FOR THE UNITED STATES

CONTENTS

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ECONOMIC AND MONETARY UNION—IMPLICATIONS FOR THE UNITED STATES

Background

The Rationale for Financial and Monetary Integration

The initial impetus for European Economic and Monetary Union (EMU) was largely political rather than economic in nature.[1] According to the EC, pursuit of EMU was necessary to safeguard the achievements of the common market and ensure the continued progress of EC integration towards the goal of European union.[2]

However, there are also clear economic gains from EMU.[3] Eliminating tariffs on intra-Community trade allows resources to be somewhat more efficiently allocated within the EC. Eliminating exchange-rate fluctuations among the member states goes one step further in this direction by eliminating a potential source of risk involved in foreign trade and investment. The elimination of foreign exchange transactions in intra-Community trade also involves a straightforward reduction in transaction costs to EC companies (and tourists).[4]

In terms of macroeconomic growth and stability, a single currency may promote price stability by allowing random international shocks to be absorbed by a broad, diverse collection of member-state economies rather than by the economy of a single country. Income levels may be raised and stabilized by reducing uncertainty concerning a country's currency value. Although it is true that a common EC currency would still fluctuate against other world currencies, including the dollar, these fluctuations would be expected to be smaller than those of most of the 12 member states considered separately.[5]

History of Past Attempts[6]

The Treaty of Rome envisioned increasing convergence in member-state economic policies. However, monetary union was not considered, since member states were unwilling to give up their sovereignty to the EC in setting monetary, budgetary, and fiscal policies.[7] As observed by Chriszt—[8]

> *During the 1960s, however, dollar and international payments crises led EC leaders to give serious consideration to formal monetary integration. Large fluctuations in member states' exchange rates were beginning to jeopardize gains from earlier progress toward more efficient and profitable commercial transactions among members; monetary cooperation and integration began to seem essential if the economic benefits of being an EC member were to be preserved and fostered.*

In response to these crises, the EC Commission requested the preparation of the October 1970 Werner Report. The report proposed complete EMU by 1980, with an initial stage aimed at reducing exchange-rate fluctuations among the member states. However, the collapse in 1971 of the Bretton Woods system of linking most world currencies within a narrow band against the dollar led to a revised system, the short-lived Smithsonian Accord, which broadened the range of currency movements against the dollar and thus allowed EC currencies to fluctuate by as much as 9 percent against one another. To remedy this situation, six EC members (Belgium, Luxembourg, France, Italy, the Netherlands, and West Germany) agreed in 1972 to a "joint float," which continued after the complete abandonment of fixed exchange rates in 1973. However, the oil crisis and general economic turbulence at the time created differential pressures in the member states for currency realignments, exacerbated by a failure to coordinate domestic monetary and fiscal policies. Plans for monetary union were abandoned as unrealistic.

The European Monetary System (EMS) was the next attempt at coordination of currency movements in the EC. The EMS began operation in 1979 (and is still in effect), with all member states at the time, except for Britain, participating in its main instrument, the exchange-rate mechanism (ERM). All EC member states, including the United Kingdom, joined the EMS by depositing 20 percent of their gold and dollar holdings into a central fund for an equivalent amount of European currency units (ECUs). Spain and the United Kingdom did not choose to enter the ERM—the joint float that restricts the movement of member currencies in relationship to each other—until 1989 and October 1990, respectively. Portugal and Greece are currently still outside the ERM.

The EMS provided for financing arrangements to facilitate currency market intervention as well as consultation among members concerning monetary policies. The ECU was established as the benchmark

[1] W.M. Corden, *Monetary Union: Main Issues Facing the European Community* (London: Trade Policy Research Centre, 1976), p. 2.

[2] EC Commission, "European Unification: The Origins and Growth of the European Community," European Documentation, Jan. 1990, p. 54.

[3] More detail on the nature of these gains is given below.

[4] Michael J. Chriszt, "European Monetary Union: How Close Is It?" *Economic Review*, Federal Reserve Bank of Atlanta, (Sept./Oct. 1991), pp. 21–27.

[5] Ibid.

[6] Much of the material in this section was drawn from Chriszt, "European Monetary Union," pp. 21–27.

[7] EC Commission, "European Unification: The Origins and Growth of the European Community," European Documentation, Jan. 1990, p. 52.

[8] Chriszt, "European Monetary Union," p. 22.

for the ERM, with all participants fixing a central exchange rate for their currency to the ECU, and maximum deviations from that central rate of plus or minus 2.25 percent. Currently the British pound sterling and Spanish peseta are permitted to fluctuate by 6 percent above or below their central rates, whereas other member currencies are restricted to 2.25-percent fluctuations. The latter is referred to as the "narrow band."

Although the early success of the EMS may have been due in part to the use of capital controls,[9] these controls, including restrictions on cross-country investment flows, were marked for elimination by the Single European Act of 1987. The intention was that financial markets of the member states would become fully integrated. The EC directive to fully liberalize capital movements took effect on July 1, 1990.[10] Spain, Portugal, and Greece may maintain certain restrictions until the end of 1992, and Greece and Portugal may also have an additional 3-year extension of the time limit if they feel unable to proceed with liberalization, in particular because of balance-of-payments difficulties or insufficient adaption of their financial systems. Belgium and Luxembourg are also allowed to maintain their double exchange market ("official" market and "free" market) until the end of 1992.

Progress Towards EMU

Recent History[11]

In mid-1988, a committee of European central bankers, academics, and other financial professionals, under the chairmanship of then EC Commission President Jacques Delors, was established to propose a mechanism for reaching EMU. The Delors Report, submitted in April 1989, established a structure and three-stage process for moving to full economic and monetary union. Stage I began on July 1, 1990, and required members to dismantle all controls on capital movements (as mentioned above) and to strengthen economic and monetary policy coordination.

More difficult to achieve will be the final two stages toward monetary union, due to begin January 1, 1994. Stage II will be a transition period during which exchange rates between member countries would be fixed except for "exceptional circumstances" and a European System of Central Banks would be established, modeled after the U.S. Federal Reserve System. National governments would, however, retain some discretion and responsiblity for monetary policies. The final stage would see the "EuroFed" undertaking all monetary responsibilities and the irrevocable locking of member currencies. Whereas the Delors Report claims that this latter step does not necessitate the introduction of a single currency, it would create essentially the same thing.

Clearly, these last two stages will usurp fiscal and monetary policymaking by sovereign member states and will be controversial up until the end of the process.[12] However, EC leaders agreed on June 29, 1991, to work toward approving a new treaty on EC political union and economic and monetary union by the next EC summit, scheduled for December 1991 in Maastricht, the Netherlands. There, EC members approved the Treaty of European Union, which set the framework for a single European currency to be established by January 1, 1999, and for an independent European Central Bank. The treaty, which has now been signed by the 12 member states, also gives the European Parliament greater powers and promotes a more unified foreign and defense policy within the EC by allowing majority rule rather than unanimous consent to all but certain vaguely defined "major" initiatives. A compromise measure, which exempts the United Kingdom, gives the EC greater say over member-state labor law and social policy.

The primary focus of the Maastricht Treaty[13] is stage II, the transition period before full monetary union. This stage will begin on January 1, 1994, with the establishment of the European Monetary Institute (EMI), which will manage the national currency reserves that EC central banks are supposed to transfer. The president of the EMI will be from outside the EC central banks, appointed by government leaders from nominations by governors of the EC central banks. The vice president will be selected from the current governors. The purpose of the EMI is to strengthen the coordination of monetary policies among the member states and to study and develop the infrastructure and procedures required for the conduct of single monetary policy. The EMI will also nurture the development of the ECU as an internationally respected currency.

During stage II, the currency composition of the ECU will be frozen; countries agreed not to revalue unilaterally their currency's central bilateral exchange rate against any other member state during this period. By the end of stage II, all member states must have changed any laws needed to give their national central

[9] "IMF Study Highlights Main Issues in EC Economic and Monetary Union," *IMF Survey*, Jan. 7, 1991, p. 6.

[10] For more information on this directive, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332–267), USITC publication 2204, July 1989, p. 5–6.

[11] Much of the material in this section is drawn from Hugo M. Kaufmann and Stephen Overturf, "Progress Toward a European Monetary Union," paper presented at the European Community Studies Association Biennial Conference, "The Challenge of a New European Architecture: Implications for the European Community's Internal and External Agendas," George Mason University, May 1991.

[12] The United Kingdom has been particularly concerned about EMU. For example, see "European Council, Maastricht, December 9–11, 1991, Agreement on Political Union and Economic and Monetary Union," *European Report*, No. 1728 (Dec. 11, 1991), Special Supplement.

[13] Much of the remainder of this section, describing the new treaty, is drawn from U.S. Department of State Telegram, "EMU or Bust: Irrevocable Single Currency Process Put in Motion in Maastricht," Dec. 1991, Brussels, message reference No. 16333, and from *European Report*, No. 1727 (Dec. 7 1991) and No. 1728 (Dec. 11, 1991).

banks political independence; for example, France has agreed to phase in the independence of the Bank of France by January 1, 1997. It was agreed, in addition, that the funding formula for the future European Central Bank (ECB) will be based both on a member state's population and on its gross domestic product (GDP). The ECB will form, together with the current national central banks, the European System of Central Banks, whose primary objective is to maintain price stability. This objective is more likely to be achieved when monetary authorities are independent of political institutions of either the member states or the Community.

The first opportunity for EMU will come in 1996. By December 31, 1996, the Council of Ministers will consider reports on the progress towards EMU from the EMI, the EC Commission, and the European Parliament. The Council will then determine the eligibility of the member states to join the common currency on the basis of convergence criteria agreed to at Maastricht. If a majority of member states meet the criteria, those countries could begin stage III of full EMU as early as 1997. Otherwise, only those countries meeting the standards would adopt the new currency in 1999, with the others following later.

The convergence conditions are the following:

1. A country's inflation rate for the past year must not be more than 1.5 percentage points higher than the average of the three lowest inflation rates in the Community;
2. The government budget deficit must be no greater than 3 percent of GDP;
3. Total government debt must be less than 60 percent of GDP;
4. The normal bilateral fluctuation margins of the ERM must have been respected for at least the past 2 years without any unilateral revaluation of the bilateral central rate against any other member-state currency; and
5. The average nominal long-term interest rate must not be more than 2 percentage points higher than the average of the three lowest such rates in the Community.

If by the end of 1997 no date has been set for stage III, the transition to a common currency will take place automatically on January 1, 1999, applying to all countries then meeting the convergence criteria. There is no required minimum number of member states for this step. As of now, only France, Denmark, and Luxembourg meet the criteria.

The Goals of EMU[14]

To clarify the rationale for moving to EMU, in October 1990 the EC Commission released a lengthy analysis entitled "One Market, One Money," intended as a detailed cost-benefit analysis of forming an economic and monetary union. This report identified 16 main mechanisms by which EMU would influence economic efficiency, macroeconomic stability, or equity among regions and countries within the EC.

Regarding efficiency and economic growth, the report said that an EMU would eliminate exchange-rate variability within the EC and would reduce exchange-rate uncertainty against other currencies thereby stimulating foreign direct investment in the EC, would eliminate foreign exchange and international payments transaction costs for trade within the EC, would promote increased integration of European energy and transportation markets through enhancing opportunities for cross-country investment, and could boost long-term growth within the Community by increasing business and consumer confidence.

The EC Commission report set forth a goal of price stability (low rates of inflation) as promoting real economic growth. The report stated that price stability within the EC would be enhanced after EMU if the Central Bank had considerable political independence (as agreed to at Maastricht) and were charged with achieving price stability as its primary task. The report argued that the costs of disinflation within the EC may be minimized by a credible commitment to an independent central banking system that could quickly reduce expectations for future inflation and thereby reduce future wage and price pressures.

At the national level, the loss of the ability to rely on monetary and exchange-rate policy implies that fiscal policy will be the only available response to country-specific disturbances. Whereas EMU will mean that all profits from the issue of currency (seigniorage revenues, or the difference between the face value and the cost of the production of currency) will be collected at the Community level, these profits are to be returned to the national economies in some manner, so that on average there will be no effect. To the extent that nominal interest rates within the EC are reduced when inlation falls, the report asserts that countries will experience reductions in their debt service requirements and immediate reductions in budget deficits.

Although member states will forgo the use of nominal exchange-rate adjustments *among themselves* after EMU, the report suggests that the economic cost associated with this development should not be exaggerated. First, the use of this instrument declined in importance during the period of the ERM. Second, the report argues that the 1992 market-integration program together with EMU will make country-specific shocks less likely, and those that do occur will be addressed by financial flows (both public and private) rather than exchange-rate adjustments. Third, the EC will retain the ability to make nominal adjustments of the common currency against other world currencies after EMU is complete. Finally, what is most important in influencing a country's competitiveness and trade flows is not nominal exchange-rate movements but rather *real* exchange-rate

[14] Much of the material in this section is drawn from EC Commission, "One Market, One Money: An Evaluation of the Potential Benefits and Costs of Forming an Economic and Monetary Union," *European Economy,* vol. 44 (Oct. 1990).

changes. The report points out that changes in real rates, influenced by labor costs and inflation rates, will still differ across member states and be somewhat under the control of each country, determined in part by fiscal policy.

Concerning the effects of EMU on the international financial system, a common currency would no doubt be more widely used as a unit of account for trade than any of the separate European currencies are today. According to the report, more universal use of a common currency would save businesses in the EC some transaction costs, provide some seigniorage revenues for the Community, and reduce the exchange-rate risk for EC firms competing in the world market. The increased demand for the common currency may imply some currency appreciation, which would reduce the international competitiveness of European firms but would also limit inflation in the EC. However, neither of these impacts is expected to be significant. In addition to strengthening the Community's presence in international forums, the report suggests that replacing 12 separate voices with 1 should facilitate international coordination of financial and economic policy.

From EMS to EMU

During much of the 1980s, the EMS was widely viewed as reducing exchange-rate variability within the EC and contributing to both a slowdown in inflationary pressures in Europe and increased growth in trade, production, and employment.[15] However, more recently, some observers have questioned these successes. As noted in the *New York Times* of December 8, 1991—

> *as Europe's economies grew, the tough anti-inflation discipline of tying a country's currency to the lead of Germany and its strict Bundesbank caused little pain. But now, as most of Europe is slowing economically and political and economic leaders are thirsting for lower interest rates to spur growth, the Bundesbank is saying no.*[16]

Questions have been raised on two levels: (1) whether the EMS has actually accomplished a significant convergence in economic indicators and (2) whether any convergence that has occurred has led to a slowdown in European growth, rather than the hoped-for alternative.

On the first question, Froot and Rogoff[17] note that inflation differentials as measured by consumer price indexes, though shrinking across most European countries (whether or not in the ERM of the EMS), have fallen most dramatically for the original eight members of the ERM.[18] The average absolute annual inflation differentials among these original eight ERM members fell from 7.4 percent in 1980 to 1.6 percent in 1990 while falling for the other European countries from 6.9 percent in 1980 to 4.9 percent in 1990. Froot and Rogoff also point out that the successful removal of capital controls without creating instability in EC currency markets suggests an evolving stabilizing influence of the EMS.

However, Froot and Rogoff provide evidence that divergences in price levels are in fact growing (inflation-rate differentials are cumulating). This evidence implies that real exchange-rate differentials among the member states are growing and that movements in their current accounts are taking divergent paths. These researchers note that Italy, for example, despite no exchange-rate adjustments since 1987, has experienced a cumulative 15-percent increase in prices relative to Germany over that period, along with an increase in its current account deficit from 0.2 percent of GDP to 1.3 percent.

On the question of the growth-related implications of monetary convergence, there are two views. The EC Commission has taken the view that the reduced volatility of nominal exchange rates will lower the risks of investment in the EC and thereby raise the long-run steady-state growth rate of the economy.[19] On the other hand, with Germany raising interest rates because of inflationary pressures and the costs of absorbing East Germany, exchange-rate stability requires the other member states—France and the United Kingdom, for example—to raise interest rates as well or to keep them steady despite sluggish economies.[20] This episode foreshadows similar problems because EMU would imply the loss of the monetary policy instrument to stimulate economic growth within a particular member state.

Given the success of the EMS in terms of stabilizing intra-EC exchange rates and monetary policy, the need for EMU is not obvious. An alternative might be to keep the national currencies but narrow over time the allowable range of fluctuations around the central bilateral exchange rates. However, the EMS has an inherent credibility problem that limits the risk-reduction advantages of stable exchange rates; there is no guarantee that in response to tomorrow's country-specific shock, a particular member state will continue to honor the margins specified by the ERM.[21]

[15] See, for example, Kaufmann and Overturf, "Progress Toward a European Monetary Union."

[16] Jonathan Fuerbringer, "New Questions About Monetary Union," *New York Times*, Dec. 8, 1991, p. 19.

[17] Kenneth A. Froot and Kenneth Rogoff, "The EMS, the EMU, and the Transition to a Common Currency," National Bureau of Economic Research Working Paper No. 3684, Apr. 1991.

[18] Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, and the Netherlands.

[19] EC Commission, "One market, One money," p. 21.

[20] Fuerbringer, "New Questions About Monetary Union," p. 19.

[21] Of course, even with a single currency there is always the possibility that a country–specific disturbance might be so severe as to cause that member state to break from use of the ECU and reintroduce its own currency. This possibility is generally considered to be unlikely, especially once the common currency is well established. See Richard J. Sweeney, "Outlook for European Monetary Union: The Message From Eastern Europe," *Contemporary Policy Issues*, vol. 9 (Oct. 1991), pp. 34–36.

Furthermore, even if bilateral exchange rates are absolutely fixed, both consumers and businesses would still have to pay the transactions costs to change currencies for tourism and intra-EC trade.

Recently a number of economists have focused not on the desirability of EMU, but on the transitional problems of going from EMS to EMU (i.e., from stage I to stage III of the Delors process). Sweeney[22] refers to the instability sweeping Eastern Europe as a shock that will continue to affect EC member states differently and create problems in the transition to EMU, perhaps through readjustments in the bilateral central rates of the ERM. Eichengreen[23] examines the early history of the U.S. Federal Reserve System to argue by analogy that stage II of the EMU process contains potential for instability, since member-state central banks retain considerable monetary autonomy at a time when intra-EC nominal exchange rates are fixed. Although it has been recognized that transnational control of the monetary system is essential for stage III, Eichengreen sees the problem as potentially severe in stage II because national economies are becoming more and more interdependent but monetary policy is largely independent, being controlled by the national central banks. Eichengreen argues for explicitly resolving all issues of autonomy and control between the ECB and the national central bank in advance of stage II.

Froot and Rogoff also suggest that stage II could be a serious source of instability. Using a somewhat different analytical approach, they apply a model of monetary policy, in which the reputation of a national central bank regarding price stability is important. As EMU gets closer, the national central bank has less "reputation" to lose by devaluing the currency; and, as citizens of that member state begin to expect such behavior, which has inflationary effects, they will push up wage and price contracts. They explain in more detail:[24]

> *This temptation may become especially great as currency union approaches. To the extent that devaluations improve the terms of trade, twelfth-hour devaluations hold out the prospect of a final, unanswerable beggar-thy-neighbor gain: He who devalues last, devalues best.*

The EC Commission has not ignored transitional problems and potential instability along the way to full EMU.[25] EC Commissioners have noted that the bulk of the costs of adjustment to exchange-rate stability will be borne in stage I, whereas the benefits will not be fully realized until much later, in stage III, with full EMU and a single currency. The EC Commission has therefore argued for a relatively short stage II, during which a central EC banking authority will be established but without complete authority over the national central banks.

> *Speculative attacks on individual currencies could be of enormous power if financial markets are given any reason to doubt the commitment of the authorities to defend the fluctuation margins of the ERM. The transition will also have to manage smoothly the change of monetary policy leadership from one based on Germany to that of the independent EuroFed.*[26]

Implications for the United States

Economic Theory Pertaining to Monetary Integration

The Delors Report defined EMU in terms of both monetary union and economic union. Monetary union encompasses total convertibility of currencies within the EC, complete liberalization of capital flows, the integration of the EC banking and financial markets, and, most importantly, the irrevocable locking of exchange-rate parities among member states.[27] Economic union involves free movement of persons, goods, services, and capital; enhanced EC-wide competition policy; common structural change and regional development policies within the Community; and close macroeconomic policy coordination. The following discussion focuses on the monetary aspects of EMU. The other aspects of economic union have already been widely discussed.

There is a well-established economics literature on the concept of "optimum currency areas," dating from the work of McKinnon in the early 1960s.[28] This literature considered the question of how large a geographic area should be established for trade using a single currency. The conclusion of this work was that labor and capital needed to be quite mobile across regions within the currency area; otherwise, region-specific shocks could lead to serious costs, especially those of unemployment.

The EC Commission has noted that labor mobility within the Community is still quite limited; however, the EC Commission suggests that the diversified industrial structure of the Community, along with EC regional assistance funds to cope with shocks, will minimize this cost of the loss of the national

[22] Sweeney, "Outlook for European Monetary Union," pp. 20–38.

[23] Barry Eichengreen, "Designing a Central Bank for Europe: A Cautionary Tale From the Early Years of the Federal Reserve System," National Bureau of Economic Research Working Paper No. 3840, Sept. 1991.

[24] Froot and Rogoff, "The EMS, the EMU, and the Transition to a Common Currency," p. 21.

[25] EC Commission, "One Market, One Money," p. 12.

[26] Ibid., p. 26.

[27] While the latter does not absolutely require a single currency, a consensus has been reached that simply agreeing to fix exchange rates without adopting a single currency is not an acceptable solution. Such an agreement allows for all the costs of a single currency without achieving many of the benefits. There would remain a tremendous credibility problem, since revaluations would be possible, so exchange-rate risk would not be eliminated, and transaction costs associated with currency exchange would persist.

[28] Ronald I. McKinnon, "Optimum Currency Areas," *American Economic Review*, vol. 53 (Sept. 1963), pp. 717–725.

exchange-rate instrument. The EC Commission also views the enhanced price stability and long-term economic growth within the EC and the increased likelihood of international financial coordination as factors that argue in favor of monetary union.[29]

Little research has been done on the effects of EMU on U.S. interests. Given the apparent commitment to accomplishing economic union, the issues related to monetary union most relevant for U.S. firms concern the exchange-rate and trade effects of moving away from a single EC market with numerous national currencies participating in the ERM of the EMS and towards a single EC market with a single currency. EMU is likely to lead to the following effects relevant to the United States:[30]

1. Reduced use of the dollar as a vehicle for trade invoicing and asset holding in third markets in favor of the ECU;
2. Because of reduced dollar use, increased transaction costs and exchange-rate risks for U.S. firms engaged in international trade outside of Europe, but reduced transaction costs and exchange-rate risks for U.S. subsidiaries operating in Europe, implying enhanced benefits from U.S. foreign direct investment in the EC;[31]
3. A small appreciation of the ECU, implying a small depreciation of the dollar against major trading partners, including the EC;
4. Some reduction of U.S. leverage in international economic policy negotiations and coordination, in favor of the EC; and
5. Greater likelihood of economic policy coordination among the major industrialized economies.

The net effect on the United States is uncertain, as effects 3. and 5. should have some positive impact, whereas the others may imply negative results.

Effects on U.S. Trade, Production, and Employment

Before discussing in more detail the possible implications for U.S. firms of the five effects mentioned above, it is worth noting that to the extent that EMU is viewed as "completing" the common market, it will likely have a small adverse effect on U.S. exports to the EC. This effect can be considered an enhanced customs union trade effect, whereby the elimination of any frictions in trading between EC member states will lead to a substitution away from products produced by third parties, in particular, the United States.[32] A partial offset of the customs union effect may be the reduced transaction costs and reduced exchange-rate risk faced by U.S. exporters to the EC in dealing only with one currency instead of multiple currencies. Furthermore, there may be increased opportunities for intra-EC trade by EC-based U.S. subsidiaries.

The first effect noted above suggests a reduced role for the dollar as an international unit of account. Such a change has implications for U.S. debt servicing; to the extent interest payments are made increasingly in ECUs, enhanced risk is borne by U.S. borrowers, effectively increasing the real burden of debt repayment.[33] If increased demand for ECUs implies decreased world demand for dollar holdings, the dollar may become somewhat devalued, with mixed effects on the U.S. economy. On the one hand, a weaker dollar implies improved international competitiveness and increased exports and employment. On the other hand, there is always the inflation risk from currency depreciation, as imported final goods and components will be relatively more expensive.

The effects on exchange-rate risk and transaction costs of U.S. firms are also somewhat ambiguous. If a greater share of U.S. exports become invoiced in ECUs rather than dollars, both the transaction costs and exchange-rate risk faced by U.S. producers would be increased. However, at least some of this increase in cost and risk will be offset by the willingness of EC importers to pay somewhat higher prices than before, since they will no longer face the costs and risks of converting to a European currency. Furthermore, U.S. exporters currently serving the entire EC market may reduce transaction costs and currency risk by being able to hedge against movements in a single currency rather than all of the current individual member-state currencies.[34] U.S. exporters may also be better able to shift export sales among various member states more quickly without worrying about currency conversion.

The unified EC market, especially if anticipated growth occurs, will likely be a more desirable focus of U.S. foreign direct investment, as the large market will allow for full realization of economies of scale. If greater U.S. investment in the EC comes at the expense

[29] EC Commission, "One Market, One Money," pp. 28–29.

[30] These are derived in part from the discussion in ch. 7 of EC Commission, "One market, One money."

[31] For U.S. firms exporting widely to Europe, there may be two offsetting effects. On the one hand, less trade is likely to be invoiced in dollars, implying greater exchange-rate risk and transaction costs. On the other hand, exporters will face lower transaction costs of shifting sales among the 12 member states and reduced uncertainty of dealing with only one European currency rather than the 11 currencies now present (Belgium and Luxembourg considered as one).

[32] For a discussion of customs union theory, see ch. 2 of this report.

[33] For further discussion of this effect and the others considered below, see Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* (Glenview, Illinois: Scott, Foresman and Company, 1988).

[34] Patrick Oster, "Putting Money on EC Currency," *Washington Post* (Dec. 26, 1991), p. D1, reports that U.S. multinationals spend an estimated $13 billion per year to convert one EC currency into another, and another $2 billion to hedge against intra-EC currency fluctuations.

of U.S. exports, the issue arises whether increased domestic profits offset the potential loss of employment. It has been argued as well that a broader European capital market developed as a result of EMU, due to financial market integration and a single currency, would imply more European investment in the United States.

One often-overlooked area is the effect of EMU on the currency exchange operations of U.S. financial firms. U.S. companies, e.g., American Express and Citibank, earn substantial revenues from exchanging currency and travelers checks from one EC member-state denomination to another, although since European banks also make large profits on transaction costs and currency trading they may have more to lose. An offsetting gain to U.S. firms may accrue to financial ratings firms such as Standard & Poor's, as a result of greatly expanded ECU-denominated bond offerings and, more generally, a broader EC capital market.[35]

The ramifications of EMU on U.S. international policy operations are uncertain. On the one hand, increasing use of the ECU in world markets at the expense of the dollar may, over time, imply some loss of prestige for the United States. This loss may be linked to the perception that reduced usage of the dollar as a unit of account implies some diminishment of the position of the United States in the global economic system. Similarly, decreased demand for the dollar may suggest somewhat reduced leverage in international negotiations, both economic and political.[36]

On the other hand, reducing the number of major players in the world economic and political system by replacing the separate interests of the 12 EC member states with one unified voice is likely to lead to greater ability to coordinate international policy.[37] Economic models uniformly predict that greater agreement among parties will be reached as the numbers involved decline. More generally, to the extent that EMU leads to a strong, growing economy in an area of the world with which the United States has strong common interests, gains would seem likely.

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[35] Ibid., p. D2.

[36] The EC suggests that "EMU will strengthen the Community as an economic policy pole within the world economy [and] will enhance the Community's identity and weight in international policy cooperation." EC Commission, "One Market, One Money," p. 178.

[37] For example, see EC Commission, "One Market, One Money," ch. 7.

PART II
ANTICIPATED CHANGES IN THE EC AND POTENTIAL EFFECTS ON THE UNITED STATES

CHAPTER 5
STANDARDS, TESTING, AND CERTIFICATION

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CHAPTER 5
STANDARDS, TESTING, AND CERTIFICATION

The objective of the EC standards program is to eliminate differing national standards and testing procedures by creating one set of rules for the entire market. As a result, trade will flow more freely. The attempt to create harmonized product standards continues as the year-end deadline for EC 1992 approaches. The importance of this effort to the Internal Market Program is shown in the 1985 White Paper entitled "Completing the Internal Market": about two-thirds of the 282 directives listed in the document are related to agricultural and industrial standards.[1]

The standards currently under development will apply to countless products manufactured by both the EC and its major trading partners. The new standards will affect many prominent export industries in the United States, including machinery, auto parts, computers, pharmaceuticals, telecommunications, chemicals, medical equipment, and animal and plant products. Although U.S. businesses broadly support the goal of creating EC-wide standards and complementary assessment procedures, they are concerned about the process and the time necessary to achieve this goal. Figure 5-1 provides an overview of the issues associated with the EC 1992 standards program.

Developments Covered in Previous Reports

Background and Anticipated Changes

Earlier EC attempts at harmonizing standards had led to the creation of highly detailed specifications. In 1985, however, the EC adopted a less detail-oriented "new approach" to standards development. The new approach is based on two fundamental ideas: (1) mutual recognition of existing member-state standards where possible, and (2) harmonization in those exceptional cases where there are legitimate but conflicting views among the member states on essential public policy matters, such as environmental protection. New approach directives focus on setting broad product features, or "essential requirements," instead of delineating each minute characteristic of production. Only these essential requirements will be legally binding.

Europe's private regional standards bodies are charged with developing the technical standards to achieve the regulatory aims of the new approach directives. Products conforming to these technical standards will generally qualify for the quickest and least expensive product approval route. However, manufacturers have the option of using other technical solutions to achieve the essential requirements. Asking manufacturers to meet only essential requirements for entire categories of products should help accelerate the process of harmonizing divergent member-state technical regulations, and relying on the private sector for standards development should help provide for more durable and more flexible product standards in the long term.

Manufacturers will demonstrate compliance with the new standards directives through the application of the CE mark of conformity to their products, which will eliminate the need for separate tests and approvals in each member state. However, those products for which a number of harmonized standards had already been developed do not have to change course and follow the new approach methods. These products, such as processed foods, motor vehicles, and chemicals, fall under "old approach" directives that have more technical specifications and testing demands than do the new approach directives. Products covered by the old approach directives do not require the application of the CE mark.

Despite efforts to move more rapidly using the new approach method, the EC is still facing a number of delays in its efforts to produce standards on a timely basis. Currently, 10 new approach directives have been adopted, but only one has been implemented as envisaged, and that only in two-thirds of the member states. Others have either not yet reached their scheduled implementation date, or they have been forced into a transition period while waiting for the necessary standards to be finalized.

Possible Effects

The U.S. Chamber of Commerce writes, "Europe's evolving standards, testing and certification regime is of critical importance to American companies since developments on this front will largely determine the openness of the European market in the post-1992 world."[2] Most of the EC's trading partners are looking forward to harmonized standards because of the economies of scale they will bring to production, the reduced costs from avoiding duplicative testing, and the time saved through the elimination of administrative delays.

However, the United States has also expressed some concerns. First, standards being developed in EC regional bodies might discriminate against non-EC countries. Second, the difficulties in receiving information during the development process might put third countries (non-EC) at a time or production disadvantage. Third, EC testing and certification

[1] For further background, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332–267), USITC publication 2204, July 1989; USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, ch. 6; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 4; and USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, ch. 4.

[2] U.S. Chamber of Commerce, *Europe 1992: A Practical Guide for American Business*, Nov. 1991, p. 28.

Figure 5–1
Overview of standards-related issues

Problem:

- Countries within the Community faced many different technical requirements and no recognition of tests/approvals among member states.

Goals:

- Facilitate trade between member states by eliminating barriers.
- Set minimum standards for protection in essential areas.
- Create EC-wide regulatory agencies similar to the U.S. Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA).

Benefits:

- Economies of scale in production.
- A single $4.8 trillion market with 340 million consumers.
- Heightened competitiveness of EC industry in the global economy.

EC Actions:

- "New approach" to standards development launched in 1985:
  - Regulate only the "essential" areas at EC level;
  - Set "floors" not "ceilings" for protecting vital interests, (e.g., human health and safety, the environment, etc.); and
  - Focus on goals, so-called "essential requirements," instead of detailed product by product specifications.
- Means of standardization:
  - Rely on voluntary standards developed in the private sector to the greatest extent possible;
  - Develop European standards in private, regional standards organizations: CEN, CENELEC, & ETSI;
  - Base standards on international standards where available and work with the International Standards Organization (ISO) when possible; and
  - Take a horizontal, broad approach to standards.
- Create a single mark of conformity—the CE Mark—signifying that a product meets the essential requirements and has undergone the conformity assessment procedures laid down in EC directives.
- Give manufacturers a choice of conformity assessment procedures.
- Assure competence of labs by unified standards (EN 45000, etc.).
- Encourage use of quality management techniques (ISO 9000).
- 10 directives currently adopted, but not fully implemented.

U.S. Actions:

- Work to ensure EC standards will not produce barriers to trade (25% of total U.S. exports went to the EC in 1990).
- Insist on transparency, access to information, and opportunities for influence during the standards development process.
- Maximize possibilities for testing and certification to be performed in the United States through either mutual recognition agreements or through subcontracting arrangements.
- Monitor developments and provide information to U.S. businesses.

Source: Compiled by the staff of the USITC.

procedures might create de facto discrimination against manufacturers from third countries if they do not have the same access to local testing and certification facilities as do their European counterparts. Finally, there are concerns over the amount of time the process is taking and uncertainty about when new requirements will actually be implemented. In March 1991, the Undersecretary for International Trade of the U.S. Department of Commerce stated that "[t]he standards issue may become, if it has not already become, one of the principal impediments for U.S. exporters."[3]

While not all of the U.S. concerns have been alleviated, substantial progress has been made during the past few years in addressing them. Testing and certification has attracted the most attention and concern by U.S. businesses, which are hoping to avoid the need to submit their products to EC-based labs for needed approvals. The EC has reassured the United States of its intention to subject foreign and domestic companies to the same conformity assessment rules. It has also signalled a willingness to accept foreign-generated tests in limited circumstances. Even so, avoiding testing related barriers in the post-1992 market remains the top U.S. priority. The concern over lack of information during the standards development process continues, but discussions between U.S. and EC standards bodies and officials have led to increased cooperation and communication in this area.

Developments During 1991

During 1991, the EC continued to establish the necessary mechanisms to remove the remaining technical barriers to trade among the member states. The EC took steps to improve the coordination of European regional and international standards development work and examined ways to speed the drafting of European standards. The Community also made progress in defining the procedures which must be followed to demonstrate product conformance, building an institutional basis for internal cooperation on testing and certification matters, clarifying the meaning and use of the CE mark of conformity, and refining its thinking on the circumstances in which it would permit unofficial bodies to conduct certain tests and approvals. The EC was less successful in ensuring implementation of standards directives under the new approach, and by yearend, this had emerged as a significant concern both within and outside the EC. Meanwhile, the agreement between the EC and EFTA to create a European Economic Area codified the two trading blocs' commitment to harmonize technical standards at both the regulatory and voluntary level.

Introduction and passage of specific standards-related measures also progressed. In the area of environmental regulation, the EC advanced a proposal to sharply limit the amount of waste associated with packaging of both industrial and consumer goods. It also proposed to encourage more environmentally responsible behavior by creating a uniform system that would allow companies to signify that their products and production facilities are "environmentally-friendly" in labels and other company literature.

Many of the standards measures reviewed for this report are sector-specific. In the agriculture sector, the EC continued to block imports of U.S. meat on sanitary grounds and refrained from approving use of the growth-promoting hormone Bovine somatotropin (bST) until scientific and social questions are resolved. On the other hand, the Community decided to allow continued imports from the United States of softwood lumber, even though it did not undergo the prescribed process for killing harmful organisms. Lists of approved food additives were developed and an institutional mechanism for enforcing EC regulations on processed foods were proposed. New risk classes and labelling requirements for chemicals were put forth and several additional chemical substances banned. To ensure that products entering the EC meet minimum environmental, health, and safety requirements, the EC is creating new regulatory enforcement mechanisms, such as a Communitywide food inspectorate and bodies similar in function to the U.S. Food and Drug Administration and Environmental Protection Agency. The EC also made headway in setting stricter motor vehicle emissions standards, passed a directive regarding mobile machinery, and began drafting legislation on pressure equipment and used machinery. Work in the construction products and pharmaceutical areas continued, but disagreement among the member states slowed progress. Finally, the EC took steps that should facilitate the introduction of new telecommunications equipment and services.

In the United States, much of the agenda of concerns for the year was set by the activities of the Federal Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 (FAC) and by the outcome of the June 21 meeting between U.S. Department of Commerce Secretary Mosbacher and EC Commissioner Bangemann. In general, U.S. concern over the ability of the EC to create all the necessary standards in a timely fashion was heightened during 1991. As noted above, implementation dates have passed or are nearing for several standards measures.

The FAC is a group of industry, trade, and standards associations that was formed in early 1990 to advise the U.S. Department of Commerce on EC policy.[4] In a May 1991 report, the FAC called on the U.S. Government to improve access of U.S. companies to EC standards development activities; to increase U.S. participation in the technical advisory groups developing standards in the International Standards

[3] Ibid.

[4] The formation of the FAC is discussed in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4-15 to 4-16.

Organization (ISO) and the International Electrotechnical Commission (IEC); to intervene if standards are used as a barrier to trade; and to negotiate "notified body" status and national treatment for U.S. testing and certification entities, seeking subcontractor status for U.S. bodies in the interim.[5] Notified body status would provide U.S. testing and certification facilities with the authority to determine whether products meet EC standards. The FAC also called upon the private sector to determine its needs for international conformity and government assistance; to better coordinate and promote its objectives in international standards bodies; to form a lead organization to coordinate cooperation with the government; and finally, to support the U.S. voluntary system of developing harmonized standards and to encourage adoption of international standards where appropriate.

The June 21 meeting between Commerce Secretary Mosbacher and Commissioner Bangemann, their third in 2 years, was primarily an opportunity for both sides to voice concerns and clarify their positions on trade issues concerning standards, testing, and certification. Despite some lingering disagreements on principle, the two sides moved toward common ground in the need to strengthen the international standards system and appeared to build a firmer basis for eventual EC acceptance of U.S. tests in key product areas.[6] In light of their mutual recognition that international standardization would provide one way to avoid technical barriers to trade, Mosbacher and Bangemann commissioned a joint U.S.-EC report to recommend improvements in the international system. Conformity assessment, which has long topped the list of U.S. concerns about standards-related barriers in the integrated EC market, was also one of the more prominent issues discussed at the meeting.[7]

This chapter discusses both legally binding and voluntary European regional standards and related conformity assessment and inspection procedures.[8] It is divided into three major parts. The first part addresses progress in the standards development process in the EC, EC policy on testing and certification, and member-state implementation of EC directives. The second section focuses on environmental regulations that could affect firms operating in the EC as well as direct U.S. exports in a variety of sectors. The third section addresses industry-specific standards and their potential impact on U.S. industry.

[5] Chairman, Federal Advisory Committee (FAC), *Report to the Secretary of Commerce of the Federal Advisory Committee on the EC Common Approach to Standards, Testing and Certification in 1992*, May 1991.

[6] For more information, see U.S. Department of Commerce, International Trade Administration (ITA), "Joint Communique Resulting from June 21, 1991 U.S.–EC Meeting."

[7] Conformity assessment refers to the range of activities—sampling procedures, testing, inspection, certification, laboratory accreditation, etc.—used to determine whether products comply with regulations and standards.

[8] Workplace health and safety standards are discussed in chapter 14.

Standards Development Issues

The European Community must develop a large number of standards in preparation for the single market in 1992. Its standards development process, however, is being reassessed. The United States has pressed for access to the development process to make sure that the new standards are acceptable to U.S. firms.[9] The EC, meanwhile, has engaged in an extensive examination of its regional standards structure to determine whether there are ways to improve it. This debate has led both sides to focus more closely in 1991 on the availability and utility of international standards, both as a means to quicken the process and to allow opportunity for increased participation by non-EC trading partners.

International Standards

Standards for the EC are being produced by the centralized organizations of the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). These bodies are composed exclusively of the national standards institutes of EC and EFTA member countries. The lack of direct U.S. participation has sometimes made it hard to get information and to exert meaningful influence, causing U.S. companies to worry that the standards developed there will give an advantage to EC products.

The United States thus has two options for influencing new EC standards. The first option is to exert indirect influence by providing written comments, requesting meetings with relevant technical committees, or being invited as an observer to the CEN/CENELEC committees. Several channels for such influence have been established as a result of cooperation between the American National Standards Institute (ANSI) and CEN/CENELEC.[10] The second option is to participate more actively in international standards organizations, such as the ISO and the IEC, to which the national members of CEN/CENELEC

[9] "U.S. Firms Want Direct Access But Prefer Sectoral Approach," *1992—The External Impact of European Unification*, Buraff Publications, Jan. 25, 1991, p. 7.

[10] For a complete description of these mechanisms, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 6–14. ANSI submits case studies every 6 months to CEN that detail U.S. experiences in obtaining access. The most recent submission was in August 1991, and most of the issues were resolved by early December. Further, during the most recent ANSI/CEN meetings in Brussels (Nov. 6, 1991), it was agreed that CEN would provide ANSI with copies of new work proposals made to the ISO. In addition, CEN/CENELEC/ETSI will be issuing a monthly bulletin available in 1993. However, the establishment of a database of information is still meeting with technical difficulties. CEN has, in turn, requested that time be allotted at the next ANSI/CEN meeting to discuss ANSI's supply of U.S. information to the EC, which CEN feels is sometimes incomplete and late. ANSI/CEN/CENELEC, *Dialogue on Standards November 6, 1991*, Dec. 10, 1991.

belong.[11] The United States does have a legitimate seat at the table in the ISO and IEC. Since the EC has pledged to base its work on international standards where possible, this U.S. presence could allow some influence.

However, four factors could limit this second option. First, the ISO bases its decisions on majority voting among national members. In theory, this could easily allow the EC to form a bloc and override the United States, although there is scant evidence of this actually happening.[12] Second, the United States has not had a history of a high level of participation in international standards. In most sectors, it has formally adopted very few international standards, and, with several notable exceptions such as information technology and petroleum, it is rarely active in the organizations themselves.[13] Third, although both sides have reiterated their commitment to international standards, it is difficult to ensure that the EC is working effectively with the ISO and the IEC whenever possible, not just whenever it is convenient.[14] Fourth, the international standards-drafting process is a time-consuming one. Some U.S. industries are reluctant to commit the effort and expense, and the EC feels it cannot afford the lengthy ISO or IEC process with the end of 1992 rapidly approaching.

In 1991, the EC made progress in two major areas toward ensuring that its standards are consistent with international standards. First, the ability of international standards organizations to communicate with and provide input to Europe's regional standards work was improved through agreements signed between the ISO and CEN and between the IEC and CENELEC. The agreements call for regular exchanges of information and for coordination of work programs and provide for the possibility of representatives of international organizations to participate as observers in European standards development work. Second, concern over the standards development process and the use of international standards prompted Secretary Mosbacher and Commissioner Bangemann at the June 21 meeting to ask standards bodies to address some of the major issues in a joint paper, referred to as the "Communique Report." Both of these developments are detailed below.

The CEN/ISO and CENELEC/IEC Agreements

Using the 1987 "Lisbon Agreement on Technical Cooperation" as a basis, CEN and ISO developed a revised draft, often referred to as the "Vienna Agreement," which pledges a regular exchange of information and cooperation in the standards-drafting process.[15] According to the new agreement, openness will improve through written contributions and mutual representation at meetings or both.[16] The Vienna Agreement will be in effect until one of the parties involved decides to revise it. A similar agreement was completed in July 1991 between CENELEC and the IEC.[17] An extension of a 1989 document, this draft addresses many of the same issues covered in the CEN/ISO Vienna Agreement and is intended to promote both openness and speed in the standards development process.

The CEN/ISO Agreement specifies three major areas of cooperation on standards development. First, CEN has agreed to maintain a general policy of checking with the ISO before undertaking new work to see if it can be completed on time within the ISO. If it is decided to transfer work to the ISO,[18] at least five CEN member bodies will commit themselves to participate in the ISO process, and the status of the work will be reported to the ISO Central Secretariat every month. CEN retains the right, however, to reject ISO work at any stage of the process if the results are considered unacceptable for technical, procedural, or timing reasons.

Second, CEN has also agreed to use the ISO procedures to adopt existing international standards as "European Standards." Through these procedures, an ISO standard may be adopted by CEN either "without change" or "subject to modification." If CEN requires the standard to be modified, the ISO will then have the choice of (1) maintaining the international standard as is and recognizing that the European standard will deviate from it, or (2) revising the standard as

[11] For further background, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 6–14 to 6–15; also p. 6–38.

[12] Patrick W. Cooke, *A Review of U.S. Participation in International Standards Activities*, NIST document number NBSIR 88–3698, Jan. 1988.

[13] Indeed, there have been numerous complaints from within the EC that the level of U.S. participation and expertise in international standards work is inadequate, especially in some of the traditional sectors. CEN/CENELEC official, meeting in Brussels on Nov. 6, 1991, attended by USITC staff.

[14] ANSI expressed concern that CEN members have been too preoccupied to participate effectively in the ISO, and that there has been a reduction in European participation in ISO overall. The EC responded, however, that decisions to turn work over to ISO must take numerous factors into account, including whether or not ISO can do the work in time, and whether a particular sector is appropriate for international work (i.e. oil, autos, information technology, etc. are sectors where global trade is significant). CEN/CENELEC official, meeting between CEN/CENELEC and ANSI, attended by USITC staff, Nov. 6, 1991.

[15] ISO and CEN, *Agreement on Technical Cooperation Between ISO and CEN (Revised Lisbon Agreement)*, draft, (no date provided).

[16] Such representation is limited to two designated representatives, and it should be at the invitation of the parent body.

[17] IEC and CENELEC, draft, revised IEC/CENELEC Cooperation Agreement, July 1991.

[18] There will be no role for the EC Commission in encouraging such transfers of work. The EC Commission will, however, hold CEN/CENELEC to agreed production schedules, so the bodies do have to be careful not to subcontract any work that ISO/IEC will be unable to complete on time. EC Commission official, meeting with USITC staff, Nov. 8, 1991.

requested by CEN and using the modified version as the new international standard. In the second case, U.S. business may wish to participate actively in the revisions to ensure that the modified international standard is acceptable.

Third, the CEN/ISO Agreement also specifies that in cases where standards are already under development in CEN, copies of drafts will be made available to the appropriate ISO committees for comment. Once completed, the European standard can be submitted to the ISO under the fast-track procedure or through parallel voting. Parallel voting procedures enable ISO and CEN votes to occur at the same time. Although it was initially assumed that parallel voting would be carried out according to the IEC procedure, it was determined that this would not be consistent with ISO practice. Consequently, no parallel voting will take place until mid-1992 when the necessary procedural changes are implemented in either CEN or ISO or in both.

In keeping with the CEN/ISO and CENELEC/IEC Agreements, progress has been made in the effort to share the standards development work between the EC and international standards organizations. In 1991, 50 percent of the standards adopted by CEN was based on ISO documents, whereas 89 percent of CENELEC standards used IEC documents.[19] Both sides noted during a November meeting in Brussels that the success of the international work would depend on the dedication of resources, such as national expert participation, and the commitment of participants to implement the newly developed international standards as national standards.[20]

Additional progress in sharing the standards development work was made at the December 5, 1991, joint ISO/CEN coordinating group meeting. Three new steps were established. First, the ISO and CEN will compile a list of which ISO documents could be candidates for parallel voting in CEN. The list will be considered at the next coordinating meeting, currently scheduled for May 5, 1992. Second, the ISO and CEN will work together to determine whether there are any items currently underway in CEN that might be transferred to the ISO; the outcome of this investigation will also be considered in May. Third, the Central Secretariats of ISO and CEN will list issues of conflict and make recommendations to resolve them.[21]

The above agreements represent considerable improvement in the coordination of EC and international work. In particular, the agreement to refer new standards development work to ISO first is a positive move. However, the United States has complained on several occasions that the EC has departed from the above policies in a few instances.

The Communique Report

As noted above, at their June 21 meeting, Secretary Mosbacher and Commissioner Bangemann requested a joint report on ways to improve the international standards system. The report is being prepared, in consultation with other standards organizations, primarily by the National Institute of Standards and Technology (NIST), ANSI, the American Society for Testing and Materials (ASTM), and the American Society of Mechanical Engineers (ASME) in the United States and CEN and CENELEC in the EC. Each side has worked separately on papers that were to be bound together to represent the opinions of both the EC and the United States. Secretary Mosbacher and Commissioner Bangemann asked that the report address (1) the promotion of maximum efficiency and speed for the development of standards in international standards bodies; (2) the determination of priority sectors where consensus on international standards would most likely be reached and where international trade would thus be promoted; (3) the improvement of transparency and reporting during the standards development process; and (4) the implementation and monitoring of international standards usage. The goal was to encourage the development and use of international standards whenever possible, instead of relying on regional, national, or industry standards. The ultimate objective was not only to prevent discriminatory standards, but also to produce more efficient international trade.[22]

The U.S. group of standards bodies met several times between June and December of 1991, but discussions were slowed by a debate over the definition of an "international standard." One group[23] felt that international standards should encompass essentially three definitions: first, de facto or consensus standards; second, industry-developed standards; and third, standards from international standards organizations, such as the ISO and IEC. Another group[24] felt that because the purpose of the report was to strengthen and improve the operation of recognized international organizations (i.e., ISO/IEC), the definition should be limited to standards from international organizations. The organizations in favor of the three-tier approach argued that restricting the definition of international standards to just those created by organizations such as

[19] Of this 89-percent figure, CENELEC reports that 72 percent is identical to IEC standards, and 17 percent is IEC standards with some amendments to adapt to European requirements through common modifications. CEN/CENELEC official, meeting in Brussels, Nov. 6, 1991, attended by USITC staff.

[20] ANSI/CEN/CENELEC, *Dialogue on Standards November 6, 1991*, Dec. 10, 1991, p. 2.

[21] ANSI official, telephone interview with USITC staff, Dec. 11, 1991.

[22] U.S. Department of Commerce, International Trade Administration (ITA), "Joint Communique Resulting from June 21, 1991 U.S.-EC Meeting."

[23] This group consisted primarily of ASTM, ASME, and the Institute of Electrical and Electronics Engineers (IEEE).

[24] This group consisted primarily of the Computer and Business Equipment Manufacturers Association (CBEMA), the National Electrical Manufacturers Association (NEMA), the American Petroleum Institute (API), the National Association of Manufacturers (NAM) and ANSI.

ISO and IEC would cause certain widely used, industry-created standards to be replaced unnecessarily. Those who favored the second and more limited definition argued that since the United States had long been pushing the EC to recognize the standards of international organizations, instead of relying solely on those developed within the EC, the three-tier approach would be contradictory to the goal established by the Mosbacher-Bangemann agreement.

The U.S. group sent a draft position paper to the EC early in 1992,[25] although some U.S. standards organizations felt the draft was not a consensus paper.[26] The U.S. paper addresses all standards "accepted and used in world markets," including those created by international standards bodies such as ISO/IEC, by "consensus-standards developers which have created widely accepted standards," and by "multi-national sectoral standards" developers.[27] The U.S. paper makes a series of recommendations for both international standards organizations (ISO/IEC) and consensus standards developers.

In an effort to speed the development process, the paper recommends that draft standards not be translated into French, and it calls for a change in the voting procedure on draft international standards (DIS). Rather than sending the DIS through national member bodies for the 4- to 6-month process of letter balloting, it suggests sending the DIS directly to the national delegations of the ISO/IEC technical committees. In addition to these recommendations for a speedier process, suggestions for increased efficiency include improving the flexibility of the ISO/IEC procedures for standards development for new or rapidly developing technology; routing standards development work to an "appropriate organization," with due process and openness, when an appropriate ISO/IEC committee is unavailable or does not yet exist; and developing criteria for the use of consensus standards as a starting point for the development or revision of international standards.[28] Because a number of these recommendations allow participation by various national bodies, not just members of international standards bodies, it is unlikely that the EC will approve of them. The U.S. paper also addresses methods of improving the efficiency of industry and consensus standards developers, suggesting that industries should develop priorities and work plans for their sectors and that consensus standards developers should encourage contact among all interested parties during the development process.

[25] NIST, "EC Communique Study Group Issue Paper on International Standardization," draft, (Jan. 6, 1992).

[26] NAM official, telephone conversation with USITC staff, Jan. 30, 1992.

[27] NIST, "EC Communique Study Group Issue Paper," p. 1.

[28] Currently national standards are taken into consideration whenever an international standard is being created or revised. However, there are a number of industry and consensus standards that are not listed as "national" and are therefore not considered in the international process.

The U.S. paper also addresses implementation requirements. It states that the use of international standards should be "encouraged" and "promoted" for use in government procurement activities and by business and industry for nonregulated products. This terminology does not imply any private sector commitment to use international standards, and may therefore prove to be another stumbling block for EC acceptance of the position. On the other hand, the paper suggests periodic meetings between the United States and the EC, either through the established ANSI-CEN/CENELEC/ETSI meetings or through the ISO/IEC, to review implementation efforts of both sides. It also recommends the identification of priority sectors where full implementation and monitoring of international standards is expected to lead to increased trade.

Finally, the U.S. paper addresses the need for increased transparency in standards development. It calls for a central point of enquiry for information on standards within both the EC and the United States and recommends that the two sides exchange information on new standards projects. While this reporting suggestion is consistent with the provisionally agreed General Agreement on Tariffs and Trade (GATT) Standards Code of Good Practice, its mention in this paper is significant because it states exactly what information should be provided,[29] and it recommends the creation of a comprehensive registry for U.S. standards projects notifications. Compliance with this recommended reporting system would be voluntary.

EC standards developers have been working on their side of the communique report as well. The Community representatives reportedly have no desire to see national or industry bodies recognized as international standards bodies; they argue this would further fragment a system that is already difficult to coordinate. Although the final version of the EC paper is not yet available, a draft lists as one of its first recommendations the need to have a "single focal point" for international standardization work and suggests the ISO, the IEC, and two consultative committees of the International Telecommunications Union[30] as this focal point.[31] The paper goes on to

[29] The draft suggests that the following should be included in a comprehensive standards information system: "U.S. and EC draft and final technical regulations, including all draft and final EC product directives; existing standards at the U.S. and EC national and regional levels; draft standards; standards projects." Further, it explains what type of information must be provided for each standards project, including "Project title; scope; technical committee for project; status of project; target date for completion; and contact for further information." NIST, "EC Communique Study Group Issue Paper on International Standardization," (Jan. 6, 1992).

[30] The International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT).

[31] "Key Elements of European Standpoints on the Follow–Up of the Joint Mosbacher/Bangemann Communique," draft, (Dec. 1991), p. 1.

suggest that countries should formally commit themselves to a process of requesting new standards development work from these international bodies first and establishing mechanisms within the current framework to do so. The EC suggests that priorities continue to be set in the international standards bodies through a multilateral consensus procedure and that they be driven automatically by the number of requests coming in from various countries and sectors. Finally, the EC participants recommend full implementation of international standards, even if that means the elimination of pre-existing, conflicting national and industry standards over time.

Because it now appears that the U.S. and EC positions will differ substantially, it is likely that the two sets of recommendations will not be combined prior to submittal to the U.S. Commerce Secretary and the EC Commission; they will instead be submitted as two distinct positions.[32] A joint U.S.-EC introduction will, however, state exactly where the two positions are in agreement and where they are not.[33] It is likely the EC will support, in principle, the U.S. recommendations to consolidate the standards development process through a single point of enquiry and a comprehensive standards registry.[34] Nevertheless, serious disagreements will undoubtedly remain over the issues of participation by other organizations in the international development process and the need to eliminate pre-existing and conflicting national standards.

The Green Paper

The process of standards development was also addressed in the EC Commission's Green Paper on the Development of European Standardization. A draft of the Green Paper was released on October 8, 1990. The third followup report noted that the Green Paper's primary objectives are the acceleration of the pace of standardization work, a reorganization of the system for developing and issuing standards, and a redefinition of EC interaction with its trading partners. The report also detailed the responses submitted by U.S. industries. Most continued to support the overall objective of the Green Paper, but they remained concerned over their ability to influence the process, especially given the proposed shortened comment period. Furthermore, there was concern that the paper implied a weakening EC commitment to the use of international standards. There were positive comments, however, in response to the call for improved communication with the EC's trading partners.[35]

The Green Paper has also generated considerable debate within the EC. During the past year a number of comments were submitted in response to the paper, most of which expressed concern over its extensive goals.[36] The Economic and Social Committee is concerned that a shortened period for public response would be at the expense of standard quality, that qualified majority rule could come at the expense of developing true consensus among all potentially interested parties, and that workers and consumers would be effectively excluded from the crucial early stages of standards development.[37] The European Centre of Public Enterprise (CEEP) also voiced concerns, especially that standard adoption by qualified majority would be at the expense of smaller businesses and marginal competitors.[38] The EC Council of Ministers discussed the paper in March of 1991 and expressed some internal differences. Germany and France were reluctant to agree to the creation of EC sectoral standardization bodies, especially since both have active national bodies whose influence they do not want to see diminished. Germany also feared that the effort to speed up the development process could result in lower quality standards, and France suggested that the proposed reforms could slow development as a result of the upheaval they would cause.[39]

The European Commission responded to these internal comments by announcing in September 1991 its plan to submit to the EC Council of Ministers a second version of the Green Paper. The first version was rejected as too ambitious by nearly all parties involved.[40] The revised Green Paper was released in early 1992.[41] Its contents include a summary of the

[32] NIST official, telephone interview by USITC staff, Jan. 30, 1992 and NAM official, telephone interview by USITC staff, Jan. 31, 1992.

[33] This joint introduction is the recommendation of some members of the U.S. group, but it is not yet a confirmed plan of action. NIST official, telephone interview by USITC staff, Jan. 31, 1992.

[34] Ibid.

[35] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–7 to 4–11.

[36] Certain groups, such as the EC Construction Workers and the European Federation of Building and Woodworkers, did give a favorable response, specifically because the Green Paper provided for the participation of all interested parties. In the past, some have been able to participate only through the European Trade Union Confederation. "Standardisation: Favourable Opinion on Green Paper from Construction Workers," *European Report*, No. 1674 (May 2, 1991), Business Brief, p. 4.

[37] *Opinion on the Commission Green Paper on the Development of European Standardization: Action for Faster Technological Integration in Europe, Official Journal of the European Communities (OJ)*, No. C 120 (May 6, 1991), pp. 28–33.

[38] "Technical Standardisation: CEEP Defends National Bodies," *European Report*, No. 1685 (June 15, 1991), Business Brief, p. 5.

[39] "Technical Standardisation: Slow Progress on Green Paper," *European Report*, No. 1663, (Mar. 22, 1991), Internal Market, p. 6.

[40] "Technical Standards: Structural Reform Will Have to Wait," *European Report*, No. 1703 (Sept. 14, 1991), Internal Market, p. 5.

[41] *Standardization in the European Economy (Follow-up to the Commission Green Paper of October 1990)*, COM (91) 521, Nov. 27, 1991.

numerous comments on the first Green Paper, a series of suggestions for standards development in the upcoming decade, and a proposal for increased use of European standardization in European policy.[42] The paper notes that, in the over 250 responses received, there had been general agreement on certain Commission priority areas, such as "greater efficiency and flexibility in the standardization process, wider representation of economic interests and greater openness to international standardization." Several concrete recommendations were made for improved efficiency, including the use of project teams, feeder organizations, new technology, a single working language, and clear rules on the use of majority voting.[43] In addition, comments from both industry and standards organizations indicated a need for clearer priorities in the development process.[44]

On the other hand, there was a general rejection of the EC Commission's recommendations for "new organizational structures and a distinct status for European standards."[45] Standards organizations rejected the idea that there should be any additional European bodies outside of CEN/CENELEC/ETSI or that there should be additional bureaucratic supervision levels, such as the suggested European Standardization Council. However, the revised Green Paper notes that the three bodies accepted the concept of a "European Standardization Forum" (ESF) where economic interests could be directly represented. The paper describes this organization as a "broadly-based body, intended to be the focal point for debate on major standardization policy issues in Europe."[46] Although the paper goes into considerable detail on the ESF, it also suggests that the precise characteristics of this consultative body remain open for discussion.

Also of significance in the revised paper are the EC Commission recommendations for followup action, based on comments received and consultations with CEN/CENELEC/ETSI. Among other things, the EC Commission calls for the European standards organizations to rapidly install efficiency-improving measures; to amend their internal rules such that adopted European standards are increasingly visible and available at the national level; to develop with the European Organization for Testing and Certification (EOTC) and other interested parties a single mark of conformity to European standards;[47] and to increase the coordination of technical assistance to third countries, especially in Central and Eastern Europe.

While actions could be taken in response to the revised Green Paper, it should be noted that some organizations did respond to the ambitious recommendations of the first version. In recognition of the growing importance and need for European standards, CEN submitted a proposal of changes to Commissioner Bangemann in May 1991 to streamline its organization.[48] CENELEC has also responded with internal reforms. CENELEC reported it would permit feeder organizations (i.e., European groupings) to have a direct line into CENELEC, bypassing national standards bodies, to improve the organization's openness. Further, it has granted permission for the IEC Secretary General to attend CENELEC technical board meetings, for IEC observers to attend CENELEC technical committee meetings, and for trade unions and consumers to participate in CENELEC's General Assembly and Technical Board. CENELEC may also change its voting procedures by mid-April 1992.[49] Finally, CEN, CENELEC, and ETSI announced the December 1991 formation of three joint committees to be used for the coordination of related work. The new committees are the Joint Presidents Group, the Information Technology Steering Committee, and the Joint Coordination Group.[50] It is expected that these internal and joint reforms of CEN, CENELEC, and ETSI will help in meeting some of the suggestions of the original Green Paper.

Although dissent over the Green Paper has been primarily an intra-EC issue, the outcome could affect the United States. First, U.S. business has become increasingly concerned that the backlog of standards development work will effectively delay the anticipated benefit of a single, integrated EC market well beyond 1992.[51] To the extent that internal reforms speed the process, they could be positive for U.S. business. Second, the Green Paper supports U.S. business's call for improved information about standards development efforts and the EC. Third, the United States also has a stake in the issue of how national EC standards bodies relate to EC centralized bodies. If national bodies were in fact able to maintain their current positions of input, U.S. industries could

[42] Because this revised communication from the EC Commission was designed primarily to address the internal concerns voiced by member states, the U.S. Government does not plan to submit formal comments on the document. U.S. Department of Commerce, ITA, memo to the Office of Multilateral Affairs, U.S. Department of Commerce, Jan. 23, 1992. However, some U.S. officials believe its effect on U.S. business will be positive if it does, in fact, encourage increased efficiency in the standards development process.

[43] *Standardization in the European Economy*, COM (91) 521, Nov. 27, 1991.

[44] In order to improve the priority–setting process, the revised Green Paper recommends that the planning and programming of EC standardization needs should be separated as much as possible from the standards–drafting process.

[45] *Standardization in the European Economy*, COM (91) 521, Nov. 27, 1991.

[46] Ibid.

[47] This mark would apparently be different from the CE mark. U.S. Department of Commerce, informal communication with USITC staff, Feb. 5, 1992.

[48] "CEN to Streamline Processes as Response to EC Green Paper," *1992—The External Impact of European Unification*, Buraff Publications, May 3, 1991, p. 4.

[49] CEN/CENELEC official, meeting between CEN/CENELEC and ANSI, attended by USITC staff, Nov. 6, 1991.

[50] "CEN, CENELEC/ETSI: New Joint Bodies," *European Report*, No. 1728 (Dec. 11, 1991), Business Brief, p. 8.

[51] U.S. Embassy official, interview by USITC staff, Brussels, Nov. 8, 1991.

continue to influence European regional and international standards work with their established lines of communication. Such an arrangement might also help to avoid bloc decisions in ISO and IEC.

EEA Agreement

Prolonged negotiations over the relationship between the EC and the seven-member EFTA[52] were concluded on October 22, 1991, with the creation of the European Economic Area (EEA).[53] Under this new agreement, most EC standards and testing and certification directives will be adopted and required by the EFTA countries.[54] There will be some derogations in the environmental field. EFTA countries will be permitted to maintain higher standards in environmental protection, but only for their domestic producers. Imported goods that meet EC environmental requirements must be allowed access to EFTA nations.

While the negotiations and the agreement are significant, in reality many of the EFTA countries have already been adapting their national rules to EC standards. Recognizing that the Community is their primary trading partner, EFTA countries have been members of CEN/CENELEC and ETSI since their inception,[55] and are signatories of the 1990 memorandum of understanding that created the EOTC.[56] In addition, they have participated in the standards development process since 1985 and have incorporated compliance with the notification procedures of Council Directive 83/189 in article 12a of the EFTA Convention in 1987.[57] Furthermore, a December 1989 agreement between EFTA and the EC requires the exchange of information on all new draft technical regulations scheduled for introduction by either side. The 1991 agreement is thus an important instrument for formalizing the adoption of EC standards by EFTA countries. It should not, however, involve drastic change by EFTA countries in most sectors, as historic trends and geographic proximity had already resulted in adoption of new EC standards.

The EEA Agreement makes the issue of harmonization even more important for U.S. businesses, which exported almost $12 billion worth of goods to EFTA nations in 1990.[58] U.S. businesses will now face harmonized standards across almost the entire European continent, widening the possible benefits of the standards portion of the 1992 program.

Testing and Certification Issues

As the end of 1992 approaches, one of the issues generating the most questions and concerns is how U.S. industries will test and certify their products to conform with the new EC standards. In many cases, if the product conforms to the supporting standard developed by CEN/CENELEC, manufacturers will be permitted to self-certify that the product conforms with relevant EC directives and to affix the CE mark. However, third party testing will generally be required if the manufacturer does not choose to conform to the referenced standards and for high risk products, such as certain medical devices, where third party intervention is needed.

U.S. industry has been seeking to maximize situations under which U.S.-generated tests would be acceptable for proving conformity to EC regulatory requirements. The two primary options for gaining acceptance of U.S. tests are (1) to have U.S. labs be recognized through mutual recognition agreements (MRAs) as notified bodies and (2) to have EC notified bodies subcontract to U.S. entities.[59] Progress was made this year in clarifying some of these possibilities and requirements, but few final arrangements were concluded. The negotiating mandates for MRAs and subcontracting guidelines were refined, and the final version of the MRA document came out in early 1992. Further, there were some advances in the discussion of the CE mark, the status of the EOTC, and the use of the modular approach for testing and certification.[60]

[52] EFTA includes Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, and Switzerland.

[53] For further information on the EEA Agreement, see chapter 1.

[54] Bureau of National Affairs, Inc. (BNA), "The EC and EFTA Reach Agreement," *International Trade Reporter* (Oct. 23, 1991), p. 1529.

[55] EC and EFTA countries cooperate in assigning mandates to CEN/CENELEC for the creation of European standards. In addition, an agreement signed in September 1989 lays out the requirements for financial support by EFTA countries for CEN/CENELEC and ETSI.

[56] "Technical Standardisation," *European Update*, West Publishing Co., Nov. 21, 1991, pp. 52–54.

[57] *Council Directive of 28 March 1983 Laying Down a Procedure for the Provision of Information in the Field of Technical Standards and Regulations*, *OJ* No. L 109 (Apr. 26, 1983), pp. 8–12.

[58] National Association of Manufacturers (NAM), *EC '92 New Issues and New Developments*, Apr. 1991, p. 8.

[59] MRAs are negotiated on a sectoral basis and allow countries to accept each other's final test results, although quality assurances may be required. Under MRAs, the entire testing and certification process may occur outside of the importing country. Based on private-law contractual negotiations, subcontracting permits a notified body of the EC to delegate some of its testing responsibilities to a third-country testing lab or quality assessment body. However, the notified body retains ultimate responsibility for final decisions relating to EC certification.

[60] In addition to these activities, access to information on testing and certification issues was also improved with the establishment of the Certificate Database [sic] project. The data base will contain information from EC and EFTA countries on the organization of testing and certification, related schemes and marks, voluntary and mandatory procedures (i.e. product certification, quality system certification, certification of personnel), names/addresses of organizations involved, and information on directives and notified bodies. Manufacturers, companies, governments, etc. can purchase subscriptions to the database. The project should be completed by mid–1992. CEN, *Statement Regarding the Certificate Database*.

Conformity-Assessment Procedures

In order to negotiate MRAs with non-EC countries, the EC Commission needs a mandate from the EC Council. The document that will establish that mandate has become the vehicle for developing EC policy on both subcontracting and MRAs. Drafts concerning subcontracting and MRA policy will be combined into a final MRA document for consideration by the EC Council. The EC Council is expected to vote on the MRA document in June, which suggests that third-country negotiations could begin that same month.[61] However, even though negotiations can be initiated at this point, it could take several years to install the infrastructure necessary to conclude an MRA between the United States and the EC.[62] Interest in the conclusion of MRAs has already been expressed by several private sector industries, including medical devices, pressure vessels, electromagnetic capability, aerospace, mechanical sealing devices, and wood products.[63]

Subcontracting

The most recent version of the subcontracting draft was released in August 1991.[64] It improves considerably on the January 1991 subcontracting draft, which included fairly strict limitations on what could be subcontracted, particularly in the quality assurance area.[65] The U.S. Government feared this would cause delays and bottlenecks in EC labs, and would make quality assurance an unattractive option for U.S. firms seeking to demonstrate conformity with EC requirements.[66] The August draft, however, suggests that quality system audits may be subcontracted, as long as notified bodies perform the audit assessment. The text is not clear, however, on whether the notified body must participate in initial or followup audits.[67] In addition, the August draft simplified the procedure for notifying the EC Commission of subcontractors. Previously, the subcontractor had to be designated by the notified body to the member state. The August draft now specifies that member states do not need to be notified which facilities are subcontractors, though this information has to be available at the request of either the member state or the EC Commission. However, the member state does need to be informed of work that is being subcontracted.[68]

Despite these improvements, the U.S. Government has several areas of continuing concern. For example, the August subcontracting draft suggests that it will still be necessary to subdivide conformity-assessment procedures into "technical operations" and "appraisal or assessment operations" before subcontracting can proceed.[69] The United States has argued that such a division is not only artificial but restrictive as well. To avoid difficulties in distinguishing between what constitutes technical and assessment operations, the U.S. Government has suggested more flexible provisions allowing notified bodies to decide what they will subcontract.[70] ANSI representatives put forward a similar opinion during an April 1991 meeting with the EC Commission and further stated that subcontracting could become the primary method of assuring there are no standards-related trade barriers if the constraints on what can be subcontracted are not overly extensive.[71] To date, however, this recommendation has not been adopted by the EC.

The EC Senior Officials Group on Standardization discussed the August subcontracting draft in October and will reportedly edit it before attaching it to the MRA document for consideration by the EC Council.[72]

Mutual Recognition Agreements

Although U.S. discussions with EC officials have served to clarify certain issues, the MRA mandate

[61] The MRA draft being considered by the Council will serve as a technical document. The EC Commission is expected to prepare a two– or three–page attachment, which will be the actual negotiating mandate. U.S. Department of Commerce, informal communication with USITC staff, Feb. 12, 1992.

[62] U.S. Mission to the EC official, meeting with USITC staff, Nov. 8, 1991.

[63] U.S. Department of Commerce, *EC Testing and Certification Procedures Under the Internal Market Program*, Nov. 1, 1991, p. 6; and U.S. Department of Commerce, informal communication with USITC staff, Feb. 12, 1992.

[64] EC Commission, Directorate–General for Internal Market and Industrial Affairs, "Guiding Principles for Subcontracting by 'Notified Bodies' Pursuant to the Council Decision of 13 December 1990 Concerning the Modules for Various Phases of the Conformity Assessment Procedures," doc. certif. 90/5—rev. 2, June 12, 1991.

[65] For a discussion of these drafts, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–12 to 4–14.

[66] NIST, *Comments on EC Document "Guiding Principles for Subcontracting by Notified Bodies Pursuant to the Council Decision of 15 December 1990 Concerning the Modules for the Various Phases of the Conformity Assessment Procedures,"* Mar. 7, 1991.

[67] The August 1991 text reads: "...quality system audits [...] can be carried out as necessary with the participation of the notified body on the occasion of the initial audit and/or the follow–up audits. At all events, the notified body reviews and assesses the quality management system so that it can guarantee the overall effectiveness of the system in conformity with the specified requirements."

[68] EC Commission, "Guiding Principles for Subcontracting," p. 4.

[69] Technical tasks would apparently include tests, examinations, and comparisons—in other words, any task that can be described in detail or which can be carried out based on pre–established technical specifications.

[70] U.S. Department of State Telegram, "Update on USG Views on EC Commission Working Documents on Negotiations with Third Countries Concerning the Mutual Recognition of Product Conformity Assessment and Guiding Principles for Subcontracting by Notified Bodies," Sep. 11, 1991, Washington, DC, message reference No. 300496, p. 2.

[71] "Summary of Discussions Between ANSI and EC DGIII on Conformity Assessment Issues," *ANSI Global Standardization Report*, vol. 5 (June 1991), pp. 18–19.

[72] EC Commission official, meeting with USITC staff, Nov. 7, 1991.

drafting process has not substantially changed the content of various draft versions. The final version of the MRA draft was released on November 18, 1991, and was almost identical to the August draft.[73] Draft versions of the MRA document have included provisions on the scope of MRAs, negotiating procedures, technical procedures, and the criteria for establishing negotiating priorities.[74] Some of the U.S. concerns about the MRA drafts have included the EC's definition of a "balanced situation," the role of third-country governments, and the criteria for third-country conformity-assessment systems.

The United States has expressed concern about the continued reference to the need to secure a "balanced situation" as a precondition for concluding MRAs. The U.S. Government is concerned that this terminology is not well-defined and suggests criteria that imply strict sectoral reciprocity. Furthermore, there is concern that the language in the most recent drafts could be read to mean that there should be a balance in national technical rules, administrative procedures, technical requirements, or geographical restrictions.[75] The United States would prefer national treatment, because this would allow U.S. bodies to perform conformity-assessment activities in accordance with EC directives, and qualified bodies in the EC would, in turn, be able to perform conformity assessment locally in accordance with U.S. regulatory requirements. The United Kingdom also voiced concern over the definition of a balanced situation.[76] The United Kingdom has cautioned that it could be a breach of the GATT Agreement on Technical Barriers to Trade (TBT) if it implies that the availability of wider market access is a prerequisite for an agreement with a third country.[77]

According to the head of the EC Commission's Unit for Standards and Certification, a balanced situation means that a partner can offer a viable balance of opportunities for EC suppliers.[78] Indication of such opportunity may include whether or not a country is a signatory to the GATT TBT agreement.[79] The EC Commission sees adherence to the principles of this agreement as a minimum pledge of transparency, openness, and nondiscrimination.[80] Furthermore, since there are some cases where the United States market is already fully open, it is unlikely that EC-notified bodies will need to request recognition in every sector. In those areas where the EC already has access, the MRA will serve to reconfirm this recognition and provide access to the EC in exchange.[81] The EC Commission official said he did not foresee insistence on the harmonization of regulatory requirements between the EC and partner countries as a goal of MRAs.

The second major complaint that the United States has voiced over the MRA draft concerns the ambiguous role of third-party governments. Although this role has not been clearly defined, some of the language changes in the November 1991 draft imply a governmental role. Through discussions with the EC this year, however, it has become clear that government will have two primary roles. The first role would be as signatories to agreements. MRAs in areas subject to EC or member-state regulation will only be concluded between the EC and sovereign governments. In addition, during the June 21 meeting between the United States and the EC, Commissioner Bangemann defined the role of third country governments as "guarantors," able to assure the competency of local bodies to perform conformity-assessment duties.[82]

U.S. Response

In an effort to facilitate negotiation of MRAs with the EC, Secretary Mosbacher offered the services of

[73] EC Commission, Directorate–General for Internal Market and Industrial Affairs, "Working Document on Negotiations with Third Countries Concerning the Mutual Recognition of Conformity Assessment," doc. certif. 91/1 rev. 3, Nov. 1991. The only changes were slight variations of words (i.e. from "bodies" to "authorities" in several places), the capitalization of the term contracting "Parties," and some phrase additions. The net effect of these changes is to make clear that the parties to the agreement and the implementing bodies will be government entities.

[74] For background, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–12 to 4–14.

[75] The document states that MRAs will be concluded on condition that "the agreements establish a balanced situation with regard to the advantages derived by the parties in all matters relating to conformity assessment for the products concerned. With regard to this last condition, such an agreement must ensure that the parties have an equivalent guarantee of access to the market for the sector(s) covered by the agreement in terms of the requirements of the laws of the two parties and the means of proof of conformity with these requirements." Commission of the European Communities, *Working Document on Negotiations with Third Countries Concerning the Mutual Recognition of Conformity Assessment, (rev. 2)*, January 1991, p. 2.

[76] U.K. Department of Trade and Industry, *European Commission Working Papers on: (A) Guiding Principles for Subcontracting by Notified Bodies, (B) Negotiations with Third Countries on Mutual Recognition of Conformity Assessment—A Consultative Document*, (no date provided).

[77] On other issues, the United Kingdom also noted that the most recent draft may discriminate against developing countries in its reference to an "equivalent level of technical and industrial development," and that there is insufficient detail about termination procedures, or the withdrawal of a notification.

[78] EC Commission official, meeting with USITC staff, Brussels, Nov. 8, 1991.

[79] There has been some speculation that the EC will insist on acceptance of the Code of Good Practice included in Uruguay Round Revisions of the Standards Code.

[80] China is not a signatory to the GATT TBT agreement. Australia recently announced that it will accept the GATT TBT, and cited as a primary reason its desire to be able to negotiate MRAs with the EC. U.S. Department of State Telegram, "GOA to Join GATT Standards Code," Jan. 1992, Canberra, message reference No. 00428.

[81] EC Commission official, meeting with USITC staff, Nov. 7, 1991.

[82] ITA, "Joint Communique Resulting from June 21, 1991 U.S.–EC Meeting."

the U.S. Department of Commerce's National Institute of Standards and Technology (NIST) for the job of guarantor at his June 21 meeting with EC Commissioner Bangemann. Bangemann accepted this as a step forward in U.S. efforts to strengthen relations over conformity assessment.[83] According to the U.S. Government plan, NIST will provide the EC with assurances that conformity-assessment bodies in the United States, including those performing quality system registration, laboratory testing, product certification, and associated conformity-assessment accreditation systems, meet EC standards of competence and conduct.[84] NIST assurances will be based on international guidelines which detail the requirements for the acceptance of bodies that perform conformity assessment.[85] It is currently anticipated that NIST will offer these services when requested, where there is need, and where the resources are available. A comprehensive plan for these programs is expected in 1992,[86] and, subject to budgetary restraints, these activities could be operational as early as October 1992, except for the assurance of quality systems, which may take longer.

The private sector has also made progress toward preparing for conformity assessment. At recent meetings in Brussels between ANSI and the EOTC, ANSI reported that a third-party certification system is now in place[87] and a program to certify lab accreditors is under consideration.[88] In addition, ANSI signed an agreement with the Registrar Accreditation Board (RAB) in December 1991 to establish the "American National Accreditation Program for Registrars of Quality Systems." This agreement will create a "voluntary, self-supporting and centrally directed" national accreditation system in the United States.[89] Discussions are underway with the U.S. Department of Commerce in an effort to arrange government recognition of this new program for registrar accreditation. It has been suggested that government recognition by NIST might be necessary if mutual recognition with the EC in a regulated area is desired.

[83] Ibid.

[84] NIST already performs lab accreditation programs for fastener testing, a new responsibility as of 1991.

[85] NIST official, telephone conversation with USITC staff, Dec. 17, 1991.

[86] The NIST proposal, along with a request for comments, was published in the *Federal Register,* vol. 57, No. 60, Mar. 27, 1992, pp. 10620-10621.

[87] ANSI official, meeting between ANSI and EOTC, attended by USITC staff, Nov. 6, 1991. To date, 15 certification programs have been approved, including some on water quality, sanitation, wood preservation, and glass. Three other programs are currently under evaluation: gas fired products, electrical products, and fuel oil products.

[88] ANSI, *Summary Report on ANSI/EOTC Dialogue on Conformity Assessment November 6, 1991*, Dec. 10, 1991, p. 1.

[89] ANSI,"ANSI/RAB Launch Joint Program," *Reporter*, Dec. 1991, pp. 1–2.

The CE Mark

The final proposal for the CE Mark Regulation was submitted by the Commission on June 5, 1991.[90] Its 10 articles define the purpose, scope, and limits of the mark, and state that its primary purpose is as a mark of conformity with EC-wide rules governing the design, manufacture, marketing, putting into service, and use of the industrial products falling under the new approach to standardization. According to the proposal, the CE mark regulations will enter into effect on January 1, 1993, and will apply to all member states. However, the CE mark will not be required for a product until the necessary standards have been created and notified bodies, if required, are in place, so the timing may vary for the mandated application of this mark.

The proposal indicates a change in policy concerning the scope of products requiring the CE mark. Although under the new approach directives some products were to be exempted from the CE mark (i.e., those not considered to be high-risk, such as certain types of personal protection equipment, or not of high economic importance, such as some construction products), there will now be no exemptions or derogations. Whoever attaches the CE mark is certifying that the product conforms to all binding Community provisions. If it is discovered that the CE mark has been improperly affixed, the product in question will be prohibited or no longer marketed. Legal penalties will be at the discretion of each member state.

The proposal specifies the size and design of the CE mark, and stipulates that the mark will be followed by the identification number of the notified body, and by the last two digits of the year in which the mark was affixed.[91] If a product is covered by more than one directive and several notified bodies are involved, only one body will be responsible for affixing the mark and identification number, though the numbers of the other bodies will appear on the certificate of conformity. The requirement to apply the body's identification number has raised concern among the EC's trading partners. The fear is that if consumers are able to decipher the identification numbers and determine the location of the notified bodies, products could again face discrimination.

[90] EC Commission, "Proposal for a Council Regulation (EEC) Concerning the Affixing and Use of the CE Mark of Conformity on Industrial Products," COM (91) 145—SYN 336, May 17, 1991.

[91] The addition of this number will be necessary only where directives require involvement by notified body. If a notified body is not required by a directive, no identification number may be applied, even if a notified body is consulted. The identification numbers of notified bodies will be assigned by the Commission, and the Commission will be responsible for publishing and continuously updating the list of notified bodies in the *Official Journal of the European Community*.

The proposal also addresses what type of information may appear in conjunction with the CE mark. No mark will be permitted that may be confused with the CE mark or that might obscure the mark. However, other marks of conformity may be affixed to the product as long as the CE mark is not obstructed.

The CE mark "is intended above all for the market inspectors in the member states and as such does not claim to be a mark of quality, safety, or environmental protection as generally understood by consumers."[92] As a result, there have been some indications that the market may demand additional marks demonstrating quality and safety conformity. This market demand may force U.S. industries to continue seeking national marks of conformity; something U.S. businesses hoped to avoid through the introduction of the CE mark.

Some issues will need further consideration and clarification. For example, there has been some question over whether the date next to the CE mark represents the year the product or the product-type goes onto the market, and whether there should be a time limit placed on notified bodies for confirming conformity. In addition, the EC Commission is urging creation of a mark of conformity to voluntary European standards developed by CEN, CENELEC, and ETSI. Further, since the publication of the proposed regulation on the CE mark, comments by member states and review by government officials have led to several suggested changes. These include the introduction of the CE mark through a directive instead of a regulation, removal of the requirement to apply the notified body identification number and year of manufacture next to the mark, and removal of the stipulation that one notified body coordinate the work of others when more than one is involved.[93] Thus while considerable progress has been made through the publication of the CE mark document, it appears that revisions may be necessary.

The European Organization for Testing and Certification (EOTC)

Created in April 1990, the EOTC is a relatively new component of the EC's standardization program and has spent a good part of the past year working to define its role and objectives.[94] This private organization was established by CEN, CENELEC, the EC Commission, and the EFTA Secretariat to bring together European industries, conformity-assessment professionals, and associations of consumers and trade unionists to create a network of mutual recognition agreements (MRAs) and harmonized certification schemes in the nonregulated sector. The majority of products entering EC commerce fall into this sector. The goal is to provide a basis for eliminating duplicative or conflicting testing requirements in the non-regulated sphere by building confidence among private sector participants. This is in conformance with the EC's "Global Approach" concept of testing and certification, which calls for efforts to ensure safe, high-quality products in both regulated and nonregulated sectors, while allowing producers some flexibility in demonstrating conformance.[95]

During 1991, the EOTC adopted guidelines for the creation of sectoral committees and agreement groups.[96] These suborganizations form the working groups that will establish consistent testing and certification mechanisms in the nonregulated sectors. Sectoral committees are composed of national delegations and provide a forum for discussion of sectoral testing and certification issues. Agreement groups are composed of interested parties from related product, service, or discipline areas that intend to establish an MRA or a certification system. Each product- or service-oriented agreement group must be represented on the relevant sectoral committees, and the sectoral committees must ensure uniformity across agreement groups.

There are four major guideline requirements for agreement groups. First, the agreement must include signatories from at least three EC-EFTA member countries. Signatories may be from outside the EC-EFTA region, but the purpose of the agreement should relate to the circulation of goods and services within the EC market, not to wider international trade.[97] Second, membership in agreement groups is open to any organization in EC-EFTA member countries that meet the eligibility criteria. In other words, membership is not limited just to one representative per country, nor just to notified bodies. Third, all signatories to the agreement should satisfy the criteria of the relevant standard in the EN 45000 series.[98] Fourth, the agreement group must achieve

[92] *Proposal for a Council Regulation (EEC) concerning the affixing and use of the CE Mark*, COM (91) 145, *OJ* No. C 160 (June 20, 1991), pp. 14–17.

[93] NEMA, *EC 1992: Update on the European Community's Single Internal Market Program*, No. 12, (Jan. 1992), pp. 1–2.

[94] For further background on the EOTC, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–11 to 4–12.

[95] For a full description of the EC's Global Approach, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 6–17 to 6–19.

[96] EOTC, *Guidelines for the Recognition and Publication by EOTC of Agreement Groups*, May 24, 1991, (issue 1) and EOTC, *Guidelines for EOTC Sectoral Committees*, July 26, 1991. For further information on these groups, see USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 4–20.

[97] Although there is the provision for non–European participation, it has been suggested that it will be prohibitively expensive for a non–European body to participate. Intersectoral discussions and information exchanges will probably be the better route for foreign firms to participate, perhaps through parallel sectoral structures in other countries. EOTC official, meeting with USITC staff, Nov. 6, 1991.

[98] The EN 45000 series refers to standards for performance by testing laboratories and certification bodies. These standards are based on relevant ISO/IEC guidelines and ILAC documentation. "EN" is nomenclature for European standards produced by CEN/CENELEC.

one of two results, either the mutual recognition of test results and product certificates or the harmonization of procedures for testing inspection, certification, or accreditation. In addition, agreement groups must be financially self-sufficient and must continue to meet the criteria and conditions for publication.

As of December 1991, the EOTC had formally recognized three agreement groups: the Calibration Laboratory Accreditation System, the European Fire and Security Group, and the International Instrumentation Evaluation Group. Two sectoral committees have also been recognized: the European Committee for Information Technology Certification (ECITC) in December 1991 and the Sectoral Committee for Electrotechnology (ELSECOM) in March 1992. Unless members of the EOTC Council submit objections, an additional four agreement groups are expected to be recognized in May 1992.[99]

There has been some difficulty in the application process over the interpretation of some of the terms in the EOTC's memorandum of understanding (MOU).[100] For example, different uses of the terms "openness," "transparency," and "technical soundness" have led the EOTC to develop an explanatory document, which is expected to be approved at the June 24, 1992 meeting of the EOTC Council.[101] Another difficulty that has recently become evident is that applicants involve sectors which fall into both the regulated and non-regulated spheres of activity. The EC Commission has drafted a document that addresses the role of the EOTC in the regulated sector, but it does not provide sufficient detail to produce a clear definition. A new draft should be ready in 1992, but officials suggest that complete separation between regulated and nonregulated sectors is not possible.[102] The EOTC has indicated its intention to work with the EC Commission to clarify these issues.

The Modular Approach

Another issue to consider in addressing the subject of testing and certification over the past year is the "Modular Approach." The modular approach is a compilation of conformity-assessment options, known as modules, available to manufacturers who must demonstrate their conformity to EC directives.[103] The Council Decision on this issue was released on December 13, 1990. The resulting document specifies the scope of each of the eight modules, A through H, from internal production control, or manufacturer self-certification,[104] in module A, to full quality assurance in module H. These modules are detailed in figure 5-2. The modules include both the design stage of the products and their production phase, though sometimes the two are interlinked. The directives themselves lay down the requirements governing the necessary conditions, and the manufacturer chooses the most appropriate from among the modules specified in the particular directive.

Standards for Procurement

Standards for procurement are a primary component of the EC's efforts to provide a transparent and open environment for public purchases.[105] The use of EC-wide standards in bid and contract specifications is designed to avoid discriminatory requirements by public bodies, and thus to ensure equal treatment for all suppliers and contractors.[106]

In order to address standards in the procurement process, the EC Commission has assigned a work program to CEN/CENELEC to provide for the establishment of inventories of existing standards in the four "excluded sectors" of water, energy, transport, and telecommunications.[107] Based on this, CEN/CENELEC will determine a standardization program, taking into account economic importance, technical feasibility and timeliness. ETSI will handle the standards necessary for telecommunications. A mandate has already been given for 300 standards related to the water sector, and resources have been allocated by the EC Commission for mandates in the remaining three areas. The EC Commission estimates that substantial progress will be made in 3 to 5 years,

[99] The four groups concern electronic and information technology.

[100] This document founded the EOTC and was signed by the EC Commission, the EFTA Secretariat, CEN, and CENELEC.

[101] U.S. Embassy official, telephone interview by USITC staff, Brussels, Mar. 23, 1992.

[102] EOTC official, meeting with USITC staff, Nov. 6, 1991.

[103] For additional background on the purpose of the Modular Approach see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 6–14 to 6–16; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 6–17 to 6–19; and *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–11 to 4–12.

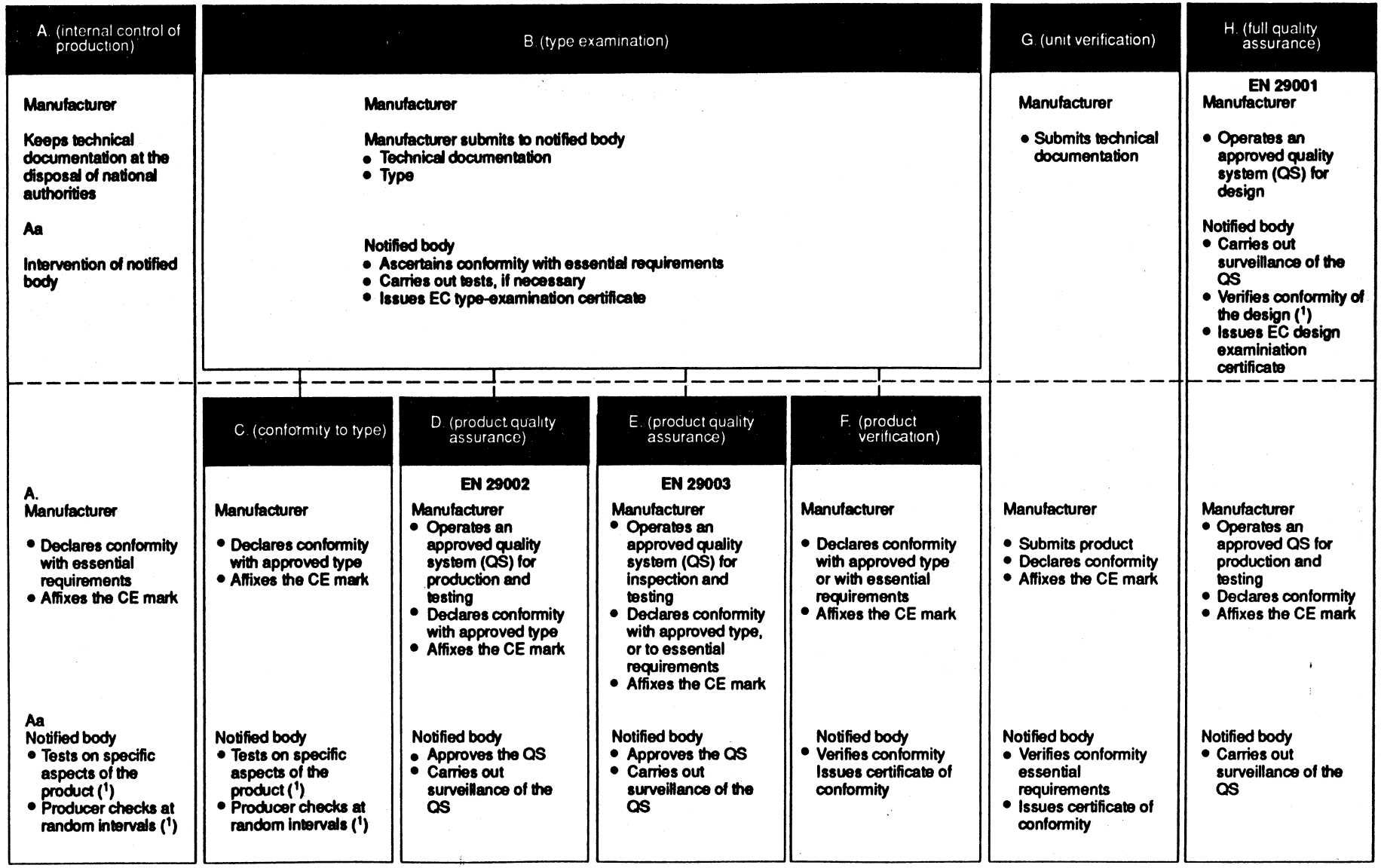
[104] Self–declarations of conformity by manufacturers to EC requirements will be permitted for machinery (except that which is designated as high risk), toys, electromagnetic compatibility, and weighing instruments for noncommercial use. Certain sectors within personal protective equipment, pressure vessels and equipment, recreational craft, and medical devices will also enjoy self–certification rights. U.S. Department of Commerce, *EC Testing and Certification Procedures Under the Internal Market Program*, Nov. 1, 1991, p. 4.

[105] For more information on public procurement, see ch. 6 of this report and USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4–18 and 6–3 to 6–8.

[106] The supplies and works directives specify that contracts must have "technical specifications defined by the authorities by reference to national standards implementing European standards or by reference to European technical approvals or by reference to common technical specifications," unless (1) these standards do not include any provisions for establishing conformity, (2) the use of these standards would prohibit the application of Council Directive 86/361, or (3) the use of these standards would require the purchase of materials incompatible with equipment already in use. *Common Rules in the Technical Field, OJ* No. C 23 (Jan. 1, 1991), p. 8.

[107] For more information on public purchasing in the four excluded sectors, see chapter 6.

Figure 5–2
Conformity assessment in the European Community under the "Modular Approach to testing and certification (Modules A through H)



(1) Supplementary requirements which may be used in specific directives.

Source: *OJ* No. L 380 (Dec. 31, 1990), p. 26.

but it will take much longer to complete fully the standardization process.[108]

In addition, the EC Committee of the American Chamber of Commerce in Belgium recommended some revisions to the Supplies Directive, which has been in force in the Community for 3 years.[109] Based on responses it received during a public comment period (through July 31, 1991), and from its own internal meetings in October, the Committee warned the EC Commission that the directive's requirement to use harmonized European standards in bid specifications can inhibit competition, especially given continuous innovations. High-tech U.S. industries are concerned that the requirement to use harmonized standards in specifications for procurement contracts means that they are not free to propose alternative, innovative solutions, effectively undercutting their competitive advantage. Furthermore, the Chamber argues that no standard should be required for which there is no recognized method of assessment.[110]

Implementation

One of the areas of most concern to U.S. companies regarding EC integration is the implementation of the technical standards directives. Overall, member states are transposing EC standards directives without undue delays. However, there are significant problems with the implementation of the standards directives adopted under the "new approach."[111] None of the new approach directives scheduled to be implemented by January 1992 has been fully implemented by all 12 member states. In fact, CEN and CENELEC have only completed the necessary standards for two of the new approach directives (toy safety and simple pressure vessels).

Several reasons have been cited for the slow pace of implementation. The primary reason cited is that the standards organizations charged with the responsibility of developing the standards (CEN, CENELEC and ETSI) are overwhelmed by the number of European standards to be developed in such a short period of time. These organizations are faced with developing approximately 1,939 product standards related to the 1992 program. For the new approach directives alone, approximately 938 standards must be developed.[112] This is significantly greater than the 150 standards CEN and CENELEC produced during 1989.[113] Even when standards are completed by these organizations, there may not be sufficient European testing facilities to certify that a product falling under a given directive is in compliance.[114] In some cases, without third-party certification of compliance with a directive, a product will not be able to bear the CE mark and therefore may not be able to circulate freely throughout the EC.

The process of developing technical standards also contributes to the delay. This process can be lengthy, requiring completion of several stages of review before a European standard can be implemented in the member states. The normal process for standards development by CEN and CENELEC begins with a proposal or request for a specific standard by the EC Commission, which may be accompanied by a reference document (e.g., an already developed international standard). A preliminary questionnaire is sent to members of CEN/CENELEC for approval. If the members approve, they will proceed to a formal vote; if they disapprove, the item is referred to a technical working group. In the event that there is no reference document, a technical committee will prepare a draft standard document, and thereafter a 6-month public inquiry is conducted in each member country.[115] Comments received are evaluated by the technical committee and then the revised version proceeds to a formal vote, another 2-month process. If adopted, the standard becomes a European standard and is published in each country as a national standard.[116] There is usually a 6-month delay before the member-state national bodies publish the standard. The process is practically identical for ETSI standards development except that non-European organizations involved in the telecommunications field may participate as observers in the technical work, and standards are published and distributed by ETSI itself fairly soon after final adoption.[117]

The EC Commission has attempted to reduce this backlog of standards development. For example, it assists member states through meetings of the senior officials group on standardization.[118] It is also considering the development of a guide to the new approach directives.[119] The EC Commission has determined that technical standards of critical importance to the EC will be developed first by the standards organizations. CEN and CENELEC have also tried to streamline the process of standards development, as noted earlier.

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[108] Written response by EC Commissioner Bangemann, Mar. 14, 1991.

[109] For more information on this letter, see chapter 6 of this report.

[110] The EC Committee of the American Chamber of Commerce in Belgium "Preliminary Draft EC Committee Letter on the Revision of the Supplies Directive," Oct. 18, 1991.

[111] For a description of the new approach, see the introductory section of this chapter.

[112] U.S. Chamber of Commerce, *Europe 1992*, p. 28; EC Commission official, interview by USITC staff, Brussels, Oct. 1991.

[113] U.S. Chamber of Commerce, *Europe 1992*, pp. 26–28.

[114] Working Group on Standards, Testing and Certification, *Status Report on EC–92*, Nov. 12, 1991, p. 4.

[115] At this stage, comments are also accepted from international standards organizations such as ISO and IEC.

[116] EC Commission, *Completing the Single Market: The Removal of Technical Barriers to Trade with the European Economic Community, An Introduction for Foreign Businessmen*, Jan. 8, 1990, pp. 10–12.

[117] Ibid.

[118] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991, p. 7.

[119] Ibid.

For some directives, the EC has established transition periods whereby the directives come into effect, but only become applicable as standards become available.[120] During the transition period a manufacturer may either comply with member states' national requirements until EC level standards are complete or comply with the essential requirements laid out in the EC directive. The problem with the first option is that this merely prolongs the status quo and requires that a manufacturer comply with each member state's national standards requirements before it may market its products within that member state's territory. The problem with the second option is that manufacturers will not be able to affix the CE mark unless they have complied with the full directive. Under current conditions, it is difficult to prove compliance with a directive. Few designated testing laboratories can certify that the product conforms to the directive's essential requirements.[121] And, even when all the supporting standards are available from CEN/CENELEC, as in the case of the toy safety directive, some member states may not recognize a manufacturer's self-certification of conformity. Differences in member-state interpretation of certain standards have also occurred.

As of January 2, 1992, six new approach directives have passed their implementation date, as shown in table 5-1. These six directives are for toy safety, simple pressure vessels, construction products, electromagnetic compatibility, gas appliances, and lifts. However, of these directives only two are still expected to be implemented on the original implementation date (toy safety and lifts). For the other four, transition periods have been established lasting anywhere from 2 years to an "indefinite" period.[122] In addition, there are several new approach directives that have not yet reached their implementation date. By the end of 1992, directives for personal protective equipment and machinery should be implemented. By January 1, 1993, three other new approach directives (nonautomatic weighing instruments, active implantable medical devices, and type approval of telecommunications terminal equipment) are due to be implemented. There are also two directives that have not yet been adopted, the medical device directive, which should be adopted by the second half of 1992, and the vitro diagnostic directive, which should be proposed by late 1992.

Toy Safety Directive

The toy safety directive (88/378/EEC) is the only new approach directive that has made significant implementation progress. Eleven of the twelve member states have communicated implementing national legislation to the EC Commission,[123] which is an improvement over last year when the EC Commission had to initiate infringement proceedings against Italy, the Netherlands and Luxembourg for failure to implement this directive.[124] As of this writing, only Luxembourg has failed to communicate implementing legislation and the EC Commission has infringement proceedings underway against it.[125]

[120] CEN/CENELEC officials, interview by USITC staff, Brussels, Nov. 6, 1991.

[121] Ibid.

[122] U.S. Department of Commerce, ITA, *EC Testing and Certification Procedures Under the Internal Market Program*, Nov. 1, 1991.

[123] For a list of the implementing measures for these member states, see table D–1 in appendix D.

[124] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 1–15.

[125] EC Commission, *Implementation of Measures for Completing the Internal Market*, annex I, p. 11.

Table 5–1
New Approach Directives

Adopted	*Date of Entry Into Force*	*Transition Period*
Toys	January 1, 1990	None
Simple pressure vessels	July 1, 1990	July 1, 1992
Construction products	June 27, 1991	Indefinite
Electromagnetic compatibility	January 1, 1991	December 31, 1995
Gas appliances	January 1, 1992	December 31, 1995
Personal protective equipment	July 1, 1992	None
Machinery	December 31, 1992	December 31, 1994 (nonmobile) December 31, 1996 (mobile)
Lifts	March 24, 1991	None
Non-automatic weighing instruments.	January 1, 1993	January 1, 2003
Active implantable medical devices	January 1, 1993	December 31, 1994
Type approval of telecommunications terminal equipment	January 1, 1993	None

Source: U.S. Department of Commerce, *EC Testing and Certification Procedures Under the Internal Market Program* Nov. 1, 1990, p. 2.

An examination of this directive illustrates how the system should be working. CEN created the reference standards for toy safety and formally identified them in 1989 in the *Official Journal*. The date of entry into force was scheduled for January 1, 1990; thus the standards were in place before the deadline for implementation. Thereafter, the EC published lists in the *Official Journal* of those testing bodies that are able to certify that a manufacturer's toy products conform to the directive.[126] Once certification is completed, a manufacturer may affix the CE mark and freely circulate toy products throughout the EC.

Nonetheless, there have been problems cited with this directive with regard to acceptance by certain member states, notably Italy, of the manufacturer's self-certification of conformity.[127] According to manufacturer reports, certification procedures were not fully harmonized as of early 1990, creating border delays for toy shipments.[128] This may be an indication of the problems other new approach directives will face when trying to implement EC standards. Some questions have also been raised regarding the scope of the directive (e.g., whether it includes sports equipment). According to the U.S. Working Group on Standards, Testing and Certification, it appears that member states have some discretion in determining scope questions when implementing the regulations.[129]

Simple Pressure Vessels

The directive on simple pressure vessels (87/404/EEC) is the second-most-advanced new approach directive in terms of implementation. After a year's delay, CEN adopted the appropriate standards. The date of entry into force for this directive was July 1, 1990, but it was granted a 2-year transition period.[130] As of early 1992, the EC had not yet published the official designation of testing laboratories, but according to the EC Commission a list of notified testing laboratories will be published soon.[131]

The EC Commission's December 1991 report on the progress of implementation indicated that infringement proceedings were underway against Germany, Luxembourg, the Netherlands, Portugal, and the United Kingdom for failure to transpose[132] the simple pressure vessels directive.[133] As of February 1992, Belgium, Denmark, Spain, Greece, France, Italy, Ireland, and the United Kingdom have communicated national implementing legislation for this directive.[134]

Electromagnetic Compatibility

As of late 1991, there were no reference standards or published official certification bodies for electromagnetic compatibility (Directive 89/336/EEC).[135] The original date of implementation was July 1, 1991, with a date of entry into force of January 1, 1992. Denmark is the only member state that has communicated national legislation to the EC Commission implementing the electromagnetic compatibility directive.[136] In Italy, a 1991 omnibus bill, which is designed to implement about 100 EC directives, is currently in the process of approval by the Italian legislature.[137] The 1991 omnibus bill includes the electromagnetic compatibility directive. However, even if the 1991 bill becomes law, Italy still must pass implementing decrees or regulations for the directive to bring Italy into full compliance with the EC rules. No incorporating decrees or regulations have been proposed or enacted yet by Italy implementing the electromagnetic compatibility directive.[138]

Because technical standards are so far behind schedule, the EC Commission presented a proposal for a Council directive providing for a transitory period up to December 31, 1995, to allow manufacturers to place their products in the EC market in accordance with national regulations in force on December 31, 1991.[139]

An intensive program for electromagnetic compatibility standards has been undertaken in the EC. CENELEC and IEC have agreed to an ambitious program of cooperation in developing electromagnetic compatibility standards that is expected to continue for 4 to 5 years.[140]

Construction Products

The implementation date of the Construction Products Directive (89/106/EEC) was June 27, 1991. However, as of that date, only Denmark, Germany, and

[126] The list of approved testing bodies are found in the following issues of the *OJ*: *OJ* No. C 154 (June 23, 1990); *OJ* No. C 162 (July 3, 1990); *OJ* No. C 278 (Nov. 11, 1990); *OJ* No. C 34 (Feb. 9, 1991); *OJ* No. C 68 (Mar. 16, 1991); *OJ* No. C 264 (Nov. 10, 1991); *OJ* No. C 272 (Nov. 17, 1991); *OJ* No. C 279 (Nov. 26, 1991); and *OJ* No. C 282 (Nov. 29, 1991).

[127] Working Group on Standards, Testing and Certification, *Status Report on EC-92*, Nov. 12, 1991.

[128] U.S. Department of State Telegram, "Revision of 1991 National Trade Estimate," Jan. 1992, Brussels, message reference No. 020536.

[129] Ibid.

[130] *European Report*, No. 1646 (Jan. 23, 1991), Internal Market, p. 4.

[131] CEN/CENELEC officials, interview by USITC Staff, Brussels, Nov. 6, 1991.

[132] Transposition is the process by which an EC member state complies with an EC directive by passing a law or rule that achieves the result sought by the directive.

[133] EC Commission, *Implementation of Measures for Completing the Internal Market*, annex I, p. 10.

[134] For a list of implementing measures for these member states, see table D-2 in appendix D.

[135] CEN/CENELEC officials, interview by USITC staff, Brussels, Nov. 6, 1991.

[136] Lov No. 216, Apr. 10, 1991, Indberetning fra generaldirektoratet published in *Lovtidende A*, 1991, S. 826, JN IK 91 1243.1.

[137] U.S. Department of State Telegram, "EC 92, Status of Italian Implementation," Jan. 1992, Rome, message reference No. 00980.

[138] Ibid.

[139] *European Report*, No. 1646 (Jan. 23, 1991), Internal Market, p. 4.

[140] Ibid.

the United Kingdom had transposed the directive.[141] Because of delays in standardization, this directive has an indefinite transition time. The directive states that if there are no EC standards or guidelines in existence, construction products may conform to national requirements.[142] In addition, because of the complexity of the required standards, the directive permits an interim approval method referred to as "European Technical Approvals" (ETAs). Italy has included the Construction Products Directive in its 1991 omnibus bill, which as of this writing had not yet passed.[143]

The stated objective of the Construction Products Directive is to enable the EC Commission to adopt guidelines in line with the new approach to harmonization before the current standardization process is complete. The directive states that a Standing Committee on Construction must approve, by qualified majority, the harmonized European standards proposed by the standards-making bodies. In some countries, Spain for example, questions have been raised about the consistency of the documentary evidence needed to establish that an imported construction product meets the certification requirements of another EC government or that the item is in free circulation in another EC country market.[144]

Gas Appliances

The directive concerning gas appliances (90/396/EEC) was due to be implemented as of July 1, 1991, and it entered into force on January 1, 1992. However, a transition time has been established up to December 31, 1995. No standards have been developed. France and Greece are the only two member states that had national legislation in place implementing this directive by the implementation deadline of January 1, 1992.

Lifts

The lifts directive (90/486/EEC) had an implementation date of March 24, 1991, but no transition period has been set forth, nor have standards been published. The following member states have communicated national measures implementing this directive: Denmark, France, Germany, Ireland, Portugal, and Spain.[145]

[141] For a list of the implementing measures for these member states, see table D–3 in appendix D.

[142] In Portugal, the Portuguese Quality Institute (IPQ) establishes national standards and implements EC directives. The National Laboratory of Civil Engineering (LNEC) is responsible for construction standards in coordination with IPQ.

[143] U.S. Department of State Telegram, "EC 92, Status of Italian Implementation," Jan. 1992, Rome, message reference No. 00980.

[144] U.S. Department of State Telegram, "Madrid 12898—1992 Trade Act Report: Spain," Nov. 91, Madrid, message reference No. 12898.

[145] For a list of the implementing measures for these member states, see table D–4 in appendix D.

Environmental Protection

Overview

Members of the European Community, like other nations worldwide, have experienced an increasing awareness of the importance of environmental protection, and on the interrelationship between environmental concerns and commerce.[146] This awareness has resulted in an increased emphasis on Communitywide environmental regulations, many of which take the form of standards addressing production methods and the types of products manufactured. The U.S. Chamber of Commerce has cautioned U.S. exporters and U.S. companies operating in the EC to pay careful attention to the potential use of environmental regulations as barriers to trade.[147] For the most part, the environmental measures adopted or under consideration by the EC are likely to have cross-industry impact.

The EFTA countries have expressed an interest in cooperating in the EC's environmental protection efforts. Norway has even made a bid to house the European Environmental Agency.[148]

Update

In 1991, the European Community progressed, at both the EC Commission and Council levels, in its consideration of directives addressing air pollution and waste management. The EC Commission has focused much of its recent effort in this area on the development of measures aimed at encouraging manufacturers to produce environmentally friendly products.[149] For example, the EC Commission recently issued a proposed regulation for the creation of a European environmental labeling (eco-labeling) program as well as a proposed directive for a voluntary environmental audit (eco-audit) program. The EC Commission is also in the process of preparing its fourth draft of a proposed directive intended to reduce the waste from packaging.

On June 11, 1991, the European Court of Justice issued an important decision concerning the adoption of the EC Commission's directive limiting hazardous waste from the titanium dioxide industry.[150] The directive had been adopted under article 130s of European Economic Community Treaty (EEC Treaty), as amended by article 25 of the Single European Act (SEA). Article 130s requires unanimous approval by the EC Council of proposals relating to the environment. Proposals adopted under that article are subject only to limited consultation with the European Parliament. The EC Commission, backed by the European Parliament, argued that the directive should

[146] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4–29 to 4–37.

[147] U.S. Chamber of Commerce, *Europe 1992*, p. 45.

[148] *European Report*, No. 1682, (May 31, 1991), Internal Market, p. 7.

[149] U.S. Department of Commerce, ITA, *The European Community and Environmental Policy and Regulations*, Oct. 1, 1991.

[150] Case C–300/89.

have been adopted under EEC Treaty article 100a, as added by SEA article 18, which applies to measures adopted to complete the internal market and aims at undistorted conditions of competition. Adoption under article 100a would have required a qualified majority approval, but only after the SEA's cooperation and consultation procedures, which give the European Parliament a greater role in the process. The Court ruled that the directive should have been adopted under article 100a, and it annulled the directive because the Council had not complied with the cooperation procedures.

The titanium dioxide decision has three potentially significant effects for future environmental measures that could affect conditions of competition. First, with qualified majority voting, no individual member state will be able to block passage of a particular measure. Second, the European Parliament, which has a large "green" representation, will have more influence in the decisionmaking process under the cooperation procedure. Third, measures adopted under article 100a have a preemptive effect over member-state laws; that is, individual member states cannot apply or implement more restrictive laws. In contrast, measures adopted under article 130s impose only minimum requirements upon member states. Member states may apply their own more restrictive laws for measures purely of an environmental nature.

In January 1992, the EC Commission introduced its proposal for the fifth environmental action program entitled "A New Strategy for the Environment and Sustainable Development."[151] This program will replace the fourth environmental program, which covers the period 1987-1992.[152] The program, if adopted, will be in effect from 1993 until the end of the century. The proposed program places a priority on the use of fiscal incentives and research and development efforts to address climatic changes, particularly the stabilization of carbon dioxide emissions; air quality; protection of nature and biodiversity; water resource management; urban environment, particularly noise pollution; coastal area preservation; and waste management.

New Regulations and Directives

Eco-label

Background

The "eco-label" is a special label that may be placed on environmentally friendly products to encourage consumers to purchase these goods.[153] The eco-label regulation was not included in the 1985 White Paper. Rather, in May 1990, the Council of European Environmental Ministers invited the EC Commission to prepare a proposal for an EC-wide eco-labeling scheme.[154]

Presently, several individual member states have or are considering setting up environmental label schemes. Germany first introduced its "Blue-Angel" environmental label in 1978, and France, the United Kingdom, the Netherlands, and Denmark are considering similar systems.[155] Officials pushed for a Communitywide system because they were concerned that consumers could be misled by various national label systems that have differing standards. The proposed regulation reflects the EC Commission's effort to address this problem and avoid the risks of fragmentation and distortion of competition in the Community.[156]

Anticipated Changes

The EC Commission issued its first proposed draft eco-label regulation in February 1991,[157] and issued its amended proposal in December 1991.[158] In January 1992, the EC Council of Ministers agreed in principle with the final proposal.[159] Except as noted in the discussion below, the general content of the original and final draft are similar.

The proposed regulation establishes a voluntary Communitywide system for awarding an ecological label for products that have a reduced environmental impact during manufacturing, distribution, consumption, and disposal after use. This framework for the regulation is known as a "cradle to grave" approach. The regulation directs that the reduction of environmental impact be achieved through the use of clean, lowest risk sustainable technologies, and through the minimization of the use of natural and energy resources; raw materials; emissions into air, water, and top soil; and waste and noise. Manufacturers and distributors of products that qualify may attach to these products the EC eco-label, an interleaved cog and flower inside a ring of 12 stars:

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[151] See *European Report*, No. 1734 (Jan. 9, 1992), Internal Market, p. 4.

[152] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 4–30.

[153] "System Adopted to Create EC–Wide Environmental Label," *1992—The External Impact of European Unification*, Buraff Publications, Jan. 13, 1992, p. 3.

[154] *Council Resolution on Waste Policy*, *OJ* No. C 222 (May 1990). See *Explanatory Memorandum for Proposal for a Council Regulation in a Community Award Scheme for an Eco–label*, COM (91) 37, Feb. 11, 1991; C & M International Ltd. and Crowell & Moring, "The Eco–Label Promoting Environmentally Sound Consumer Products," *EC–US Business Report*, Apr. 1, 1991, p. 10.

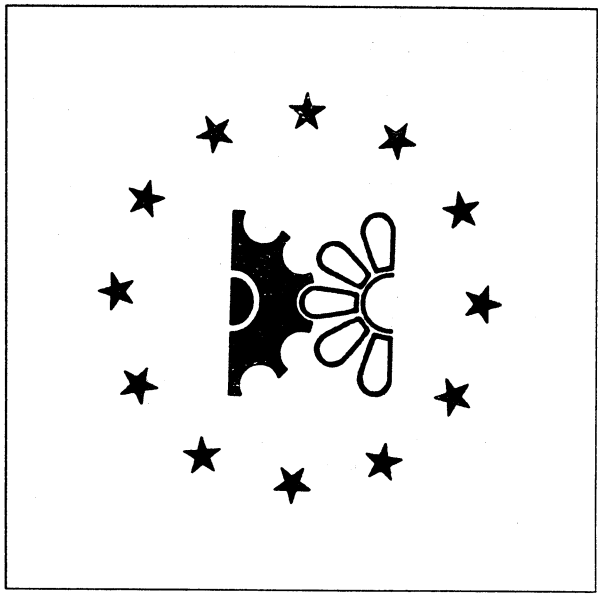
[155] *Explanatory Memorandum for Proposal for a Council Regulation in a Community Award Scheme for an Eco–Label*, COM (91) 37, Feb. 11, 1991; "System Adopted to Create EC–Wide Environmental Label," p. 3.

[156] Ibid.

[157] *Proposal for a Council Regulation in a Community Award Scheme for an Eco–Label*, *OJ* No. C 75 (Mar. 20, 1991), p. 23.

[158] COM (91) 544, *OJ* No. C 12 (Jan. 18, 1992), p. 16.

[159] *European Update*, West Publishing Co., 1991 WL 11672 (D.R.T.), Feb. 13, 1992.



The regulation covers all consumer products other than food, drink or pharmaceuticals, which are covered by other directives. The regulation does not affect existing EC legislation on labeling and packaging of dangerous substances. The regulation requires that the criteria for awarding the eco-label will be the same throughout the Community. Products imported into the EC will be eligible for the eco-label subject to the same stringent requirements as products manufactured in the Community.

The EC Commission will adopt specific environmental criteria for each product group. As part of this process, the EC Commission will consult a forum consisting of representatives of industry, retailers, consumers' organizations, environmental organizations and independent scientists. In addition, the EC Commission will be assisted by an advisory committee of member-state representatives chaired by an EC Commission representative.

Each member state will establish or use an existing "competent body" to assess applications for eco-label awards. Eco-label awards for particular products will be made by the competent body in the member state in which the product is manufactured or into which the product is imported. As noted, the regulation specifies that all member states are to apply the same uniform general principles and specific environmental criteria adopted by the EC Commission.

The eco-label may be awarded to any products that meet the criteria for specific product categories. In this respect, there are two significant differences between the EC Commission's final version of the regulation and its original draft. First, the original draft allowed for the awarding of the label only to the "best" products in a given line, based upon a competition between products. Although some environmentalists supported the "best" product approach, the use of objective and specific criteria for individual product categories was adopted in the final version of the proposed regulation. This system assures that the labels will be awarded objectively and that all applications will receive equal treatment.[160] Further, the "best" product approach was considered unworkable in that it would require a fresh appraisal of all products every time a new product applied for the label.[161] Second, the original draft would have required the member states to make a preliminary assessment of the environmental performance of the product, and decide whether the product should be submitted to a special EC jury established for the award of individual products.

Finally, the regulation contains a confidentiality provision, allowing the manufacturer or importer of a particular product to designate as business confidential information presented to the member state body or the EC Commission during the award process. The manufacturer or importer must present full justification for confidential treatment, and the member state body will decide which information should be kept secret for confidentiality reasons. The regulation prohibits the member state bodies and advisory committee judges from disclosing any information to which they have gained access through the award proceedings. The regulation does not, however, establish or require member states to institute sanctions for violation of this prohibition.

The regulation is directly applicable in all member states and goes into effect on October 1, 1992. EC Commission representatives have indicated that they expect to implement the eco-labeling system for 10 products by the end of 1992.[162] Products that have been under consideration for the pilot implementation include paper products, paints, detergents (for which a German standard exists), kitchen towels, photographic paper, batteries, insulations, and brakes and clutches.[163]

Possible Effects

U.S. exports

Although application for the eco-label is voluntary, competitive pressures are likely to mandate the obtaining of an eco-label.[164] Therefore, U.S. manufacturers of products exported to the EC should be prepared to apply for the eco-label. Because the regulation does not set time limits for the member state, it is probable that some member states will proceed more quickly than others. In addition, although the member states are directed to apply uniform criteria, it is possible that some member states may be more lenient than others.

[160] *Opinion on the Proposal for a Council Regulation (EEC) on a Community Award Scheme for an Eco-Label, OJ* No. C 339 (Dec. 31, 1991), p. 30.

[161] "System Adopted to Create EC-Wide Environmental Label," p. 3.

[162] EC Commission officials, meeting with USITC staff, Brussels, Nov. 1991.

[163] Ibid.

[164] See *European Report*, No. 1661 (Mar. 13, 1991), Internal Market, p. 3; National Institute on International Environmental Law, Oct. 31–Nov. 1, remarks of representative of GE Plastics.

The benefit of obtaining the label will need to be weighed against possible risks. Because the regulation does not provide for sanctions for revealing business confidential information, it may not afford manufacturers the same protection against disclosure of confidential information as that afforded by various U.S. laws.

Diversion

The regulation could potentially divert trade to the United States. Manufacturers outside the EC, as well as EC producers, may decide to export to the United States products that are rejected for the eco-label or products for which the manufacturer simply does not want to expend the funds necessary to apply for the award. The U.S. could be a likely market for rejected or unevaluated products, given that Canada and Japan employ eco-labeling and the Scandinavian countries are considering establishment of an eco-labeling system.[165]

Business operating conditions

The regulation is unlikely to influence U.S. investment plans in the EC. Any U.S. firm already located in the EC can apply for an eco-label award in the member state where the production facilities are, and the award will be effective throughout the Community. Thus, a company that expands into or relocates to another member state will not have to reapply for an award.

The regulation probably will cause U.S. manufacturing firms in the EC to incur a one-time per product expense for each product it markets. Although this expense is not discriminatory against non-EC owned firms, the award decisions of member state bodies could potentially discriminate against non-EC firms. However, the decision to employ objective, specific criteria for such awards should minimize this prospect.

U.S. Industry Response

Representatives of U.S.-owned firms operating in the EC favor an EC-wide eco-labeling system.[166] However, some representatives have expressed concern that because the Community label does not preempt member-state labeling laws, it could simply add another labeling system to the member-state systems actually or potentially in effect.[167] Because of a similar concern, Danish representatives have suggested that the individual labels should be abandoned in order to avoid confusion with the EC label.

U.S. industry representatives are further concerned about the establishment of product categories and the specific criteria adopted for making an environmental assessment of products falling within each category.[168] The manipulation of the categories and criteria could effectively create trade barriers. U.S. firms have been closely following the development of this regulation and will continue to monitor the establishment of product categories and criteria.[169] U.S.-owned firms with presence in the EC are eager to be involved in the drafting of product definitions and applicable criteria.[170]

Eco-audit

Background

The environmental auditing regulation, like the environmental label regulation, is aimed at influencing consumer product selection based upon environmental concerns. Environmental auditing is based on systematic, documented, periodic, and objective assessment to ensure that company organization, management practices, and environmental protection arrangements are in good working order.[171] Unlike eco-labeling, which concerns goods, the eco-auditing applies to firms' production methods and sites.[172]

The original EC Commission eco-audit proposals, in the form of working papers, would have required mandatory audits for nearly 60 industries, including chemicals, plastics, pharmaceuticals, and waste management.[173] Industry groups strongly opposed the use of compulsory audits, and they influenced the EC Commission to recommend voluntary participation, with each country establishing a register of companies carrying out the eco-audit, together with an environmental auditing body to oversee the scheme. Participating companies would be entitled to display the eco-audit logo.

Anticipated Changes

The eco-audit proposal originally was in the form of a directive but was changed to a regulation to avoid competition distortions that could result from

[165] U.S. Chamber of Commerce, International Division, *Europe 1992: A Practical Guide for American Business Update 3*, (1991), p. 43.

[166] Quote by David Veitch, European spokesman for Proctor and Gamble, in "System Adopted to Create EC-Wide Environmental Label," p. 3.

[167] National Institute on International Environmental Law, Oct. 31-Nov. 1, remarks of representative of GE Plastics. Belgium and Denmark likewise have questioned the existence side by side of a Community labelling system and national systems. *European Report*, No. 1658 (Mar. 4, 1991), Internal Market, p. 4.

[168] C&M International, "The Eco-Label," p. 12; National Institute on International Environmental Law, Oct. 31-Nov. 1, remarks of representative of GE Plastics.

[169] Ibid.

[170] "System Adopted to Create EC-Wide Environmental Label," p. 3 and EC Commission officials, meeting with USITC staff, Brussels, Nov. 1991.

[171] *European Report*, No. 1731 (Dec. 21, 1991), Internal Market, p. 12.

[172] European Community Economic and Financial News, "EC Eco-Audit Plan Released," *Eurecom*, Jan. 1992, p. 2.

[173] "EC Expected to Approve Voluntary Eco-Audit System," *1992—The External Impact of European Unification*, Buraff Publications, Nov. 4, 1991, p. 4 and "Compulsory Auditing System Proposed for Key Industries," *1992—The External Impact of European Unification*, Buraff Publications, May 3, 1991, p. 8.

member states setting different conditions in order to qualify for the award of the eco-logo.[174] The latest draft of the regulation was put forward in January 1992, but it only became an official EC Commission proposal in February 1992.[175]

Participation in the program is site specific. Once a company decides to participate with respect to a particular site, it cannot pick and choose from among various aspects of the program but instead becomes bound by all parts of the regulation.[176] A participating company would first make an initial environmental assessment at the given site, taking into account factors such as energy efficiency, waste reduction and accident prevention. The firm would then establish company environmental protection arrangements based upon this initial analysis. In establishing the environmental plan, companies would be required to consult with workers and their representatives. Next, the company would prepare an initial environmental statement based upon the established environmental program.

An accredited environmental auditor would then audit the environmental report. The member states would be required to set up new agencies to supervise this audit. Upon approval by the auditor, the company's environmental statement would be sent to the member-state agency and added to the eco-audit list. Based upon the audit, the firm's top management would have to set targets for continued improvement in the environmental performance of the plant. Further, for each site registered, the company would have to conduct, and prepare reports of, internal eco-audits every 1 to 3 years.

Public information is a key element of the proposed scheme. Firms would have to furnish a public statement explaining the verified audit results, and place their environmental reports at the disposal of the public.

Companies authorized to use the eco-audit logo could place the logo on the following types of literature: company leaflets, reports, and information documents; letter headings; the company's environmental statements; and advertising campaigns, provided no reference is made to specific goods or services. Companies will not be permitted to use the logo on products or their packaging.

Possible Effects

It is difficult to ascertain at this time the potential impact of an EC eco-audit regulation on the United States. With respect to U.S. facilities that manufacture products for export to the EC, it currently is unclear whether, and if so how, these facilities could be audited for use of the eco-audit logo.[177] The adoption of the EC eco-audit regulation could potentially create a services market for U.S. consultants and auditors. However, it is currently unclear whether non-EC auditors will be able to conduct the audits.[178] There is some concern that U.S.-owned firms operating in the EC could be disadvantaged if individual member states establish criteria that effectively preclude use of non-EC consultants and auditors. U.S. firms are further concerned about the public disclosure requirements of the proposed eco-audit scheme, which provisions may require public disclosure of confidential or privileged information.[179]

Like the creation of a voluntary award system for the eco-label, the creation of a voluntary eco-audit system is likely to have the actual effect of requiring companies to participate in order to remain competitive. Compliance with the proposed system will be costly for *all* firms operating in the EC, whether under European or third-country ownership. Both U.S. and European industry representatives have expressed a great deal of concern about the potentially prohibitive costs of the proposed eco-audit system.[180] However, for U.S. firms, these costs may be viewed relative to the average $9 million (ECU 7.5 million) cleanup costs per site that U.S.-based companies have incurred under U.S. superfund legislation.[181]

Packaging and Packaging Waste

Background

In June 1991, the EC Commission issued its first draft proposal for a directive on packaging and packaging waste. The first draft was not well received by industry representatives, some of whom described it as impractical.[182] After discussions with national experts from the member states, representatives of the packaging industry, and environmental and consumer organizations, the EC Commission issued the second draft of the packaging proposal on September 30, 1991.[183] Some industry representatives continued to voice concern about the second draft.[184] The EC Commission recently completed a third proposal, which also was not favorably received.[185]

[174] *European Update*, West Publishing Co., 1991 WL 11672 (D.R.T.), Feb. 13, 1992.

[175] Ibid.

[176] National Institute on International Environmental Law, Oct. 31–Nov. 1, 1991, remarks of Gabrielle Williamson.

[177] ITA, *The European Community and Environmental Policy and Regulations*, p. 3.

[178] Ibid.

[179] See, e.g., National Institute on International Environmental Law, Dec. 31–Nov. 1, 1991, remarks of Gabrielle Williamson.

[180] U.S. Chamber of Commerce, *Europe 1992*, p. 43.

[181] Price Waterhouse, "Environmental Audits to Remain Voluntary," *EC Bulletin*, No. 94, May–June 1991.

[182] Bob Hagerty and Julie Wolf, "EC May Water Down Rules to Reduce Packaging Waste," *Wall Street Journal Europe*, Sept. 26, 1991.

[183] *Draft Proposal for a Council Directive on Packaging and Packaging Waste*, Draft No. 2, Sept. 30, 1991.

[184] See, e.g., "EFPA [European Food Service Packaging Association]: Packaging More a Harmonization Question than an Environmental One," *European Report*, No. 1719 (Nov. 7, 1991), Internal Market, pp. 6–7.

[185] U.S. Embassy in Brussels, facsimile to USITC staff, Feb. 19, 1992.

Although the third draft has not yet been made available, the EC Commission is reportedly in the process of preparing a fourth draft.[186]

Anticipated Changes

The purpose of the proposal, as set forth in the second draft, is to establish a framework directive for packaging and packaging waste management programs that would reduce their impact on the environment and encourage lower consumption of raw materials and energy. Adoption of this proposal would apply to all packaging placed on the EC market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service or household level. This proposal does not apply to packaging exported from the EC.

There are seven significant measures which the member states would be directed to implement:

(1) the output of packaging waste per capita shall not exceed 150 kilograms per year, no later than 10 years after this proposal enters into force;

(2) the sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in packaging or packaging components shall be reduced to a proposed 600 parts per million (ppm), 250 ppm, and 100 ppm by weight after this proposal has been in force for 2, 3, and 5 years, respectively;

(3) within 10 years after the directive enters into force, at least 90 percent of packaging waste output by weight shall be recovered and, within this recovery requirement, 60 percent by weight of the packaging waste shall be recycled;

(4) the residues from the collection, sorting, and reuse activities shall be limited to 10 percent by weight of the packaging waste output;

(5) economic measures, voluntary agreements, or administrative or legal provisions to ensure the return of used packaging to the appropriate processor and to operate the process with the appropriate technology for high standards of environmental protection shall be established;

(6) information shall be sent to consumers and users on the advantages of using reusable and recoverable packaging, the process available for returning used packaging and packaging waste, the applicable economic measures, and the existing plans for management of packaging and packaging waste; and

(7) a database to provide information on the number, weight, and characteristics of packaging and packaging waste shall be established.

Under the second proposal, the party responsible for placing the product on the EC market would guarantee that the packaging and packaging waste would be taken back if returned or that a separate collection would be established. Any packaging waste that is processed for energy recovery must contain a minimum energy value of 5.6 BTU per pound. Packaging waste processed for composting must be fully biodegradable. The proposal also would direct the member states to require standard markings on all reusable and recoverable packaging placed on the EC market 3 or more years after adoption of this proposal.

The member states would be required to establish, by the January 1st after this proposal enters into force, packaging waste management funds to pay for the capital outlays necessary for setting up packaging waste management operations and for the operating deficits incurred during the first 5 years following the proposal's entry into force. Packers and fillers would also pay into the fund of the country of consumption a uniform product charge on each packaging unit, whether produced inside the EC or not, that is used within that EC country. The details of these economic instruments would be elaborated by the Committee for the Adaptation of Scientific and Technical Progress, which was established by article 12b of Directive 75/442[187] that concerns the categories, disposal, and recovery of waste, so that an EC Commission directive setting forth specific fiscal obligations could be issued prior to this proposal's entry into force.

Every 3 years, beginning on April 1, 1995, the member states would report on the measures taken to implement this proposal. The EC Commission proposes that EC Council direct the member states to implement these changes within 18 months after their adoption by the Council.

Possible Effects

U.S. Exports

The EC proposal identifies industries that would be regulated by the packaging and packaging waste measures. These industries can be divided into either consumer goods or packaging industries. The consumer goods industries with the highest level of exports to the EC are the pet food industry, with exports of $217 million in 1990, the fresh fruit and vegetable industry, with exports of $156 million in 1990, and the fresh meat industry, with exports of $142 million in 1990. Other substantial exports to the EC include a variety of products from the beverages, food products, and cleaning preparations industries. The total 1990 value of U.S. exports to the EC from industries that will be affected by the proposal is approximately $11 billion, which is about 17 percent of total U.S. exports from these industries.

The packaging industries affected include containers and closures of plastic, glass, steel, and aluminum and paper and paperboard. The value of U.S. exports of plastic containers and closures to the EC was more than $92 million in 1990. The principal markets for U.S. exports of plastic containers and closures in the EC are the United Kingdom,

[186] Ibid.

[187] *OJ* No. L 194 (July 25, 1975), p. 47.

Germany, and France. U.S. exports of glass containers and closures increased from an estimated $2.0 million in 1986 to almost $7.1 million in 1990. The principal EC market during 1986-90 was the United Kingdom. U.S. exports of steel containers and closures to the EC were $61 million in 1990, with Germany and the United Kingdom as the principal EC markets. The average annual growth rate of U.S. exports to Germany was 48 percent during 1986-90. More than 141 million empty aluminum containers, valued at $17.7 million, were exported from the United States to the EC in 1990, compared with an estimated 10 million containers, valued at $6.1 million, in 1986. The principal markets for these products were Germany and the United Kingdom. The value of U.S. exports of paper and paperboard to the EC increased from $31 million in 1986 to $75 million in 1990. During 1986-90, the principal EC markets for these products were Italy and Spain, but the average annual growth rate in U.S. exports of these products to the Netherlands was 80 percent, compared with 25 percent for the entire EC market.

Until now, the main competitive concerns of both U.S.-based firms and firms based in several member states regarding packaging regulation in the EC have centered around the especially restrictive bottling and recycling requirements currently imposed by German and Dutch law. Despite these restrictive laws, U.S. exports of most types of containers to these two countries, and to the EC in general, have increased in the past several years. While U.S. exporters of containers to the EC may be required to take additional measures in order to comply with any packaging proposal that may be adopted by the EC, the current ability of these producers to continue shipping increasing quantities of containers to Germany and the Netherlands suggests that the packaging directive is unlikely to have a negative effect on U.S. firms.

Business operating conditions

The principal location for U.S. investment and production of boxes and crates is Germany ($5.3 million), with a total U.S. investment in the EC for this product group of almost $25 million. However, Germany already has in place, as of 1985, laws limiting packaging waste per capita to the equivalent of 30 kilograms per year. Given Germany's already restrictive standards, the Communitywide packaging measure is unlikely to deter future investment in that country. The directive may actually bolster competitiveness of U.S.-owned investments in Germany by bringing the standards in the rest of the Community up to par with the restrictive packaging measures already in effect in the Netherlands and Germany.

[188] Regulation 594/91, *OJ* No. L 67 (Mar. 14, 1991), pp. 1–10.

[189] Decision 80/372, *OJ* No. L 90 (Apr. 3, 1980), p. 45.

Substances that Deplete the Ozone Layer[188]

Background and Anticipated Changes

The EC Commission signed the Vienna Convention for the protection of the ozone layer in 1985. The signatories pledged to work toward a protocol on substances that deplete the ozone layer since continued emissions of chlorofluorocarbons (CFCs) and halons were believed to cause significant damage to the ozone layer. The EC Council decided that the member states should provide controls on emissions of two such substances (CFC-11 and CFC-12) as aerosols in 1980,[189] and by their producers and users in the manufacture of synthetic foam, refrigeration, and solvents on November 15, 1982.[190] The EC Commission participated in the negotiation of the Montreal Protocol, which was adopted in 1987. Both the convention and the protocol were approved by the EC Council in October 1988. Under these instruments, the EC is obliged to control production and consumption of certain CFCs[191] and halons.[192] Any member state may maintain or introduce more stringent measures to protect the ozone layer.

The EC fulfilled its obligation by limiting sales and imports. EC Regulation 3322/88[193] limited annual imports of CFCs to 2.3 million ozone depletion equivalents (ode) and imports of halons to 700,000 ode.[194] The quotas are managed by an advisory committee composed of representatives of the member states. A country that is not complying with the Montreal Protocol may not supply these substances to the EC after January 1, 1990,[195] nor may such a country supply goods containing these substances after January 1, 1993.

In 1989, the EC Council decided that the production of CFCs needed to be reduced as soon as possible with a goal of elimination towards the end of the 1990s. There is an international consensus[196] that additional CFCs,[197] carbon tetrachloride, and 1,1,1-trichloroethane also need significant reductions in emissions. In 1991, the EC Council approved two regulations to achieve this result. EC Regu-

[190] Decision 82/795, *OJ* No. L 329 (Nov. 25, 1982), p. 29.

[191] Trichlorofluoromethane (F–11), dichlorodifluoromethane (F–12), trichlorotrifluoroethane (F–113), dichlorotetrafluoroethane (F–114), and chloropentafluoroethane (F–115).

[192] Bromochlorodifluoromethane (Halon–1211), bromotrifluoromethane (Halon–1301), and 1,2–dibromo–1,1,2,2–tetrafluoroethane (Halon–2402).

[193] *OJ* No. L 297 (Oct. 31, 1988), pp. 1–7.

[194] An ode is the weight of a substance expressed in terms of the ozone depletion potential of CFC–11.

[195] U.S. interim regulations on these substances were in effect by then.

[196] A meeting of the United Nations Environmental Program in London on June 29, 1990.

[197] Chlorotrifluoromethane (F–13), pentachlorofluoroethane, tetrachloro–difluoroethane, heptachlorofluoropropane, hexachlorodifluoropropane, pentachlorotrifluoropropane, tetrachlorotetrafluoropropane, trichloro–pentafluoropropane, dichlorohexafluoropropane, and chloroheptafluoropropane.

lation 594/91[198] reduces importation of the CFCs controlled under Regulation 3322/88 to 1.2 million ode for 1993 and 1994, which is 50 percent of the imports of these substances to the EC during 1986. The annual quota will drop to 32.5 percent and 15 percent of the 1986 level during 1995 and 1996, respectively. An import quota of 174,000 ode of CFCs will be available from January 1 to June 30, 1997. The annual import quota for halons remains unchanged through 1994, when it drops to 350,000 ode through 1999. The quantity of EC imports of halons after 1999 will be determined by the essential uses established by the EC Commission.

The EC Commission manages the quotas established by these regulations using import licenses that are considered by the above-mentioned advisory committee in the year prior to importation. If the advisory committee is in agreement, the EC Commission's proposed quota allocation must be adopted by the EC Council. If the Commission and the advisory committee are not in agreement, the Commission may defer application for not more than 1 month. The EC Council may make a different decision within that time frame.

Possible Effects

U.S. exports

U.S. exports to the EC are expected to decrease in proportion to the quotas established by the EC Commission for U.S. manufacturers of all of these products. U.S. exports to the EC under EC Regulation 3322/88 amounted to 564,000 ode of chlorofluorocarbons, valued at $1.5 million, and 3.4 million ode of halons, valued at $1.3 million, in 1990, compared with 3.8 million ode of chlorofluorocarbons, valued at $11.4 million, and 10.6 million ode of halons, valued at $5.3 million, to all markets that year. U.S. exports of the additional chlorofluorocarbons, carbon tetrachloride, and 1,1,1-trichloroethane to the EC that would have been controlled under EC Regulation 594/91 if it were in force amounted to 85,000 kilograms, valued at $385,000; 178,000 kilograms, valued at $55,000; and 8.2 million kilograms, valued at $5.3 million, respectively, in 1990. U.S. exports to all markets of these additional products amounted to 4.0 million kilograms, valued at $14.2 million; 18.1 million kilograms, valued at $5.0 million; and 52.0 million kilograms, valued at $27.2 million, respectively, in 1990.

Diversion

Imports account for less than 1 percent of apparent EC consumption of CFCs. Based on official statistics of the EC, as much as 12.7 million ode of CFCs and 2.6 million ode of halons would have been available for diversion from an unnamed third country in 1989, but such diversion would be subject to the consumption allowances established by the U.S. Environmental Protection Agency (EPA). Almost 6.6 million ode of carbon tetrachloride would be banned from the EC beginning in January 1993, but third-country diversion of carbon tetrachloride to the U.S. market from nonparticipating countries is illegal for importers under the Clean Air Act Amendments of 1990. All sources of EC imports of 1,1,1-trichloroethane in 1989 participated in the Montreal Protocol; therefore, third-country diversion of this product to the U.S. market seems unlikely.

U.S. Industry Response

The Alliance for Responsible CFC Policy maintains contact with the European Fluorocarbon Technical Committee, an industrial sector advisory committee with six members representing national governments. The U.S. industrial coalition supports the report of the Technology Review Assessment Panel of the United Nations Environment Program that almost 30 percent of the demand for CFCs that was projected to be consumed during 2000 prior to the Montreal Protocol could be eliminated by conservation, recovery, and recycling. Another 30 percent of projected demand could be met using nonfluorocarbon substances. The alliance believes industrial producers and consumers, and national governments should be working together to develop long-term options for meeting the remaining 40 percent of demand for essential societal needs. Any near-term shortage of alternatives to CFCs may persuade nonparticipating countries to continue to use CFCs and frustrate U.S. policy to support a phaseout of CFCs and halons before 2001, but this EC Regulation supports U.S. policy in this sector.[199]

Implementation

The environment continues to be near the top of a list of problem areas with respect to implementation.[200] In 1990, 221 infringement proceedings were opened concerning environmental measures.[201] The majority of these proceedings resulted from member states' failure to notify measures imple menting Community directives.[202] The percentage of environmental directives due for implementation by 1990 for which member states notified the EC Commission of implementation of measures ranged from 99 percent for Denmark to 63 percent for Italy.[203] The most problematic areas are water pollution directives and natural habitat directives.[204]

[198] *OJ* No. L 67 (Mar. 14, 1991), p. 10.

[199] Alliance for Responsible CFC Policy, "Satisfying CFC Demand in the Year 2000," *CFC* (June 1990), p. 3.

[200] *European Report*, No. 1699 (Aug. 3, 1991), Internal Market, pp. 7–8 and USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990.

[201] *European Report*, No. 1699, pp. 7–8.

[202] Eighth Annual Report on Monitoring of the Application of Community Law, annex C, *OJ* No. C 338 (Dec. 31, 1991), p. 228.

[203] Ibid., p. 46.

[204] Ibid.

In addition to poor implementation of environmental measures, enforcement in some member states is lax. The holdup in choosing a site for the European Environmental Agency has perpetuated this problem. The U.S. Chamber of Commerce has expressed concern that the "blatant disregard" on the part of member states in implementing and enforcing environmental measures will preclude the realization of desired European-wide environmental regime.[205]

The EC Commission and European Parliament have aggressively begun to address the problem of environmental implementation. An increasing number of new environmental initiatives, such as eco-label and eco-audit, have been proposed as self-implementing regulations rather than as directives. In addition, the European Parliament's Committee on the Environment, Public Health and Consumer Protection recently approved a motion for a resolution recommending that legally binding environmental measures should be adopted, which could even include sanctions for member state failure to conform with the requirements of Community law.[206]

Industry Analysis

This section covers new industry-specific measures formally proposed prior to the end of 1991, as well as enacted or proposed modifications to previously analyzed proposals and directives. All directives that were considered standards-related were categorized and analyzed under nine industry categories on the basis of the sectors most likely to be affected.[207] The industries identified as substantially affected by EC 1992 standards measures during 1991 were (1) agriculture, (2) processed foods and kindred products, (3) chemicals, (4) pharmaceuticals, (5) medical equipment, (6) motor vehicles, (7) other machinery, (8) construction products, and (9) miscellaneous. After assessing the possible effects of such measures on U.S. industry, specific directives were selected for further analysis. Those directives, which are discussed below, were chosen because they illustrate major issues of possible concern for U.S. industry or because of their potential to have an impact on U.S. exports or investment in the EC.

Agriculture

Overview

A wide range of directives and proposals concerning farm-based agriculture were analyzed in earlier USITC reports.[208] This report reviews developments in EC meat inspection policies, developments concerning the growth promoting hormone bovine somatotropin (bST), and EC regulations concerning importation of softwood lumber.

EC integration measures in agriculture are intended to promote the free movement of animals and products within the EC and to ensure that national animal and plant health standards are not used as nontariff barriers. Border control inspections between member states will be replaced with inspections at the site of production, and veterinary and phytosanitary rules will be phased out in favor of EC-wide standards. The aim is to have one inspection and certification at the point of origin that is then accepted throughout the EC.

This approach involves two key elements: (1) harmonizing essential requirements throughout the Community in the production and processing of animal and plant products, and (2) establishing an inspection procedure that enables member states to ensure animal health, public health, and animal welfare by confirming that the new Community requirements have been followed.[209]

EC prohibitions on imports of meat from the United States continue to be a source of contention between the United States and the EC. The EC limits imports of meat to those from EC-approved U.S. beef and pork facilities and effectively rejects the argument that the U.S. inspection system is equivalent to that of the EC. U.S. firms have been seeking regulatory approval of the use of bovine somatotropin (bST) in the EC. The U.S. Government, meanwhile, has expressed concern about the EC's intention to use social criteria, such as the impact of bST usage on competing farmers, in its approval decision. As of early February 1992, final approval for the marketing of bST within the EC had not been obtained.

U.S. exports of softwood lumber could be severely curtailed if a previously accepted phytosanitary directive is rigidly applied and the provision(s) within that directive that permit derogations are not extended. In 1991, a temporary derogation was passed that permitted softwood lumber exports from the United States to continue in 1991 because an alternative phytosanitary measure was adopted to insure that no harmful organism entered EC member countries in U.S. shipments of softwood lumber. In January 1992, a final extension of this derogation was granted by the European Commission that will permit imports of non-kiln-dried lumber from the United States until December 31, 1992.

Update

Meat Inspection

Background

The Third Country Meat Directive, which requires foreign meat producers to comply with certain technical standards in order to export to the EC, has prohibited EC imports of most pork from the United

[205] U.S. Chamber of Commerce, *Europe 1992*, p. 45.

[206] *European Report*, No. 1721, Internal Market, Nov. 16, 1991, p. 7.

[207] See appendix C for a listing of all the standards-related measures reviewed.

[208] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 6–46 to 6–49; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4–46 to 4–49; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–17 to 4–25.

[209] EC Commission, *Completing the Internal Market: Animal Health Controls Plant Health Control*, Mar. 1988.

States since November 1, 1990 and imports of beef since January 1, 1991. U.S. exports to the EC of hormone-treated meat have been banned since January 1, 1989.[210] The EC's Standing Veterinary Committee has contended that the United States does not meet EC veterinary standards because of a general lack of adequate hygiene and veterinary controls as well as postmortem inspections of animal carcasses. U.S. officials contend that U.S. hygiene standards are equivalent to those of the EC, and thus there is no basis for prohibiting imports from the United States.[211]

On November 28, 1990, the National Pork Producers Council (NPPC), a trade association representing swine farmers, and the American Meat Institute, a trade association representing all segments of the U.S. meatpacking and meat-processing industry, filed a complaint with the United States Trade Representative (USTR) under section 301 of the Trade Act of 1974. The complaint sought Government action to reverse the EC prohibition on imports of meat from the United States.[212] The USTR accepted the complaint on January 10, 1991, but also announced a decision to refrain from submitting a formal complaint to the GATT for 90 days to allow for bilateral consultations.[213]

On May 3, 1991, U.S. and EC negotiators announced an agreement to take specific steps aimed at resolving the dispute. EC officials agreed to work to recertify U.S. plants and agreed to send EC veterinary officials to the United States beginning May 20, 1991, to inspect 25 U.S. plants. However, U.S. negotiators cautioned against "undue euphoria" and indicated that there were still some things to "iron out."[214]

Under section 301, the EC had until June 9, 1991, to withdraw the ban before the United States was required to begin the process of retaliation by requesting the creation of a GATT panel.[215] Therefore, notwithstanding the EC actions in May, the United States, on June 7, 1991, called for the formation of an independent panel under the GATT to mediate the dispute. The EC reportedly blocked formation of the GATT panel.[216]

By September 1991 the EC Veterinary Committee, made up of EC Commission and national experts, recertified four U.S. plants. As for the remaining plants, an EC official was quoted as saying, "We are ready to reconsider their recertification at any time."[217] The EC meat import policies were the subject of additional U.S.-EC negotiations from November 1991 through February 1992.[218]

Anticipated Changes

A EC Commission Decision[219] (91/344/EEC) of June 17, 1991, authorized imports from listed U.S. beef and pork slaughterhouses and cutting premises, on a date to be fixed in the future, following EC verification that EC-specified improvements had been made. Another EC Commission Decision[220] (91/245/EEC) of May 7, 1991, listed U.S. pork plants that had adequate protection measures concerning trichinosis, and thus would not be precluded from exporting to the EC by reason of trichinosis. In combination with previous EC actions, these EC decisions effectively limit EC imports of meat to only those from listed U.S. beef and pork facilities and amount to a rejection of the argument that the U.S. inspection system is equivalent to that of the EC. The concept of equivalency involves the acceptance of an exporting country's entire inspection system as achieving the same regulatory aim of the importing country, even if the component parts differ, and substitutes for the requirement that the exporting country have exactly the same inspection system as the importing country. This concept has been the subject of ongoing negotiations between the United States and the EC. The United States supports the concept of equivalency, whereas the EC would require exporting countries to have exactly the same inspection system as in the EC.[221]

Possible Effects

It appears likely that additional U.S. beef and pork slaughterhouses and cutting premises will eventually be authorized to ship meat to the EC. However, as of February 1992, there had been no significant progress in obtaining plant approval.[222] It is anticipated that U.S. exports of meat to the EC will resume as the result of the EC reauthorization of the subject plants for export to the EC. However, because many U.S. plants have not been reauthorized to export, shipments will continue to be limited.

U.S. exports of pork averaged about $2 million annually during 1988-90, and exports of pork offals (byproducts such as livers, tongues, and intestines) amounted to another $8 million to $10 million annually during the period.[223] Exports of pork to the EC

[210] For a discussion of these restrictions see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 4–22 and USITC, *Operation of the Trade Agreements Program, 42nd Report, 1990*, USITC publication 2403, July 1991, p. 101.

[211] For background on this topic, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–20 to 4–22.

[212] Ibid, p. 4–22.

[213] "USTR official, telephone conversation with USITC staff, Washington DC, Jan. 3, 1992.

[214] "U.S., EC Agree on Steps to Resolve Dispute Over U.S. Meat Exports to EC," *International Trade Reporter*, vol. 8 (May 8, 1991), p. 694.

[215] "U.S. Requests Formation of GATT Panel to Rule in Dispute With EC Over Meat Ban," *International Trade Reporter*, vol. 8 (June 12, 1991), pp. 892 and 893.

[216] USTR official, telephone conversation with USITC staff, Washington DC, Jan. 3, 1992.

[217] "U.S. Requests Formation of GATT Panel," p. 892.

[218] USTR official, telephone conversation with USITC staff, Washington DC, Feb. 11, 1992.

[219] *OJ* No. L 187, (July 7, 1991), p. 50.

[220] *OJ* No. L 115, (Aug. 5, 1991), p. 56.

[221] USTR official, telephone conversation with USITC staff, Mar. 23, 1992.

[222] USTR official, telephone conversation with USITC staff, Washington DC, Feb. 11, 1992.

[223] Estimated from statistics reported in U.S. Department of Agriculture, Foreign Agriculture Service (FAS), *U.S. Trade and Prospects: Dairy, Livestock, and Poultry Products*, FDLP 2–91, Mar. 1991, pp. 30 and 34.

accounted for 1 percent or less of the total value of U.S. pork exported annually during 1988-90,[224] and exports to all markets were equivalent to less than 2 percent of pork production during 1989-90.[225] However, exports of pork offals to the EC accounted for 23 percent of the total value of pork offal exports in 1989 and about 14 percent during 1988 and 1990.[226] As noted above, U.S. exports of beef to the EC are limited by the EC's directives related to growth stimulants (hormones).

U.S. Industry Response

The NPPC has stated that it "is deeply disturbed by the apparent continued lack of progress in effectively resolving the European Community's (EC) Third Country Meat Directive." The NPPC also continued to contend that the Third Country Meat Directive is a "non-tariff barrier."[227] The Meat Industry Trade Policy Council[228] has reaffirmed its support for the formation of a GATT panel and the concept of equivalency.[229]

Veterinary Inspection

Background and Anticipated Changes

A Commission Decision (91/189/EEC) on February 25, 1991, established, among other things, detailed procedures for veterinary checks on live cattle and swine entering the EC from third countries.[230] The Decision specifies that "it would appear useful to refer to a single common Decision containing the protocols for veterinary tests and the conditions for the approval of markets."

Possible Effects

Trade and industry sources indicate that the subject Commission decision is a less serious cause for concern than the EC's actions concerning the Third Country Meat Directive and growth stimulants because U.S. exports of live cattle and swine averaged less than $1 million annually during 1988-91. However, the sources indicate that they are concerned that the Commission Decision will contribute to industry reluctance to try to develop a significant market in the EC.[231]

[224] Ibid., p. 30.

[225] U.S. Department of Agriculture, Economic Research Service (ERS), *Livestock and Poultry Situation and Outlook Report*, LPS–49, Aug. 1991, p. 34.

[226] Estimated from statistics reported in FAS, *U.S. Trade and Prospects*, FDLP 2–91, Mar. 1991, p. 34.

[227] National Pork Producers Council, letter of Sept. 18, 1991, to the U.S. Secretary of Agriculture.

[228] The members of the Meat Industry Trade Policy Council are the American Farm Bureau Federation; the American Meat Institute; the National Cattlemen's Association; the National Pork Producers Council; and the U.S. Meat Export Federation.

[229] Meat Industry Trade Policy Council letter dated Oct. 7, 1991, to the USTR.

[230] *OJ* No. L 96 (Apr. 17, 1991) p. 1.

[231] Trade association representative, telephone conversation with USITC staff, Jan. 10, 1992.

U.S. Industry Response

The NPPC has complained that EC testing requirements are too stringent.[232] An EC requirement concerning a test for Brucellosis requires a "serum agglutination test" and a "complement fixation test." The NPPC contends that the complement fixation test is not satisfactory. Another EC requirement concerns the interpretation of a test for swine influenza and states that "Titrates of 1/10 or greater are considered positive." The NPPC contends that a more lenient standard of titrates of 1/20 or greater should be considered positive. Another EC requirement concerns the interpretation of a test for Aujeszky's disease and states that "Serum titrates of less than 1/2 (undiluted semen) are considered negative." The NPPC contends that a more lenient standard of serum titrates of less than 1/4 (undiluted semen) should be considered negative.

Bovine Somatotropin (bST)

The marketing of bST, a dairy-enhancing hormone, is not permitted in the EC. EC Council Decision 90/218/EEC requested member states to prohibit, until December 31, 1990, the administration of bST to dairy cows on their territory as the effects and consequences of such administration were not sufficiently clear. An EC Council Decision of February 4, 1991, continued the prohibition of the administration of bST until December 31, 1991,[233] and a decision on December 11, 1991 further extended the prohibition until December 31, 1993.[234]

The Monsanto Company, a U.S.-based multinational company, recently has received scientific technology clearance from the EC Committee for Veterinary Medical Products (CVMP) for the use of bST in the Community; the European brand name for the product is Somatech.[235] The scientific technology clearance of the CVMP is concerned only with the safety, efficacy, and quality of new products developed from advanced scientific technology. Although Monsanto's scientific technology clearance is reported by the company to be a major advancement for biotechnology, Monsanto cautions that the product cannot be marketed in the EC until final political approval is obtained from each of the Farm Ministers of the member states.[236] In the political approval process, the Farm Ministers would be concerned with an impact assessment of the new products developed from advanced scientific technology. Unlike the scientific technology criteria, the impact assessment

[232] NPPC official, telephone conversation with USITC staff, Washington DC, Jan. 10, 1992.

[233] For a discussion of this action, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 4–19.

[234] FAS, *U.S. Trade and Prospects*, FDLP 01–92, Jan. 1992.

[235] Monsanto Co., "European Veterinary Committee Says BST Approvable," press release, Mar. 22, 1991.

[236] Medical and Nutritional Affairs, Animal and Nutritional Health, Monsanto Co., letter to the USITC, Mar. 26, 1991.

would involve issues such as the effects of new products on production, producers' income, the environment, Community farm structures, and the EC budget. The Monsanto company does not anticipate final political approval for marketing of the product from each of the Farm Ministers until after 1993,[237] although the company acknowledges that the political situation can change quite rapidly.[238] CVMP scientific technology clearance for use of bST produced by Eli Lilly is pending.[239]

The U.S. Food and Drug Administration (FDA) has determined that meat and milk from cows that have received bST is safe for human consumption. However, the FDA has not determined that the use of bST is safe for cows that are injected with the product. It is unlikely that the FDA will make a final decision on the use of bST in the United States in the near term.[240] FDA and other U.S. Government agencies have repeatedly expressed concern about the EC's intention to consider non-scientific factors in its approval process. There is also a fear that the EC's actions on bST and beef hormones are a negative precedent for future EC approval of biotechnologically-derived substances.[241]

Softwood Lumber

Background

On December 21, 1976, Council Directive 77/93 outlined protective measures against the introduction of harmful organisms of plant and/or plant products, including imports into the EC of coniferous logs and lumber. EC imports of softwood lumber from the United States, Canada, and other temperate and subarctic countries, excluding EC member countries, had to be free of bark and, more importantly, kiln-dried.

Historically, only about 15 percent of all softwood lumber from the Pacific Northwest, the principal producing region, destined for export markets undergoes the kiln-drying process prior to exportation. Consequently, about 85 percent of U.S. exports from this area is shipped "green" (non-kiln-dryed). Since the 1976 directive was passed, a series of directives was adopted that allows for derogations from the established guidelines as long as evidence is provided to insure that there is no risk of spreading harmful organisms, such as nematodes. Under the authority of the derogations, an officially approved "Certificate of Debarking and Grub Hole Control," issued in the United States under a program approved by the U.S. Department of Agriculture, accompanies each U.S. softwood lumber shipment to the EC as an agreed upon interim measure that permits the level of U.S. softwood lumber exports to the EC to be maintained.

Anticipated Changes

A February 13, 1991, directive[242] (91/107/EEC) allows for a limited derogation from some of the guidelines set forth in a previous EC phytosanitary directive concerning softwood lumber (77/93/EEC). Ten of the twelve EC member countries requested this derogation, thereby allowing continued U.S. exports of softwood lumber to enter these member countries until February 29, 1992, providing that the softwood lumber departed a U.S. port prior to December 31, 1991. In January 1992, The EC Commission decided to extend the derogation one final time until December 31, 1992.

Possible Effects

Without the February 13, 1991, derogation and the January 1992 extension, all U.S. exports of softwood lumber would have been required to be kiln-dried before shipment to the EC. U.S. kiln-drying capacity for softwood lumber originating from the Pacific Northwest is limited. Consequently, U.S. exports of softwood lumber would have been greatly curtailed during 1991 and significantly reduced in 1992. It is estimated that between $120 million and $180 million of annual U.S. exports of non-kiln-dried softwood lumber to the EC would have been lost if the 1991 derogation and the 1992 extension were not in effect.

U.S. Industry Response

The U.S. industry was in favor of the February 13, 1991, derogation. More importantly, the U.S. industry is hopeful that a long-term solution will be satisfactorily accomplished. The EC Commission has reportedly stated that the December 31, 1992, extension date is the final extension date. One possible solution under discussion is a heat-pasteurization process applied to U.S. softwood lumber exports. The proposal requires U.S. exporters to briefly heat the core temperature of the lumber, rather than using the lengthy kiln-drying process in order to insure that all nematodes and other harmful organisms have been killed.[243]

Processed Foods and Kindred Products

Overview

European Community legislation on foodstuffs is aimed at harmonization of differing national regulations and standards which apply to the protection of public health, labeling and other packaging controls, and, in the area of consumer protection, mutual recognition of differing member state regulations

[237] *New York Times*, Feb. 12, 1992, p. D–4.
[238] Monsanto representative, telephone conversation with USITC staff, Jan. 10, 1992.
[239] Eli Lilly Co. representative, telephone conversation with USITC staff, Jan. 9. 1992.
[240] USDA official, telephone conversation with USITC staff, Jan. 9, 1992.
[241] Food and Drug Administration, letter to Directorate General III, Commission of the European Communities, Sept. 1, 1989.
[242] *OJ* No. L 55 (Feb. 3, 1991) p. 26.
[243] U.S. Department of Agriculture, FAS official, various telephone conversations with USITC staff, Washington, DC, 1992.

and standards. To accomplish its goal of harmonized foodstuff standards and regulations, the 1985 White Paper called for passage of seven framework measures covering six areas: additives; materials coming into contact with foodstuffs; food for nutritional uses; labeling; inspection of foodstuffs; and irradiation of foodstuffs.[244] By the end of 1991, the EC Council had adopted the majority of the framework measures. The EC Commission continues to develop and manage the directives necessary to implement the framework measures.

The issues covered in this report concern geographical indications and designations of origin, amendments to a previous Council directive on sweeteners, the use and labeling of additives in foodstuffs, and labeling and advertising of tobacco products. Testing and certification concerns regarding certificates of specific character and the scientific examination of questions relating to food are also discussed, and an update on foods treated with ionizing radiation is provided.

Update

Protection of Geographical Indications and Designations of Origin

Background and Anticipated Changes

On December 21, 1990, the EC Commission submitted a proposal (91/C 30/06) for a Council regulation concerning the protection of geographical indications and designations of origin for agricultural products and foodstuffs. The proposal was approved by the EC Parliament on November 19, 1991, after several amendments were added. The objective is to establish a system for the use of a geographical name in the designation of product in cases where certain characteristics and quality are associated with geographical origin. Certain wines and cheese, such as Champagne and Parmesan, are examples of products that would be likely candidates for these designations.

The proposed regulation would make a distinction between two types of classifications: protected geographical indication (PGI) and protected designation of origin (PDO).[245] The PGI designation, such as "Parmesan," will refer to the name of a specific place, region, or country describing a product originating there and having a quality attributable to that geographic environment. The PDO designation, although similar, places greater emphasis on the exclusivity of particular geographical factors contributing to the unique quality or other characteristic of the product. Wines seem likely products for PDO designations.

Qualification for a PGI or PDO designation will be based on compliance with specifications on names and descriptions, definition of geographical areas, and methods of preparation; approval by recognized inspection bodies; and use of accepted labeling. Products for which the geographic name of origin have already become generic, such as "Cheddar," will retain the generic application of their names and will not qualify for either designation. Requests are first forwarded to the member state in which the specific geographical area is located, and then, if found to meet the requirements, are forwarded to the other member states and the EC Commission. The EC Commission further examines the requests, and then publishes the requests in the *Official Journal* for comment. If no objections are made within 6 months, the designations are entered in a register kept by the Commission.[246] If objections are made, they are examined by the EC Commission before making a decision on registration. Once the use of a PGI or PDO designation for a product is approved, the product will carry a Community stamp or symbol. The submitted proposal contains procedures for the application of a PGI or PDO designation by a third country, and it includes the authority for the EC Commission to negotiate reciprocal protection of designations with third countries.

Possible Effects

Geographical designations referring to the area in which a product was produced or the method by which a product was produced are common in both the United States and the EC. However, factors such as the criteria for designation have differed between the United States and the EC, quite noticeably in the alcoholic beverage market, where questions have arisen as to whether regional names refer to where the product was produced or a traditional method of production originating in a certain region. There exists the possibility of conflict between the United States and the EC in determining whether the uniqueness of a product is the result of a process or the place of origin.

The effect on U.S. exports is unclear at this time, because the possibility of penalties for infringement is not fully laid out in the proposal. However, in the past, the U.S. alcoholic beverage companies that faced similar rules already in effect in the EC market have not experienced significant export losses. The use of PGI and PDO designations in the EC is not likely to result in any large diversion of third-country trade from the EC to the U.S. market because the United States retains its own rules regarding such designations. It is believed that U.S.-owned subsidiaries in the EC will probably have an easier time complying with the requirements for the PGI and PDO because of their location in the EC and the lack of concern for reciprocity.

U.S. Industry Response

Despite differences in U.S. and EC geographical labeling practices, U.S. industry sources indicate that

[244] For further information, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990.

[245] *OJ* No. C 30 (Feb. 6, 1991).

[246] The original proposal put before the EC Parliament by the EC Commission called for a 3–month period for receiving complaints.

the harmonization of differing EC labeling laws into a uniform code will be of benefit to U.S. exporters, who will be able to deal with one decisionmaking body. However, the use of a Community symbol to denote the PGI or PDO status of product causes some industry analysts to feel that the symbol will become a type of "Goodhousekeeping" symbol for certain products and perhaps influence consumer preference.

Sweeteners for Use in Foodstuffs

Background and Anticipated Changes

The European Parliament approved the EC Commission's proposal (with Parliament amendments) for a Council directive on sweeteners for use in foodstuffs (COM (90) 381 final).[247] The proposed directive, which drew upon Council Directive 89/107 concerning approved food additives, listed 12 approved sweeteners and amounts allowed for use in foodstuffs.[248]

The proposed amendments to the EC Commission's proposal include changes in the levels of use, the deletion of three substances from the permitted list (lactitol, cyclamic acid, and neohesperidine), new labeling requirements, and new deadlines for member-state compliance.[249] The new labeling requirements call for a warning label for pregnant women and children under the age of three, and a sugar equivalency stated on the packaging. The original draft of the directive had encountered opposition from Germany, which has strict beer purity laws and regulations on the use of sweeteners in beers, and it engendered various member-state concerns over the maximum doses of cyclamate in carbonated drinks such as colas.

Possible Effects

Due to the diverse products in which high-intensity sweeteners are used, data on the amount of U.S. exports of sweeteners are not available. The new labeling requirements, including the call for a sugar equivalency, would obviously impose added complications on U.S. exporters, who already must comply with U.S. labeling requirements, and for U.S. firms with investments in the EC. However, as with all products, uniformity in labeling requirements in the EC will facilitate packaging and permit shipment of a single product to all member states. The removal of the three sweeteners from the list should pose no problem for U.S. exporters or for third-country suppliers to the U.S. market because these three sweeteners are currently not approved for use in the United States. Diversion of third-country trade to the U.S. market is unlikely since third-country producers do not export any significant quantities of the product and the United States continues to have a more restrictive sweetener market in terms of types approved for use.

U.S. Industry Response

These latest amendments to the proposed directive have caused additional uncertainty within U.S. industry about the final requirements the EC will impose on sweetener use. As a result of such continual changes in EC requirements for sweetener use, many U.S. industry sources have indicated that they will likely rely more on their EC-based operation to satisfy demand in the EC market since proximity will permit them to respond more quickly to regulatory change. The use of EC-based operations has also become more attractive because the EC has approved more sweeteners for use than has the United States.

Flavorings for Use in Foodstuffs and Designations of Flavorings on Labels

Background and Anticipated Changes

The EC Commission Directive of January 16, 1991, supplemented Council Directive 88/388 regarding flavorings for use in foodstuffs and their sources. Directive 88/388 applied to agents used to impart odor or taste in foods, requiring any material imparting odor or taste in foods to meet criteria for purity and composition. The new Directive (91/71/EEC) contains the labeling requirements for sale to consumers.[250] The labeling will have to meet compulsory elements that include clarity and indelibility. Furthermore, the new directive defines the conditions under which the term "natural" may be used in the labeling of foodstuffs.

Possible Effects

Labeling requirements in the food industry also exist in the United States, and they have been subject to recent revision by the Food and Drug Administration (FDA). The regulations contained in EC directives concerning the labeling of foodstuffs are not likely to hurt U.S. food exports. In fact, as with the sweetener labeling requirements, uniformity of labeling and sweetening requirements in the EC may have a net positive benefit on the U.S. export industry. Processed foods, which are the export types most affected by the new directive, are typically one-quarter of U.S. food exports to the European Community.

The new labeling requirements are also not expected to hurt other foreign suppliers to the EC, and thus a diversion of trade is not expected. Third-country exporters such as Canada and Mexico already have to meet U.S. labeling requirements, and the uniformity of EC requirements will facilitate marketing. The new directive should have little effect on U.S. investments in the EC. Previously, the industry indicated that the uniformity of EC laws on labeling outweighed negative aspects of the directives.

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[247] For further background, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 4–30.

[248] *OJ* No. C 129 (May 20, 1991), p. 97.

[249] *OJ* No. C 175 (July 6, 1991), p. 6.

[250] *OJ* No. L 42 (Feb. 2, 1991).

U.S. Industry Response

U.S. industry has had to respond this year to tougher U.S. Government guidelines on the use of descriptive words in foods, such as "fresh." New EC guidelines on the use of similar descriptive words as well as the visibility of labeling may cause some difficulty to an industry already experiencing change in its domestic market.

Scientific Examination of Questions Relating to Food

Background and Anticipated Changes

Although consultation with the Economic and Social Committee of the European Parliament by member states is required by a number of previous directives on areas such as dietetic food, material in contact with foods, and flavorings, member states currently maintain their own individual scientific work, such as data banks and testing facilities, on questions relating to foodstuffs. The EC had not developed the institutional infrastructure for a central examination of such questions.

In an effort at better coordination, the EC Commission submitted a proposal for a Council directive on assistance to the EC Commission and cooperation by the member states in the scientific examination of questions relating to food on March 27, 1991.[251] The directive's aim is to help the EC "examine and evaluate scientific questions relating to food in disciplines such as medicine, nutrition, toxicology, food contamination, microbiology, biotechnology, and chemistry, particularly when these questions concern human health," as well as to provide scientific and logistical support for handling incidents involving food contamination and the drawing up of new rules concerning food safety.[252]

The directive stops short of creating a fully independent EC-level watch dog organization on a par with the U.S. Food and Drug Administration. Instead, the proposal asks that member states designate authorities to provide scientific and logistical support for the EC Commission. In this way, the directive would provide the Commission with access to member-state food-related experts and enable these experts to work directly with the Commission to develop future rules to ensure the free movement of foodstuffs. The principal tasks to be carried out by the designated authorities will include health risk assessments, determination of conditions of use of food additives, collection and storage of data, and investigations of the components of diets and of biological or chemical food contaminants.

The directive charges the Commission with developing a work program that includes administrative rules for cooperation by the designated authorities with the EC Commission; a procedure for handling member state petitions for scientific assessments of food safety issues; and a research agenda, timetable, and resource plan. It also authorizes the Commission to begin negotiations with third countries with a view to concluding agreements "guaranteeing their participation" in the principal tasks to be carried out by member state authorities.

Possible Effects

The directive will clearly affect the handling of food regulatory issues in the EC and is thus likely to have a significant effect on U.S. exporters to and U.S. investors in the EC. Cooperation in scientific data relating to food will lead to uniform testing procedures and assessments of risks to public health, making it easier to market products throughout the EC market.

U.S. firms with investments in the EC are likely to find business conditions easier with Communitywide cooperation on scientific research on food. U.S.-affiliated multinational firms accounted for 8 out of 10 of the largest food processing firms in the EC, but smaller firms dominate U.S. exports.[253] Although larger firms have good access to European decisionmakers, smaller firms have complained about the non-transparency of EC procedures for approving new additives, packaging and handling materials, and product formulations. Both have an interest in seeing EC regulation administered in an expeditious and predictable way and in having decisions based on sound science. The proposal may represent an improvement over the status quo in these areas.

To the extent that the proposal eases the current backlog of regulatory decisions at the EC level and permits the Community to more systematically work on harmonizing regulatory requirements between the EC and major markets like the United States and Japan, it should further benefit U.S. firms. On the other hand, firms in other industries, such as pharmaceuticals, have expressed some concern about centralized regulatory decisionmaking in the EC because working through an individual member state regulatory apparatus has sometimes proved speedier and more favorable to their interests.

Labeling of Tobacco Products

Background and Anticipated Changes

In November of 1989, the Council passed a directive requiring that all tobacco product packages carry a general warning of the potential health effects resulting from tobacco product use. Cigarette packages must carry one of several additional, specific warnings.[254] On September 24, 1991, the EC Commission proposed an amendment[255] to this

[251] COM (91) 16, *OJ* No. C 108 (Apr. 23, 1991), p. 7.
[252] Ibid.

[253] U.S. Department of Commerce, *EC 1992: A Commerce Department Analysis of European Community Directives*, vol. 2, SIMIS No. L–137, pp. 31–32.
[254] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 4–54.
[255] COM (91) 336 SYN 314, *OJ* No. C 191 (July 22, 1991), p. 38.

directive that would (1) require a specific warning label on pipe tobacco, rolling tobacco, cigars, and smokeless tobacco products; (2) ban the marketing of tobacco for oral use[256] effective July 1, 1992; and (3) add the following warning to the list of those that may be used on the label: "Smoking causes addiction." The proposed directive states that it is not intended to affect "traditional tobacco products for oral use," and it exempts tobacco products meant to be smoked or chewed.

Member states will be required to comply with the revised rules regarding health warning labels on tobacco products. Most EC member countries already have their own laws requiring health warnings on tobacco products. These laws, however, differ considerably. Ireland, the United Kingdom, and Belgium already ban oral snuff tobacco products.

Possible Effects

The labeling portion of the directive is unlikely to significantly affect direct U.S. exports to the EC because cigarettes account for 90 percent of the value of U.S. manufactured tobacco exports to the EC, and they are already subject to warning labels. However, at least one U.S.-based multinational firm has a plant in the EC that produces snuff and that would be affected by the proposed ban.

U.S. Industry Response

U.S. industry does not object to harmonization of existing rules regarding tobacco labeling. Industry, however, is opposed to the proposed ban on marketing of oral moist snuff. U.S. firms also are concerned that some of the warning texts required are not consistent with scientific knowledge about the effects of smoking and smokeless tobacco use.

Advertising of Tobacco Products

Background and Anticipated Changes

Draft directives restricting tobacco product advertising were proposed in 1989 and 1990.[257] A further amended proposal would ban all forms of advertising for tobacco products effective January 1, 1993.[258] Member states could authorize advertising within tobacco sales outlets, provided such advertisements are not visible from outside the premises. The proposed directive also would prohibit the use of brands or trademarks whose reputation is mainly associated with a tobacco product from being used in advertising in other areas. In addition, the proposal bans free distribution of tobacco products.

Member states that allow tobacco advertising would be required to change their laws in accordance with the directive. The proposed directive would affect existing laws that restrict tobacco advertising in Greece, Belgium, Great Britain, the Netherlands, and Spain. Tobacco advertising is already prohibited in Portugal and Italy, so the proposal would not change the status quo in those countries.

Possible Effects

The extent to which restrictions on tobacco advertising will affect direct U.S. exports to the EC is unclear. Some industry sources maintain that tobacco advertisements do not affect consumption overall, but encourage smokers only to switch among various brands of tobacco products. To the extent this is true, the proposed directives may have little effect on consumption of some U.S. products, particularly unmanufactured tobacco and cigarette brands that are well known to EC consumers. However, introducing U.S. cigarette brands to new markets in the EC or introducing new product lines would likely be more difficult if advertising were banned. U.S.-based tobacco manufacturers have production facilities and licensing arrangements to produce in EC countries. These operations would be similarly affected by an advertising ban.

U.S. Industry Response

Industry officials state that the proposal would endorse the segregation of national markets because it allows the adoption of various sets of national rules regarding tobacco product advertising in member states. The industry also charges that the proposal would restrict competition in the tobacco sector, without accomplishing the goal of reducing cigarette consumption. According to industry comments, restrictions on advertisements are not justified in view of scientific evidence of the lack of advertising effect on the level of tobacco product consumption. By prohibiting advertising for certain nontobacco products and services, the proposal would nullify the commercial value of intellectual property, such as trademarks, emblems, and symbols, according to the industry. It would also penalize past, current, and future diversification by tobacco manufacturers.

Chemicals and Related Products

Overview

Previous reports discussed general EC work in the chemicals and related products area, provided some background on the process being employed to accomplish it, and analyzed in detail directives on registration of plant-protection products and on the establishment of a European Environmental Agency and a European Environmental Monitoring and

[256] The products are defined as "all products for oral use, except those intended to be smoked or chewed, made wholly or partly of tobacco, in powder or particulate form or in any combination of these forms—particularly those presented in sachet portion or porous sachets—or in a form resembling a food product." The subject products are finecut or ground tobaccos made up in small packets and intended to be placed in the mouth inside the cheek.

[257] These directives are discussed in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 4–29.

[258] COM (91) 111 SYN 194, *OJ* No C 167 (June 27, 1991), p. 3.

Information Network.[259] The second followup report contained a separate chapter devoted to the chemicals and pharmaceuticals sector because of the significant impact EC 92 could have on future U.S. access.[260] In addition, a separate section of the standards chapter was devoted to analysis of specific chemical directives focusing primarily on restrictions on the marketing, use, classification, packaging, and labeling of certain dangerous substances and preparations.[261] The third followup report focused on directives that amended and updated previous directives on dangerous substances and preparations to include specific chemical coverage or modify date, tolerance, or limit specifications.[262]

This report focuses on directives published during 1991. Twenty-five chemicals and related products directives were analyzed for this report, 14 of which dealt with dangerous substances. However, only seven of these directives were considered to be of potential interest to U.S. industry. Five directives that amend previously published analyses of dangerous substances directives and two directives that amend a baseline 1976 cosmetics directive are discussed below as updates.

Update

Restrictions on Dangerous Substances

Background and Anticipated Changes

The harmonization of restrictions on the marketing and use of certain dangerous substances and preparations under EC Council Directive 76/769[263] was presented in previous reports.[264] A procedure to allow the EC Commission to adapt EC-wide restrictions to technical progress is set out in article 2a to Directive 76/769, adopted as EEC Directive 89/678.[265] During 1991, three directives have been adopted and one proposed which amend the restrictions of Directive 76/769.

Two of these amendments are part of a coordinated EC strategy concerning the wood treatment industry. First, on February 8, 1991, the EC Commission proposed that the Council direct member states to ban the marketing of seven specified brominated biphenyl ethers, which are fire retardants, in excess of 0.1 percent by weight in substances, preparations, and products.[266] The proposal also provides for a 5-year transition period for three specific brominated biphenyl ethers: decabromodiphenyl ether, octabromodiphenyl oxide, and pentabromodiphenyl oxide. After reviewing the proposed ban, the Economic and Social Committee of the EC Commission suggested that, before banning the latter three chemicals, it assess the findings of the U.S. Toxic Substances Control Act (TSCA) Interagency Testing Committee. The aim would be to ascertain the availability of effective substitutes proven to be safe for humans and the environment and that have satisfactory physical properties, flame retardancy, cost, lifetime, and behavior, both during processing and in the finished product.

Second, on March 21, 1991, the EC Council directed member states to ban the marketing and use of pentachlorophenol in industrial applications after July 1, 1992.[267] Pentachlorophenol is a fungicide that has been used as a textile or wood preservative. In addition, the Council directed member states to re-examine the exceptions for industrial applications of pentachlorophenol on wood or textiles prior to July 1, 1995. Denmark, Germany, Luxembourg, and the Netherlands have already banned pentachlorophenol and have further announced that they will seek a ban on the continued marketing of wood or textiles with more than 4 parts per million of the specific dioxin contaminant, hexachlorodibenzoparadioxine, which is a byproduct of pentachlorophenol use.[268]

The remaining two amendments to Directive 76/769 were issued on June 18, 1991. Council Directives 91/338[269] and 91/339[270] relate to restrictions on the marketing of cadmium-containing products and three substitutes for polychlorinated biphenyls, respectively. Directive 91/338 directs member states to ban the use of cadmium and its compounds in excess of 0.01 percent by weight in a number of products by December 31, 1992.[271] Producers of certain chemicals[272] that include cadmium have until December 31, 1995, to achieve the acceptable tolerance. However, products that must be colored with a cadmium compound for safety reasons are exempted. Implementation of Directive 91/338 will reduce the transition period for these chemicals from 5 to 3 years.

[259] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 6–65 to 6–70.
[260] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 22.
[261] Ibid., pp. 4–58 to 4–61.
[262] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–31 to 4–36.
[263] EC Council, *OJ* No. L 262 (Sept. 27, 1976), pp. 201–203.
[264] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4–58 through 4–60, and *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–33 and 4–34.
[265] EC Council, *OJ* No. L 398 (Dec. 30, 1989), p. 24.
[266] COM (91) 7 SYN 325, *OJ* No. C 46 (Feb. 22, 1991), pp. 8–9.
[267] Directive 91/173, *OJ* No. L 85 (Apr. 5, 1991), pp. 34–36.
[268] "Dangerous Substances: Ban on Pentachlorophenol," *European Report*, No. 1663 (Mar. 22, 1991), Internal Market, p. 8.
[269] EC Council, *OJ* No. L 186 (July 12, 1991), pp. 59–63.
[270] Ibid., pp. 64–65.
[271] Polyvinyl chloride, polyurethane, low-density polyethylene, cellulose acetate, cellulose acetate butyrate, and epoxy resins.
[272] Melamine-formaldehyde resins, urea-formaldehyde resins, unsaturated polyesters, polyethylene terephthalate, polybutylene terephthalate, transparent polystyrene, acrylonitrile methylmethacrylate, cross-linked polyethylene, high-impact polystyrene, and polypropylene.

Possible Effects

U.S. exports

The United States is the principal supplier of these chemicals to the EC. The 1991 proposals to restrict or ban the marketing of pentachlorophenol, polybrominated biphenyl ethers, and cadmium is expected to have a significant impact on U.S. exports of these substances. U.S. exports of pentachlorophenol to the EC more than doubled from 1989 to 1990. Vulcan Materials Co. is the only U.S. producer of this cyclic fungicide.[273] Cadmium is incorporated into other products, so statistics on the export of all products affected by Directive 91/338 are not available. Of the polybrominated biphenyl ethers, U.S. exports of decabromodiphenyl ether and octabromodiphenyl oxide to the EC amounted to 6,180 metric tons, valued at $22.8 million or ECU 20.7 million, in 1989. Great Lakes Chemical Corp., not considered a small business, is the only U.S. producer of these two flame retardants[274] and is expected to comply with any national legislation that results from this proposal. There is no known U.S. production of pentabromodiphenyl oxide.

Diversion

France, Belgium, and the United Kingdom are the leading EC competitors. Israel is the only third country supplying the EC with polybrominated biphenyl ethers. If the national implementing legislation were in force in 1989, more than 5,000 metric tons of these chemicals, valued at $20.7 million or ECU 18.8 million, that would normally have been shipped to customers in the EC would have been available on the world market.[275] Diversion of a portion of the polybrominated biphenyl ethers currently shipped to the EC market to the U.S. market seems very likely if proposal COM (91) 7 were adopted since relevant U.S. rules, developed by the EPA, are expected to provide national treatment to U.S. imports.

Dangerous Preparations

Background and Anticipated Changes

The Committee on the Adaptation to Technical Progress[276] reached a consensus on the occupational safety and health information needed by industrial users of dangerous preparations. With this consensus, the EC Commission issued Directive 91/155 on March 5, 1991, establishing detailed information about dangerous preparations that manufacturers and importers must provide to industrial users of these preparations.[277] The U.S. Occupational Safety and Health Administration (OSHA) also requires the supplier of a hazardous preparation to provide an industrial user with information on numerous characteristics and potential hazards.[278] The EC directive goes further than comparable U.S. regulations by requiring that the Material Safety Data Sheet (MSDS), which accompanies or precedes the shipment of a dangerous preparation to the EC, contain the composition of the preparation, ecological information,[279] a reference to Directive 88/379[280] and appropriate national legislation, training advice, and other information about the preparation.

Possible Effects

Implementation of Directive 91/155 will require adaptation by U.S. exporters but is not expected to change U.S. exports of dangerous preparations to the EC appreciably because both large and small firms have the flexibility to develop MSDSs that comply with this directive. Of the $162 billion in exports in the chemicals and related products group to the EC in 1990, approximately $289 million in exports of dangerous preparations needed revised MSDSs prior to June 8, 1991. The companies with the most revenue at stake, including insurance and U.S. freight, were medium-size exporters of paints, inks, and related items. These companies accounted for over $95 million in exports to the EC.

European List of Notified Chemical Substances[281]

Background and Anticipated Changes

The list of chemical substances notified under the sixth amendment[282] to EC Council Directive 67/548[283]

[273] USITC, *Synthetic Organic Chemicals: United States Production and Sales, 1990*, USITC publication 2470, Dec. 1991, p. 13–3.

[274] Ibid., pp. 15–11 and 15–13.

[275] European Communities Statistical Office, *Analytical Tables: External Trade—1989* (Luxembourg: Office des publications officielles des Communautés européennes, 1990), vol. C. pp. 92–93, and *Analytical Tables of Foreign Trade* (Luxembourg: Office des publications officielles des Communautés européennes, 1983), vol. C, p. 71.

[276] The Committee on the Adaptation to Technical Progress of the Directives for the Elimination of Technical Barriers to Trade in Dangerous Substances and Preparations.

[277] Directive 91/155, *OJ* No. L 76 (Mar. 22, 1991), pp. 35–41.

[278] These include the identity; physical and chemical characteristics; physical hazards; health hazards; primary route of entry; the permissible exposure limit; whether the preparation contains a hazardous chemical that is a carcinogen or potential carcinogen; precautions for safe handling and use, control measures; emergency and first aid procedures; the date prepared or last changed; and the name, address, and telephone number of someone who can provide additional information and appropriate emergency procedures, if necessary.

[279] Pending the establishment of EC criteria, information about the characteristics likely to affect the environment, including mobility, persistence, degradability, bioaccumulation, aquatic toxicity, and the result of sewage treatment, must be provided for substances and preparations classified as dangerous for the environment under Directives 67/548 or 88/379.

[280] USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 6–19.

[281] Decision 85/71, *OJ* No. C 139 (May 29, 1991), pp. 1–84.

[282] Directive 79/831, *OJ* No. L 259 (Oct. 15, 1979), pp. 10–28.

[283] *OJ* No. 196 (Aug. 16, 1967), p. 1.

on the harmonization of laws relating to the classification, packaging and labeling of dangerous substances, better known as the European List of Notified Chemical Substances (ELINCS), was established on June 30, 1990.[284] The list consists of all the chemical substances for which the competent authorities of the member states have received premanufacturing notices (PMNs). An updated list will be published each year. The first ELINCS supplements the European Inventory of Existing Chemical Substances (EINECS) published on June 15, 1990.[285] All products marketed in the EC in quantities exceeding 1 metric ton per manufacturer or importer per year, except those specifically exempted, must be listed in either EINECS or ELINCS.[286] In order to legally market any other substances on or after August 15, 1990, an EC technical dossier must be sent to the competent authorities. These "new" substances will be included in the updates of ELINCS that are published after June 30, 1991. Hazardous substances are included in the ELINCS only if their hazard classification has been adopted by the EC Commission. Other hazardous substances, provisionally classified by the responsible party, are in the process of being officially classified. The official classification of provisionally classified hazardous substances will be included in future publications of the ELINCS.

Possible Effects

The relative competitiveness of U.S. firms is not likely to be affected by the notification of "new" substances, provided U.S. firms remain in contact with the American Chamber of Commerce in Belgium and the U.S. TSCA Interagency Testing Committee. Diversion to the U.S. market of these products is unlikely, because the EPA has similar requirements under TSCA, but it established a higher action level than that of the EC.

[284] Decision 85/71, *OJ* No. C 139 (May 29, 1991), pp. 1–84.

[285] *OJ* No. C 146 A (June 15, 1990), p. 1.

[286] The following substances do not require an EC technical dossier: medicinal products, narcotics, radioactive substances, hazardous cargo, foodstuffs, feeding stuffs, wastes, substances deposited in customs-bonded warehouses or in transit under bond, nationally regulated pesticides and fertilizers, substances regulated by the EC Commission under existing directives, polymers containing less than 2 percent of a monomer, substances for research and analysis for determining properties under Directive 67/548, substances for research or analysis in quantities of less than 1 metric ton per manufacturer per year and intended for use solely in laboratories, and substances marketed in quantities of less than 1 metric ton per manufacturer per year provided the responsible party notifies the competent authorities of the member states where the substances are marketed and complies with any conditions imposed by those authorities. But all other substances marketed in the EC before Aug. 15, 1990, including those which are components of preparations do require such a dossier.

Investment by U.S. firms in the chemicals and related products group in majority-owned foreign affiliates based in the EC increased from $3.1 billion in 1989 to $4.2 billion in 1990. The leading U.S. investors in the EC are Allied-Signal, Inc.; Dow Chemical Co.; and the 3M Co. The cost of performing toxicological studies must be considered in investment plans, although many products are exempted if placed on the EC market prior to September 18, 1981.

Classification, Packaging, and Labeling of Dangerous Substances

Background and Anticipated Changes

When the EC Council directed the member states to harmonize laws relating to the labeling of dangerous substances,[287] they stipulated that the harmonization of member states' laws relating to the classification, packaging, and labeling of dangerous solvents,[288] paints, varnishes, printing, inks, adhesives, and related items[289] would be superseded on June 7, 1991. Therefore, the EC Commission issued Directive 91/325 to introduce concentration limits for these items.[290] Hydrogen, ethane, and methane have been reclassified as extremely flammable; therefore, member states must amend their classification and labeling regulations based on the revised classifications. New phrases related to dangerous substances were adopted March 1, 1992, that indicate danger to health after long-term exposure, risk of cancer following inhalation, danger for the environment, and safety advice for the environment. New criteria was also adopted for substances that are dangerous for the environment; have long-term health effects; and are classified as solvents, paints, inks, adhesives, and related items.

All these changes were approved by the committee charged with harmonizing chemical regulations. Member states were to amend their regulations to comply with Directive 91/325 no later than June 8, 1991. However, member states have until July 1, 1992, to amend regulations relating to classification on the basis of environmental effects and the safety advice associated with such classification.

Possible Effects

U.S. exports

In 1990, the value of U.S. exports to the EC of adhesives was approximately $45 million; the value of paints, inks, and related items was more than $95 million, and the value of solvents was more than $175,000. This is a very diverse product group, so U.S. exporters will need to monitor the implementation of this directive in the member states and comply with its requirements in order to maintain market share.

[287] Directive 88/379, *OJ* No. L 187 (July 16, 1988), p. 14.

[288] Directive 91/325, *OJ* No. L 180 (July 8, 1991), pp. 1–78.

[289] Directive 73/173, *OJ* No. L 189 (July 11, 1973), p. 7.

[290] Directive 77/728, *OJ* No. L 303 (Nov. 28, 1977), p. 23.

Diversion

Diversion of trade to the U.S. market is more likely for those third-country suppliers that have not effectively monitored implementation of this directive. However, the U.S. producers' shares of the U.S. market are so large that any diversion is unlikely to have a marked effect in the foreseeable future.

Business operating conditions

The EC market for adhesives; paints, inks, and related items; and solvents was estimated at more than $40 billion in 1990. Owing to the large number of U.S. multinational companies, U.S. investors are unlikely to change their investment plans or EC-based production strategies as a result of implementation of this directive.

Packaging of Dangerous Substances

Background and Anticipated Changes

On July 22, 1991, the EC Commission issued Directive 91/410[291] in order to comply with article 15 (2) of Directive 67/548 relating to containers containing certain dangerous substances intended for household use and article 6 (2) of Council Directive 88/379 relating to containers containing certain categories of dangerous preparations offered to the general public. Child-proof fastenings used on recloseable packages must comply with ISO standard 8317 (July 1, 1989). Compliance must be certified by laboratories that conform with the European Standards Series EN 45000. If packaging is obviously safe for children because they cannot access the contents without the use of a tool, the test need not be performed. In all other cases and when the competent authorities have sufficient grounds to doubt the closure's security, the national authority may request a certificate from a testing laboratory that the type of closure is such that (1) it is unnecessary to test or (2) the closure conforms under test to ISO Standard 8317. The technical specification for containers requires a raised equilateral triangle, the European symbol for danger, that conforms with EN standard 272 (August 20, 1989). Member states must adopt the provisions necessary to comply with this directive no later than August 1, 1992.

Possible Effects

U.S. exports

The value of U.S. exports of stoppers, lids, caps, and other closures, of plastics, to the EC increased from $2.9 million in 1986 to almost $12 million in 1990. This compares with the value of U.S. exports to the EC of stoppers, caps, and lids, of base metal, which increased from $5.6 million in 1986 to almost $12 million in 1990. Owing to the lead time for implementation, the U.S. plastics container industry is expected to at least maintain its share of the growing EC market for these mandatory products. Only dangerous substances are subject to the packaging requirements of Directive 91/410; medicinal products, narcotics, and radioactive substances are specifically exempted.[292] Mixtures of two or more dangerous substances are regulated under Directive 88/379.

Diversion

Germany, France, and Italy are the leading EC competitors for U.S. firms. These countries supplied intra-EC trade in plastics containers valued at $57.5 million, $28.1 million, and $28.0 million, respectively, in 1989. Switzerland is the leading third-country competitor and supplied the EC with products subject to Directive 91/410 valued at $26.3 million in 1989. Owing to the leadtime for implementation and the growing EC market for these mandatory products, industry members believe that diversion of uncertified containers to the U.S. plastics container market is unlikely.

Business operating conditions

The level of U.S. investment in the EC plastics-packaging industry is estimated to have risen from almost $22 million in 1989 to more than $29 million in 1990. Many investors are medium-size companies that are suppliers or customers of General Electric Co.'s Plastics Division in the United States, which is a major investor in the EC.

U.S. investors in the EC plastics-packaging industry are unlikely to change their investment plans or EC-based production strategies as a result of this directive. However, future developments in the conformity assessment area could cause them to rethink the situation. Currently, conformity of the plastics containers with ISO standard 8317 is usually established by the EC affiliate who selects a certified laboratory. Each of the EC member states has laws that establish criteria for testing laboratories. Owing to these laws, U.S. affiliates in the EC tend to rely on local test facilities, and U.S. investment in EC testing laboratories is believed to be negligible.

U.S. exporters of plastic containers and their EC-based affiliates desire mutual recognition of certified testing laboratories in Europe and the United States. In establishing a mutual recognition agreement with the EC, the NIST will need to work with the current evaluation programs of the Consumer Products Safety Commission, the EPA, and the National Institutes of Health. U.S. investors are likely to change their investment plans and EC-based service strategies as a result of future mutual recognition agreements between the United States and the EC for testing laboratories.

[291] Directive 91/410, *OJ* No. L 228 (Aug. 8, 1991), pp. 67–68.

[292] Paragraph 2(a) of art. 1 of Directive 67/548.

Cosmetic Products

Background and Anticipated Changes

EC Council Directive 76/768 harmonized the treatment of cosmetic products within the European Community with respect to labeling requirements, health and safety issues, and registration procedures. Since its publication, this directive has been amended to improve labeling regulations and to specifically permit or prohibit coloring agents, substances, and preservatives for public health and safety reasons.

EC Commission Directive 91/184[293] modifies EC Council Directive 76/768. It further refines regulations to allow for easier and clearer product definition. On the basis of available information, certain coloring agents, substances, and preservatives that were previously permitted provisionally are now definitively permitted, prohibited, or specifically regulated. The use of lidocaine and of thiomersal is specifically prohibited, but magnesium fluoride is specifically permitted, subject to a total F concentration not to exceed 0.15 percent and with the inclusion on labels of health warnings that the product contains magnesium fluoride. Further, this directive allows 7-ethyl bicyclo-oxazolidine to be used as a preservative up to December 31, 1992, and a specific sulfonic acid[294] and its salts to be used as an ultraviolet filter in cosmetic products subject to pH.

An EC opinion on the proposal to amend Directive 76/768 relating to cosmetic products[295] separately calls for a major reform of the base cosmetics directive. However, the outcome is an EC Commission proposal to amend EC Council Directive 76/768 in addition to the modifications of 91/184. The proposed amendment changes the original provisions in the consistency and precision of definitions of cosmetics and the safety of cosmetics; requires an inventory of ingredients in common nomenclature; and suggests improvements to pictograms and information used in labeling.

Possible Effects

Total U.S. exports of potentially affected cosmetics products, primarily toiletries, were $180 million in 1987. Proctor and Gamble, Colgate Palmolive, and Lever Brothers are the leading U.S. exporters, none of which is a small company. There are no data available as to the actual level of U.S. investment in Europe involving cosmetics, but it is believed to be minimal.

U.S. firms are not expected to have difficulty complying with the directive. However, the implementation of EC Council Directive 76/768 in Greece has been questioned by the U.S. Cosmetic, Toiletry and Fragrance Association as possibly discriminatory. The treatment of EC and of non-EC produced cosmetics differ slightly: EC producers need to register new products within 5 days of introduction, while non-EC producers must register new materials prior to sale. The implementation legislation is being challenged by the U.S. Cosmetic, Toiletry and Fragrance Association as of November 1991, and the U.S. Government raised these concerns officially with the EC in the context of the GATT Standards Code.

[293] *OJ* No. L 91 (Apr. 12, 1991), pp. 59–60.

[294] 3,3'–(1,4–phenylene dimethylidyne) bis (7,7–dimethyl–2–oxo–bicyclo–(2,2,1)heptane–1–methane sulphonic acid)

[295] *OJ* No. C 269 (Oct. 14, 1991), pp. 15–19.

Pharmaceuticals

Overview

Developments in the pharmaceuticals sector during the creation of the single market and the impact of these developments on the U.S. pharmaceutical industry were analyzed in the first two USITC followup reports.[296] Topics covered include the creation of a single-market authorization procedure for pharmaceutical products in the EC; the transparency directive and its effect on existing national pricing/reimbursement systems; patent term restoration; and new guidelines on the granting of duty suspensions on certain EC imports. The third followup report addressed the advertising of pharmaceuticals and modifications in the EC approach regarding the single-market authorization procedure and the concerns and recommendations of the Pharmaceutical Manufacturers Association (PMA) regarding these modifications.[297]

Update

No significant progress was achieved in developing the single-market authorization procedure and the advertising directive since the last followup report was released. PMA reports that the creation of the single-market authorization procedure has apparently run into political difficulties at the Council of Ministers level where a common position must be reached prior to implementation.[298] Any delays in resolving these differences could defer the effective date of implementation of the procedure until the mid- to late-1990s.

Two additional issues that emerged during 1990-91 could be of potential interest to the industry. These concern good manufacturing practices for human use of medicinal products and the free circulation of homeopathic products for human and veterinary use.

Good Manufacturing Practice for Medicinal Products for Human Use (GMP)

Background and Anticipated Changes

In June 1991, the EC Commission proposed Directive 91/356, which establishes the principles and

[296] USITC, *EC Integration: First Follow-Up,* USITC publication 2268, Mar. 1990, pp. 6–70 to 6–84, and USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 22.

[297] USITC, *EC Integration: Third Followup,* USITC publication 2368, Mar. 1991, pp. 4–32 to 4–38.

[298] According to staff telephone conversations with a representative of PMA during Jan.–Feb. 1992.

guidelines of good manufacturing practice for those medicinals for human use whose manufacture requires prior authorization.[299] Good manufacturing practice, as defined in the directive, is that "part of quality assurance which ensures that products are consistently produced and controlled to the quality standards appropriate to their intended use."[300] Detailed guidelines to good manufacturing practices are published in the European Commission's *Guide to Good Manufacturing Practices for Medicinal Products* and its annexes.[301]

U.S. Industry Response

Pursuant to ongoing review by its relevant committees, PMA indicates that the U.S. pharmaceutical industry generally supports this directive.[302] The principles and guidelines enumerated in this directive are said to be based on practices currently in use in both the United Kingdom and the United States, and thus will codify into law their existing practice. PMA has, however, expressed concern about certain proposed provisions regarding products intended for use in clinical studies.[303] Under these provisions, which appeared in earlier drafts of the "Annex for the Manufacture of Medicinal Products for Clinical Trials," member states could explicitly require that clinical products comply with GMP, necessitating examination and testing of starting materials, packaging materials, and finished products.[304] According to industry sources, "special rules" for clinical products do not exist in the United States; U.S. manufacturers generally comply with GMP in preparation for product approval. Companies, regardless of their nationality, could find the proposed testing requirements difficult to meet since very small amounts of the product are typically made for clinical trials, given the generally small sample population; and batches may vary between trials. These issues, however, are believed to have been resolved in the fourth draft of the annex (November 1991) to the *Guide for Good Manufacturing Practices for Medicinal Products.*

[299] *Commission Directive of 13 June 1991 Laying Down the Principles and Guidelines of Good Manufacturing Practice for Medicinal Products for Human Use,* (91/356/EEC), *OJ* No. L 193 (July 17, 1991), pp. 30–33.

[300] Ibid.

[301] Office for Official Publications of the European Communities, *The Rules Governing Medicinal Products in the European Community*, vol. 4, Jan. 1989.

[302] PMA representative, telephone interviews by USITC staff, Jan.-Feb. 1992.

[303] The results of clinical studies are generally included in a company's application(s) to obtain marketing approval for a product in the United States and overseas.

[304] *Working Party on "Control of Medicines and Inspections": Guide to GMP*, (III/3004/91–EN), draft No. 4, Nov. 1991; *Commission Directive on Good Manufacturing Practice*, (91/356/EEC), p. 32.

Homeopathic Human and Veterinary Medicinal Products

Two directives originally proposed in 1990 (COM (90) 0072-SYN 251 and 252) would harmonize EC legislation concerning the free circulation of homeopathic remedies for human and veterinary use "without interfering in an individual member state's decision to accept or reject homeopathy."[305] They would also extend the scope of legislation previously introduced regarding the approximation of laws on medicinal products to include homeopathic products. The directives underwent several modifications in 1991, [306] of which the most essential, according to industry sources, is the inclusion of antroposophical medicines.[307] Although many U.S. firms do not produce homeopathic medicines, the legislation is of interest to U.S. firms operating in several of the member states in which such medicines are marketed, including France and Germany.

Motor Vehicles

Overview

Under the EC 1992 program, the EC is harmonizing member states' laws on motor vehicle standards and implementing a single-type approval procedure, referred to as "whole-type" approval. A wide range of technical standards for motor vehicles, motor vehicle parts, and emissions has been passed in this effort.[308] In general, U.S. motor vehicle industry representatives have expressed their support for harmonizing member states' technical standards.

[305] *Opinion on the Proposal for a Council Directive Widening the Scope of Directive 81/851/EEC on the Approximation of the Laws of the Member States on Veterinary Medicinal Products and Laying Down Additional Provisions on Homeopathic Veterinary Medicinal Products,* (90/C 332/08), *OJ* No. C 332 (Dec. 31, 1990), p. 32. Homeopathy is defined as a system of therapeutics based on the administration of minute doses of drugs that are capable of producing in healthy persons symptoms like those of the disease treated.

[306] *Amendment to the Proposal for a Council Directive Widening the Scope of Directives 65/65/EEC and 75/319/EEC on the Approximation of the Laws of the Member States on Medicinal Products and Laying Down Additional Provisions on Homeopathic Medicinal Products,* (91/C 244/09), *OJ* No. C 244 (Sept. 19, 1991), pp. 8-11 and *Amendment to the Proposal for a Council Directive Widening the Scope of Directive 81/851/EEC on the Approximation of the Laws of the Member States on Veterinary Medicinals Products and Laying Down Additional Provisions on Homeopathic Veterinary Medicinal Products,* (91/C 244/10), *OJ* No. C 244 (Sept. 19, 1991), pp. 11-13.

[307] *OJ* No. C 332 (Dec. 31, 1990), p. 32. For the purposes of these directives, anthroposophical medicines are deemed to be equivalent to homeopathic medicinals products.

[308] For further discussion, see USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 20–7 and 20–10 through 20–11.

Update

Recently, there have been a number of developments related to technical standards in the EC motor vehicle industry. Most significant are EC proposals and amendments affecting motor vehicle emissions standards. The primary aspects that concern U.S. industry are the test methods and certification process. These concerns generally appear to be relatively minor, but nevertheless represent U.S. industry's opposition to the increased administrative cost burden that may result. In addition, representatives of the U.S. motorcycle industry have expressed opposition to the EC efforts to harmonize noise emissions from motorcycle exhaust systems, claiming that those efforts would threaten the ability of U.S. producers to serve the EC market.

There are several other EC proposals and amendments affecting motor vehicles that, although not opposed by U.S. industry officials, might have relevance to U.S. industry. The EC has adopted directives affecting the weight, dimension, and certain design features of heavy trucks. U.S. heavy truck producers do not oppose EC harmonization of heavy truck standards, but these producers stress that future developments should be monitored for changes that pose technical difficulties for U.S. firms.

The EC also proposed two separate directives affecting the sound level of vehicle exhaust systems and electromagnetic radiation emissions from vehicles. In the future, stricter sound level standards other than those related to the exhaust system could pose technical problems for tire manufacturers, since tires produce most of the noise emitted from a moving vehicle. With respect to electromagnetic emissions from motor vehicles, there is reason to believe that the EC might adopt standards that could pose engineering difficulties and could adversely affect U.S. manufacturers' performance in EC markets.

Emissions by Gas-Powered Vehicles

Background and Anticipated Changes

On June 26, 1991, the EC Council approved Directive 91/441 in order to consolidate all previous emissions-related legislation for gasoline-powered vehicles.[309] This so-called "consolidated directive" makes it compulsory to align limit values for the emissions of motor vehicles with an engine capacity equal to or more than 1.4 liters to those European standards previously established for cars with an engine capacity of 1.4 liters or less. Directive 91/441 adheres to the compliance deadlines previously established for smaller cars and requires the use of an improved European test procedure to reflect European urban and nonurban driving habits.

Annex 3-A of Directive 88/76 permitted U.S. manufacturers to use EPA-administered test results for European certification as a substitute for the European test cycle. Beginning in 1993, however, under the consolidated directive, this option will be discontinued for all automakers, with the exception of vehicle manufacturers whose annual production does not exceed 10,000 units.[310] Advocates argued that European driving patterns (e.g., speed and commuting distances) made it necessary to apply a uniquely European-designed test cycle.

Possible Effects

The limit values as defined by the consolidated directive resemble those of U.S. standards, and therefore, do not pose compliance problems for U.S. vehicle manufacturers. Similarly, EC emissions requirements involve a nominally identical technology to that of U.S. emissions technology, or more specifically, the feedback-controlled three-way catalyst. However, the requirement to use the European test procedure in 1993 will create an additional cost burden for U.S. vehicle producers. This requirement should pose less of a challenge to the European divisions of General Motors and Ford than to U.S. stateside manufacturers. U.S. exports of vehicles to Europe may temporarily slow at the outset, as a result of increased administrative costs associated with European testing and certification procedures.

U.S. Industry Response

U.S. industry representatives do not anticipate any long-term difficulties in complying with new EC-wide emissions requirements. However, they are concerned and feel inconvenienced by the exclusivity of European testing and certification procedures. One U.S. industry official noted that the lack of reciprocity between U.S. and European testing and certification requirements should not come as a surprise, since European testing procedures were never allowed to be used as a substitute for the U.S. EPA-administered testing cycle either.[311] While U.S. manufacturers hesitate to quantify the added cost burden, one U.S. industry official noted that the additional documentation associated with the European test procedure could amount to $440 per each specific vehicle model, not including other costs such as special testing facilities and witnessing officials. However, U.S. industry officials also stated that the administrative costs associated with European testing alone are not likely to impede the U.S. industry's competitiveness.

Emissions From Diesel-Powered Vehicles

Background and Anticipated Changes

Council Directive 91/542 amends Directive 88/77, which relates to emission of gaseous pollutants from

[309] For further background, see USITC, *EC Integration: First Follow-Up,* USITC publication 2268, Mar. 1990, pp. 6–87 to 6–89; USITC, *EC Integration: Second Followup,* USITC publication 2318, Sept. 1990, pp. 4–64 to 4–65; USITC, *EC Integration: Third Followup,* USITC publication 2368, Mar. 1991, pp. 4–39 to 4–41.

[310] Rolls Royce is the only vehicle exporter to the EC whose annual production does not exceed 10,000 units. U.S. EPA official, telephone interview with USITC staff, Jan. 2, 1992.

[311] U.S. industry official, telephone interview with USITC staff, Jan. 3, 1992.

diesel engines for use in vehicles.[312] The 1991 directive added the following stipulations to the previously analyzed proposal:[313] (1) modified the EC testing procedure for checking limit values of gaseous pollutants, the 13-mode test cycle, to account for dynamic processes, such as acceleration; (2) improved the procedure for testing engines during production for compliance with emission standards; and (3) required motor vehicles to undergo an annual, mandatory exhaust test.

U.S. Industry Response

In general, U.S. manufacturers believe that they will not have to make significant changes to comply with this amendment. U.S. exporters and U.S.-owned producers are pleased that this directive modifies the EC testing procedure to account for acceleration. U.S. diesel engine producers believe that the modification may indicate that the EC is moving away from the steady-state, 13-mode testing method and toward adopting a dynamic, or transient, test method, which is required by the EPA. U.S. firms would prefer that the EC Commission adopt the EPA transient test procedures rather than create a unique test procedure of its own. U.S. firms believe that the creation of a second transient test would increase U.S. producers' costs and decrease their efficiency. In addition, U.S. firms claim that a second transient test would make direct comparisons between U.S. and EC standards difficult and dampen hopes for the efficiencies that worldwide harmonization would bring.

U.S. firms remain concerned over the current EC regulations, which permit the acceptance of U.S. emission certificates only for a transitional period. U.S. producers would like the EC to continue accepting U.S.-certified diesel engines.

Type Approval of Two-wheeled Vehicles

Background and Anticipated Changes

The U.S. motorcycle industry may be adversely affected by proposal 91/C 110/03, a Council Directive on the type-approval of two- or three-wheeled motor vehicles.[314] The purpose of this directive is to ensure the safety of on-highway motorcycles, mopeds, and tricycles in the EC. The directive discusses the regulations and testing procedures necessary for obtaining EC type-approval for the above-mentioned products.

This directive was deemed necessary since disparities between national technical regulations for motorcycles forced manufacturers to provide numerous EC hopes to make European motorcycle production more efficient and to strengthen the industry's position, both in the EC and the world market.

Possible Effects

U.S. exports

U.S.-owned motorcycle producers serve the EC market through direct exports from the United States. If the directive creates a condition where U.S. motorcycle manufacturers cannot meet a specific requirement, either because of the stringency of the requirement or insufficient warning, U.S. producers would have to cease exporting to the EC. U.S. exports of motorcycles to the EC totaled $209.8 million in 1991. Harley-Davidson is the leading U.S. exporter of motorcycles to the EC. In addition, Buell Motor Company and A.T.K., two small-volume U.S.-owned manufacturers, export motorcycles from the United States to the EC.

Business operating conditions

At present, no U.S.-owned manufacturers have production facilities in the EC. However, if the standards are very stringent, U.S. manufacturers may open plant facilities outside of the United States, where they would manufacture newly designed motorcycles for the EC market. Certain motorcycle producers claim that they would not consider building such a plant in the United States because the financial burden would be too great.

Diversion

According to industry sources, the leading EC competitors are BMW of Germany, Triumph in England, and Cagiva in Italy. Third-country competitors include the four major Japanese motorcycle manufacturers—Honda, Yamaha, Kawasaki, and Suzuki. According to U.S. industry sources, if EC and third-country motorcycle producers find that they cannot meet the EC certification requirements, it is possible that motorcycle producers will divert their products to the United States.

U.S. Industry Response

Industry sources are concerned that the U.S. motorcycle industry may be adversely affected by this directive. One U.S. motorcycle manufacturer stated that the U.S. industry may not be able to meet certain requirements included in this directive that are considered to be quite stringent, far exceeding those applied to motorcycles produced and marketed in the United States.[315] For example, the U.S. motorcycle industry claims that manufacturers may have to redesign and retool their engines, which they claim would take years to accomplish and would significantly increase the costs of manufacturing, to meet the proposed requirements relating to noise reduction. One U.S. manufacturer noted that its present engine design is critical for its market appeal in the EC.[316]

[312] Council Directive of Oct. 1, 1991, *OJ* No. L 295 (Oct. 25, 1991), pp. 1–19.

[313] This analysis is presented in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–39 to 4–40.

[314] COM (90) 669 SYN 331, *OJ* No. C 110 (Apr. 25, 1991), pp. 3–30.

[315] Industry representative, telephone interview by USITC staff, Jan. 10, 1992.

[316] Ibid.

Another major concern of U.S. motorcycle manufacturers is that the directive does not stipulate the acceptable ranges and testing procedures necessary to conform to certain requirements of this directive. Manufacturers are also concerned that there is not sufficient time to perform the necessary development and design work by the scheduled implementation date of 1993.

Developments to Watch

Heavy Truck-Related Directives

EC efforts to harmonize various aspects of the heavy truck industry pose no problems for U.S. producers, but future developments should be monitored for proposals that would create technical difficulties for the U.S. industry. Directive 91/C 230/04[317] is a proposal for a Council Directive relating to the masses and dimensions of certain categories of motor vehicles and their trailers. Directive 91/60[318] amends, with a view to fixing certain maximum authorized dimensions for road trains, Directive 85/3/EEC, which provides acceptable dimensions for heavy trucks. Directive 91/C 230/04 prohibits overloading trucks beyond what is technically authorized by the manufacturers, sets length limits on the entire vehicle, sets minimum power requirements, and broadly defines certain suspension requirements. Since manufacturers do not recommend overloading their vehicles, and since most, if not all, U.S. and EC producers meet the other requirements of the directive, it poses no technical problems. Although Directive 91/60 makes minor alterations to the language of Directive 85/3, it poses no technical problems to U.S. firms. While U.S. producers are not concerned about the effect of directives that define acceptable masses, dimensions, and technical standards for trucks, they believe that any new directives, or changes to directives, should be evaluated for any effect on U.S. producers.[319]

Sound Level and Exhaust Systems for Motor Vehicles

The EC introduced 914/C 193/03, pertaining to vehicle noise emissions, which is a proposal for a Council Directive amending directive 70/157/EEC on the approximation of the laws of the member states relating to the permissible sound level and the exhaust system of motor vehicles. The EC Commission published a proposal to reduce vehicle noise for passenger cars from the current industry average of 77 decibels to 74 decibels by October 1995 for all new cars sold in the European Community. EC and U.S. industry representatives have been critical of this proposal. U.S. industry officials claim that the new EC requirements pertaining to the increased use of exhaust silencers (mufflers) should pose no difficulties to U.S. suppliers.[320] However, since most of the noise emitted from vehicles is caused by the friction between tires and road surfaces, compliance with future stricter sound level emissions could present a challenge to U.S. tire manufacturers, and especially to truck tire manufacturers. EC developments should be monitored.

Electromagnetic Radiation From Motor Vehicles

During 1991, the EC Commission worked to revise Directive 72/245[321] that relates to electromagnetic radiation from motor vehicles. The development of the revised proposal should be watched to determine whether the EC will carry out its intention to adopt international standards, when they exist, regarding peak measurements standards covering motor vehicle electromagnetic radiation. The U.S. government has expressed concern that the recently drafted auto emission standards are not feasible from an engineering perspective and might discriminate against U.S. manufacturers.[322] The finalized text of the updated proposal is not expected to be available until October 1992.

Other Machinery

Overview

Previous reports have focused largely on health and safety issues covered by the Machinery Safety Directive (89/392) and have discussed EC efforts to harmonize regulations and conformity-assessment procedures for machinery.[323] The most recent report[324] assessed the impact on U.S. suppliers of voluntary standards developed by CEN/CENELEC and the EC policy toward testing and certification. Furthermore, EC acceptance of U.S. test data was identified as a key industry objective and discussed therein.

Update

During the period under review, the EC Commission proposed Council Directive 4056/91 on the approximation of the laws of the member states

[317] *OJ* No. C 230 (Sept. 4, 1991) pp. 46–91.
[318] *OJ* No. L 37 (Sept. 2, 1991), pp. 37–38.
[319] U.S. industry officials, telephone interview with USITC staff, Dec. 1991.
[320] U.S. industry official, telephone interview with USITC staff, Jan. 1992.
[321] Council Directive of 20 June 1972 on the Approximation of Laws of the Member States Relating to the Suppression of Radio Interference Produced by Spark Ignition Engines Fitted to Motor Vehicles, *OJ* No. L 152 (July 6, 1972), p. 15.
[322] U.S. Department of Commerce, briefing book for U.S.–EC meeting, June 21, 1991.
[323] USITC, *Effects of EC Integration,* USITC publication 2204, July 1989; USITC, *EC Integration: First Follow-Up,* USITC publication 2268, Mar. 1990, pp. 6–89 to 6–97; USITC, *EC Integration: Second Followup,* USITC publication 2318, Sept. 1990, pp. 4–65 to 4–67; USITC, *EC Integration: Third Followup,* USITC publication 2368, Mar. 1991, pp. 4–41 to 4–43.
[324] USITC, *EC Integration: Third Followup,* USITC publication 2368, Mar. 1991, pp. 4–41 and 4–42.

relating to the free movement of used machinery and Council Directive 3561/90 on the approximation of the laws of the member states concerning pressure equipment and certain safety accessories. The used machinery directive applies to machinery transferred between users and establishes conditions for sale and rental to minimize workplace risks. Paperwork could become a burden under this directive, especially to certain industries that experience frequent rentals such as in the construction and public works sectors. The pressure equipment and safety accessories directive covers a number of health and safety issues. Because of its broad product scope, it appears to affect a wide range of industries that manufacture products such as heat exchangers, semiconductor gas cylinders, air and gas compressors, railroad and truck tank cars, pneumatic industrial valves, water tube boilers, and pipefittings.

Other directives discussed in this section include an update on the amendment (91/368) to the Machinery Safety Directive that covers health and safety requirements relating to mobile machinery and lifting and loading equipment. Also included are the directives on noise emissions relating to mowers and other garden equipment (88/180 and 88/181) and the directive requiring labeling and standard product information covering the consumption of energy and other resources of household appliances (91/C 235/04/EEC).

Machinery Safety Directive

Background and Anticipated Changes

Directive 91/368[325] amends the Machinery Safety Directive, which sets forth essential health and safety requirements that must be met in the production and marketing of machinery within the European Community.[326] The Machinery Safety Directive originally applied to machinery defined as a powered assembly with mechanically linked parts of which at least one is movable. Exceptions to this included mobile and lifting equipment. Amendments to this directive, specifically proposal 9071/90 of October 15, 1990, and proposal 10587/90 of December 12, 1990, introduced the inclusion of mobile and lifting equipment to the Machinery Safety Directive.

On June 20, 1991, the Council adopted Directive 91/368 covering mobile machinery and lifting and loading equipment. The objective of this directive is to implement the new approach to technical harmonization and standardization,[327] to approximate the laws of the member states on machinery, and to include rules on machinery that creates hazards as a result of its mobility and load-raising capacity. This directive recognizes that machinery entailing specific risks due either to its mobility or its ability to lift loads, or to both of these actions together, must satisfy both the general health and safety requirements set out in the Machinery Safety Directive and satisfy also health and safety requirements relating to those specific risks.

This directive is designed to cover all equipment, since certain equipment or machinery covered by other existing directives comes within the scope of this directive. Council directives to be repealed because of incorporation into the Machinery Safety Directive include 86/295 on roll-over protective structures, 86/296 on falling-object protective structures, and 86/663 on self-propelled industrial trucks. Implementation of Directive 91/368 is scheduled for December 31, 1992, with a 2-year transition period for immobile machinery, and a 4-year transition period for mobile machinery. During the transition period, manufacturers can choose to follow either the directive or national rules.

U.S. Industry Response

Industry sources report that this directive merely formalizes amendment proposals made in 1990, and it will not have any new major effects on U.S. industry. Any problems they had with the language adding mobile and lifting equipment to the Machinery Safety Directive were cleared up satisfactorily in this directive.

However, U.S. industry representatives are concerned that differing national technical regulations in areas not specifically covered in the Machinery Safety Directive essential requirements, such as regulations covering on-road use of equipment, will inhibit free circulation of this equipment in the EC. U.S. industry officials indicate that it would be counterproductive to the single market to maintain existing national technical regulations or to create new EC regulations which differ from the provisions of the Machinery Safety Directive for such uses of machinery. Moreover, for some industrial products, EC product safety legislation may not adequately address all relevant technical barriers to trade.

Used Machinery

Background and Anticipated Changes

This draft proposal for Directive 4056/91[328] establishes conditions for sale and rental of used machinery to minimize workplace risks.[329] A used machine is a machine, as defined by the Machinery Safety Directive, that has already been put into service

[325] *OJ* No L 198, 22 Feb. 1991, p. 16.

[326] The Machinery Safety Directive and proposed amendments to it are discussed in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–41 to 4–42.

[327] This approach is briefly described in figure 5–1.

[328] Draft proposal 4056/91, EC Commission, Brussels, Apr. 17, 1991.

[329] The Machinery Safety Directive requirements are applicable only to the first placing of the machinery on the Community market, whereas Directive 89/655 concerns the minimum worker safety and health requirements for the use of work equipment. Requirements apply only to machinery already in service in the EC before the date of entry into force of the Machinery Safety Directive.

and used in a member state before a change in user. The transferor (the owner of the machine before transfer to the user) shall be responsible for the machinery's compliance with the regulations in force in the country of the user. However, where a professional user is in agreement, the user may take the machine as is and be responsible for bringing it into line with local regulations.

A final EC Commission proposal is expected in spring 1992. Member states shall apply the provisions of the proposed directive, when approved, begining December 31, 1992, with a transition period extending until December 31, 1995.

Possible Effects

The possible effects of the proposed directive will vary from industry to industry. According to the EC Commission, the number of transactions in second-hand machinery varies according to industrial sector. In the construction and public works sector, the number of transactions in second-hand machinery is higher than the number of transactions in new machinery. This directive has the potential to cause onerous amounts of paperwork literally every time a piece of machinery changes hands. This paperwork would be very burdensome for a dealer who rents equipment on a rapid turnover basis.

While it is unclear at this time what standard a piece of used machinery must meet, U.S. industry officials believe that the intent is for the machinery to meet the state-of-the-art standards at the time of manufacture, not the state-of-the-art standards at the time of resale/rental. This would be supported by U.S. industry as a means to stem product liability complaints. The impact would be felt, however, by the retailer or person who is selling/leasing the used machinery, as it would be their responsibility to evaluate the machinery. In addition to the paperwork burden, there is some concern that the requirement in the Machinery Safety Directive (89/392) of inspection by a notified body may, in certain cases, be carried over to the proposed directive on used machinery. This would have a negative effect on U.S. manufacturers' dealers and distributors in the EC.

U.S. Industry Response

U.S. industry representatives have indicated that this is an important directive for them to watch. It is essential that there be a directive that covers used machinery, and U.S. industry officials have indicated that they would support a directive that would aim to maintain a level of safety for used machinery equal to that when the machinery was originally built. U.S. industry representatives would not support a used machinery directive, however, that involved "retrofit," or upgrading of used equipment to meet current safety standards. This would not be economically viable, according to U.S. industry officials, and would be also basically unenforceable.[330]

[330] U.S. industry representatives, interview by USITC staff, Jan. 1992.

Pressure Equipment and Safety Accessories

Background and Anticipated Changes

This draft proposed Directive (3561/90) applies to pressure equipment for fluids (gases, liquids, liquefied gases, and steam) subject to an atmospheric positive pressure greater than 0.5 bar or a negative pressure of -0.3 bar and to safety accessories relating to this equipment. Such safety accessories include protective, regulating, and monitoring devices, as well as valves and similar devices, insofar as they have a safety-related function within the pressure envelope. Although this directive's general nature makes it difficult to tell, it appears that this directive is largely similar to existing European codes and the ASME pressure vessel code.

This standards directive covers such issues as health and safety considerations in placing a product on the market and putting it into service. Essential requirements specify that pressure equipment shall be designed; manufactured; inspected; tested; and, if applicable, equipped and installed in such a way that it shall withstand all foreseeable operational considerations. Guidelines for periodic inspection and correct maintenance are provided. Directions are furnished by this proposed draft directive for product conformity assessment so that the CE mark may be affixed.

Possible Effects

One possible effect of this directive is that if it is linked to the international quality assurance standard, ISO 9000,[331] it would force U.S. manufacturers to deal with the matter of quality in non-nuclear facilities in a uniform manner.

Shell and tube heat exchangers are part of the broader pressure equipment industry. According to an industry estimate, U.S. exports of shell and tube heat exchangers to the EC amounted to less than $10 million in 1991. One large U.S. firm is believed to be the major supplier. Most current demand for shell and tube heat exchangers is in Pacific Rim countries. Italian manufacturers, who are aggressively exporting to the United States, are the major competitors in the EC. The U.S. heat exchanger industry serves the EC market through exports, licensing agreements, and subcontractors and not through local investment.

U.S. Industry Response

As a draft proposal, this directive has raised a number of questions among various industry groups concerning its meaning. In some cases, due to lack of specificity, it is difficult for them to provide an analysis of trade and investment effects. Two industry groups, the Valve Manufacturers Association and a producer of shell and tube heat exchangers (Yuba Heat Transfer) provided the following reactions to this directive.[332]

[331] ISO 9000 is an international quality assurance standard for both manufacturers and service providers. The comparable U.S. standards are the ANSI/ASQC 90 series as promulgated by the American Society for Quality Control.

[332] Other industry groups have been contacted for information. Any submissions received will be added to this write-up.

Industrial Valves

According to the Valve Manufacturers Association, this proposed directive will likely have little or no direct impact on U.S. producers of industrial valves. There are few specific applications contained in this proposed directive that directly affect U.S. producers. The major industrial valve producers in the United States serve the EC primarily from facilities throughout Europe. However, the majority of U.S. industrial valve producers that export to the EC are small- to medium-sized firms that depend on niche markets.

Shell and tube heat exchangers

Yuba Heat Transfer indicates that the implementation of the pressure vessel directive could be beneficial to the U.S. industry except in the case where U.S. fabricators may become overly dependent upon foreign material suppliers. Yuba indicates that even this drawback could be overcome if the EC would accept U.S. materials specifications (ASME, Section II) as complying with the draft proposal.

The directive is similar in nature to existing European codes and the U.S. ASME Pressure Vessel Code, which is widely accepted in the EC member states and other foreign countries. In addition, fabricators in the United States that comply with U.S. ASME codes pertaining to design, fabrication, and material specifications work with a greater factor of safety (lower allowed stresses) and specifications for domestic materials. Furthermore, if the draft proposal is linked to ISO 9000, the issue of quality could be dealt with in a uniform manner. Currently, for non-nuclear applications, quality details in the United States are left to the fabricator and its third-party inspection agency.

Developments to Watch

Lawn and Garden Equipment

The European Standard for Lawnmowing Equipment is expected to be put to national balloting in February 1992. It was originally expected that this CEN standard would have gone to national balloting as early as November 1991. The basis for the standard is ISO standard 5395 and the EC directive on machine safety.

In mid-1991, CEN began to draft its own standards for edge-trimmers, shredders, grinders, tillers, and lawn trimmers and edgers without reference to newly initiated ISO work, because the ISO process was thought to be too slow to produce standards in time for inclusion in EC 1992.[333] However, in September 1991, CEN decided to work through the ISO process. In response, the U.S. industry has begun to expedite ISO work. The U.S. industry hopes to complete ISO standards on edger trimmers, shredder grinders, and tillers in 1992.[334]

The EC directive amendments on noise emissions from lawnmowers, 88/180 and 88/181, were due to be implemented in national legislation in July 1991. This has occurred in most member states. U.S. producers have been manufacturing in accordance to these directives for several years.[335]

Household Appliances

Another proposed directive (91/C 235/04) establishes a requirement for labeling and publishing product information on certain household appliances. The labels would indicate the energy consumption of the appliances even in those instances when the appliances are sold for nonhousehold purposes. It is likely that standard test procedures will be required to measure the energy efficiency of the appliances. The developments of these standards should be watched to determine whether they are created in harmony with international standards.

Construction Products

Overview

Council Directive 89/106, issued on December 21, 1988, applies to construction products, which are defined as any products intended for incorporation in a permanent manner in construction works, including both building and civil engineering works. The directive requires that all construction products be fit for their intended use and meet certain general safety criteria. Products affected by the directive include timber, concrete, masonry, and steel; as well as installations and equipment and parts thereof for heating, ventilation, air conditioning, or sanitary purposes; electrical supply; storage of substances harmful to the environment; and prefabricated construction works. The objective of the directive is to harmonize national legislation with respect to the health and safety requirements applicable to construction products, set the essential requirements which will eventually form the basis for the preparation of standards harmonized at the Community level, and enable the Commission to adopt guidelines in line with the new approach to harmonization before the current standardization process is complete.[336] These guidelines will be drafted by a standing committee of the EC Commission and will take the form of

[333] Outdoor Power Equipment Institute, Inc., letter to Office of European Community Affairs, June 19, 1991.

[334] USITC staff telephone conversation with an official of the Outdoor Power Equipment Institute, Inc., Feb. 7, 1992.

[335] These earlier directives are analyzed in USITC, *Effects of EC Integration,* USITC publication 2204, July 1989, p. 6–24.

[336] For further background, see USITC, *EC Integration: First Follow-Up,* USITC publication 2268, Mar. 1990, pp. 6–99 to 6–104 and USITC, *EC Integration: Third Followup,* USITC publication 2368, Mar. 1991, pp. 4–45 to 4–46.

"Interpretative Documents" that will explain how to transfer requirements in the directive into national building regulations and product standards.

A matter of concern currently under discussion within the EC Commission is how to deal with certain products that fall within both the Construction Products Directive and the Machine Safety Directive. Another possible problem is that conformity with essential requirements and the application of the CE mark is based on intended use. Beacuse many products for the construction industry have many uses, they do not have one defined or intended use. Also of concern, due to the scope of the directive, is the enormous number of products that will require mandatory third-party testing.

Update

Interpretative Documents of the Construction Products Directive

The Construction Products Directive (89/106) was implemented on June 27, 1991, with an indefinite transition period. Six interpretative documents were originally expected to be approved by the end of 1990, but they were not submitted to the standing committee for approval until June 1991. The essential requirements in these documents are as follows: (1) Safety in Case of Fire; (2) Mechanical Resistance and Stability; (3) Hygiene, Health and the Environment, including a list of substances legally banned or restricted; (4) Safety in Use; (5) Protection Against Noise; and (6) Energy Economy and Heat Retention. The purpose of these documents is twofold: to explain how the essential requirements can be met, and to guide the CEN and CENELEC committees involved in developing product-specific standards.[337]

EC and CEN officials predict that delays in finalizing the interpretative documents will be resolved by mid-1992. Even though there are no interpretative documents finalized and no final mandates, CEN is working on standards related to the Construction Products Directive on the basis of preliminary mandates. CEN is reportedly reluctant to go much further until it has a better idea of what the interpretative documents will say. Since consensus on interpretative documents has been so difficult to achieve, it is predicted that the same problem would carry over into the CEN standards work.

Concern has also been voiced over conformance to the Construction Products Directive provision relating to factory quality assurance procedures and the ability to have U.S. institutions register or certify conformance to ISO 9000 standards. There are several U.S. organizations currently evaluating quality assurance programs for conformance with ISO 9000 requirements. Some of these are subsidiaries of European testing and certification bodies; others are U.S. organizations, some of whom are developing MRAs with European organizations that are presently accredited to conduct ISO 9000 evaluations.

Due to the complexity and scope of the standards work to be undertaken by CEN on the Construction Products Directive, the directive provides for an interim method for getting products to the market, called "European Technical Approvals" (ETAs). The statutes establishing the European Organization for Technical Approvals (EOTA) were signed on December 12, 1991, and the first ETAs are to be issued in mid-1993.[338]

Eurocode Program

With the Eurocode program that began in 1977, the EC Commission intended to establish a set of harmonized technical rules for the design of building and civil engineering works which, in a first stage, would serve as an alternative to the differing building codes in force in the various member states. Ultimately, the Eurocodes were intended to replace those national rules. CEN is currently developing Eurocodes; interim codes are expected within 3 or 4 years, and permanent codes (which will not be compulsory) within 10 years. The codes will set up a comparative class system, whereby risk classes are created. Different regions can use the relevant classes or risk, taking into account their geographic and climatic conditions and traditional practice. The adoption of these standards by CEN will not automatically lead to the withdrawal of the national rules existing in the fields concerned. The time limits for coexistence of the Eurocode standards, or parts of them, with corresponding national standards will be determined in each case in common agreement among the EC Commission, member states, and CEN.

U.S. Industry Response

The U.S. heating, ventilation, and air-conditiong (HVAC) industry has been seeking to influence the standards to be developed by CEN to meet the essential requirements of the Construction Products Directive through participation in the standards-setting program. However, the industry is concerned that the EC is promoting the development and adoption of European regional standards in the ISO at the expense of participating in the development of international standards. Representatives from the Air-Conditioning and Refrigeration Institute report that by emphasizing the importance of European regional standards, the EC is forcing the European national standards bodies to withdraw from participating in international standards development activities, because the national bodies allege that there are not sufficient resources available to develop both European standards and international standards. U.S. industry repre- sentatives believe this will create trade barriers for manufacturers in third countries desiring to market their products in the EC.

[337] Air–Conditioning and Refrigeration Institute, *"EC–1992" and "The Single Market" in Europe: The Construction Products Directive,* 1991, p. 4.

[338] European Construction Research, *Euro-Build,* No. 31 (Feb. 4, 1992).

The U.S. softwood lumber industry is also concerned about the impact of international standards on the harmonized standards developed during the unification of the European market, and thus recognizes the importance of being represented on the ISO lumber committee. Failure to participate in this committee could result in a European market which requires products that the U.S. softwood lumber industry does not normally produce. In addition, the industry may also be required to conform to new European standards or codes which exceed the most stringent U.S. codes or standards. Both of these scenarios could result in U.S. products that will not be price competitive in the European market.

Medical Equipment

Overview

The previous reports discussed proposed directives on active (electronic) implantable medical devices (AIMD), active nonimplantable devices, nonactive sterile devices, and in vitro diagnostic (IVD) devices.[339] They also discussed EC efforts to harmonize regulations and conformity-assessment procedures for such medical devices. This report updates the status of these initiatives.

U.S. industry has generally responded favorably to the EC program to harmonize medical device regulation and permit Communitywide marketing once a single standardized conformity assessment procedure is completed. The changes should permit U.S. firms to reduce costs associated with efforts to comply with different EC-member-country requirements, to benefit from economies of scale, and to increase productivity. However, U.S. industry officials have been closely watching the EC's proposed policies on conformity assessment. The U.S. industry has strongly advocated a flexible, market-based approach to acceptance of test results and urged the EC to provide opportunities for the acceptance of U.S.-generated test results.

Update

Medical Device Directive

Background and Anticipated Changes

A proposal for a directive on medical devices[340] (MDD) was published by the EC Commission on September 9, 1991. This directive combined the planned directives on active nonimplantable and nonactive sterile devices into one. The proposal is not expected to be approved by the EC Parliament and adopted by the EC Council until mid-to-late 1992. The proposed directive is expected to go into effect on July 1, 1994, with a 3-year transition period lasting until June 30, 1997.[341]

The MDD directive is very similar to the AIMD directive approved by the EC Council on June 20, 1990.[342] The major difference is that whereas the AIMD directive applies to pacemakers and other implantable electronic devices that represent the greatest potential threat to human health and safety, the MDD directive applies to a large range of medical devices representing varying degrees of risks to patients. Thus, the MDD directive generally provides to suppliers greater flexibility in demonstrating conformity to required standards.

Possible Effects

The MDD directive is the most comprehensive of the directives related to medical equipment, applying to medical instruments and apparatus that make up about 85 percent of the total value of U.S. producers' shipments of medical devices to the EC. During 1987-1991, U.S. exports of medical devices covered by the directive more than doubled to almost $5.3 billion. Exports of such equipment to the EC represented over one-third of this total, and Germany, France, the Netherlands, the United Kingdom, and Italy accounted for about 80 percent of total exports to the EC. The United States maintained a surplus in the trade of medical devices with all EC countries except Germany during the period.

U.S.-based firms that produce products covered by the MDD directive also traditionally have held substantial investment positions in the EC market. Direct U.S. investment in the EC medical device market amounted to about $1.3 billion in 1991. Products manufactured by EC subsidiaries and joint-venture partners of major U.S. medical device manufacturers accounted for an estimated 35 percent of EC consumption of medical equipment in 1991. EC imports from the major U.S. companies accounted for another 15 percent of the EC market.

Many of the U.S.-based firms with investment in the EC have significant representation on EC industry bodies that have been involved in the drafting of the proposed directives on medical devices. However, smaller U.S. exporters have had less influence on the drafting of the medical device directives and potentially could have the most difficulty adjusting to the proposed MDD directive. Although Japanese manufacturers are also important suppliers of medical devices to the EC, most industry observers doubt that adverse consequences of the MDD directive on Japanese exports would lead to significant diversion of such exports to the U.S. market.

[339] USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 6–7 and 6–17; USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 6–71, 6–72, and 6–81 to 6–84; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4–62 to pp. 4–64; and *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4–38 and 4–39.

[340] *Proposal for a Council Directive Concerning Medical Devices*, COM (91) 287, *OJ* No. C 237 (Sept. 12, 1991), p. 3.

[341] U.S. Department of Commerce, "Medical Devices," Oct. 1, 1991.

[342] Directive 90/385, *OJ* No. L 189 (July 20, 1990).

U.S. Industry Response

In general, the U.S. industry is very satisfied with the proposed MDD directive since it addresses positively many issues and concerns raised by the industry during the drafting process.[343] Nevertheless, the industry would like the EC to address several outstanding concerns about product classification, postmarketing surveillance, clinical investigation, and approvals for product modification before final adoption of the directive. Many of the concerns of the U.S. industry are the same or similar to those voiced by EC companies.

U.S. industry representatives were pleased with product classification rules of the MDD directive, under which a large percentage of medical devices are expected to fall into the least restrictive class for purposes of receiving device approval.[344] However, they urged the EC Commission to resist any efforts to change the rules in order to push products into more restrictive classifications as the proposed directive is debated in the EC Parliament and EC Council. Overly cautious classification rules could lead to significantly higher costs resulting from longer approval cycles and more expensive product-testing requirements.

U.S. industry officials are concerned that post-marketing surveillance provisions in the MDD directive may be very burdensome. These provisions require manufacturers to carefully monitor and report problems related to the safety of medical devices after they are placed on the market.[345] Although the officials agree that certain high-risk products, such as certain implantable electromedical and sterile devices, should be required to have an active followup, they oppose proposed guidelines that would require an active followup of a patient population for all, or most, medical devices, including many of the devices covered by the MDD directive. Such followup they believe would be extremely time-consuming and expensive and should be required only where necessary. The U.S. industry would like necessary products and situations to be clarified and limited to those that present genuine safety concerns.

U.S. industry officials also are concerned that competent authorities might be excessively involved in approving investigatory trials required for some classes of medical devices.[346] The officials would prefer that the EC instead rely on ethics committees, made up of industry and medical experts on particular devices, to evaluate whether an investigation should take place. They believe that the role of competent authorities should be to ensure that ethics committees are properly constituted and to monitor their activities, but to defer to their expertise. This would result in a more flexible, more expert, and less bureaucratic process, industry sources claim.

Finally, representatives of the U.S. medical device industry would like more clarification of a provision in the MDD directive specifying when a producer is required to inform notified bodies of "significant changes" that the producer makes to a quality system, product, or product design.[347] Such clarification would help companies better assess the costs of such changes or notifications.

Active Implantable Medical Devices

The previously adopted AIMD directive is scheduled to go into effect on January 1, 1993, by which date member states are supposed to pass necessary implementing legislation. There is a 2-year transitional period ending December 31, 1994, in which manufacturers can continue to meet existing national requirements to put their devices on the market or declare conformity to essential requirements directly after obtaining third-party approval from a notified body. CEN/CENELEC are currently working on supporting standards and no bodies have as yet been notified.

Conformity Assessment

With regard to meeting the requirements of the MDD and AIMD directives, U.S. industry has been particularly vocal about the importance of EC acceptance of U.S.-generated testing and quality assurance reports. The simplest and most immediately viable option for pursuing this is permitting EC-based notified bodies to subcontract certain elements of their work to U.S.-based facilities. U.S. trade associations representing the U.S. medical device industry are satisfied with the revised draft EC Commission paper on subcontracting[348] and believe that its provisions will help ensure that U.S. and other foreign medical equipment firms have timely access to the product approval process as well as provide for an appropriate balance between the quality assurance route to the market and the product-testing route.[349]

A longer term option for EC acceptance of U.S.-generated conformity-assessment results in the medical device area is the negotiation of government-to-government MRAs.[350] U.S. medical industry officials believe that the establishment of EC-sanctioned U.S. notified bodies would alleviate

[343] Health Industry Manufacturers Association (HIMA), "Comments on the Proposed EC Medical Devices Directive," Oct. 8, 1991; and U.S. industry officials, telephone conversations with USITC staff, Dec. 1991.

[344] U.S. industry officials, telephone conversations with USITC staff, Dec. 1991. Medical devices are classified into three classes in annex 9 of the proposed directive. Products in classes II and III require more extensive testing and documentation for approval than class I devices.

[345] Officials of HIMA, telephone conversation with USITC staff, Nov. 4, 1991.

[346] U.S. industry officials, telephone conversations with USITC staff, Dec. 1991.

[347] HIMA, "Comments."

[348] This draft is discussed in the overall conformity-assessment section earlier in this chapter.

[349] Officials of HIMA and the National Electrical Manufacturers Association (NEMA), telephone conversations with USITC staff, Nov. 4, 1991.

[350] See discussion on mutual recognition agreements earlier in this chapter.

many of the market access concerns that U.S. medical equipment manufacturers have concerning the EC 1992 program. Mutual recognition of specific requirements or harmonization of standards that might result from such agreements could help bar duplication of testing requirements and promote greater regulatory efficiency.

The U.S. FDA, the agency responsible for approving the use and sale of medical devices in the United States, has worked extensively with EC officials on proposed EC medical device regulatory and standards issues. The FDA currently maintains memoranda of understanding with British and German regulatory bodies that allow for mutual recognition of testing and certification activities. Due to the extensive cooperation between the FDA and the EC, it is generally believed by U.S. and EC industry and regulatory officials that the medical device sector will be among the first areas in which an MRA could be developed between the United States and the EC.[351] However, the officials believe that it will take a minimum of 3 years to negotiate such an agreement for the medical equipment industry, and it may even take longer.[352] Among the issues that would need to be addressed are whether EC and FDA officials can come to terms on compatible product nomenclature and classification systems for devices, and whether the FDA is prepared to grant its medical device approval authority to EC notified bodies.[353] Legislation enacted in 1990 provided the FDA with the authority to enter into MRAs with the EC and other foreign governments concerning medical device approval.[354] As a result, the FDA has established an international division to help accomplish this mission.

Another problem that must be addressed with regard to MRAs is an EC requirement that agreements with non-EC countries establish a balanced situation with regard to the advantages derived by the parties in all matters relating to conformity assessment. However, the EC Commission appears to recognize that only those EC bodies that meet U.S. criteria would be eligible to perform FDA required tests, inspections, and surveillance under any MRA.[355] This recognition appears to be a positive shift from the prior EC position that third countries would be expected to accept results from all EC notified bodies under any MRA.

Developments to Watch

Drafting of a proposed directive on IVD devices was only begun in the latter part of 1991, well behind schedule. This directive covers the tests and analytical instruments that are used in medical laboratories for diagnostic purposes. Approval of a formal proposal of the directive is not expected before late 1992.

Telecommunications

Overview

The harmonization of telecommunications standards in the EC is considered an essential condition for the completion of the internal market. Such harmonization is necessary to realize the benefits of liberalization of telecommunications services and expanded competition and choice in telecommunications equipment.[356] During 1991, the Council adopted a final directive on the mutual recognition of telecommunications terminal equipment and proposed new directives concerning data protection, leased lines, digital cordless telecommunications, and satellite communications.

Update

Data Protection

Background and Anticipated Changes

The proposed data protection framework directive[357] sets the conditions under which computerized data may be collected on individuals, giving them the right to access information concerning themselves and to correct any mistakes. A sector-specific directive was also proposed to cover protection of advanced digital networks from unauthorized access.[358]

The main objectives of the data protection directive are to protect individuals' privacy and facilitate transborder data flow within the EC and to third countries. The proposal would require express consent from data subjects before any personal data could be processed or stored. The proposal would also require controllers of data files to notify national supervisory authorities before any data are transferred to other parties. Member states may prohibit the transfer of data to third countries that are not found to have an "adequate level of protection."

The sector specific directive on the protection of advanced data networks aims to provide customer

[351] Officials of HIMA and the National Electrical Manufacturers Association, telephone conversations with USITC staff, Nov. 4, 1991.

[352] U.S. Embassy officials, interview by USITC staff, Brussels, Nov. 8, 1991.

[353] U.S. Department of State telegram, "Update on Medical Devices," Oct. 1, 1991, Brussels, message reference No. 12825.

[354] State Medical Devices Act of 1990, Pub. L. No. 101-629, 104 Stat. 4511. Officials of the U.S. FDA, telephone conversation with USITC staff, Feb. 6, 1992.

[355] Official of the EC Commission, interview by USITC staff, Brussels, Nov. 7, 1991.

[356] For further background, see USITC, *EC Integration: First Follow-Up,* USITC publication 2268, Mar. 1990, pp. 6–106 to 6–108; USITC, *EC Integration: Second Followup,* USITC publication 2318, Sept. 1990, pp. 4–67 to 4–70; USITC, *EC Integration: Third Followup,* USITC publication 2368, Mar. 1991, pp. 4–44 to 4–46 and 18–6 to 18–8.

[357] *Proposal for a Council Directive Concerning the Protection of Individuals in Relation to the Processing of Personal Data,* COM (90) 314 final—SYN 287, *OJ* No. C 277, (Nov. 5, 1990), p. 3.

[358] *Proposal for a Council Directive Concerning the Protection of Personal Data and Privacy in the Context of Public Digital Telecommunications Networks, in particular, the Integrated Services Digital Network and Public Digital Mobile Networks,* COM (90) 314 final—SYN 288, *OJ* No. C 277, (Nov. 5, 1990), p. 12.

control over the network functions of a particular telecommunications service, such as caller-identification (caller-ID) and call forwarding. The calling party must be able to override the caller-ID feature either permanently or by request. In addition, call forwarding will require the agreement of the party receiving the call, and calling subscribers must also be immediately informed that their calls are being forwarded.

Possible Effects

Any U.S. industry that does business in the EC will be significantly affected by this directive. Examples of data records that will be covered under this directive include banking transactions, airline reservations, personnel data, and mailing lists.

Many U.S. firms that operate in the EC process data remotely in the United States or other third countries. In 1990, exports of data processing services from the United States to the EC were about $319 million.[359] The leading U.S. providers of data processing services are Automatic Data Processing (ADP), Electronic Data Systems (EDS), and Computer Sciences Corporation (CSC).

Because this directive imposes restrictions on the transfer of data, many U.S. firms may be prohibited from processing data in the United States and in third countries where costs are lower. As a result, many U.S. firms may be forced to establish additional processing facilities within the EC.

U.S. Industry Response

An issue of particular concern to U.S. companies in the European Community is a condition that data on individuals may not be transferred to other EC and non-EC countries unless "adequate protection" is guaranteed.[360] This language appears to leave considerable discretion to the member states to define "adequate protection." U.S. companies fear that cross-border direct marketing, market research, and intrafirm communications could be disrupted. For example, a U.S. company with offices in the EC might be unable to send personnel information on its employees to its headquarters in the United States. This information is often necessary to process insurance and payroll records. If this information cannot be processed outside the EC, U.S. firms will incur higher costs, which will in turn increase the costs of doing business in the EC.

The requirement of express consent would increase the cost of services that depend on processing data and would impose burdens on U.S. industry by requiring it to receive written approval from individuals before personal data can be stored or processed. Instead of this "opt in" requirement, U.S. industry would like the directive to adopt a notice or "opt out" approach in which individuals can determine what uses of personal data are appropriate.[361] For example, if individuals do not wish to have their names placed on a credit card company's direct marketing mailing list, they may request that their names be taken off the entire list or certain lists.

Requiring processors and users of data to notify the national supervisory authorities in each member state before any data file is transferred would further burden the industry, increase the cost of doing business in the EC, and make the provision of some services prohibitively expensive. U.S. industry believes that the scope of this requirement goes beyond what is reasonably needed to protect privacy, and it could threaten the confidentiality of company secrets or proprietary data.[362]

A major U.S. industry concern regarding the advanced digital networks directive is that private network operators, as well as collectors of data, would carry the burden of responsibility for security. U.S. value-added network providers believe that this provision goes too far, and that it should only be applied to reserved telecommunication services provided by the telecommunications authorities (TAs) in each member state.[363] Finally, U.S. industry believes that this directive may require non-EC manufacturers of terminal equipment to incorporate technical features that conform to the call forwarding and caller-ID specifications.[364] If this provision is enacted, U.S. firms believe that this may be a significant barrier to selling terminal equipment in the EC, a market estimated at about $3.5 billion.[365]

Leased Lines

Background and Anticipated Changes

In accordance with the open network provision directive,[366] the Commission has proposed a directive[367] that would establish the criteria for

[359] U.S. Department of Commerce, Bureau of Economic Analysis, "U.S. International Sales and Purchases of Services," *Survey of Current Business,* Sept. 1991. This figure includes "computer and data processing services."

[360] U.S. industry representatives, interview by USITC staff, Jan. 1991.

[361] "U.S. Criticizes EC Data Directive's Potential Burdens and Barriers," *Transnational Data and Communications Report,* Nov.-Dec. 1991, p. 8.

[362] U.S. industry representatives, interview by USITC staff, Nov. 1991.

[363] U.S. industry representatives, interview by USITC staff, Jan. 1991.

[364] U.S. Council for International Business, "Statement on the Proposed Digital Services Data Protection Directive," Apr. 26, 1991, p. 6.

[365] John Williamson, "Europe 1992: Closer to the Horizon," *Telephony,* Dec. 2, 1991, p. 27.

[366] For previous discussion of the ONP directive, see USITC, *EC Integration: First Follow-Up,* USITC publication 2268, March 1990, p. 6–106, USITC, *EC Integration: Second Followup,* USITC publication 2318, September 1990, p. 4–67, and USITC, *EC Integration: Third Followup,* USITC publication 2368, March 1991, pp. 4–44 and 18–6.

[367] *Proposal for a Council Directive on the Application of Open Network Provision to Leased Lines,* 91/58/EEC, *OJ* No. C 58, (Mar. 7, 1991) p. 10.

nondiscriminatory access to leased lines. In the EC, U.S. firms use lines leased from the TAs to establish private networks for intracorporate communications and to provide value-added telecommunication and information services to third parties. The directive also outlines measures that the member states must take to harmonize tariffs, quality of service, and repair and delivery times in order to stimulate the supply of value-added services over leased lines in the EC. The EC Council of Ministers agreed to a common position on the directive in November 1991. The proposed directive will undergo a second reading by the European Parliament and is expected to be adopted in mid-1992. After the second reading of the directive in early 1992, the EC will consider guidelines for leased lines where one network termination point is located outside the Community.

Possible Effects

U.S. industry is likely to be significantly affected by this directive. In the past, leased lines were primarily used for voice transmission; they have now become a main part of the network infrastructure for the provision of value-added telecommunications and information services, such as electronic data interchange (EDI), on-line data base services, and electronic message transmission. Access to leased lines has therefore become very important to U.S. companies in the EC that have large intracorporate communication requirements.

U.S. firms do not export value-added telecommunications and information services to the EC. Instead, they provide these services in the form of foreign direct investment. U.S. firms that lease lines to provide intracorporate communications include IBM, Ford, and Proctor and Gamble; third-party service providers include General Electric Information Services Company (GEISCO), EDS, and Infonet. The EC market for value-added services is growing rapidly and is expected to be worth more than $7 billion in 1992.[368]

U.S. Industry Response

U.S. service providers believe that the data protection directive already contains adequate provisions and enforcement mechanisms that cover leased lines, and that the inclusion of additional safeguards is unnecessary and would increase the cost of providing network-based services in the European Community.[369]

U.S. industry is also concerned about including network termination points in the leased line offering.[370] If the TA established the network termination point on the user's side of the leased line, it would be able to bundle terminal equipment, such as telephones, with the leased lines in one package. This type of bundling would prohibit U.S. service providers from purchasing terminal equipment from sources other than the TA. U.S. service providers believe that this conflicts with the directive on type approval for terminal equipment, which allows service providers and users to interconnect their own terminal equipment to the public-switched network.[371]

U.S. industry was concerned about the language in an earlier version of the directive that would have allowed the TAs in each member state to provide competitive services based on equivalent transmission capacity (ETC).[372] ETC might have enabled the TAs to furnish leased line capacity to themselves at a lower price than they do for other providers of competitive services. After the first reading of this directive by the European Parliament, this language was dropped from the common position adopted in November 1991.

Finally, U.S. industry is concerned about vague language in the directive concerning tariffs.[373] Though the directive specifies that leased lines be priced on a cost-basis, U.S. industry believes that the TAs will have discretion to charge tariffs on a volume-sensitive basis, rather than a flat rate. U.S. service providers prefer flat rate tariffs over volume-sensitive tariffs because the former provide them with unlimited usage for a fixed price.[374]

Satellite Television Broadcasting

Background and Anticipated Changes

A proposed directive on satellite television broadcasting[375] would instruct EC member states to take all measures to promote and support the establishment of D2-MAC and HD-MAC as satellite television broadcast standards.[376] It would require that new satellites and services launched after January 1995 be equipped with D2-MAC exclusively, and that HD-MAC be used as the High-Definition Television (HDTV) standard when implemented, likely not before

[368] "Proposed Directive Provides Open Access to Leased Lines," *1992—The External Impact of European Unification*, Buraff Publications, Mar. 22, 1991, p. 3.

[369] U.S. Council for International Business,"Statement on the Proposed Directive on the Application of Open Network Provision to Leased Lines," May 21, 1991, p. 5.

[370] Interview with representatives of the U.S. information services industry by USITC staff, Jan. 1992.

[371] For further information, see USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4-43 to 4-44.

[372] U.S. Council for International Business, "Statement on the Proposed Directive on the Application of the Open Network Provision to Leased Lines," May 21, 1991, p. 5.

[373] Ibid.

[374] U.S. industry representatives, interview by USITC staff, Nov. 1991.

[375] *Proposal for a Council Directive on the Adoption of Standards for Satellite Broadcasting of Television Signals, OJ* No. C 194, (July 1991), p. 20.

[376] D2-MAC (Multiple Analog Component) is a standard for cable or satellite transmission. HD-MAC is a standard for high definition transmission.

1994. The proposed directive addresses the concerns of the broadcasting industry, which has argued against the compulsory simulcast requirements on the grounds of unnecessary additional expense. France is encouraging operators to use D2-MAC technology ahead of the January 1995 deadline.

There is considerable argument over the timetable for adopting HDTV standards in the EC. Broadcasters want the standards to be adopted at a slower pace, thereby enabling them to retain their current transmission equipment until the development of a consumer market for the D2-MAC and HD-MAC compatible receivers. Television set manufacturers, on the other hand, favor rapid adoption of the HDTV standards to recoup their considerable investments in D2-MAC technology by forcing broadcasters to broadcast in the new standards. This would create demand for D2-MAC and HD-MAC receivers.

On December 19, 1991, the EC telecommunications ministers reached a compromise on satellite television broadcasting standards, incorporating some of the provisions included in a European Parliament report adopted on November 20, 1991.[377] The ministers' compromise, the European Parliament report, and the subsequent amended proposed directive introduce greater flexibility into the transition to a full HDTV standard. Broadcasters will be able to continue transmitting existing satellite services in the current non-HDTV standard. The European Parliament report proposed that broadcasters be required to simulcast in D2-MAC after January 1995. The EC telecommunications ministers, however, agreed that broadcasters would be able to continue broadcasting in the pre-existing standard indefinitely.[378] The amended proposal reflecting this decision has not yet been published in the *Official Journal of the European Communities*.

The revised satellite broadcasting directive would require compulsory simulcasting only for satellite television services introduced after January 1, 1995. Further, only services in the 16:9 format would have to be broadcast exclusively in D2-MAC, since the higher quality of this standard would not be visible in programs broadcast in the standard 4:3 format.[379] The Parliament proposed that only television sets in the 16:9 format be fitted with a D2-MAC decoder, while other receivers would merely require a connector for an adapter to receive programs in this standard.

The EC telecommunications commissioner has estimated that the required level of EC financial support for the transition from the present standard to D2-MAC and finally, to HD-MAC, the full HDTV standard would total ECU 500 million to ECU 1 billion over 5 years. On December 19, 1991, the telecommunications ministers agreed that the question of EC financial support will be considered in a separate directive, subject to unanimous approval by the member states.

Possible Effects

The effect of the satellite broadcasting directive on U.S. industry is still unclear. Although the United States has not yet selected an HDTV broadcasting standard, the EC adoption of D2-MAC and HD-MAC is expected to establish an HDTV broadcasting systems which is incompatible with the MUSE system, now in effect in Japan, and whatever system is chosen by the United States. However, some parties in the EC favor the adoption of a digital television broadcast standard, rather than the analog D2-MAC and HD-MAC.[380] There are several U.S. manufacturers pursuing digital HDTV, including Phillips and Thomson, which are European-owned manufacturers that support the MAC standards for the EC. It is possible that a U.S.-designed digital television standard could be adopted in the European Community in place of HD-MAC.

If three separate, incompatible systems are developed, there will be a limit to economies of scale for television receiver manufacturers producing for any of the three systems. However, it is doubtful that manufacturers would produce HDTV receivers in the United States for use in the EC market, particularly since U.S.-produced receivers are not now marketed in the EC. U.S. manufacturers of color TV receivers are 90-percent foreign-owned, with almost one-half controlled by Thomson and Phillips, European-owned companies. EC-based production and Asian imports currently supply television receivers to the EC, and it is likely they would continue to do so when the new standards are imposed.

Telecommunications Terminal Equipment

Anticipated Changes

On April 29, 1991, the Council of Ministers adopted a directive[381] that establishes minimum standards for the approval of telecommunications terminal equipment intended for use on public telecommunications networks. Telecommunications terminal equipment includes such items as telephone sets and private branch exchanges. U.S. equipment producers certified by standards authorities in one member state will be given Communitywide market access, thereby instituting a single approval procedure for the interconnection of terminal equipment to public telecommunications networks in EC member states. Member states must implement this directive by November 6, 1992.

[377] Andrew Hill, "French Compromise Opens Way for HDTV," *Financial Times*, Dec. 20, 1991.

[378] Ibid.

[379] 16:9 and 4:3 are broadcast aspect ratios that provide dimensional information.

[380] "French Compromise Opens Way for HDTV," Financial Times, Dec. 20, 1991, p. 16.

[381] *Council Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including Mutual Recognition of Their Conformity*, Directive 91/263/EEC, *OJ* No. L 128, (May 23, 1991), p. 1.

U.S. Industry Response

U.S. companies indicated that the directive was a step in the right direction.[382] They were, however, concerned that the EC member states might implement the directive in ways that limit U.S. equipment manufacturers' access to the EC market. For example, one way to get a product certified for sale in EC member states is for a manufacturer to have the plant inspected. However, the directive has some potentially onerous aspects in terms of certifying a plant. Another issue is whether U.S. manufacturers can have their equipment tested in the United States or whether testing must be done in the EC.[383]

Digital European Cordless Communications

Background and Anticipated Changes[384]

On June 3, 1991, the EC Council adopted a directive on the frequency band to be designated for the coordinated introduction of Digital European Cordless Telecommunications (DECT).[385] DECT is technology conforming to specifications developed by the European Telecommunications Standards Institute (ETSI) that cover mobile communications services such as cordless telephones, telepoint services, private automated branch exchanges (PBX) and on-site transmissions. All member states will reserve the frequency band 1880-1900 MHz for DECT by January 1, 1992. This directive is the result of a Council Resolution calling for Community action with regard to the introduction of pan-European cellular radio communications.[386]

The EC Council issued a recommendation[387] that a common tariff or schedule of access and user fees be developed for the Community that would specify minimum service capabilities for DECT system operators. This common tariff should allow users to travel between member states with uninterrupted service. Pan-European digital land-based mobile cellular communications will enable the construction of a seamless web of coverage throughout the Community. Callers will be able to subscribe to the pan-European system and use the same cellular phones or other personal communications apparatus in all EC member states.

The EC Council specified that member states consult with telecommunications-service providers, users, equipment manufacturers, and their respective unions to discuss problems in implementing this directive. Member states are to inform the European Commission of any problems encountered in implementing this directive on at least an annual basis.

Possible Effects

Harmonizing the technical specifications for mobile communications equipment used within the EC should help U.S. suppliers achieve cost-saving scale economies, while also increasing demand for both mobile equipment and services. U.S. firms such as Motorola, AT&T, and some of the Regional Bell Operating Companies are leaders in the field of mobile communications. These firms have entered the EC mobile communications market by establishing subsidiaries within the EC to manufacture equipment or provide mobile network services. In general, these U.S. firms have been kept abreast of legal or regulatory developments within the Community by their EC-based subsidiaries, or through other communications equipment or service providers with which the U.S. companies have joint ventures.

Green Paper on Satellite Communications

Background and Anticipated Changes

The Green Paper on Satellite Communications extends the general principles of harmonization and liberalization established in the Green Paper on Telecommunications[388] to the area of satellite communications. In order to increase the competitiveness of the European satellite industry and establish pan-European satellite networks, the EC has proposed measures aimed at deregulating the market for satellite equipment and services. The Green Paper outlines four main objectives to accomplish this goal. First, subject to type approval and licensing procedures, there will be full liberalization of the earth segment, including receiving and transmitting terminals. Second, access to the space segment will also be unrestricted and will be granted on a nondiscriminatory and cost-oriented basis. Third, the paper proposes full commercial freedom for space segment providers, including direct marketing of satellite capacity to service providers and users. Fourth, harmonization measures will be introduced to facilitate mutual recognition of type approval and licensing procedures between member states and frequency coordination within the Community and with third-country providers.

[382] For earlier U.S. industry comments on the directive, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp.6–107 to 6–109.

[383] U.S. industry representatives, interview by USITC staff, Jan. 1992.

[384] For further background, see USITC, *EC Integration: Third Followup*, USITC publication 2368, March 1991, pp. 4–44 to 4–45.

[385] *Council Directive on the Frequency Band to be Designated for the Coordinated Introduction of Digital European Cordless Telecommunications into the Community*, Directive 91/287/EEC, *OJ* No. L 144, (June 8, 1991), p. 45.

[386] *Council Resolution on the Final Stage of the Coordinated Introduction of Pan-European Land-Based Public Digital Mobile Cellular Communications in the Community, OJ* No. C 329, (Dec. 31, 1990), p. 25.

[387] *Council Recommendation on the Coordinated Introduction of Digital European Cordless Telecommunications into the Community, OJ* No. L 144, (June 8, 1991), p. 47.

[388] For further background, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, March 1990, pp. 6–104 to 6–105.

Possible Effects

U.S. industry will generally benefit from this policy. As a result of this liberalization, satellite services will be greatly improved by bringing new competition to the market. In addition, users of satellite services will benefit from lower costs and more advanced types of services.

Currently, most satellite communications in the EC are provided by the European Telecommunications Satellite Organization (EUTELSAT) and the International Telecommunications Satellite Organization (INTELSAT).[389] Under the directive, private satellite operators can provide satellite services as long as they do not interconnect to the public switched telecommunications network. Because most satellite services have been restricted to these two organizations in the EC, the opening up of the market to other providers of satellite services is likely to increase the market share to U.S. operators of satellite systems and earth segment equipment manufacturers.

Large U.S. providers of satellite services in the EC include Alpha Lyracom Communications and Orion. In 1990, the size of the EC market for satellite services was about $519 million: satellite-carried telephony accounted for 44 percent, satellite-distributed television services accounted for about 46 percent, and new satellite services, such as videoconferencing and very small aperture terminal (VSAT) services, accounted for the remaining 10 percent.[390]

No official trade or production data is available on the export of earth segment equipment from the United States to the EC. However the U.S. Department of Commerce estimates that total exports of earth segment equipment worldwide totaled approximately $47 million in 1990.[391]

U.S. Industry Response

In general, U.S. industry is pleased with the objectives of the Green Paper. It is believed that this policy will result in the provision of new services at lower prices.[392] Because of EC harmonization of type approval and licensing procedures, U.S. firms will be able to obtain access to pan-European networks and provide nonreserved value-added services such as EDI and videoconferencing. By liberalizing the earth segment, the market for VSATs will also increase opportunities for U.S. firms such as Hughes Network Systems and Scientific-Atlanta, which provide VSAT equipment and services.

Nevertheless, U.S. providers and users of satellite services have expressed a few concerns. U.S. industry believes that there should be regulatory safeguards put into place to prevent TAs from cross-subsidizing the provision of competitive services from services that are exclusively reserved for them.[393] There is also concern regarding the application of data protection requirements to satellite services. U.S. industry considers this unnecessary because EC has already issued separate directives regarding data protection issues.[394] On the equipment side, there is concern that the standardsmaking policy of the ETSI could be nontransparent and unfavorable to non-European earth segment equipment manufacturers.[395]

The restrictions on interconnection of private satellite networks to the public-switched telephone network are also of concern to U.S. industry. One U.S. industry representative stated that restrictions on the use of public networks for backup or extended use would limit the types of services offered over satellite networks.[396] Finally, in order to promote competition to the fullest extent, U.S. industry believes that member states should be allowed to implement liberalization measures beyond those outlined in the Green Paper.[397]

Miscellaneous Manufactures Standards

Overview

Directives in this sector necessarily cover many different industries or categories of material and include both directives under development and those in finalized form. One directive, analyzed below, proposes new certification procedures for equipment for playgrounds, fairgrounds, amusement parks, and certain nonpermanent structures. The implementation section earlier in this chapter provides an update of the previously analyzed toy safety directive. Finally, there are four directives in the two sectors that are not yet finalized: (1) a proposed standard for reliability (watertightness and strength) of condoms; (2) standards of flammability for upholstered furniture; (3) a proposed standard for malleable iron pipe fittings; and (4) worker comfort standards for computers and the applicability of these standards to portable electronic typewriters.

[389] EUTELSAT was established by European TAs to provide satellite links to route international telephone traffic within Europe. Each European TA holds an investment share in EUTELSAT based on its use of the system. INTELSAT, an international cooperative established in 1962, provides satellite capacity on a cost-sharing basis to its 108 member nations, which includes the United States.

[390] European Commission, *Towards Europe-wide Systems and Services—Green Paper on a Common Approach in the Field of Satellite Communications in the European Community,* (Nov. 20, 1990), p. 57.

[391] U.S. Department of Commerce, "Radio Communication and Detection Equipment," *U.S. Industrial Outlook*—1991, p. 31–8.

[392] Officials of the U.S. Department of State, Bureau of International Communication and Information Policy (CIP), interview by USITC staff, Dec. 1991.

[393] Written comments of the U.S. trade association to the U.S. Department of State, CIP, Jan. 31, 1991.

[394] Ibid.

[395] Ibid.

[396] Ibid.

[397] Ibid.

Update

Equipment for Playgrounds, Fairgrounds, and Amusement Parks

Background and Anticipated Changes

A draft directive, which has yet to be proposed by the EC Commission, sets a certification process on the design and construction of nonpermanent structures and specific equipment for fairground and amusement parks, playgrounds, and sport halls. It states that a manufacturer or authorized EC representative is responsible for meeting the requirements of an EC declaration of conformity and affixing a CE mark to each item of equipment and batch of component parts. A multitude of safety measures must be met to obtain this certification. This directive, in effect, is modeled after the Machinery Safety Directive in structure and substance.[398]

Article 1 of the proposed directive defines nonpermanent structures and the specific equipment for fairgrounds, amusement parks, playgrounds, and sports halls that it is regulating. Article 8 calls for the CE mark to be affixed to equipment that is certified as meeting the guidelines of this directive. There are two types of inspection: an "acceptance inspection" before the equipment is put in use for the first time and periodic inspections of the equipment by a competent body. Each member state must establish a competent body that will carry out the certification process for both the initial acceptance and periodic inspection.

In addition, the proposed directive will govern how operators in these fairgrounds, amusement parks, playgrounds, and sport halls will set up equipment and will govern access and circulation of exits at the equipment, lighting, ventilation, fire fighting equipment, signs, and other safety procedures. The directive is being written to ensure that the industry's nonpermanent structures and equipment are being operated in a safe manner, to ensure sanitation standards are maintained, and to reduce liability lawsuits.

Possible Effects

Implementing this proposed directive should bring control and high standards to the industry in the EC. Implementation will ensure that the equipment operated in fairgrounds, amusement parks, playgrounds, and sports halls is designed, constructed, and operated in a safe manner. Overall, the effect of this proposed directive on large U.S. firms will be minor if the supporting standards that will be developed by CEN are based on current DIN standards rather than TUV standards.[399] The German standards-making body, DIN, establishes building codes and specifications for fairground rides that are recognized by the United States and some European countries. The private German testing and certification company, TUV, certifies standards for building specifications for fairground rides.

Some member states of the EC do not export fairground amusements to Germany because of the TUV certification process. If the proposed directive adopts the TUV standard completely, some member states would have difficulty manufacturing fairground amusements for their own markets. This would make the adoption of the TUV standard unlikely.

U.S. exports

The U.S. industry serves the EC primarily through direct exports as opposed to investments. U.S. exports of fairground amusement equipment to the EC accounted for 59 percent of all U.S. fairground amusement equipment exports in 1991. U.S. exports of these goods to the EC rose 888 percent during 1989-91, from $5.1 million to $50.6 million. France was the largest market, accounting for 91 percent of total U.S. exports of fairground amusements to the EC. Between 1989 and 1991, total U.S. exports of fairground amusement equipment increased 179 percent from $31 million to $86 million. In 1991, France, Mexico, and Canada were the top three markets for U.S. exports of fairground amusement equipment, accounting for 54, 13, and 13 percent, respectively. Chance Rides Inc. and Arrow Dynamics Inc. are the two largest U.S. exporting companies, with Arrow Dynamics exporting primarily to Europe.

Adoption of the DIN standards as the EC standards for equipment for amusements parks, playgrounds, and sports halls would not change the level of U.S. exports of these products to the EC because most U.S. exports currently meet these standards. However, adoption of the TUV standards if accompanied by the existing, more difficult certification requirements would probably cause third-country suppliers to shift their export focus from the EC to the United States. Nevertheless, such suppliers are not significant in the international market and therefore U.S. imports would not increase appreciably.

U.S. Industry Response

Some U.S. firms believe that basing CEN standards on the current TUV standards would amount to a nontariff trade barrier.[400] Currently, only TUV can certify that the equipment meets TUV standards. The concern is that U.S. companies would effectively have to send a sample of their construction material for testing by TUV, or pay for TUV representatives to come from Germany to the factory to certify the product. In this respect, the certification process would be highly restrictive and burdensome.

[398] See discussion of the Machinery Safety Directive in the section on Other Machinery in this chapter.

[399] DIN is the abbreviation for Deutsches Institut für Normung and TUV is the abbreviation for Technischer Ueberwachungsverein e. V.

[400] U.S. industry representative, interview by USITC staff, Nov. 1991.

Some U.S. companies agree that there should be uniformity in regulations that govern the design and construction of equipment for fairgrounds, amusement parks, playgrounds, and sports halls. They promote the idea of having "international standards" that all the countries would recognize. However, U.S. companies would like to be included or consulted in the planning stages of formulating this directive; they feel that their input is of some importance.

CHAPTER 6
PUBLIC PROCUREMENT AND THE INTERNAL ENERGY MARKET

CONTENTS

CHAPTER 6
PUBLIC PROCUREMENT AND THE INTERNAL ENERGY MARKET

At an estimated 15 percent of the EC's gross domestic product, the EC public sector represents a large and potentially crucial market for a number of U.S. industries. In several key areas—such as telecommunications equipment, power generators, computers, and water treatment equipment—public purchasers are the most important prospective EC customers for U.S. firms. Currently, however, U.S. suppliers are not ensured access to nearly half of the value of EC public sector contracts, because these contracts fall outside the scope of EC and international trading rules. As part of the 1992 program, the EC is putting in place rules intended to introduce greater openness, transparency, and nondiscrimination in all phases of public purchasing.

Developments Covered in the Previous Reports

Background and Anticipated Changes

In the 1970s the EC adopted two directives intended to open member-state procurement to greater competition. The goal of the legislation was to increase transparency and reduce opportunities for discrimination in procurement of public works and supplies. Subsequently, the EC joined the Tokyo Round Agreement on Government Procurement, to which the United States is also a signatory.

Despite these steps, public sector markets in the EC continued to depend almost exclusively on national suppliers. In its 1985 White Paper, the Commission of the European Communities (EC Commission) proposed a substantial strengthening of member-state commitments on public procurement. The legislation envisaged as part of the 1992 procurement program would—

- Close loopholes in existing directives governing central and local government purchases of goods ("supplies") and public works construction;
- Expand the scope of EC discipline to service contracts and most entities in the so-called "excluded sectors" of telecommunications, water, energy, and transport;
- Require member states to provide effective administrative and judicial remedies for wronged suppliers; and
- Strengthen EC oversight of member-state procurement practices.

As of yearend 1990, the EC had adopted four directives covering supplies, works, remedies, and the excluded sectors. In 1990, the EC Commission proposed two directives: one covering public procurement of services and another covering appeals procedures for contracts covered by the excluded-sectors directive. In 1989, the EC introduced a system for monitoring compliance with public procurement rules of projects executed with assistance from the EC's structural funds and financial instruments. In 1990, the EC Commission issued a communication outlining procedures to increase the participation of small and medium-size enterprises in public contracts.

In addition to proposals to extend coverage of public procurement rules to energy under the excluded-sectors directive, the EC's energy sector is now the subject of separate initiatives designed to create an EC-wide energy market. In 1989, the EC Commission proposed a package of four measures intended not only to eliminate existing obstacles to a unified energy market, but also to take into account the EC's overall energy objectives of guaranteeing a secure supply of energy, reducing costs, and producing environmentally harmless energy. During 1990, the EC Commission adopted two of these measures: directives to (1) improve the transparency of natural gas and electricity prices and (2) improve guarantees for the right of transit on the major grids for electricity. The remaining two measures had not been adopted by the end of 1990: a regulation that would coordinate investment projects in the oil, natural gas, and electricity sectors and a directive to improve guarantees for the right of transit on the major grids for natural gas. In May 1990, the EC Commission issued a report citing progress in harmonization of standards, liberalization of public procurement, application of EC laws to increase competition, and reduction of price opacity and market compartmentalization in the energy field.

Possible Effects

U.S. suppliers and procurement experts generally believe that the EC's 1992 procurement program will eventually open the EC's public sector markets. However, they also agree that short-run effects are likely to be small due to the entrenched attitudes of procuring authorities to rely on national suppliers. Evidence indicates that cross-border contracts have been awarded, but many procuring entities, particularly at the local and regional level, have ignored publishing requirements and resisted market opening.

U.S. suppliers have generally focused their concern on a 50-percent EC-content rule in the excluded-sectors directive, which could restrict their ability to take advantage of more open procurement. This rule would result in an unpredictable bidding situation and could have the effect of requiring U.S. firms to invest in the EC in order to win procurement contracts. Such content rules are among the issues being addressed in ongoing negotiations to revise the GATT Code on Government Procurement.

Energy—like other public sector markets—is currently one of the EC's more protected industries at the national level. Ultimately, companies operating in the EC should benefit from the greater freedom to choose among the types of energy consumed as well as among suppliers. As the energy sector restructures and procuring entities are pressured to lower costs, marketing opportunities for U.S. suppliers of coal and energy equipment and technology should increase. However, U.S. energy firms will continue to face restrictions if more open public procurement procedures in the energy sector are not implemented.

Developments During 1991

Public Procurement

Background and Anticipated Changes

During 1991, the EC Commission proposed the last element in its public procurement program under the White Paper. Once the package of measures is in force, no public contracts should fall outside the scope of the rules except those that lie in a clearly defined exception. The EC has already adopted directives covering (1) supplies; (2) works; (3) appeals procedures against discrimination in the award of public contracts covered by the Supplies and Works Directives (known as the "Remedies" Directive); and (4) public procurement in the four so-called excluded sectors of water, energy, transport, and telecommunications (referred to as either the "Utilities" Directive or the "Excluded Sectors" Directive).[1] During July 1990, the EC Commission proposed a directive covering appeals procedures for contracts covered by the Utilities Directive. Subsequently, the EC addressed public procurement of services in two separate proposals: a directive covering all public services contracts except those falling in the excluded sectors and an amendment to the Utilities Directive that would extend coverage of the directive to services contracts. Those measures not yet adopted by the EC Commission are discussed below.

Other developments addressed below include the status of programs to eliminate regional subsidies in public procurement and the status of EC programs to ensure compliance with the procurement directives. Member-state implementation of those directives already adopted also is discussed, including case studies of the Supplies and Works Directives, which have been in force in most member states since January 1, 1989, and July 19, 1990, respectively. Now that the EC and European Free Trade Association (EFTA) countries have agreed to pursue a European Economic Area agreement, the public procurement directives will ultimately apply not only in the 12 EC member states, but also in the 7 EFTA member countries.

Public Services Procurement

Background

Almost 25 percent of the total value of public purchases in the EC represents services. In 1987, total public purchasing of supplies, works, and services was ECU 595 billion ($684 billion), of which ECU 145 billion ($167 billion) was accounted for by services.[2]

In June 1990, the EC Commission proposed a directive covering procurement procedures for the award of public service contracts. Taking account of the EC Parliament's first reading, the EC Commission published an amended proposal in September 1991.[3] The EC Council reached a common position on February 25, 1992.[4] The directive is scheduled to come into effect by July 1, 1993. There are no derogations for particular member states.

Coverage

The Public Services Directive covers all public service contracts not covered by existing directives or certain well-defined exceptions. Services procurements tied closely to the purchase of supplies or works are already covered under the Supplies and Works Directives, respectively. Procurement of services in the excluded sectors is covered by the Utilities Directive (discussed below).

The Public Services Directive categorizes services into priority and residual services. Priority services will be subject to all of the rules outlined in the directive, whereas residual services will be subject only to requirements to use European standards where practicable and to prepare a postaward notice, whose publication is voluntary. The EC Commission intends to review the directive within 3 years to determine, among other things, whether residual services should be subject to the full directive or should be exempted from procurement rules altogether.

Those services considered priority services include certain telecommunication services;[5] financial services

[1] For more information on these four directives, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989; USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991.

[2] EC Commission, "Community-Wide Competition for Government Contracts for Services," *Information Memo*, Sept. 19, 1990.

[3] *Amended Proposal for a Council Directive Relating to the Coordination of Procedures on the Award of Public Service Contracts*, COM (91) 322, *Official Journal of the European Communities (OJ)* No. C 250 (Sept. 9, 1991), pp. 4-29.

[4] "Internal Market Council: Frank Warning," *European Report*, No. 1747 (Feb. 26, 1992), Internal Market, p. 9. The EC Council agreed "in principle" on the common position in December 1991. No text is currently available.

[5] Telecommunication services not covered by the directive include voice telephony, telex, radio-telephony, paging, and satellite services.

(insurance, banking, and investment services); computer and related services; research and development services (if the public authority paid entirely for the research and possesses its results exclusively); accounting, auditing, and bookkeeping services; market research and public opinion polling services; management consulting services; architectural and engineering services; advertising; building-cleaning and property management services; publishing and printing services; sewage and refuse disposal and related sanitation services; maintenance and repair services; transport services (with the exception of rail and water transport); and transport of mail. Residual services include hotel and restaurant services; transport services by rail and water; supporting and auxiliary transport services; legal services; personnel placement services; investigation and security services; educational services; health and social services; and recreational, cultural, and sporting services.

The directive does not apply to services supplied in-house. Furthermore, it does not apply to "reserved activities" whereby a contracting authority awards a public service contract to another contracting authority, provided the supplier has an exclusive right granted by the Treaty of Rome to provide that service. Concessions are not covered by the directive.

The EC does not place any restrictions on the bundling of contracts, such as the purchase of advertising services together with equipment. If the value of services exceeds the value of supplies in a contract, the Public Services Directive shall apply rather than the Supplies Directive.

The contracting authorities whose purchases are covered by the Public Services Directive are those covered by the Supplies and Works Directives. They include State, regional, and local authorities; bodies governed by public law; and entities covered by the GATT Code on Government Procurement.

Thresholds

The directive applies to contracts whose estimated value net of value-added tax (VAT) is not less than ECU 200,000 or about $260,000. Special rules apply for calculating the value of contracts that do not specify a total price or where the services are divided into several lots, each subject to a separate contract. The directive requires that contracts not be split or valued with the intention of avoiding the application of the directive.

Procedures

In general, the procedures outlined in this directive are similar to those specified in the other procurement directives. However, because services have certain unique characteristics, special provisions are included addressing such issues as design contests, variants, the legal form of suppliers, the reservation of certain activities to certain professions, and registration and quality assurance issues.

The directive permits the use of open, restricted, or negotiated procedures. Open procedures allow all interested suppliers to submit a tender. Restricted procedures permit only those suppliers invited by the contracting authority to submit a tender. Negotiated procedures permit authorities to consult suppliers of their choice and negotiate the terms of the contract with one or more of them.

Open and restricted procedures are the favored procedures. The directive carefully specifies the conditions for the use of negotiated procedures. For example, a negotiated procedure with prior publication of a tender notice is permitted when the contract involves "complex" services such that the cost of the service cannot be determined in advance. Many services, particularly intellectual and creative services, fall into this category. Also, the negotiated procedure without prior publication of a tender notice may be permitted when there is only a single source of supply, usually due to technical or artistic reasons or exclusive rights to supply.

Provided certain thresholds are met, contracting authorities are required to publish annually their intended total procurement of services for the upcoming year ("advance notice" or "indicative notice"). Authorities must also publish a "contract notice" to announce their intention to award a contract. Any restrictions placed on the suppliers, such as qualitative selection criteria or that they be in a particular profession, must be indicated in the contract notice. Contracting entities may request the tenderer to indicate the share of the contract that would be subcontracted to third parties.

Similar to the other procurement directives, this directive specifies that a contract should be awarded to the lowest price bid or to the "economically most advantageous" tender, which is based on such criteria as quality, delivery date, service, and technical merit. Should the purchaser choose the latter, the criteria intended to be applied in evaluating tenders must be described in the contract notice and must be applied during the contract-award procedure. A contracting authority that has awarded a contract must provide the results of the award procedure ("contract-award notice" or "post-award notice") to the EC for publication.

The directive requests that contract documents define technical specifications by reference to European standards. However, European standards for services themselves are, in general, only now under consideration. Standards in services procurement are currently used to define physical products or spare parts required by the service contract. The proposal recommends the use of EN 29,000 quality assurance standards for services,[6] but these standards are not commonly used. Therefore, the directive requires public authorities to accept equivalent quality assurance measures.

[6] For more information on quality assurance standards, see "The Modular Approach," in ch. 5 of this report.

Treatment of Non-EC-Origin Bids

There are no special provisions addressing third-country tenders. In the original proposal a reciprocity provision was incorporated, but it was deleted when the EC Council reached a common position.

Remedies

The Public Services Directive amends the Remedies Directive to cover services contracts, in addition to supplies and works contracts.

Utilities Services Procurement

Background

The Utilities Directive adopted in September 1990 covers procedures for procurement of supplies and works by entities operating in the water, energy, transport, and telecommunications sectors.[7] In September 1991, the EC Commission proposed a revision of the Utilities Directive that extends its coverage to the purchase of services.[8] The EC Commission estimates that the procurement of services by utilities accounts for between 15 and 20 percent of their total procurement, or ECU 45 billion annually[9] The proposal directs all member states except Spain, Portugal, and Greece to comply with the provisions of the directive relating to service contracts by July 1, 1993. The services provisions of the directive enter into effect in Spain on January 1, 1996, and in Portugal and Greece on January 1, 1998.

Many of the provisions of the original directive were not substantively amended, because they apply to all three types of contracts—supplies, works, and services. Such provisions include the scope of contracting entities covered, use of technical specifications, procedural obligations including transparency requirements and systems for the qualification of candidates, contract-award criteria, and statistical reporting.[10] Amendments to the original directive were made only when the unique characteristics of services and design contests so required. These amendments often mirror the approach to services taken in the Public Services Directive.

Coverage

The Utilities Directive already covers services that are included in supplies and works contracts in the four excluded sectors and certain services that the directive treats as supplies, such as certain software services procured by telecommunications entities and services whose purpose is to make equipment available to the contracting entity (lease, rental, or hire-purchase contracts). The proposed revision extends coverage to other services, which have been categorized into priority and residual services, in exactly the same way as the Public Services Directive.

Also similar to the Public Services Directive, this proposal neither applies to services supplied in-house nor to service contracts awarded to another contracting authority, provided the supplier has an exclusive right (compatible with the Treaty of Rome) to provide such service.

Certain service contracts are excluded from the procedural obligations of the directive provided that the service provider is subject to majority control by the purchasing authority on which it depends and that at least 85 percent of the turnover of the service provider generated in the EC derives from the provision of services to its affiliated companies. The EC Commission explains that often affiliates are formed to provide certain services—such as accounting, recruitment, management, or special services embodying the know-how of the group—to other companies in the economic group and are not established to market their services commercially.[11]

The thresholds for services remain the same as for supplies: ECU 400,000 net of VAT for contracts awarded by entities in the water, energy, and transport sectors and ECU 600,000 net of VAT for telecommunications contracts.

Procedures

The procedural obligations surrounding the use of open, restricted, or negotiated contract-award procedures outlined in the Utilities Directive for supplies and works were extended to services.[12] Special provisions, like those in the Public Services Directive, were added to address design contests, the legal form of suppliers, and quality assurance issues. The provisions relating to confidentiality in the original Utilities Directive have been extended to services and expanded to protect the confidentiality of research and development contracts.

Treatment of Non-EC-Origin Bids

The directive stipulates that when the EC Commission determines that a third country does not

[7] *Council Directive of 17 September 1990 on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors,* 90/531/EEC, *OJ* No. L 297 (Oct. 29, 1990), pp. 1-47.

[8] *Proposal for a Council Directive Amending Directive 90/531/EEC on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors,* COM (91) 347, *OJ* No. C 337 (Dec. 31, 1991), p. 1.

[9] EC Commission, "Public Service Contracts in the Water, Transport, Energy and Telecommunications Sectors To Be Opened Up to Europe-Wide Competition in 1992," *Information Memo,* Sept. 25, 1991.

[10] See Council Directive 90/531/EEC.

[11] EC Commission, *Proposal for a Council Directive Amending Directive 90/531/EEC on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors,* "Explanatory Memorandum," pp. 9-12.

[12] For a description of the procedural obligations of the Utilities Directive, see USITC, *Effects of Economic Integration,* USITC publication 2204, July 1989, pp. 4-14 to 4-19.

grant EC companies national treatment, most-favored-nation treatment, or the same treatment as third-country firms receive in the EC with respect to the award of public service contracts, it can initiate negotiations to remedy the situation. In the meantime, the EC Commission may direct public authorities to suspend or restrict the award of future service contracts to such third-country firms. (The EC Commission does not have the authority to suspend existing contracts.) Although the EC Commission can take this action without the EC Council's approval, the Council has the opportunity to overturn the decision if it acts within a specified period.

Third-country firms that would be subject to EC action are defined in the directive as—

1. Undertakings (firms) governed by the law of the third country in question;
2. Undertakings affiliated to the undertakings specified in 1. and having their registered office in the Community but having no effective and continuous link with the economy of a member state;
3. Undertakings submitting tenders that have as their object services originating in the third country in question.

Definition 3 requires a rule of origin to determine whether the tender is foreign. Because there is presently no such rule of origin, definition 3 will not apply until such a rule is developed.[13]

These provisions addressing third-country tenders were also originally incorporated into the Public Services Directive but were deleted when the EC Council reached a common position. It is possible that as the Utilities Directive moves through the EC's legislative process, these provisions will also be deleted from this directive.

Utilities Remedies

To ensure that the EC's rules on public procurement procedures are respected, the EC Commission proposed two directives that provide recourse for bidders who believe they have been unfairly treated in a contract-award procedure. One directive, known as the "Remedies" Directive (or sometimes the Compliance Directive), was adopted in December 1989 and entered into effect in all member states in December 1991.[14] This directive covers contracts subject to the Supplies, Works, and Public Services Directives. The EC Commission proposed a second directive in July 1990 to cover infringements committed during the award of contracts in the four excluded sectors (the "Utilities Remedies" Directive).[15] Agreement on the content of the Utilities Remedies Directive has been difficult to reach, since some private sector entities are covered. Nevertheless, the EC Council reached a common position on September 16, 1991,[16] and formally adopted the directive on February 25, 1992.[17] The directive is scheduled to enter into effect in most member states by January 1, 1993. Spain has until June 30, 1995, and Portugal and Greece have until June 30, 1997, to comply with the directive.

The Utilities Remedies Directive is similar to the Remedies Directive except that it introduces more flexibility to take account of the private sector status of some of the procuring entities. National laws often forbid interference in the management of private firms, so that certain remedies applied to public authorities would be inappropriate. Like the Remedies Directive, the Utilities Remedies Directive only applies to companies established in the EC, including subsidiaries of third-country firms. The proposal covers four major topics: (1) available remedies; (2) an attestation procedure; (3) a corrective mechanism; and (4) a conciliation procedure.

The directive provides several options for remedies:

1. Interim measures designed to correct an alleged infringement or to prevent further injury, including measures to suspend the contract-award procedure;
2. The setting aside of unlawful decisions, such as the removal of discriminatory specifications in contract notices and documents; and
3. The payment of damages to persons harmed by an infringement.

The member state determines which remedies are available to the court or appropriate reviewing body to award. In general, it would be difficult to apply the first two options to private sector procuring entities.[18] The payment of damages is an alternative to contract suspension and set-aside, although damages may also be awarded along with these measures. Furthermore, once a contract is signed, it cannot be terminated and only

[13] EC Commission, meeting with USITC staff, Brussels, Oct. 25, 1991.

[14] *Council Directive of 21 December 1989 on the Coordination of the Laws, Regulations and Administrative Provisions Relating to the Application of Review Procedures to the Award of Public Supply and Public Works Contracts,* 89/665/EEC, *OJ* No. L 395 (Dec. 30. 1989), pp. 33-35.

[15] *Proposal for a Council Directive Coordinating the Laws, Regulations and Administrative Provisions Relating to the Application of Community Rules on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors,* COM (90) 297, *OJ* No. C 216 (Aug. 31, 1990), p. 8.

[16] *Common Position Adopted by the Council on 16-9-1991 With a View to Adopting a Directive Coordinating the Laws, Regulations and Administrative Provisions Relating to the Application of Community Rules on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors,* 7333/91, July 24, 1991.

[17] The adopted directive is identical to the common position. U.S. Department of State Telegram, "Internal Market Council: February 25," Mar. 2, 1992, Brussels, message reference No. 02989.

[18] HM Treasury, meeting with USITC staff, London, Oct. 22, 1991.

damages can be awarded. The court or appropriate reviewing body will determine the amount of any damages, which are required by the directive to be set at a level high enough to dissuade the contracting entity from committing or persisting in an infringement.

Of particular note in this directive is the introduction of a voluntary "attestation" or auditing procedure for contracting entities to certify compliance of their purchasing systems with the EC's procurement rules. Most experts anticipate contracting entities will volunteer to be attested in order to deter litigation and capricious grievances.[19] Nonetheless, because the attestation system does not provide remedies for particular claims by individuals, the remedies outlined in the directive would still be available. Standards on attestation are currently under discussion, including procedural steps and qualifications of the attestors.

Should a procuring entity not seek review and not correct infringements, the EC Commission has been granted the authority through the "corrective mechanism" to intervene prior to the award of a contract and enforce compliance when there is clear infringement.

Finally, the proposal provides for the possibility of conciliation procedures as an alternative to judicial or review proceedings. The procedure is voluntary on the part of both the aggrieved supplier and the procuring entity. The directive provides for the establishment of a working party, which issues nonbinding recommendations.

Regional Preferences

Three countries—Greece, Italy, and Germany—currently grant regional preferences in the award of public contracts as an instrument for economic development.[20] In 1989, the EC Commission began negotiations with these member states as well as the United Kingdom with a view to abolishing regional preferences by December 31, 1992. The United Kingdom abolished its regional preferences at the end of 1990.[21] The EC Commission continues to negotiate intensively with the remaining three countries and anticipates that formal infringement proceedings could be necessary.[22]

Compliance

To ensure compliance with public procurement rules, the EC Commission has instituted several monitoring programs. One program monitors compliance of projects executed with assistance from the EC's structural funds.[23] Purchasing entities receiving EC funds must complete a questionnaire whenever a contract is awarded to confirm their observance of the rules. Should the EC Commission determine that entities have not complied with the EC's tendering rules, it may choose to suspend payments or order past payments returned. Although this program only monitors contracts covered by directives in force (the Supplies and Works Directives), the EC Commission encourages recipients of EC funds awarding contracts in the excluded sectors to comply with pending procurement rules by giving them priority when awarding assistance.

The EC Commission also conducts spot computer checks of notices published in the *Official Journal* to determine whether the publishing requirements of the directives are being met. The purpose of this monitoring program is less to discipline member states than to be a source of information on the observance of the rules.[24] The publication of notices has increased significantly since the EC's public procurement rules have entered into effect—from about 10,000 notices per year to about 40,000 per year—and is anticipated to increase to 100,000 per year after all of the rules are in effect.[25] However, there are also widespread violations of the directives, particularly the publishing requirements.[26] Common violations are failure to comply with deadlines for publishing tenders, early closures of the tendering procedures, failure to publicize evaluation criteria, ignoring altogether the obligation to publish notices in the *Official Journal*, misinterpretation of the scope of directives and the excluded sectors, and inserting discriminatory clauses in the contract documents.[27] Should the EC Commission become aware of noncompliance either through these systematic checks or through a complaint from a firm, it approaches the national authorities and, when necessary, initiates the procedure provided for in article 169 of the Treaty of Rome (which provides for bringing a case before the European Court of Justice).[28]

To further ensure that the procurement directives are uniformly and effectively applied, the EC Commission adopted a recommendation in October 1991 that urges member-state procuring authorities to use standard forms for tender notices and the "General Public Works Nomenclature" for the description of a

[19] Ibid.

[20] For more background, see USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 4-5.

[21] Confederation of British Industry, meeting with USITC staff, London, Oct. 21, 1991.

[22] EC Commission, meeting with USITC staff, Brussels, Oct. 25, 1991.

[23] For more information, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 4-5 to 4-6.

[24] EC Commission, meeting with USITC staff, Brussels, Oct. 25, 1991.

[25] Ibid.

[26] French Public Procurement Commission, meeting with USITC staff, Paris, Oct. 31, 1991.

[27] "Public Procurement," *European Update*, West Publishing Co., 1990 WL 259688 (D.R.T.), July 4, 1991, par. 1.2; EC Committee of the American Chamber of Commerce, "Draft Letter on the Revision of the Supplies Directive," Oct. 1991; and EC Commission, *Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law*, COM (91) 321, Oct. 16, 1991.

[28] *Answer to Written Question No. 2976/90 Given By Mr. Bangemann on Behalf of the Commission, 15 April 1991 [on* compliance with EC directives], *OJ* No. C 177 (July 8, 1991), p. 15.

works project put out to tender.[29] According to the EC Commission, the goal of standardization of notices is to (1) enable potential suppliers to be better informed of the conditions for participation in public procurement procedures, (2) reduce unintentional errors and incorrect application of the directives, and (3) simplify the task of preparing notices. The EC Commission requested the recommendation be implemented by January 1, 1992.

The Supplies Directive—implemented on January 1, 1989—was the first of the White Paper procurement measures to be implemented. As such, this is the first of the procurement directives to undergo a review. Based on comments from its members, the EC Committee of the American Chamber of Commerce in Belgium has suggested a variety of revisions to improve the functioning of the directive.[30] Suggested changes include the enforcement of the obligation of contracting entities to publish the evaluation criteria and details of contracts awarded as well as the advance notice; easing of the requirement to use harmonized standards, which tends to stifle innovative solutions and hurt competitiveness; and development of a mechanism for suppliers to provide feedback to the EC Commission so that loopholes can be closed.

Possible Effects

Overview

EC member-state governments have begun to contract out many services once performed in-house.[31] Governments often find it more convenient to procure services externally for various reasons: the cost of upgrading the necessary equipment makes it cheaper to procure some services from outside sources; the experience and expertise of private firms regarding the provision of certain services often exceeds that of government agencies; and finally, some services are required on a periodic basis, which makes it more practical for governments to procure them as needed rather than maintaining an in-house staff to perform them.

This trend to contract out more services, together with the Public Services and Utilities Directives, should increase the opportunities for U.S. firms to access the EC's public sector service market, which accounts for almost 25 percent of total EC public procurement.[32] Of all U.S. companies, those with affiliates in the EC would probably derive the greatest benefit because local presence is often a determining factor in winning service contracts.

In general, U.S. service providers favor EC measures that liberalize the public sector services procurement market, stating that increased transparency of award procedures should increase awareness of contract opportunities and create competition where none currently exists. Furthermore, the introduction of Communitywide procurement rules and procedures to replace disparate member-state regulations should facilitate U.S. companies' access to the entire EC market by reducing the administrative burden of understanding 12 different procurement regimes.[33]

However, certain U.S. firms apparently do not believe that the introduction of more open competition in this sector will have a significant impact on their EC activities. In general, the large, well-known U.S. service providers already enjoy access to EC public procurement markets through their presence on government-preferred supplier lists. Accordingly, such companies are less likely to welcome the directives than to express concern over the increased administrative burden of following the procedures outlined in the directives. For example, they claim that it is difficult to distinguish between supplies and services and, therefore, the particular EC directive that should apply.[34]

In addition, several barriers could continue to create difficulties for U.S. firms or individuals who seek access to the entire EC market. Professional qualifications and certification requirements could prevent U.S.-trained nationals from performing services in some EC member states because the EC Directive on Mutual Recognition of Diplomas[35] makes no provisions for non-EC nationals. Individual member-state regulations prevail in the absence of Community regulations, therefore requiring licensed U.S. service providers to meet individual member-state requirements.[36]

The provisions addressing third-country bids differ between the Public Services Directive and the Utilities Directive. The Public Services Directive does not contain provisions addressing third countries, whereas the Utilities Directive provides a mechanism for the EC Commission to restrict third-country access to the EC

[29] *Commission Recommendation of 24 October 1991 on the Standardization of Notices of Public Contracts*, 91/561/EEC, *OJ* No. L 305 (Nov. 6, 1991), p. 19.

[30] EC Committee of the American Chamber of Commerce in Belgium, "Draft Letter on the Revision of the Supplies Directive," Oct. 1991.

[31] EC Commission, *Panorama of EC Industry: 1988*, p. 19.

[32] EC Commission, "Community-Wide Competition for Government Contracts for Services," *Information Memo*, Sept. 19, 1990.

[33] U.S. industry representative, meeting with USITC staff, Brussels, Oct. 25, 1991.

[34] U.S. industry representative, meeting with USITC staff, Brussels, Oct. 25, 1991, and the French Public Procurement Commission, meeting with USITC staff, Paris, Oct. 31, 1991.

[35] *Council Directive on a General System for the Recognition of Higher-Education Diplomas Awarded on Completion of Professional Education and Training of at Least Three Years' Duration*, Directive 89/48, *OJ* No. L 19, Jan. 24, 1989, p. 16.

[36] In some EC member states, individual practitioners of certain licensed professions must comply with local certification requirements. In others, member-state law requires that a professional firm's senior partners comply with local licensing regulations, thereby establishing the firm's compliance with local requirements.

market should it determine that the third country does not provide equivalent market access. Although negotiations under way on the GATT Government Procurement Code could nullify the third-country provisions in the Utilities Directive, U.S. companies have expressed concern that in the meantime, local, State, and Federal "Buy America" legislation in the United States could prompt the EC Commission to restrict access to the EC utilities market.[37] On the other hand, the lack of such provisions in the Public Services Directive has been interpreted by EC officials to mean that member states can continue to treat third-country bids the way they always have, which includes the possibility of discrimination.[38]

The overall impact of liberalization of services procurement is difficult to determine because of the paucity of statistics on the actual size of the public services market. Moreover, the directives exempt services performed in-house and those sold by one contracting authority to another public entity. The value of such services is unknown, but it has been suggested that these exclusions from the application of the directives could actually encourage governments to reverse the current trend and provide services in-house, as well as to other public authorities.[39]

Also, effective enforcement of the procurement directives will help determine whether more liberalized public procurement is realized. The EC has implemented a number of programs to ensure compliance with the procurement directives, as discussed above. In addition, the Remedies Directive and the Utilities Remedies Directive institute procedures to help ensure that discrimination in the award of public contracts does not occur.

Some U.S. firms have suggested that procuring entities have been successful in avoiding the intention of procurement directives already in force by invoking the "compatibility" clause, which permits procuring authorities to reject bids that would impose "disproportionate" costs or technical difficulties to make them technically compatible.[40] Moreover, certain U.S. subsidiaries operating in the EC have questioned the practicality of the Utilities Remedies Directive in particular. For example, several U.S. companies said they would be reluctant to use the directive because it could offend the purchaser and reduce their chances to secure a future contract.[41] Other firms claimed the length of time to resolve a case is impractical.[42] Some companies perceive that the member-state court or reviewing body would naturally support the opinion of the local procuring entity.[43] Furthermore, one U.S. firm noted that effective use of the directive would require a supplier to have collected "evidence" on a regular basis throughout the entire contract-award process, an administrative burden that firms may be unwilling to perform or may simply forget.[44]

Only a few of the sectors designated as "priority services" in annex 1.A of the directives offer significant export or direct investment potential for U.S. service firms. The provision of services such as maintenance and repair, building cleaning and property management, and sewage and refuse disposal would probably prove impractical for U.S. companies without EC affiliates, since these types of services require a local presence. Furthermore, companies in these sectors apparently have little interest in establishing an EC presence, because of local competition and the relatively insignificant economic weight of these service industries in the total EC public procurement market.

In the context of the procurement directives, some of the service sectors that appear to offer the greatest opportunities for U.S. companies are management consulting and related services; accounting, auditing, and bookkeeping services; computer and related services; and architectural and engineering services. Accordingly, case studies addressing these sectors appear below. These service sectors are large industries in both the EC and the United States, significantly contributing to the overall economy in terms of revenue and employment. Furthermore, U.S. firms in these industries are already active in the EC market. Because these services are of an intellectual nature and require close contact between the contracting entity and the service provider throughout the award and execution of the contract, these services have traditionally been provided locally. Therefore, the liberalization of the public procurement market would enable the EC affiliates of U.S. service firms to compete on a level playing field with their Community counterparts.

Case Study: Management Consulting

Background

The U.S. Market

Management consultants advise and assist the management of organizations. This work involves identifying and analyzing problems and opportunities, recommending appropriate action, and increasingly, implementing solutions. In 1990, the U.S. management consulting industry employed 80,000 consulting professionals and global industry revenues

[37] U.S. Chamber of Commerce, International Division, *Europe 1992: A Practical Guide for American Business*, 1991, p. 49.

[38] U.S. Department of State Telegram, Jan. 27, 1992, Brussels, message reference No. 01215.

[39] U.S. industry representative, meeting with USITC staff, Brussels, Oct. 25, 1991, and French Public Procurement Commission meeting with USITC staff, Paris, Oct. 31, 1991.

[40] U.S. industry representative, meeting with USITC staff, Brussels, Oct. 25, 1991.

[41] U.S. industry representatives, meetings with USITC staff, Brussels, Oct. 25, 1991.

[42] Ibid.

[43] Ibid.

[44] Ibid.

amounted to approximately $13.3 billion. This industry experienced 15 to 20 percent annual growth throughout the 1980s, but industry observers predict no better than 5-percent annual growth in the near future. In general, it appears that the management consulting industry is not as recession-proof as once believed and that companies tend to cut back on consulting expenditures during economic downturns.

The U.S. consulting industry consists of 20 large firms (only a few of which are not U.S. owned) accounting for about 70 percent of industry revenues.[45] U.S. management consulting firms gain market access more through foreign direct investment than cross-border trade, because firms must closely cooperate with clients to ensure effective service. The large U.S. consulting firms have established worldwide networks of foreign offices, usually as branch offices of the U.S. company.

The management consulting industry is closely linked to the accounting industry; 6 of the 10 largest consulting firms in the world are divisions of U.S. multinational accounting firms. In addition, the management consulting industry increasingly overlaps with the computer services industry. The development and installation of information and management systems accounts for approximately 35 percent of management consulting activities.[46] Accordingly, computer software houses have begun to offer consulting services tailored to the specific needs of their corporate clients.

The EC Market

The EC management consulting market has witnessed rapid growth since the mid-1980s, expanding at an average annual rate of 15 to 20 percent.[47] In 1989, the management consulting industry in the EC member states generated revenues of approximately $8.3 billion,[48] employing approximately 70,000 consultants. The recent economic downturn has had disparate effects on the management consulting industry in the various EC member states, but overall growth did not exceed 5 percent in 1991.[49] Due to relatively sluggish growth, industry analysts predict that home-country market share will be more strongly contested than ever among the EC member states.[50]

The industry is most concentrated in Germany and the United Kingdom, the largest and most developed EC member-state consulting markets. Growing concentration characterizes the French and Italian markets, and greater consolidation is expected in the smaller country markets as the industry matures and as the large U.S. consulting firms open offices, acquire local firms, or both. According to industry representatives, the major U.S. consulting firms have a very strong, if not dominant, market position in the EC. In addition, smaller U.S. consulting firms with specialized, industry-specific expertise have also established themselves in the EC market.

Management Consulting in the Public Sector

Public sector consulting contracts account for about 10 to 20 percent of the total EC consulting market,[51] or about $830 million to $1.7 billion. Public sector consulting reportedly accounts for an even larger share of the total market in France and the Netherlands, particularly with regard to information systems implementation and guidance on public capital spending.[52] Industry representatives have stated that, at present, much of the work performed by U.S. firms appears to be related to privatization.[53] For example, U.S. management consulting firms have advised governments on the financial, fiscal, and industrial restructuring factors involved in the privatization of state-owned enterprises. However, the demand for consulting services has also grown in public service sectors such as health, transportation, and education, particularly in the United Kingdom.[54]

U.S. consulting firms have reportedly established a significant presence in the British public sector consulting market and are well represented on the Central Government's preferred supplier lists. Another important EC market for public sector management consulting is Germany, which has perhaps become the largest market for public sector consulting, given the consolidation and rationalization of industry in eastern Germany.[55]

Plans to reorganize the structure of government agencies and state-owned enterprises have presumably increased demand for consulting services in France and Italy. Spain has been viewed as an underdeveloped market, but one with significant growth potential, particularly for auditing and strategic planning consulting services.[56] Finally, some industry observers have identified the various Directorates-General within the EC bureaucracy as important growth markets.[57]

[45] Editor of a management consulting industry newsletter, telephone interview by USITC staff, Jan. 23, 1992.

[46] EC Commission, "Management Consultancy," ch. in *Panorama of EC Industry: 1991*, p. 27-65.

[47] Editor of a management consulting industry newsletter, telephone interview by USITC staff, Jan. 23, 1992.

[48] USITC staff estimate based on figures compiled by the German Management Consultants Association (BDU); "Survey on Management Consultancy," *Financial Times*, May 15, 1991; and the editor of a management consulting industry newsletter.

[49] EC Commission, "Management Consultancy," p. 27-68.

[50] "Survey on Management Consultancy," p. 1.

[51] EC Commission, "Management Consultancy," p. 27-64.

[52] Ibid.

[53] Industry representative at a major U.S. consulting firm, telephone interview by USITC staff, Jan. 9, 1992.

[54] EC Commission, "Management Consultancy," p. 27-66.

[55] Industry representative at a major U.S. management consulting firm, telephone interview by USITC staff, Jan. 9, 1992.

[56] Ibid.

[57] Industry representative at a major U.S. management consulting firm, telephone interview by USITC staff, Jan. 23, 1992.

Competitive Advantages of U.S. Industry

U.S. firms tend to be more experienced than their European counterparts in the strategy-consulting sector, which involves industrial restructuring, privatization, and long-range planning. In addition, U.S. firms are larger and therefore tend to have greater resources with which to establish international alliances and acquire local firms. Language can sometimes be a barrier to obtaining public sector contracts in any foreign country, but most U.S.-based management consulting firms in the EC view themselves as multinational and often have local EC partners or subsidiaries.

Possible Impact on U.S. Companies

General Observations

Currently, the most common bidding procedure for public sector contracts in management consulting is the restricted procedure, whereby the procuring entity invites only certain firms to submit bids for contracts. This bidding procedure could conceivably enable contracting authorities to favor firms from that country. However, an industry source indicated that, in the United Kingdom at least, U.S. management consulting firms are well represented on government agencies' "preferred supplier" lists.[58]

The proposed directives could help the EC affiliates, subsidiaries, or branch offices of U.S. niche-market consulting firms to obtain more member-state public sector contracts, thereby establishing a more broadly based reputation for these firms within the EC. It is unlikely that similar U.S. firms without EC branch offices will derive much benefit from the directives, because the major U.S. consulting firms that dominate the EC market have begun to develop specialty practices through mergers with and acquisitions of foreign firms. Industry representatives report that U.S. consulting firms with EC affiliates are generally considered to be EC firms, in part because they hire local consultants and therefore participate fully in the private and public sector markets.[59]

Industry Responses and Concerns

Most industry observers believe that the directives would most likely have a neutral effect on the EC affiliates of U.S. consulting firms because these firms already participate in the public sector market and have had little difficulty winning contracts from government entities. These firms favor the directives' transparency requirements; however, they also perceive that they will now have to face a more burdensome bidding procedure.

[58] London bureau chief of a U.S.-based management consulting industry publication, telephone interview by USITC staff, Jan. 7, 1992.

[59] Industry representative at a major U.S. consulting firm, telephone interview by USITC staff, Jan. 23, 1992.

Case Study: Accounting, Auditing, and Bookkeeping

Background

The U.S. Market[60]

The U.S. accounting industry employed about 550,000 people and generated revenues of $35 billion in 1991. The "Big Six" multinational accounting firms, three of whose world headquarters are located in the United States, account for the majority of industry revenues.[61]

This industry has experienced a dramatic decline in annual growth, from double-digit rates in the 1980s to 2.2 percent in 1991. Several factors converged in the late 1980s, creating the conditions for very slow growth in 1990 and 1991 and relatively moderate projected growth through the mid-1990s. Recent low levels of growth can be attributed to the economic downturn. Although business corporations always require accounting services, they have begun to commission only the minimum level of services, reducing spending on premium billing, labor-intensive mergers and acquisitions, and work related to leveraged buyouts, for example.

In addition, the top international accounting firms were restructured during 1988-89, transforming the "Big Eight" into the "Big Six." The costs involved in two mergers among the top international firms took their toll on total industry profits during an economic downturn. Finally, the consulting divisions of the Big Six accounting firms acted as their engine of growth throughout the 1980s. When growth in the management consulting sector began to slow down, revenues of the Big Six suffered accordingly.

Foreign direct investment is essential in this industry to gain EC market access because licensing regulations in most member states require that foreign accountants establish a local presence, usually in association with a locally licensed accounting partnership. The U.S.-owned Big Six accounting firms have established affiliate networks throughout the EC. These firms earn a significant share of their revenues overseas, and their clients are mostly U.S. multinational companies.[62]

[60] All U.S. industry figures from U.S. Department of Commerce, "Professional Services," ch. in *U.S. Industrial Outlook: 1992*, pp. 52-1 through 52-6.

[61] Because accounting is a licensed profession, the Big Six firms must comply with the requirement that branch offices in foreign countries be established as partnerships with locally licensed accountants. Industry experts point out that it is therefore difficult to ascribe nationality to the Big Six international accounting firms. In order of size: KPMG Peat Marwick (the Netherlands), Ernst & Young (United States), Deloitte & Touche (United States), Arthur Andersen (United States), Coopers & Lybrand (United Kingdom), and Price Waterhouse (United Kingdom).

[62] Editor of an international accounting industry publication, telephone interview by USITC staff, Jan. 24, 1992.

The accounting profession in both the United States and the EC has evolved beyond its original parameters, encompassing diverse services such as tax and financial advice, insolvency settlement, trustee and administrative work, and management consulting activities such as privatization and general business advice. Because the Big Six accounting firms have also developed consulting units, it is somewhat difficult to separate the activities of accountants and management consultants. Industry analysts predict that slow growth in demand for accountancy services and the maturity of these sectors will lead to further blurring of the distinction between accounting and management consulting.[63]

The EC Market

There were approximately 270,000 registered accountants in the EC member states in 1988, about 40 percent of whom worked in the public sector as in-house accountants.[64] This figure appears to indicate that a significant proportion of EC public sector accounting work is performed in-house. Industry revenues totaled ECU 12 billion ($13.2 billion) in the EC in 1989,[65] with the United Kingdom, Italy, Germany, and France accounting for 85 percent of this total.[66] EC industry structure mirrors that of the United States, with the affiliates of the Big Six international firms accounting for most of total industry revenue.

Accounting Services in the Public Sector

Precise data on the size of the EC public sector accountancy market are unavailable since government entities tend to perform much of this work in-house. An industry source indicated that in the past, private sector accountants usually restricted themselves to audit and consulting functions in the public sector. However, some British Government departments and agencies reportedly have considered contracting out actual accounting services as well.[67] Whereas the Big Six firms participate in the public sector market, often relying on their locally trained hires, it appears that other U.S. firms are more interested in pursuing private sector work, because it is more profitable.

Competitive Advantages of U.S. Industry

The U.S.-owned Big Six accounting firms tend to benefit from longstanding relationships with U.S. corporations, which enable them to follow their corporate clients into new foreign markets. However, increased consolidation and internationalization of medium-size EC firms will likely increase competition in the EC market.

Possible Impact on U.S. Companies

General Observations

Government entities in the EC member states currently use the negotiated procedure for accounting and auditing service contracts.[68] The proposed directives permit the use of the negotiated procedure as long as the tender notice is published. This procedure would increase the transparency of the award procedure, but it could lead to favoritism on behalf of local firms.

Industry Responses and Concerns

Industry observers maintain that the directives will not significantly affect the U.S. Big Six accounting firms in the EC. Because they are considered to be local firms in the member states in which they operate, they have little difficulty in obtaining government contracts. U.S. accounting firms are generally not very active in the EC public sector. Although one of the U.S. Big Six firms regularly provides public sector accounting services in Spain and Portugal, U.S. Big Six and other accounting firms are generally more interested in the Eastern European countries' public sector accounting services markets.[69] In general, it appears that the directives will prove more beneficial to the consulting divisions of U.S. accounting firms.

Case Study: Computer and Related Services[70]

Background

The U.S. Market[71]

The two largest segments of the computer and related services industry in the United States are data processing and computer professional services—systems integration, custom programming, consulting, and training. In 1991, these two segments employed approximately 800,000 people and earned revenues of $85 billion. Data processing services were estimated at

[63] EC Commission, "Accountancy Services," ch. in *Panorama of EC Industry: 1991*, p. 27-68.

[64] EC Commission, "Accountancy," ch. in *Panorama of EC Industry: 1990*.

[65] USITC staff meeting with European Community officials, Brussels, June 15, 1991. This figure refers to private sector revenues.

[66] Ibid.

[67] Industry representative at a British-based registered accountants association, facsimile correspondence with USITC staff, Feb. 5, 1992.

[68] Ibid.

[69] Ibid.

[70] According to the EC Commission, *Classification of Products According to Activities (version 03)*, July 19, 1991, this sector includes hardware consultancy services; software consultancy and supply services; data processing services; data base services; maintenance and repair services of office, accounting, and computing machinery; and other computer-related services. However, for the purposes of this case study, we will focus on the two most significant sectors affected by this directive: data processing and network services and computer professional services—services related to the design and selection of computer and peripheral systems, computer and telecommunications linkages, and systems and network management. U.S. Department of Commerce, "Information Services," ch. in *U.S. Industrial Outlook: 1992*, p. 26-4.

[71] U.S. Department of Commerce, "Information Services," ch. in *U.S. Industrial Outlook: 1992*, pp. 26-1 to 26-9.

about $35.6 billion,[72] and computer professional services were about $49.4 billion. From 1992 to 1996, growth in both sectors is estimated at an average annually compounded rate of 13 percent.

Data processing services comprise three main subsegments: transaction processing, utility processing, and data entry. In transaction processing, a service provider inputs, updates, or deletes data from customer files. In order for a service to be classified in this subsegment, a transaction must occur in which user files are updated or changed in some way. In the United States, transaction processing accounts for about 81 percent of all processing revenues.[73] Utility processing and data entry account for a much smaller share of the processing services industry. In utility processing, a vendor often provides intermediate services for a customer such as data storage or computer time-sharing services. Data entry has recently emerged as another major type of processing service. Since most data entry is low-skilled, labor-intensive work, most data entry service providers have moved to offshore locations in the Caribbean and Far East to take advantage of lower labor rates.

The U.S. market for computer professional services is almost evenly divided: systems integration accounts for about 33 percent of all revenues, customized programming accounts for 32 percent, and consulting and training accounts for about 35 percent. Customized programming services are targeted towards users who require unique applications. Often these users require that software be developed or modified. Systems integration is a computer professional service in which standard computer hardware components are combined with custom software in a system that is tailor made to user requirements. During the next few years, growth in this field is projected at approximately 20 percent annually. The last major subsegment of computer professional services—computer consulting and training—provides advice on design and selection of computer and peripheral systems and trains people on how to operate and maintain these systems.

The data processing sector is highly competitive. In 1991, there were more than 2,000 companies, employing 300,000 people and ranging from global corporations to very small firms. During the last few years, the computer professional services sector has become increasingly concentrated as existing firms have merged to face competition from new industry entrants such as computer equipment manufacturers and distributors, telecommunications firms, and accounting/consulting firms. There were about 3,700 firms providing computer professional services in 1991; 1,700 provided systems integration services, and the remaining 2,000 provided customized programming, consulting, and training services.

To gain access to foreign markets, foreign direct investment and direct exports are both important in the data processing sector of this industry. Data processing services are unique in that they can be provided on a batch[74] as well as a remote basis using the telecommunications network as a means of transport. In order to perform remote processing, the conditions of access to the public-switched network—most importantly, leased private telephone lines—determine U.S. companies' ability to enter foreign markets.[75] U.S. companies have established remote processing centers in low-wage areas and perform these services for clients in third-country markets. For network services, access to foreign telecommunications networks and the ability of U.S. companies to build their own networks are the most important market access issues. For computer professional services, local presence through foreign direct investment is important to ensure adequate coordination and cooperation with the client.

The EC Market

The EC market for computer and related industries is estimated at $26 to $30 billion, 30 to 35 percent of the size of the U.S. market.[76] Like that in the United States, EC industry structure is diverse, ranging from large multinational corporations to small independent contractors. However, most firms are small to medium-size companies. In 1991, an estimated 360,000 to 400,000 people were employed by the information services industry in the EC. The leading providers of computer and related services at the country level are France, Germany, the United Kingdom, and Italy, which account for about 70 to 80 percent of the total EC market.[77] Industry observers predict that EC market growth will outpace that of the United States in coming years, in large part because new telecommunications regulations will liberalize the market and allow new services to be provided. Already, many European as well as foreign companies are acquiring EC companies and forming joint ventures.

[72] Since processing services may be provided on a remote basis using the telecommunications network as a means of transport, value-added network service revenues are also included in this segment.

[73] INPUT, *U.S. Processing/Network Services Markets, 1988-1993*, Dec. 1988, p. 30.

[74] Batch processing is a carry-in or over-the-counter business that involves no direct interaction between the user and the data processing equipment. In remote processing, the user processes data by entering it through a computer terminal, which is linked by a telecommunications line to another computer at another location.

[75] One issue of importance to U.S. information service providers is the pricing of leased lines. U.S. service providers prefer flat-rate pricing to volume-sensitive pricing because they are allowed unlimited usage of leased lines at a mutually agreed upon price. Other leased-line restrictions can prohibit firms from interconnecting private networks to the public-switched network or reselling excess capacity to third parties. These restrictions are apparently designed to prevent service providers from bypassing the public network.

[76] Estimated by USITC staff.

[77] EC Commission, "Software and Computing Services," ch. in *Panorama of EC Industry: 1990*, p. 30-11.

The EC computer and related services industry is dominated by the data processing and computer professional services segments, which each have about a $10 to $12 billion share of the market.[78] Computer professional services will experience 24 percent annual growth in the 1990s.[79] Data processing services, on the other hand, will continue to grow slowly, by 6 percent annually.[80] However, during the last few years, many companies have been turning over their processing functions to third-party providers of processing services because they lacked the expertise and resources to perform these functions in-house. This trend may enable new service providers to enter the market and has allowed large providers of processing services to realize significant economies of scale.

Many EC computer professional service firms are subsidiaries of corporate conglomerates such as Siemens, Olivetti, and Bull; therefore, the EC market tends to be more concentrated than its U.S. counterpart. Further, concentration is likely to increase as telecommunications authorities and firms form strategic alliances to provide "one-stop shopping" computer-linked telecommunications services.

Most of the large U.S. data processing/network services firms are present in the EC market, and together they account for 35 to 40 percent of this relatively stagnant market.[81] U.S. companies such as Automatic Data Processing and General Electric Information Services Co. (GEISCO) have taken an active interest in the European processing services market. Other U.S. companies with significant operations in Europe include Computer Sciences Corp. (CSC), AT&T, Electronic Data Systems (EDS), and American Express. Many U.S. computer professional service firms entered the EC market through joint ventures with local firms but have now formed full-service subsidiaries in the EC market. For many U.S. firms, growth by acquisition is a key strategic goal in entering foreign markets.[82]

Computer and Related Services in the Public Sector

U.S. Federal Government procurement has been an important element in the growth of the computer-related service industries in the United States, particularly systems integration. Estimates by the General Services Administration (GSA) indicate that the U.S. Government purchased about $2.7 billion of data processing and telecommunication services in fiscal year 1990.[83] Industry observers have noted that the increased volume and complexity of computer-related services has encouraged public and private sector entities to out-source these services rather than provide them in-house. However, the public sector market has become saturated in recent years, due to the completion of large-scale Federal agency computer network systems.

The EC public sector market for computer professional and network services is likely to be more dynamic than the U.S. public market. As trade barriers disappear in preparation for a unified market in 1992, U.S. computer and related services providers anticipate that the EC member states will liberalize their public telecommunications markets. However, U.S. companies' access to this market could be impeded by incomplete deregulation of the telecommunications market.

The public sector market for computer and related services varies by member state. Estimates indicate that in most member states, the level of government procurement ranges from 5 to 15 percent of the total market for computer and related services.[84]

In most member states, the public sector relies almost exclusively on domestic suppliers.[85] Although this market continues to make up only a small share of their European sales, some U.S. companies have been successful in entering this market.[86] Government contracts awarded to U.S. firms in the EC have ranged from $500,000 to as high as $5 million.[87]

Competitive Advantages of U.S. Industry[88]

The U.S. computer and related services industry is the world's largest, and U.S. firms have been present in the EC market longer than most European firms. One of the main competitive strengths of U.S. firms is the ability to transfer technology from their Federal to commercial divisions. This capability has enabled U.S. firms to enter foreign markets and gain revenues from the commercial as well as the government side of the business. Also, the U.S. industry has had an advantage in the development of advanced software systems

[78] Estimated by USITC staff.

[79] U.S. Department of Commerce, "Information Services," ch. in *U.S. Industrial Outlook: 1992*, p. 26-7.

[80] EC Commission, "Software and Computing Services," p. 30-10.

[81] Industry representatives, telephone interview by USITC staff, Jan. 3, 1992.

[82] As a result of recent acquisitions, CSC and IBM are the top two information services providers in Belgium, with an estimated combined market share of 15 percent. For more information, see INPUT, Inc., *Worldwide Market Forecast for Information Services, 1989-1994*; "Firm to Buy CIG-Intersys, Computer Services Company," *Wall Street Journal*, May 1, 1989, p. C7.

[83] U.S. General Services Administration, Federal Procurement Data System, *Federal Procurement Report*, Mar. 13, 1991, p. 7.

[84] Industry representative, telephone interview by USITC staff, Feb. 1992.

[85] Ibid.

[86] For example, EDS has some quasi-governmental contracts for systems integration and processing services in the Netherlands and Spain. Through its newly acquired subsidiary in the United Kingdom, SD-Scion, EDS has also obtained contracts with the British Department of Social Security. In the United Kingdom, CSC won a contract to provide data processing services for the tax authority of the United Kingdom. In addition, it has obtained contracts for smaller projects from the European Parliament and EC Commission.

[87] Industry representative, telephone interview by USITC staff, Feb. 1992.

[88] Ibid.

and equipment, and U.S. firms enjoy well-established relationships with overseas-based U.S. corporations as well as foreign clients. U.S. firms such as IBM and CSC are well known in Europe for their superior level of customer support and service.

U.S. firms in this industry also have been exposed to more competition than have their European counterparts, due to more flexible Government regulation of telecommunications in the U.S. market. This competition has led to the development of a broader range of advanced services, which can be offered to the EC market. However, many of the EC telecommunications authorities have entered into multinational alliances to provide certain types of network-based processing services that compete with the diversified services offered by U.S. firms.

Possible Impact on U.S. Companies

General Observations

The directives will likely have a negligible impact on the largest U.S. computer and related services firms' access to the EC public procurement market because many of the firms have already formed alliances with some of the major foreign telecommunications companies and authorities to provide network-based information services. Therefore, improved access to the public procurement market is more likely to be achieved through these joint ventures and acquisitions.

The negotiated bidding procedure is the most common public contract award procedure for data processing and network services. Under the proposed directives, the negotiated procedure will be permitted when the contract in question involves complex services whose cost cannot be easily determined, as long as a tender announcement is published. Some industry sources reported that contracting entities might use this procedure to circumvent the open competition provisions of the directive to the benefit of local firms. However, the new transparency requirements should benefit all U.S. firms wishing to learn more about the EC public market for these services.

Industry Responses and Concerns

U.S. industry representatives reported that while the liberalization measures were welcome developments, they would have a negligible effect on U.S. firms in the EC. At present, the public procurement market for data processing and computer professional services is not very large since most government entities perform their data processing services in-house.[89] However, it is possible that as the public sector's data services requirements become more complex and the pace of technological innovation exceeds the capabilities of in-house data processing staff, government entities may begin to "out-source" more of their data processing and work. In addition, as more member states privatize and streamline government agencies, the demand for computer professional services such as consulting and systems integration should also increase.

[89] Executives at a major U.S. information services company, telephone interviews by USITC staff, Jan. 3, 1992.

Case Study: Architectural And Engineering Services

Background

The U.S. Market

The term 'design,' as it relates to the construction industry, primarily refers to architecture and engineering, with engineers making up the majority of design professionals. Employment in the U.S. construction design industry breaks down approximately as follows: 80 percent engineers, 17 percent architects, and 3 percent surveyors.[90] Engineering, as implied in this context, is defined as the planning and/or designing of roads, bridges, buildings, etc. Architecture tends to have a similar definition but usually refers more specifically to the design of buildings. Engineering and architecture are directly related to the construction industry, as the three sectors contribute to the construction of buildings, roads, bridges, and other structures. Therefore, trends in the architecture and engineering (design) industry tend to directly reflect trends in the construction industry.

Total employment in the U.S. design sector is approximately 750,000. The U.S. engineering industry is composed of 5,000 to 7,000 firms. Engineering firms tend to specialize in a limited number of engineering disciplines, such as environmental or petrochemical projects, in order to acquire expertise and create market niches.

There are 68,000 qualified architects in the United States employed by more than 15,000 firms. Small practices dominate the architectural profession: 62 percent of firms have less than 5 employees and 84 percent have less than 10. Seventy percent specialize in 'pure' architectural design, and the remainder combine architectural design work with another specialty (generally interior design or engineering).[91]

As a frame of reference, new construction in the United States amounted to more than $400 billion in 1990. Design work in the United States produced $23.7 billion in billings in 1990, almost 10 percent more than in 1989. Billings for U.S. design firms increased between 1987 and 1990, both domestically and abroad. General building markets in the United States historically have provided the greatest demand for design-related services, averaging 34 percent of billings in 1989 and 1990. Struggling commercial and manufacturing markets restrained growth in the general building market segment in both years.[92]

[90] U.S. Department of Commerce, *U.S. Industrial Outlook: 1987*, p. 65-1.

[91] Information provided by a U.S.-based architecture firm in Spain, telephone interview by USITC staff, Jan. 22, 1992.

[92] *Engineering News Record,* Apr. 8, 1991, p. 34.

Over the next 5 years, the U.S. design market is expected to experience negligible to moderate growth. Since design is tied to construction, and new construction has decreased in real terms since 1988 and is expected to underperform GNP until 1996, design billings are not expected to recover until the mid-1990s.

U.S. firms have traditionally relied on a combination of direct exports and investment to penetrate the EC market. However, investment is fast becoming the predominant method for participation in the EC design market, due to U.S. industry's fears of being shut out of that market after the economic integration of Europe. This investment usually takes the form of joint ventures and branch offices.

The EC Market

As an indication of the size of the market that provides the demand for design services, the total EC construction market is $330 billion, or 25 percent of the world construction market.[93] Extrapolations from a survey of the Comite Europeen des Bureaux d'Ingenierie and Comite Europeen des Ingenieurs Conseils showed that in 1988, total consulting engineering sector revenue in the EC was estimated at ECU 21 billion ($24.8 billion) and employment reached 350,000. Revenue from exports of engineering consultancy services represented about 30 percent of total revenue for EC firms in 1988.[94] In 1990, total sector revenue increased to an estimated ECU $23.5 billion ($29.5 billion), with employment at 400,000. Revenues from exports of engineering consultancy services also increased, to ECU 7.8 billion ($9.8 billion) or 33 percent of total revenue.

The engineering sector in the EC comprises about 10,000 firms, with the 10 largest accounting for 11 percent of the total market and the 60 largest accounting for 33 percent.[95] EC engineering firms are beginning to broaden their range of services while maintaining a high degree of sectoral specialization.

There are over 250,000 qualified architects in the EC.[96] The revenue figure for the architectural sector is unavailable but is likely to be substantially lower than engineering revenue. Although building activity has picked up moderately in some member states, employment and revenue have not yet recovered to pre-1980 levels. For both architecture and engineering, the highest growth rates during the last half of the 1980s were in Spain and Portugal, where the development of the road- and rail-transport networks are crucial to EC integration. With considerable amounts of work to be done in the East, Germany remains the largest design market.[97]

[93] *Consulting Engineer,* fall 1990, p. E11.
[94] EC Commission, *Panorama of EC Industry: 1990,* p. 27-23.
[95] EC Commission, *Panorama of EC Industry: 1991,* p. 27-32.
[96] Ibid., p. 27-28.
[97] *Constructis,* Sept. 1990.

Since the end of the second oil crisis and the rise in investment during the mid-1980s, engineering activity has increased significantly. This trend continued throughout 1989 and 1990. The prospects remain average to good; however, the current recession in the EC may temporarily hamper this growth. Demand is expected to come from both the industrial and public infrastructure sectors.

There are two major markets for engineering in the EC: improving the infrastructure throughout the Community and addressing the Green movement by providing environmental engineering. U.S. firms believe that they must position themselves now through linkages with their EC counterparts in order to strategically address the marketplace. Efficient transport links will be essential to commercial and industrial development, and it is to this end that the EC is expected to invest ECU 33.5 billion ($42.1 billion) in the transport infrastructures of the southern part of the EC and Ireland by 1993. Spain, the major beneficiary of this aid, is expected to receive ECU 12 billion ($15.1 billion) from the EC's Structural Fund by 1993.[98]

Many design professionals expect that the EC is preparing to initiate programs to alleviate environmental air and water problems as the United States has done. British sources have estimated that over the next 10 years, more than $1.4 trillion will be spent in the EC to clean up the environment.[99]

Europe, (including countries other than those in the EC) along with Asia, is the most lucrative foreign market and the leading venue for the award of new overseas design contracts. In 1990, 57 U.S. design firms captured $1.5 billion, or nearly 63 percent of the European design market won by foreign firms. This amount is up from $1.14 billion in 1989 (64 percent of the European international design market). After the Canadian international design market, of which U.S. design firms in 1990 accounted for 78.5 percent of revenues to non-Canadian firms, the European international market is the second-most-important foreign market for U.S. design firms in terms of revenue. The U.S. share of the European international design market is nearly twice the share of European firms' share of the European international design market (in terms of cross-border services trade).[100]

As a result of increased U.S. industrial activity in the EC, U.S. design and construction firms have gained spinoff business. This business accounts for a large portion of the business U.S. design firms are winning in the EC. Many industry observers are concerned that this spinoff business is a short-term phenomenon driven by the EC 92 deadline and may not be sustained much beyond 1992.[101]

[98] Ibid.
[99] *The Construction Specifier,* Nov. 91, p. 130.
[100] *Engineering News Record,* Aug. 19, 1991, p. 25.
[101] *Consulting Engineer,* fall 1990, p. E3.

The incidence of U.S. consulting engineers' establishing a presence in the EC has been on the rise in the last few years. Industry sources report that approximately one-quarter of all U.S. firms that export design-related services currently participate in joint ventures. One industry representative indicated that the only way to obtain work in the EC is to maintain a local presence and develop relationships with EC firms. Proximity is valued because of the need for first-hand familiarity with the local market and easy access to the client and associated worksite personnel. Considering the investment in time, effort, and capital, many believe that in the near term, only the larger overseas engineering companies will become the real players in the EC.[102] To operate successfully, non-EC firms need to hire knowledgeable local personnel who understand the local regulations and speak the appropriate language.

Mergers and acquisitions between U.S. and EC consulting firms are growing in number and are being initiated in approximately equal proportions. As U.S. firms move to establish themselves in the EC, EC firms have been acquiring U.S. companies in order to expand their technological base and serve emerging markets.

The Public Sector Design Market

The U.S. public sector design market is nearly as large as the private sector market. A 1990 survey of U.S. consulting engineers showed that commercial clients were the major source of business for 34 percent of the respondents, followed by local government (28 percent), industrial (14 percent), State government (13 percent), and Federal Government (5 percent).[103] U.S. architects reportedly earn 23 percent of their income from contracts with Federal, State, and local governments.[104] In terms of construction, public works as a percentage of total new construction increased from 22 percent in 1988 to 26 percent in 1991.[105] The increasing public emphasis on meeting U.S. infrastructure needs has helped to counter the private building slide. Along with transportation, industry experts forecast increased hospital and public building work.[106]

EC-based sources report that public works contracts for engineering/design services in the EC are approximately 50 to 60 percent of total revenue (ECU 12 to 14 billion, or $15.1 to $17.6 billion).[107] However, EC industry representatives believe that the specializations of U.S. firms tend to serve the private rather than the public sector. Moreover, as industrial and utilities sectors continue to undergo privatization, U.S. firms will likely increase their earnings in the EC private sector.

There is a clear trend in the EC away from public investment expenditure and towards more private expenditure—for example, in the commercial and industrial areas. Government budgets have come under increased pressure as authorities attempt to trim deficits in nearly all EC member states. Thus, the relative importance of public procurement projects in the income of engineering consultants has declined since the 1980s.[108]

Competitive Advantages of U.S. Industry

EC engineers and architects generally have the same or greater level of technological expertise as U.S. design professionals. Therefore, successful U.S. firms have found niches in the EC market, since design services need only be sought from non-EC sources for projects in highly specialized areas.

U.S. design firms' advantages are in the industrial processes and "own technologies"[109] areas, offshore oil and gas capabilities, and increasingly, in environmental design.[110] In addition, U.S. firms reportedly dominate the market for advanced processing technologies.[111]

However, whereas some sectors of environmental design, such as community impact studies and hazardous waste treatment, might become niche markets for U.S. firms, EC professionals are learning the same environmental skills and advanced techniques that give U.S. design firms a competitive advantage in today's market. Moreover, EC firms have the advantage of greater access to mixed credit financing and other government subsidies for a variety of projects.[112]

Possible Impact on U.S. Companies

General Observations

Within the EC, the engineering firms based in lower income member states enjoy an advantage in terms of the cost competition for projects, presumably largely because of lower labor costs. These firms are increasingly more successful than their colleagues from higher income member states. With the creation of the single market in 1992, competition from lower income countries, both in the private and public sectors, will increase. The expected result is downward pressure on

[102] *Consulting Engineer,* fall 1990, p. E11.
[103] *American Consulting Engineer,* winter 1991, p. 44.
[104] Industry representative from a U.S. architecture firm in Spain, telephone interview by USITC staff, Jan. 22, 1992.
[105] U.S. Department of Commerce, *U.S. Industrial Outlook: 1992,* p. 5-2.
[106] *Engineering News Record,* Apr. 8, 1991, p. 34.
[107] EC Commission, *Panorama of EC Industry: 1991,* p. 27-32.
[108] EC Commission, *Panorama of EC Industry: 1990,* p. 27-23.
[109] 'Own technology' processes refer to patented manufacturing processes that, if a European firm wishes to incorporate in its manufacturing plant, must be designed by the U.S. firm that holds the patent to design this plant.
[110] Industry representative from the British office of a major U.S. design firm, telephone interview by USITC staff, Jan. 6, 1992.
[111] Industry representative from a major U.S. design firm, telephone interview by USITC staff, Jan. 2, 1992.
[112] Industry representative from a major U.S. design firm, telephone interview by USITC staff, Dec. 30, 1991.

the prices of engineering consultancy services.[113] This will affect the level of revenues of all U.S. design firms (whether or not established in the EC) or may serve to price them out of the market in certain instances.

In the EC, as in the United States, open procedures are used in bidding for architectural and engineering contracts. EC countries clearly prefer to employ domestic firms for public sector projects, despite U.S. competitiveness in this industry. However, EC member-state governments hire non-domestic firms when domestic expertise is lacking or unavailable.

The increased bidding transparency that may result from the public procurement directives will benefit U.S. firms that would like to be, but are not already, established in the EC. However, U.S. firms that traditionally and successfully have served the EC market will experience increased competition. This competition will come not only from other European firms, but from U.S. firms that have not been able to serve the EC market due to a lack of transparency in bidding procedures.

Even with a liberalization of public services procurement procedures, other barriers to the free flow of trade in design services will still exist. The most obvious of these barriers are licensing requirements for the practice of architecture and engineering in the EC.

Industry Responses and Concerns

Expectations of the U.S. design industry are mixed. One environmental engineering and design studies firm representative does not expect a noteworthy increase in U.S. design firms' billings in the EC as a result of public procurement liberalization. However, another industry representative reported that while the opening of public procurement is not likely to create a tremendous amount of work for construction firms, consulting engineers and architects would perhaps realize greater opportunities in the EC.[114]

Implementation

EC authorities consider implementation of the public procurement directives one of their top five priorities of the single market.[115] Three of the public procurement directives have passed their implementation deadlines: Supplies, Works, and the Remedies (or Compliance) Directives. Appendix D lists the national measures that implement these three directives. The Utilities Directive must be implemented by most member states by July 1, 1992.

[113] EC Commission, *Panorama of EC Industry: 1990*, p. 27-23.

[114] Industry trade association representative, telephone interview by USITC staff, Dec. 23, 1991.

[115] "EC Public Procurement Rules May Cause Anxiety to Buyers," *Financial Times*, Jan. 17, 1991.

Implementation of the Works, Supplies, and Remedies Directives

The Supplies Directive (88/295/EEC) had an implementation date of January 1, 1989. Greece, Spain, and Portugal obtained derogations until March 1, 1992. Portugal has transposed[116] the directive according to the EC's official data base ("Info 92").[117] In the last USITC report it was noted that the Supplies Directive was not yet transposed into national law by Italy or the Netherlands.[118] Those two countries still have not transposed the Supplies Directive at the time of this writing, although they have begun the process of implementation.[119] The rest of the member states have transposed the directive, but according to the EC Commission, Denmark is the only member state to have done so correctly.[120] Infringement proceedings are under way against Belgium, Italy, and the Netherlands.[121]

The Works Directive (89/440/EEC) had an implementation date of July 19, 1990 with derogations for Greece, Spain, and Portugal until March 1, 1992. As of December 1991, all member states had implemented the Works Directive except Luxembourg, the Netherlands, and those countries with derogations. Again, however, the EC Commission stated that only Denmark has correctly transposed the directive.[122] Despite derogations until March 1, 1992, Spain and Portugal have transposed into national law the sections of the Works Directive concerning thresholds.[123] Infringement proceedings are currently under way against Italy, Luxembourg, and the Netherlands.[124]

The Remedies Directive had an implementation date of December 21, 1991. To date, only Belgium, Denmark, the Netherlands, Spain, and the United Kingdom have communicated to the EC Commission national implementing measures for this directive.[125] Italy has included the Remedies Directive in its 1991 omnibus legislation bill.[126] Approval of the omnibus

[116] Transposition is the process by which an EC member state complies with an EC directive by passing a national law or rule that achieves the result sought by the directive.

[117] Diario da Republica I Serie, No. 279, pp. 4966-4968, Dec. 4, 1990 (Deliberacao da Assembleia da Republica No. 12-PL/90).

[118] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 6-4, ftn. 6.

[119] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991, p. 9.

[120] Ibid. See appendix D.

[121] Ibid., annex I, p. 18.

[122] Ibid. See appendix D.

[123] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991, p. 9.

[124] Ibid.

[125] Ibid. See appendix D.

[126] U.S. Department of State Telegram, "EC 92, Status of Italian Implementation," Jan. 1992, Rome, message reference No. 00980.

bill is only the initial step in Italy's lengthy process of coming into compliance with the EC directives, since Italy must also promulgate implementing decrees or regulations.[127]

The United Kingdom has implemented both the Supplies and Works Directives by circular. The Info 92 data base also indicates that the United Kingdom has implemented the Remedies Directive. According to British sources, the Supplies and Works circulars were to be replaced by the British regulations that implemented the Remedies Directive.[128]

Germany has implemented both the Supplies and Works Directives.[129] In general, the U.S. State Department considers Germany's procurement practices to be nondiscriminatory.[130]

Italy is reportedly in technical conformity with the EC public procurement directives; however, it has not transposed the Supplies Directive.[131] In December 1991, Italy published its legislative decree implementing the Works Directive.[132] Noteworthy sectors excluded from the decree include energy production and distribution, air and ground transportation, and national interest projects.[133] Nonetheless, the U.S. Department of State does not consider the overall procurement procedures in Italy to be transparent and competitive. For example, article 19 of the decree requires nonresidents to be registered on an official listing of contractors before they may be considered bidders for Government contracts.[134] In addition, a public contract may be awarded based on a determination of economic advantage rather than the lowest price.[135] It is estimated that if the Italian system were more open and competitive, U.S. firms could sell an additional $100 million annually to the Italian Government.[136] As discussed below, Italy has been sued several times by the EC Commission for failure to follow EC procurement rules.

Greece has improved its public procurement practices by bringing them more in conformity with EC and GATT regulations.[137] Reportedly, the Greek Government has begun to award major telecommunications and heavy electrical equipment contracts to U.S. firms.[138] Nonetheless, a number of significant barriers remain for foreign suppliers, such as reduced access to tender information, subjective tendering processes, and ambiguous standards requirements.[139]

Portuguese public procurement law follows the EC's Works and Supplies Directives.[140] Public tenders are announced in the *Official Journal* as required by the EC public procurement directives, as well as in the Portuguese Government's official gazette and in the two daily newspapers with the largest circulation. According to the U.S. Embassy in Portugal, all terms and conditions are included in the published announcements and there is adequate time for bids to be made. Portuguese authorities apparently make no distinction regarding the nationality of the supplier.[141]

As of December 1991, Spain had not implemented the Supplies or Works Directives; however, Spain was granted derogations for these directives until March 1, 1992.[142] Spain has communicated to the EC national implementing measures for the Remedies Directive.[143] The U.S. Embassy in Madrid has noted several concerns regarding Spain's current method of awarding public contracts. Although there are no actual discriminatory legal requirements enacted in Spanish Government procurement law, because the Spanish Council of Ministers must approve all major Government contract awards, subjective considerations reportedly play a role.[144] In practice, preference is given first to Spanish and then to EC suppliers and products.[145] The U.S. sectors most affected are commercial aircraft and communications satellites.[146] Another concern is that offset and local-content

[127] Ibid.

[128] British Government official, interview by USITC staff, London, Oct. 1991.

[129] See Appendix D.

[130] U.S. Department of State Telegram, "1991 National Trade Estimate Report on FRG: Revisions," Jan. 1992, Bonn, message reference No. 02253.

[131] U.S. Department of State Telegram, "Revision of National Trade Estimate Report, Italy," Jan. 1992, Rome, message reference No. 01576.

[132] U.S. Department of State Telegram, "Italy Implements EC Rules on Public Works," Jan. 1992, Rome, message reference No. 01556. See Appendix D.

[133] Ibid.

[134] Ibid.

[135] Ibid.

[136] U.S. Department of State Telegram, "Revision of National Trade Estimate Report, Italy," Jan. 1992, Rome, message reference No. 01576.

[137] U.S. Department of State Telegram, "National Trade Estimate Report—Greece," Jan. 1992, Athens, message reference No. 01036.

[138] Ibid.

[139] Ibid.

[140] However, Portugal has not yet submitted to the GATT a list of agencies covered by the GATT Procurement Code. U.S. Department of State Telegram, "Lisbon: 1992 Trade Act Report," Nov. 1991, Lisbon, message reference No. 08226.

[141] Ibid.

[142] In Spain, an EC directive is assigned to the appropriate administrative Government agency. Once it is passed into Spanish law, the directive is published in the Spanish official bulletin. Spanish Government official, meeting with USITC staff, Madrid, Nov. 4, 1991.

[143] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491, Dec. 19, 1991, annex I, p. 18.

[144] U.S. Department of State Telegram, "1992 National Trade Estimate Report: Spain," Jan. 1992, Madrid, message reference No. 00909; U.S. Department of State Telegram, "Revision of 1991 National Trade Estimate Report," Jan. 1992, Madrid, message reference No. 15828; U.S. Department of State Telegram, "1992 Trade Act Report: Spain," Nov. 1991, Madrid, message reference No. 12898.

[145] Ibid.

[146] U.S. Department of State Telegram, "Revision of 1991 National Trade Estimate Report," Jan. 1992, Madrid, message reference No. 15828.

requirements are becoming more prevalent in civilian Government contracts.[147]

Implementation of the Utilities Directive

Although not due to be implemented until July 1, 1992, the Utilities Directive has raised considerable interest in the United States, and therefore the U.S. Government has been paying close attention to EC member-state implementation activities. The directive provides that the deadline for implementation is July 1, 1992, although it will not go into effect until January 1, 1993. Spain has a derogation until January 1, 1996, and Greece and Portugal have derogations until January 1, 1998.

Danish officials at the Ministry of Industry have stated that they plan to implement the Utilities Directive by the target date of July 1, 1992.[148] Implementing legislation was introduced in October 1991, and a majority of the Danish legislature appears to support the directive[149] Similarly, British officials state that the United Kingdom will have the necessary secondary legislation in place by July 1, 1992, and intends to implement the directive by January 1, 1993.[150]

As with the Remedies Directive, Italy has included the Utilities Directive in its 1991 omnibus bill. If the bill passes, Italy must still promulgate a decree or regulation to implement fully the directive—as noted above, a reportedly very lengthy process.[151]

Despite its derogation until 1998, Portugal is reportedly working on the implementation of the Utilities Directive.[152] It is unclear whether Portugal will be able to pass the necessary legislation by July 1, 1992; however, Portuguese officials report that the necessary provisions will come into effect on January 1, 1993.[153]

The Spanish EC Secretariat and Spanish Ministry of Finance have stated that since Spain has a derogation until January 1, 1996, it does not plan to conform by July 1, 1992, but Spain may implement the directive before 1996.[154]

Ensuring Compliance With EC Procurement Directives by Member States

The EC Commission considers transposition of EC public procurement directives as only a first step in implementation. To ensure that member states actually follow the directives' procedures in practice, the EC Commission may seek enforcement by bringing formal infringement proceedings before the European Court of Justice (ECJ), by issuing press releases to apply additional pressure on member states, and by monitoring tender notices to ensure that the selection and award criteria and the requirements concerning guarantees and deposits are in accord with EC law.[155] The EC Commission also publishes standard models for tender notices in a form compatible with the directives.[156] Finally, the EC Commission is launching information campaigns and training activities at national, regional, and local levels.[157]

The EC Commission has initiated infringement proceedings against several countries for failure to implement the public procurement directives. The ECJ has held hearings and rendered judgments on several cases involving such violations. For example, one such alleged violation that has received a lot of attention occurred in Denmark in 1989. Two procurement contracts were issued in connection with the construction of the Danish Great Belt (Storebaelt) Bridge, the largest bridge in the EC. The EC Commission claimed that the contract for the bridge was awarded on the basis of tender specifications that called for a maximum Danish content of labor and materials.[158] Just before a summary hearing was to be held before the ECJ, Denmark negotiated successfully with the EC Commission to settle the dispute. In exchange for the EC Commission's withdrawal of the action, Denmark officially acknowledged its wrongdoing, agreed to reimburse the expenses incurred by unsuccessful bidders, and agreed to provide them with an opportunity to claim damages and interest in Danish courts.[159] A U.S. firm contested the award of the contract to a Danish company and obtained relief.[160]

[147] Ibid. Spain is reportedly close to becoming a member of the GATT Procurement Code. According to the U.S. Embassy in Madrid, the EC is expected to present Spain's Government procurement package to GATT signatories by the spring or summer of 1992. U.S. Department of State Telegram, "1992 National Trade Estimate Report: Spain," Jan. 1992, Madrid, message reference No. 00909; U.S. Department of State Telegram, "1992 Trade Act Report: Spain," Nov. 1991, Madrid, message reference No. 12898.

[148] U.S. Department of State Telegram, "Danish Implementation of Utilities Directive," Jan. 1992, Copenhagen, message reference No. 00778.

[149] Ibid.

[150] U.S. Department of State Telegram, "UK Implementation of EC Utilities Directive," Jan. 1992, London, message reference No. 01962.

[151] U.S. Department of State Telegram, "EC 92, Status of Italian Implementation," Jan. 1992, Rome, message reference No. 00980.

[152] U.S. Department of State Telegram, "Implementation of EC Utilities Directive," Feb. 1992, Lisbon, message reference No. 00914.

[153] Ibid.

[154] U.S. Department of State Telegram, "Spain: Implementation of Utilities Directive," Feb. 1992, Madrid, message reference No. 01493.

[155] EC Commission, *Sixth Report of the Commission to the Council and the European Parliament*, June 19, 1991, p. 18. See also previous section on compliance in this chapter.

[156] Ibid.

[157] Ibid.

[158] "To Build or Not to Build," *Europe*, No. 289, Sept. 1989, p. 9-11.

[159] "Public Procurement: Denmark Sees the Error of Its Ways and Commission Drops Call for Work on Storebaelt to be Suspended," *European Report*, No. 1526 (Sept. 26, 1989), Internal Market, p. 3.

[160] EC Commission, meeting with USITC staff, Brussels, Oct. 24, 1991.

On January 31, 1992, the ECJ issued an interim order requiring Italy to suspend a contract that was awarded to automate the state lottery system because Italy restricted the award to public companies and failed to publish the call for tender offers in the *Official Journal*.[161] In 1989, the ECJ had entered a judgment against Italy for requiring that all data processing supplies contracts be awarded only to companies in which the Italian Government had a majority shareholding. Italy never complied with the 1989 judgment—a failure that the ECJ cited as one of the reasons for granting the interim injunction in the more recent case.[162]

The EC Commission also commenced infringement proceedings against Spain because three public works contracts (relating to the construction of the Olympic Games facilities) were not published. The EC Commission dropped the infringement proceedings once Spain agreed to conform to the EC's publication requirement.[163]

The Internal Energy Market

Background

In 1986, the EC Commission issued broad objectives for the energy sector. These objectives included the need for "greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs and improving economic competitiveness."[164] The EC Commission also identified several factors that contribute to segmentation of the energy market. These factors include the diversity of products, end uses, operator size, political traditions, taxation policies, and energy resource endowments among the member states.[165]

In order to move toward a single internal energy market, the EC Commission has proposed a series of directives, divided in two phases, that would unify the various energy markets of the member states while also promoting competition within the sector. These directives are expected to increase price transparency, thereby lowering prices, while also providing a coherent approach to security of supply, environmental protection, and technical cooperation.[166] The EC Commission estimates that a single internal energy market could cut electricity generation costs by 15 percent and save ECU 5 to 11 billion in overall energy costs by 2010.[167]

The first phase includes a series of directives, proposed in July 1989, which are characterized by the common carriage principle. This principle provides for the unrestricted distribution of energy across national boundaries through pipeline networks and electricity grids. The first phase, however, was insufficient to create a single internal energy market. The directives of this phase govern relations between existing energy suppliers without encouraging new entrants or addressing differences in competitive conditions among member states. With the establishment of the first phase, France, for example, can export Government-subsidized electricity to its neighbors at lower than average rates.[168]

The second phase, which was proposed officially in January 1992, extends beyond the common carriage principle of the first phase by introducing the principle of open access.[169] The second phase involves a liberalization package that will limit monopoly power in the energy sector. The most contentious proposal in this package would permit third-party access (TPA) to gas and electricity networks. TPA would give third parties, such as large industrial customers and energy distributors, the right to use energy networks currently controlled by the EC's large gas and electricity producers. Third parties would pay for the use of the transmission and distribution networks of the member states and, in return, energy companies would be obliged to offer terms for the use of their system.

Although a separate chapter on energy was considered for incorporation into the Maastricht Treaty, a consensus was reached prior to the December 10 treaty agreement that the draft chapter, progressively weakened during the Dutch Presidency, should be

[161] U.S. Department of State Telegram, "European Court Orders Italian Government to Suspend Execution of a Public Procurement Contract Pending a Ruling on Compliance With EC Procurement Rules," Feb. 1992, Brussels, message reference No. 01880.

[162] Ibid.

[163] "Spain Complies With EEC Public Buying Procedure," *European Report*, No. 1675 (May 9, 1991), Internal Market, p. 4.

[164] *EC Council Resolution, OJ* No. C 241 (Sept. 25, 1986).

[165] For more information on the EC Commission's assessment of and approach to the internal energy market see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 4-7 to 4-8.

[166] "Energy: Cardoso Spells Out Liberalisation Plans," *European Report*, No. 1678 (May 22, 1991), Internal Market, p. 1.

[167] "EC Makes Slow Progress on Single Energy Market," *EC Reports*, Dec. 1, 1990, p. 6, and EC Commission, Directorate-General for Energy, *Completion of the Internal Market in Electricity and Gas*, Brussels, July 15, 1991, p. 2.

[168] The European Parliament's Green group (the Greens) has lodged a complaint against Electricite de France (EdF) for distorting the European electricity market in violation of articles 90, 93, and 169 of the Treaty of Rome. Alleged sources of distortion include large tax concessions, solvency that is guaranteed on the French state capital markets, abnormally low tariffs for exports, and lax conditions for business operation in the nuclear sector. If the EC Commission does not take up the complaint, the Greens plan to refer the matter to the Court of Justice. "EC Update: Green Complaints Against EdF," *EC Energy Monthly*, No. 35, Nov. 1991, p. 15.

[169] Because implementation of the proposals in the second phase outlined in this section will occur over two time periods, the liberalization package is often described as a three-stage plan: the directives of the first phase and the two time periods of the second phase.

dropped.[170] There is, however, a new chapter on trans-European networks in which energy is grouped with transport and telecommunications. This chapter promotes the "inter-connection and inter-operability of national networks as well as access to these networks" and the "harmonisation of technical standards."[171]

Phase I: Common Carriage Directives

Central Directives

During the first phase of the EC Commission's efforts to create a single internal energy market, four central directives were proposed under the concept of common carriage between member states:

1. The transparency of natural gas and electricity prices;[172]
2. Investment projects in the oil, natural gas, and electricity sectors;[173]
3 The right of transit of electricity between high-voltage grids;[174] and
4. The right of transit of natural gas between high-pressure transmission grids.[175]

With the exception of the Investment Projects Directive, which is no longer under consideration, the EC Council has adopted this first series of directives. Under the European Economic Area agreement, these directives will apply to the 7 EFTA countries, which have already indicated their acceptance, as well as the 12 member states.[176] The Price Transparency Directive was adopted on June 29, 1990;[177] the Electricity Transit Directive was adopted on October 29, 1990;[178] and, most recently, the Gas Transit Directive was adopted on May 31, 1991.

The Gas Transit Directive requires member states "to take the measures necessary to facilitate the transit of natural gas between high pressure grids in their territory."[179] Conditions of transit must be nondiscriminatory and fair for all parties concerned and must not endanger security of supply or quality of service.[180] Although the directive ensures the right of transit across the territory of any EC member state between large-scale, high-pressure gas transport networks, it does not provide unrestricted access to any natural gas network.

In addition to these central directives, the EC Commission has supplemented its efforts to create a single energy market with several related actions.

Related Actions

Import-Export Monopolies

The EC Commission began legal proceedings in March 1991 against several member states that have granted exclusive rights for the import and export of electricity and natural gas. Member states cited for permitting monopoly rights in the electricity sector are Denmark, France, Greece, Ireland, Italy, Netherlands, Portugal, Spain, and the United Kingdom and in the natural gas sector are Belgium, Denmark, and France.[181] These rights were seen as an obstacle to creating a single market for energy as well as a violation of article 37 of the Treaty of Rome. Article 37 prohibits commercial monopolies that establish discriminatory conditions for the procurement and marketing of goods.[182] France and other member states have argued that national monopolies benefit the consumer because they purchase foreign energy supplies at lower rates as a large bidder.[183]

On August 9, 1991, the previously cited member states, with the exception of Portugal, were given 2 months to justify their import and export monopolies. Portugal was exempted in June 1991 because of legislation that liberalized its electricity industry.[184] Most member states had responded to the EC Commission inquiries by early December 1991. The EC Commission has not yet commented on the content of the replies.

France and Italy are two of the strongest opponents of the EC Commission's efforts to open the energy sector to competition. Both have state-owned energy

[170] See chapter 1 for further detail on the Maastricht Treaty.

[171] "Maastricht Clears Chapter on Networks But No Energy Policy," *EC Energy Monthly*, No. 36, Dec. 1991, p. 1.

[172] *Council Directive Concerning a Community Procedure to Improve the Transparency of Gas and Electricity Prices Charged to Industrial End Users*, (90/377/EEC), *OJ* No. L 185 (July 17, 1990), pp. 16-24.

[173] *Draft Council Regulation Amending Regulation No. 1056/72 on Notifying the EC Commission of Investment Projects of Interest to the Community in the Petroleum, Natural Gas and Electricity Sectors*, COM (89) 335, *OJ* No. C 250 (Oct. 3, 1989), pp. 5-6.

[174] *Council Directive on the Transit of Electricity Through Transmission Grids*, (90/547/EEC), *OJ* No. L 313 (Nov. 13, 1990), pp. 30-32.

[175] *Council Directive on the Transit of Natural Gas Through Grids*, (91/296/EEC), *OJ* No. L 147 (June 12, 1991), pp. 137-139.

[176] U.S. Embassy officials, interview by USITC staff, Brussels, Oct. 24 and 28, 1991.

[177] For further discussion of this directive, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, and USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990.

[178] For further discussion of this directive, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, and USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991.

[179] EC Council, "Transit of Natural Gas Through Grids," press release, 6569/91 (presse 78-G), May 31, 1991.

[180] EC Council of Ministers, "Transit of Natural Gas Through Grids," press release, unw/AM/pj, May 31, 1991.

[181] EC Commission, "Commission Opens Infringement Proceedings Against Member States in Respect of Electricity and Gas Monopolies' Import and Export Rights," press release, IP (91) 251, Mar. 21, 1991.

[182] Ibid.

[183] Bureau of National Affairs, Inc. (BNA), "EC Targets Energy, Electric Monopolies; Member States Seek Common Defense," *1992: The External Impact of European Unification*, Sept. 6, 1991, pp. 1-2.

[184] "Electricity: Portugal Exempted From Import-Export Electricity Inquiry," *European Report*, No. 1684 (June 12, 1991), Business Brief, p. 1.

companies with considerable market power; Electricite de France (EdF) and Enel of Italy are the two largest utilities in Europe.[185] Both the French and Italian responses have reportedly argued that the electricity sector is not covered by article 37.[186] Further, they argue that article 90 permits public service enterprises to retain the resources necessary to fulfill their objectives. Article 90 says that public service monopolies are subject to competition rules, but only "in so far as the application of such rules does not obstruct the performance. . .of the particular tasks assigned to them."[187] France and Italy have also noted that removing the import and export monopolies would threaten the security of supply.[188]

Although these proceedings affect only monopolies in cross-border trade, the EC Commission has said that attacking cross-border monopolies was a necessary step towards attacking national distribution monopolies.[189] In this regard, the action against import and export monopolies sets an important precedent concerning the ability of the EC Commission to reform the energy sector through competition law.

Natural Gas in Power Stations

On January 24, 1991, the EC Parliament approved a proposal to repeal a 1975 directive that restricted the use of natural gas in power stations.[190] The legislation was originally introduced to conserve natural gas supplies in response to the oil disruptions of 1973 and 1974. The discovery of vast reserves of natural gas, however, made the initial estimate of gas supplies overly conservative. Natural gas is also recommended as a power source because it is considered less harmful to the environment than other fossil fuels.[191] Nevertheless, the Parliament's Energy Committee has asked the EC Commission to study further the economic and social effects of a shift in energy resources before issuing an opinion.[192]

[185] "New Markets, Old Hands," *Energy Economist*, No. 122, Dec. 1991, pp. 10.

[186] "Competition: Member States Respond to Energy Monopolies Threat," *European Report*, No. 1728 (Dec. 11, 1991), Business Brief, p. 3, and BNA, "EC and Energy Companies Reached Truce on Monopolies," *1992: The External Impact of European Unification*, Dec. 2, 1991, pp. 5-6.

[187] "Competition: Member States Respond to Energy Monopolies Threat," *European Report*, No. 1728 (Dec. 11, 1991), Business Brief, p. 3.

[188] "Competition: Member States Respond to Energy Monopolies Threat," *European Report*, No. 1728 (Dec. 11, 1991), Business Brief, p. 3, and BNA, "EC and Energy Companies Reached Truce on Monopolies," p. 6.

[189] David Buchan, "Reform for EC Power Links," *Financial Times*, Mar. 22, 1991.

[190] *Proposal for a Council Directive Revoking Council Directive 75/404/EEC on the Restriction of the Use of Natural Gas in Power Stations*, COM (90) 306, OJ No. C 203 (Aug. 14, 1990), pp. 19-20.

[191] "Gas: European Parliament Backs Repeal of Directive Limiting Gas Use in Power Stations," *European Report*, No. 1647 (Jan. 25, 1991), Internal Market, p. 6.

[192] Ibid.

Coordination Efforts

Associated with its efforts to establish a single energy market, the EC Commission is also involved in a number of activities designed to better coordinate the EC energy sector, such as a proposed energy tax designed to curtail harmful emissions,[193] proposals to coordinate oil stocks in the event of disruptions, the accession of the EC to the International Energy Agency, and the support of energy-related research and development through the THERMIE project.

Several coordination activities have particular significance for the United States. First, the European Energy Charter, signed on December 17, 1991, establishes a set of protocols for cooperative investment and trade in the energy sector between Western Europe and the former Soviet bloc. In addition to European nations, the signatories to the charter include most republics of the former Soviet Union, the United States, and Japan. Second, on December 5, 1991, the EC Commission and Germany announced a compromise strategy to reduce German subsidies to its coal industry. Germany has agreed to limit the amount of German coal that is eligible for subsidization to 40.9 million tons per year, which will reduce the amount of subsidized coal used in electricity generation to 20 percent of all coal used by electricity generators by 2005.[194] Third, the EC Commission has established the SAVE (Special Action for Vigorous Energy Efficiency) Program to promote energy efficiency. The program supports efforts to set technical standards and minimum efficiency requirements and initiatives to expand or create infrastructure by the member states.[195] The first standards measure proposed by the SAVE Program involves standards for hot water boilers.

Phase II: The Liberalization Package

After considerable discussion and controversy, the EC Commission presented its proposals for completing the liberalization of the electricity and natural gas markets in January 1992.[196] The initial directives, which are still in draft format but are scheduled for implementation by early 1993, would remove exclusive rights to generate electricity and build power lines; require vertically integrated companies to unbundle generation, transmission, and distribution activities; and permit third-party access (TPA) for large industrial consumers.[197] The definition of large consumers is expected to cover 400 to 500 industrial consumers, mainly in the aluminum, steel, chemicals, construction materials, glass, fertilizer and electricity

[193] For further discussion of this tax, see chapter 11.

[194] "Competition: Breakthrough Hailed on German Coal Subsidies," *European Report*, No. 1727 (Dec. 7, 1991), Business Brief, p. 2.

[195] "Energy Council: Ministers Adopt SAVE, Oil Crisis Conclusions and Tackle CO_2 Tax," *European Report*, No. 1717 (Nov. 1, 1991), Internal Market, p. 1.

[196] EC Commission, "Commission Proposals on the Completion of the Internal Market: The Gas and Electricity Markets and 1992," press release, P (92) 5, Jan. 22, 1992.

[197] P (92) 5, Jan. 22, 1992, p. 2.

production industries, and about 200 distributors of electricity and natural gas.[198] TPA rights would be extended to smaller industrial consumers by early 1998 through subsequent directives.

The proposals also clarified the EC Commission's approach to liberalization of the energy market. Specifically, the EC Commission will pursue a legislative approach based on the step-by-step cooperation procedure under article 100A of the Single European Act to introduce the necessary directives. During preparation of the liberalization package, the EC Commission had proposed a two-pronged approach which would include both procedures under article 100A as well as article 90 of the Treaty of Rome.[199] Article 90, which does not require EC Council approval, permits the EC Commission to use competition law to abolish monopoly rights in the electricity and natural gas markets. The proposed use of article 90 had been part of a "carrot and stick" approach designed to encourage resistant member states and energy companies to become involved in preparations for TPA through the approach using article 100A or face possible unilateral action through article 90 if TPA were to be continually stalled by debate. Although removed from current Commission plans, article 90 appears to have been reserved for possible future use.[200]

In addition, the EC Commission approach is based on subsidiarity for member states.[201] Under the liberalized internal energy market, member states would exercise control over the method of implementing the liberalization directives and would continue to regulate pricing and exclusive distribution rights for non-TPA to be use of energy networks, establish the rights and obligations of distribution companies, and establish criteria for building the energy infrastructure. Gas exploration and energy distribution systems will most likely be unaffected by the package directives.[202]

Progress on the preparation and presentation of the liberalization package has proceeded slowly due to considerable controversy over the merits of TPA. The major points of contention concern the effect of TPA on price, investment, and security of supply. Proponents of the liberalization package include the EC Commission; the United Kingdom, which has already begun to liberalize its energy sector; Portugal; energy-intensive industries, such as the fertilizer, chemical, aluminum, steel, and glass industries; and consumer groups. These proponents believe that TPA will improve the EC energy market by promoting competition, resulting in lower energy prices, improved efficiency of supply, rationalized investment decisions, and a broader and more flexible, and thus more secure, supply base.[203] TPA proponents also expect environmental benefits as competitive energy companies rationalize energy-sourcing decisions, thus increasing the market share of natural gas, and more rapidly adopt efficient, "clean" technologies.[204]

Opponents of the liberalization package include producers and suppliers of energy; companies involved in gas exploration; and most member states. Opponents dispute the EC Commission's conclusions about the effect of TPA and argue that TPA may in fact raise prices and will most likely reduce investment and threaten the security of supply.

To examine the merits of TPA, the EC Commission proposed establishing consultative committees composed of interested parties in September 1989. Two consultative committees were established in each market area: one with representatives of member states and one with representatives of the relevant energy industry—including producers, transporters, and distributors—and large industrial users. For the most part, the consultative committee reports, issued in May 1990, backed the opponents.[205] (It should be noted that the committees were largely composed of representatives from the energy companies and from the energy ministries of member states, both of which have a vested interest in maintaining the status quo.) The following sections review the major points of debate in both the electricity and natural gas sectors.

The Natural Gas Sector

Proponents of TPA base much of their argument on the assumption that TPA will increase future demand for natural gas.[206] According to proponents, monopolistic practices have stifled the market for natural gas and artificially depressed demand. They argue that the removal of such practices will cause the overall demand for natural gas to expand, providing opportunities for new entrants to the market and for

[198] Large consumers include those whose consumption exceeds 100 Gwh of electricity or 25,000,000 m^3 of gas. Eligible distributors are those who supply at least 3 percent of the electricity or 1 percent of the gas consumed in each member state. (P (92) 5, Jan. 22, 1992, p. 2.)

[199] EC Commission, Directorate-General for Energy, *Completion of the Internal Market in Electricity and Gas*, Brussels, July 15, 1991.

[200] "Energy: Cardoso Unveils Gas and Electricity Network Liberalisation Plans," *European Report*, No. 1717 (Nov. 1, 1991), Internal Market, p. 3.

[201] P (92) 5, Jan. 22, 1992, p. 1.

[202] "Cardoso Unveils Network Liberalisation Plans," p. 3.

[203] EC Commission, Directorate-General for Energy, *Completion of the Internal Market in Electricity and Gas*, Brussels, July 15, 1991, p. 4.

[204] Energy Committee, Counseil Europeen des Federations de l'industrie Chimique (CEFIC), "CEFIC Energy Committee Position Paper on Professional Consultative Committee on Gas," in an annex to EC Commission, Directorate-General for Energy, *Final Report: Professional Consultative Committee on Gas*, Apr. 1991, p. 9-10.

[205] "Energy: Storm Brews Over Commission's Article 90 Plans for Third Party Access to Gas and Power Grids," *European Report*, No. 1696 (July 24, 1991), Business Brief, p. 3.

[206] Energy Committee, Counseil Europeen des Federations de l'industrie Chimique (CEFIC), "CEFIC Energy Committee Position Paper on Professional Consultative Committee on Gas," in an annex to EC Commission, Directorate-General for Energy, *Final Report: Professional Consultative Committee on Gas*, Apr. 1991.

competition among market players. The resulting competitive pricing will lead to price decreases, further increasing demand. TPA proponents also expect that higher demand levels and a broader customer base will strengthen security of supply by providing greater incentives to increase exploration and raise production levels.

As evidence of the potential demand for natural gas, proponents cite the faster growth of natural gas consumption in the United States in comparison to the EC.[207] In addition, there appears to be general agreement that natural gas demand will increase in industrialized nations during the next 10 to 15 years, despite slow growth in consumption in 1990.[208] Demand for natural gas is expected to respond to the lower cost, cleaner burn, and higher efficiency of gas as an energy source.[209] Economic growth in France and Germany as well as forecasted growth in the formerly centrally planned economies of Europe is expected to further boost Europe's demand for natural gas.[210]

In contrast, opponents of TPA base their argument on the assumption that TPA will disrupt the capacity of the current structure to manage a market characterized by fluctuations in demand and price.[211] Because demand for natural gas can vary with the seasons and the business cycle and the price of natural gas can float with the price of oil, the industry has devised take-or-pay contracts that enable suppliers and buyers to share the risk of such fluctuations. In take-or-pay contracts, the purchaser agrees to a set quantity at a set price. If unable to take that quantity, the purchaser must still pay for it. Thus, the purchaser accepts the volume risk, which it limits by aggregating demand, and the supplier accepts the price risk.

According to opponents, under a system of TPA, the gas industry will no longer be able to aggregate demand and buyers will no longer be willing to enter into take-or-pay contracts.[212] As a result, risk will be shifted to the sellers, thus reducing investment incentives, decreasing supply, and increasing prices because of consumer bidding. Further, opponents point out that the capital and operating costs of gas companies, which TPA is expected to decrease, are only a small proportion of the price to final consumers, the "burner-tip" price. Any cost savings resulting from TPA will thus have only a minor impact on the burner-tip price.

Both arguments depend significantly on their underlying assumptions. The success of TPA is less clear if demand for natural gas were to fall.[213] Similarly, if TPA is introduced gradually, first only to large consumers, and the current contract system is largely maintained, then the problematic nature of TPA is also less clear.[214]

The Electricity Sector

The assumptions and conclusions in the debate over TPA in the electricity market are similar to those in the natural gas market. Proponents of TPA in the electricity market also believe that a more competitive market structure would encourage new entrants and additional investment, thus decreasing price and improving the security of supply. Opponents believe that TPA would increase the uncertainty of future sales, thus decreasing investment and the security of supply. In addition, they expect captive customers, or those with little negotiating power, to pay for the price decreases negotiated by larger customers, resulting in an inequitable distribution of benefits.[215]

The EC Directorate on Competition (DG-IV) commissioned two studies to assess the effect of competition in the production and distribution of electricity. The studies found that establishing some competition within the electricity market could improve supply conditions and allow for more flexible relationships and contracts between purchasers and suppliers. The DG-IV analysis also found that a natural monopoly does not necessarily exist at all levels of the electricity industry.[216]

Possible Effects

Since the United States does not export electricity or natural gas to the EC, the liberalization and unification of the EC energy market will not directly affect U.S. trade. However, the reduction of Germany's subsidies to its coal industry may increase U.S. exports of coal to the EC. The EC is already a significant market for U.S. coal exports, purchasing 38 percent of U.S. exports in 1988.[217] The market for U.S. exports could expand significantly with a more

[207] Energy Committee, Counseil Europeen des Federations de l'industrie Chimique (CEFIC), "CEFIC Energy Committee Position Paper on Professional Consultative Committee on Gas," in an annex to EC Commission, Directorate-General for Energy, *Final Report: Professional Consultative Committee on Gas*, Apr. 1991 and "Competition: Energy Monopolies Could Escape Full Force of Article 90," *European Report*, No. 1712 (Oct. 15, 1991), Business Brief, p. 3.

[208] "World Status: Natural Gas," *Energy Economist*, No. 117, July 1991, p. 24.

[209] "New Markets, Old Hands," *Energy Economist*, No. 122, Dec. 1991, p. 2.

[210] "World Status: Natural Gas," p. 24.

[211] European Union of the Natural Gas Industry, "Eurogas Views on Third Party Access," annex 5 in EC Commission, Directorate-General for Energy, *Final Report: Professional Consultative Committee on Gas*, Apr. 1991.

[212] Ibid.

[213] Ian Powe, Director of the United Kingdom Gas Consumers Council, "Position Statement," annex 6, EC Commission, Directorate-General for Energy, *Final Report: Professional Consultative Committee on Gas*, Apr. 1991.

[214] Ibid.

[215] EC Commission, Directorate-General for Energy, *Report on the Proceedings of the Consultative Committee of Member States—Electricity (CCEME)*, May 1991, p. 17.

[216] "Commission Studies on Third Party Access in the Electricity Sector," *EC Energy Monthly*, No. 35, Nov. 1991, pp. 10-11.

[217] U.S. Department of Energy, Energy Information Administration, *International Energy Annual 1989*, table 27.

competitive coal industry in Germany, which only imported 8 percent of its coal consumption in 1990.[218] Similarly, the Price Transparency Directive could result in lower electricity rates, creating an increased demand for cheaper inputs such as imported coal by the EC electricity industry. Market expansion, however, could be mitigated by competition from other energy sources once the subsidy program is lifted and the internal energy market is begun. In either case, the removal of coal subsidies and the rising interest in the environmental effects of coal should provide expanded opportunities in the market for clean coal technology.[219]

Besides direct trade effects, the United States may be affected through the market for energy-related equipment and through the EC subsidiaries of its multinational corporations that are energy suppliers or energy-intensive users.

Equipment in the Energy Sector

If the expectations of the TPA proponents are realized, competition and new entrants to the energy sector should result in increased investment in the sector, a more diverse set of companies making investment decisions, and investment incentives shifting toward more efficient equipment. Each of these changes could provide new opportunities for U.S. manufacturers of equipment related to the energy sector—such as gas and steam turbines for electric utilities; gas exploration equipment; and power circuit breakers, transformers, and generators. Even under this optimistic scenario, however, U.S. manufacturers must attempt to sell their equipment in an environment where "buy national" behavior is traditional.[220] However, new EC rules aimed at liberalizing public procurement in the four excluded sectors, including energy, could benefit U.S. suppliers when they are implemented in January 1993.[221]

A study by the University of Sussex notes that few goods are as far from the ideals of free trade as are the main components of power stations.[222] Trade in power plant equipment among EC countries accounts for just 8 percent of the total capacity supplied since 1955. Even this low figure, however, overstates intra-EC trade since most such trade involves customer countries with no manufacturing capacity. Power plant manufacturing capacity in the EC is concentrated in the United Kingdom, France, Germany, and Italy.[223]

The study suggests several reasons why trade in power-generation equipment is restricted and may continue to be so even with a single energy market. First, close supplier relationships are vital to the energy sector. Second, suppliers may engage in market-sharing cartel activities that prevent them from bidding in each other's markets. Third, electricity has been a cost-plus industry with little real incentive to minimize costs.[224] Although a liberalized energy sector that permits TPA may have little effect on the first two factors, the third factor may be revised sufficiently to provide an opening for U.S. suppliers.

In addition to expanded trade opportunities, U.S. equipment manufacturers may be affected by EC efforts to coordinate technical standards and efficiency requirements through the SAVE program. If the SAVE program devises standards that are unique to the EC or difficult to meet, U.S. manufacturers may continue to be at a disadvantage in the EC market.

EC Subsidiaries of U.S. Companies

There are both proponents and opponents of TPA among the U.S. companies that operate subsidiaries in the EC. Energy-intensive U.S. companies operating in the EC tend to support the liberalization package and TPA in the belief that it may provide the benefits of lower prices and increased purchasing flexibility.[225] Energy-intensive industries include the fertilizer industry, a significant consumer of natural gas in the production of ammonia; the aluminum and glass industries, large consumers of electricity; and the chemical industry. However, there is also concern that the liberalization of the EC energy market could improve the competitiveness of European rivals.[226]

Energy-intensive industries have expressed their support for TPA on several occasions. The president of Dow Europe joined a delegation from private industry that met with the EC Commissioners for Energy and Competition Policy to express its support for the liberalization package.[227] The European Fertilizer Manufacturers Association, the single largest consumer of natural gas, issued a statement in June 1991 in support of the liberalization package. Since there is presently no economic substitute for natural gas in the production of ammonia, the industry faces international competitive pressures due to high European gas prices, which it says are double those in the United States and up to six times those in the Middle East.[228] Similarly,

[218] "Agreement Reached in Reduction of German Coal Production," *The Week in Germany*, Nov. 15, 1991, p. 5.

[219] U.S. Embassy official, interview by USITC staff, London, Oct. 23, 1991.

[220] U.S. Department of Commerce, International Trade Administration, "EC Coordinates Energy Sector," *Europe Now*, winter 1990-91, p. 4.

[221] See previous section on public procurement in this chapter.

[222] Steve Thomas and Francis McGowan, "Procurement in European Power Plant Utilities Policy," University of Sussex, Jan. 1991, as reported in Andrew Baxter, "Power Plant Competition Opens Charged Debate," *Financial Times*, May 7, 1991.

[223] Baxter, "Power Plant Competition."

[224] Ibid.

[225] U.S. representatives of the fertilizer, aluminum, paper, glass, and chemical industries, telephone interviews by USITC staff, Feb. 6 and Feb. 12, 1992.

[226] U.S. industry representative, telephone interview by USITC staff, Feb. 12, 1992.

[227] EC Commission and the Chemical Industry Delegation, "Chemical Industry Companies Give Strong Support to Commission on Creation of Single Market for Energy," joint press release, IP (92) 158, Mar. 6, 1992.

[228] "Energy: Fertiliser Industry Backs Third Party Access in Gas," *European Report*, No. 1683 (June 8, 1991), Business Brief, p. 6.

the International Federation of Industrial Energy Consumers, which includes U.S. companies such as Dow, has called for the inclusion of TPA in the internal energy market and in the terms of the European Energy Charter.[229]

In contrast, companies involved in the production or supply of energy tend not to support TPA. The membership of the Oil Industry International Exploration and Production Forum, or E&P Forum, includes most major U.S. oil companies as well as the American Petroleum Institute. Its position paper on TPA warns that TPA could result in a complex regulatory structure that will ultimately disrupt market forces, increasing uncertainty in market demand and decreasing access to financing for long-term investment projects.[230] The result will be reduced investment, supply shortfalls, and potentially higher gas prices. In addition, increased regulatory burden and the requirements of unbundling will add to the costs of providing natural gas. Echoing this opinion, Exxon Co. International has also indicated concern for the effect of TPA on long-term supply and investment.[231] Exxon is a major producer of gas in the United Kingdom, the Netherlands, and Norway as well as a minority shareholder in some gas distribution systems in Europe. It believes that TPA and the associated regulatory system would undermine the ability of producers to obtain long-term sales commitments and would thus make producers unable to justify increasingly costly investments in new gas developments.[232]

Implementation

According to the EC Commission, the implementation of the three adopted energy directives is proceeding smoothly.[233] Because there are no major political disputes over these directives, the EC Commission expects full implementation to be achieved.

The Gas Transit Directive is not due to be implemented until July 1, 1992. As a result, information on its implementation status is not yet available.[234] On the other hand, the implementation of the Electricity Transit Directive is nearly complete. Only Spain and Ireland have not yet taken any measures to implement the Electricity Transit Directive. Ireland is not expected to take any action because this directive does not apply to the structure of its electricity sector. Of the remaining member states, France, Germany, Greece, the Netherlands, and the United Kingdom have officially published implementing legislation. Belgium, Denmark, Italy, Luxembourg, and Portugal have prepared legislation, but have not yet published it.[235]

The Price Transparency Directive is of a more technical nature than the transit directives and, as such, does not require the same legal obligations as the transit directives. Implementation responsibilities for this directive may be satisfied by administrative action, such as filing statistical information with the EC Commission, without passing implementing legislation.[236] The United Kingdom and Ireland have fulfilled their obligation through such administrative action. Only Luxembourg and Greece have officially published implementing legislation, although Greece's legislation applies only to the electricity sector as it does not have a natural gas sector. Belgium, France, and Italy have proposed legislation, but have not yet published it officially. Denmark, Germany, the Netherlands, Portugal, and Spain have not yet notified the EC Commission of any implementing action.[237]

[229] International Federation of Industrial Energy Consumers, *General Statement*, prepared for the Professional Consultative Committee on Gas of the EC Commission, Apr. 4, 1991.

[230] E&P Forum, *A Position Paper From the E&P Forum Concerning Third Party Access for Gas in the European Community*, Oct. 9, 1991.

[231] U.S. Embassy official, interview with USITC staff, Brussels, Oct. 24, 1991.

[232] Industry representative, telephone interview by USITC staff, Jan. 27, 1992.

[233] EC Commission official, telephone interview by USITC staff, Mar. 19, 1992.

[234] Ibid.

[235] Ibid.

[236] Ibid.

[237] Ibid.

CHAPTER 7
FINANCIAL SECTOR

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Western European financial markets are undergoing momentous change. The European Community has agreed on an Economic and Monetary Union (EMU) to integrate fully their monetary policies and currencies.[1] Moreover, should the European Economic Area (EEA) agreement of October 1991 be implemented, an additional 7 European Free Trade Association (EFTA) nations will join the 12 EC member states in this liberalized financial market place, serving a total population of some 380 million.

Even without the impetus of EMU or EEA, however, it is clear that the EC 1992 financial services directives already promulgated by the EC Council portend a significant transformation of European financial markets. For the first time, banks, securities houses, and insurance firms will operate on an EC-wide basis and will need only one license from the appropriate regulators in their home EC state. The EC 1992 program for financial services has raised interest and concern within U.S. financial circles. EC capital markets and financial firms are likely to become relatively more competitive and efficient. Liberalized and open financial and capital markets in the European Community should create business opportunities for U.S.-based financial service firms operating in the European market. Reciprocity ("third nation") provisions have been included in the EC financial services directives, however, and the application of the Community's reciprocity policy may have the effect of restricting the future market access of U.S. firms.[2]

Developments Covered in the Previous Reports

Background and Anticipated Changes

The Treaty of Rome set forth the free movement of services and capital as two of its principal objectives. However, barriers to the free movement of capital, to cross-border trade in financial services, and to the free establishment of financial service firms have impeded the full integration of the EC financial services market. With the adoption of the White Paper on Completing the Internal Market and the Single European Act, the EC set out to create a single financial market.

The financial services directives, in conjunction with the capital movements directives, are intended to have three broad effects: (1) liberalize the financial service sectors, (2) benefit the individuals and firms that use such services, and (3) increase the discipline of market forces on the monetary and fiscal policy of member states.

The approach of the EC has been to harmonize essential standards that apply to financial services firms regarding authorization, supervision, and prudential regulatory rules and to provide for the mutual recognition of home-country control on the basis of those harmonized standards. Under this regulatory regime, financial services firms will be able to operate throughout the EC with a single license.

Approximately 30 financial-sector directives apply to banking, securities, insurance, and capital movement. The Capital Movement Directive provided for the full liberalization of all capital movements as of July 1, 1990.[3] The chief banking directive is the Second Banking Directive,[4] which introduces the single banking license. A bank with a single license, including, for example, an EC subsidiary of a U.S. bank, will be able to undertake banking and securities activities throughout the EC either through branching or through the cross-border provision of services. The Own Funds and Solvency Ratio Directives,[5] which address the capital adequacy of banks, will be implemented simultaneously with the Second Banking Directive. Together, these three directives constitute the core of the program to liberalize EC member states' banking markets.

Still controversial and reportedly some distance from agreement, the Investment Services Directive[6] is the core directive for securities firms. It is modeled on and complements the Second Banking Directive. The directive would introduce the EC-wide single license and provide for the mutual recognition of home-country control for securities firms. Other important securities directives coordinate rules on mutual funds, insider trading, and public-offer prospectuses.

[1] For a discussion of the EC Economic and Monetary Union, see chapter 4 of this report.

[2] Reciprocity provisions are generally interpreted to mean that EC firms in a non–EC country must have effective market access comparable to that granted by the Community to firms from that country.

[3] Portugal, Spain, Ireland and Greece have temporary derogations. The other eight EC member states now fully comply with the directive. For background, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332–267), USITC publication 2204, July 1989, pp. 5–6 to 5–8.

[4] For background, see USITC, *Effects of EC Integration*, pp. 5–9 to 5–12.

[5] For background on these two directives, see ibid., p. 5–13, and U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: First Followup Report* (investigation No. 332–267), USITC publication 2268, Mar. 1990, p. 5–4.

[6] For background, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 5–18; USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 5–10; USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Second Followup Report* (investigation No. 332–267), USITC publication 2318, Sept. 1990, p. 5–4; and USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No,. 332–267), USITC publication 2368, Mar. 1991, p. 5–5.

In the insurance field, two core insurance directives deal with the freedom of cross-border services for life and nonlife insurance. Similar to the Second Banking Directive, the Third Nonlife[7] and the proposed Third Life Insurance[8] Directives provide a single license so that firms can sell nonlife and life insurance on a cross-border basis to customers throughout the Community, with home-country regulatory control. These two insurance directives revise many of the provisions of the more restrictive 'First' and 'Second' Insurance Directives.[9] Other key insurance directives provide for standard accounts to be issued by insurance firms throughout the EC, thus permitting comparisons of the size and financial status of EC insurance companies;[10] the standardization of the important area of motor insurance for cross-border travelers throughout the EC;[11] and the creation of an insurance committee to interpret the reciprocity ("third nation") provisions of the EC insurance directives and to advise the EC Commission on the interpretation and need for additional Community insurance laws.[12] Important "Recommendations" also have been issued, such as the one dealing with insurance intermediaries (insurance brokers and agents).[13]

Possible Effects

The 1992 program for financial services creates opportunities as well as challenges for U.S. and other non-EC firms. Although several key directives as outlined in the White Paper have been proposed and adopted, many uncertainties remain, especially with respect to investment services. The net effect of the financial services directives in the EC, in individual member states, and in the rest of the world should become clearer as additional final directives are adopted and as national governments begin to implement them. In fact, the EC 1992 program already has been a factor in the pronounced increase of mergers and acquisitions activity throughout the European financial sector. This activity includes cross-sector mergers, such as between banking and insurance companies, and much increased activity between financial institutions domiciled in different EC member states. Financial institutions are growing both larger and more pan-European; this will affect their global competitiveness. Such developments concomitantly prompt consideration of whether reform of the U.S. financial regulatory system is necessary or appropriate to enhance U.S. global competitiveness.[14]

Developments During 1991

Banking

Overview

Particularly in light of the issues raised by the failure of the Bank of Credit and Commerce International (BCCI), the EC Commission and European Parliament continued in 1991 to re-examine certain aspects of the proposed directive of the consolidated supervision of credit institutions.[15] Certain technical aspects on the implementation of the directive also were considered. In addition, the EC Council of Ministers reached a common position on methods to be used to enforce prohibition of money laundering associated with criminal activities.[16]

The EC Commission also formed two working groups to facilitate the development of cheaper and more efficient payment systems, for instance check clearing, between EC credit institutions. One group is addressing the technical aspects of harmonizing payment systems, whereas the other is working to ensure that new payment systems satisfy consumer demand for service availability and quality.[17] The working groups' progress reports are still pending. Initially due by the end of 1991, they apparently were delayed by the slow resolution of issues related to the EC's negotiations on Economic and Monetary Union (EMU).

Proposed Directive on Large Exposures for Credit Institutions

Background

A directive regarding large exposures by credit institutions was proposed by the EC Commission

[7] For background, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 5–6.

[8] See later discussion of this directive in this chapter.

[9] For background, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 5–24 to 5–25; USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, p. 5–17; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 5–5,; and USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 5–6.

[10] For background, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 5–26.

[11] For background, see USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 5–6; and USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 5–6.

[12] For background, see USITC *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 5–6.

[13] Commission Recommendation 92/48, *Official Journal of the European Communities (OJ)* No. L 19 (Jan. 28, 1992). Also see EC Commission, "Commission Recommendation on Insurance Intermediaries," press release, Brussels, Jan. 28, 1992.

[14] See, for example, U.S. General Accounting Office, *European Community: U.S. Financial Services' Competitiveness Under the Single Market Program*, May 1990.

[15] COM (90) 451, *OJ* No. C 315 (Dec. 14, 1990). *Economic and Social Committee Opinion*, *OJ* No. C 102 (Apr. 18, 1991).

[16] 91/308/EEC of June 10, 1991, *OJ* No. L 166 (June 28, 1991).

[17] "Banking: Commission Pushes Ahead With Work on Payments Systems," *European Report*, No. 1663 (Mar. 23, 1991), Economic and Monetary Affairs, p. 2.

during March 1991.[18] The purpose of the directive is twofold. First, the measure is intended to prevent competitive distortions resulting from differences in prudential regulatory banking rules enforced by EC member states. Second, the measure is intended to enhance the stability of the EC banking system by promoting the diversification of loans, which would dilute the adverse impact of financial downturns by any one loan recipient or economic sector. The directive on large exposures, or risks, is the last measure necessary for implementation of the core Second Banking Directive and for related follow-on banking directives. The EC Commission reportedly expects the EC Council of Ministers to reach a common position on the directive during the spring of 1992.[19]

The directive stipulates that credit institutions[20] must report large exposures to national regulatory authorities. The proposed directive is stricter in terms of defining large exposures and setting limits than the Commission Recommendation on large exposures issued in December 1986.[21] For instance, a credit institution's "own funds" are defined by the relatively strict rules of the 1989 Own Funds Directive,[22] which excluded funds set aside for general banking risk. In addition, the proposed directive includes a more restrictive definition of large exposures to a client or group of related clients; large exposures are defined as 10 percent of a credit institution's own funds, instead of 15 percent as originally recommended. The newly proposed directive sets the upper limit on credit institutions' large exposures to a client or group of related clients at 25 percent rather than at 40 percent of own funds. The upper limit on large exposures is 20 percent of own funds in instances where the loan is extended to either the credit institutions' parent company or affiliated subsidiaries. A 5-year transition period, beginning January 1, 1993, allows banks to bring large exposures into line with authorized levels; this period may also be extended by an additional 3 years.[23]

Moreover, credit institutions' reporting burden may be increased in certain instances from at least once a year to four times a year. In instances where only one annual report on large exposures is required, changes in a credit institution's exposure must be reported to the proper regulatory agency as they occur. The directive stipulates that member states may impose more restrictive rules at their discretion.

Possible Effects

The Proposed Directive on Large Exposures will likely have a trade liberalizing impact. The proposal is in line with the recommendations of the Basle Committee on banking supervision, which is attempting to harmonize regulatory practices among major banking nations to promote trade and safeguard the financial integrity of the international banking industry. From the viewpoint of U.S. business, the proposed directive will permit U.S. banks and investors who conduct business in the EC or who contemplate doing so to more accurately assess the financial strength of potential business partners and the safety of potential investments.[24]

Securities

Conceptual disagreements regarding the proposed Investment Services Directive and the proposed Capital Adequacy Directive continue to impede the development of a common EC securities market by 1993. Little progress has been made on the Investment Services Directive since mid-1990, principally because of disagreements regarding off-market trading and reporting to stock exchange authorities. During 1991, modest progress was made on the proposed Capital Adequacy Directive, which is a necessary complement to the Investment Services Directive. The European Parliament completed its first reading of the Capital Adequacy Directive in November 1991, approving 20 amendments. These amendments reinforced different treatment of banks and investment firms with respect to minimum initial capital requirements and increased capital requirements for investment firms.[25]

More progress was noted with respect to the implementation of measures necessary to harmonize EC stock exchanges. Simultaneous listing of 150 European stocks ("Eurolist") is scheduled to occur on each of the Community's stock exchanges in the spring of 1992 and is to be followed by the completion of a report on stock exchange indexes ("Euroindice") in the autumn.[26]

Insurance

Overview

A number of important insurance directives made progress through the EC legislative process during

[18] *Proposal for a Council Directive on Monitoring and Controlling Large Exposures of Credit Institutions*, COM (91) 68, *OJ* No. C 123 (May 9, 1991).

[19] European banking officials, interview by USITC staff, Jan. 1992.

[20] Member states reportedly need not apply the directive to central banks, post office (giro) institutions, and certain other institutions particular to each member state. In addition, member states may exempt certain specific exposures from application of the limits imposed by the directive.

[21] Council Recommendation on Monitoring Large Exposures of Credit Institutions, OJ *No. L 33 (Feb. 4, 1987).*

[22] Council Directive on the Own Funds of Credit Institutions, *COM (89) 299,* OJ *No. L 124 (May 5, 1989).*

[23] "Banking: Proposal for Draft Directive on Large Risks," *European Report*, No. 1663 (Mar. 23, 1991), Economic and Monetary Affairs, p. 3.

[24] Financial industry officials in Europe, interview by USITC staff, Sept. 1991.

[25] "Credit Institutions: European Parliament to Debate Capital Adequacy," *European Report*, No. 1722 (Nov. 20, 1991), Economic and Monetary Affairs, p. 1.

[26] "Stock Exchanges," *European Report*, No. 1680 (May 29, 1991), Economic and Monetary Affairs, p. 5.

1991 and early 1992. Most importantly, a common position was reached by the EC Council of Ministers on the Third Nonlife "core" insurance directive on February 25, 1992.[27] The directive eliminates many of the restrictions and caveats of earlier nonlife directives and effectively establishes a single EC-wide market for nonlife insurance with home-country regulatory control.[28] In other matters, the EC Council of Ministers adopted on December 19, 1991, a common position on Directive 91/674/EEC mandating and formalizing extensive annual accounting procedures for EC insurance companies.[29] This Accounts Directive considerably increases transparency for EC insurance firms' accounts in that it makes such accounts in different EC member states comparable for the first time, thus allowing both policyholders and potential investors to better judge the financial strength of all EC insurance firms. The directive thus contributes to a single EC insurance market. Additionally, on December 19, 1991, the EC Council of Ministers reached a common position on Directive 91/675/EEC establishing an insurance committee made up of member states' representatives.[30] The committee will advise and assist the EC Commission on the interpretation and application of existing and future insurance legislation and provide advisory assistance in administering the Community's reciprocity policy.

In other action, the Commission published a Recommendation on insurance intermediaries such as agents and brokers, on January 28, 1992.[31] It defines the minimum qualifications for all insurance intermediaries throughout the Community, requires the registration of all intermediaries at the member state level, and provides greater transparency for consumers by requiring that intermediaries make known any legal or economic links they have with particular insurance companies. Finally, in a peripheral matter, the Commission also proposed a directive relating to the cross-border management and investment of pension funds throughout the Community.[32] The provisions of the directive will be highly important to life insurance companies, as well as to banks, securities firms, and other financial institutions.

Proposed Third Directive on Life Insurance

Background

On April 16, 1991, the EC Commission proposed a comprehensive directive that would considerably liberalize cross-border EC trade in life insurance.[33] The directive's provisions follow closely those for the Third Nonlife Insurance Directive.[34] The directive establishes an EC-wide single-license system for life insurance companies, based on home-country regulatory control. Once issued, a license is valid throughout the Community. Pensions are excluded and are to be dealt with in a separate EC directive.

The Proposed Third Life Insurance Directive harmonizes national EC regulatory laws sufficiently to permit mutual recognition and home-country control for life insurance. Such harmonization has taken place particularly in regard to rules permitting the establishment of a life insurance company and the methods to be used for calculating technical provisions needed by regulators. The proposed directive defines, for example, the choice, valuation, diversification, and location of the assets a life insurance company is permitted to hold. The proposed directive also coordinates the actuarial principles that have to be respected by every insurance company in defining and calculating technical life insurance provisions. The previous requirements of earlier directives (that assets be located in the EC member state in which business is done and that companies invest certain minimums in particular categories of assets) are abolished to take account of the EC measures that liberalize capital movements throughout the Community.

The life insurance buyer will have access to any life insurance product lawfully marketed in the Community provided it does not contravene the legal provisions protecting the "general good" in force in the EC member state in which the risk is located.[35] The consumer can pull out of an insurance contract within a "cooling-off" period of 14 to 30 days from the time he or she is informed that the contract has been concluded. The consumer must be provided with clear and accurate information about the essential characteristics of the products offered, both during the precontractual phase and during the term of the contract in the event of any change or amendment.

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[27] COM (90) 348, *OJ* C 244 (Sept. 28, 1990).

[28] For background, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 5–6. The directive's formal name is the "Third Council Directive on the coordination of laws and regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC." European Council "political agreement" was reached on December 19, 1991. References include the Commission Proposal, COM (90) 348, *OJ* No. C 244 (Sept. 28, 1990), and the Economic and Social Committee's opinion, *OJ* No. C 102, (Apr. 18, 1991).

[29] OJ *No. L 374 (Dec. 31, 1991)*. For background, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 5–26.

[30] OJ *No. L 374 (Dec. 31, 1991)*. For background, see USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 5–6.

[31] Recommendation 92/48/EEC, *OJ* No. L 19 (Jan. 28, 1992).

[32] *Proposal for a Council Directive relating to the freedom of management and investment of funds held by institutions for retirement provision*, COM (91) 301 – SYN 363, Nov. 12, 1991.

[33] *Proposal for a Third Council Directive on the coordination of laws, regulations, and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC*, COM (91) 57, *OJ* No. C 99 (Apr. 16, 1991).

34 See USITC, *EC Integration: Third Followup*, USITC publication 2318, Sept. 1990, p. 5–6.

[35] The concept of the "general good" has developed in the jurisprudence of the European Court of Justice, and it is similarly incorporated in the banking and securities directives. There remains some concern, however, that the terminology is sufficiently broad so as to permit the attempted justification of national trade barriers on prudential grounds.

Any insurance company wishing to establish a branch in another EC member state must notify its home-country regulatory authority. The latter may refuse to pass on the proposal to the authorities in the prospective host country if it has reason to doubt the proposal's viability or the adequacy of the insurance company's structure. In such an eventuality, the regulatory authority must justify its refusal within 3 months of receiving the notification.

Any insurance company wishing to pursue business by way of the cross-border provision of services must indicate to its home-country authorities the EC member state or states in which it intends to provide services and the nature of the business it proposes to transact there. Additionally, contrary to the provisions of earlier insurance directives, duly authorized insurers have free access to all means of communication to advertise their services and products. Every insurer will have to furnish its home-country supervisory authority with information on turnover (e.g., changes in capital holdings, ownership, voting rights) in each EC member state. So far as indirect taxes and parafiscal charges are concerned, insurance companies are subject to the territoriality principle. That is to say, the tax rules of the member state in which the risk is located apply. Taxes are for the benefit of that member state. The proposed directive also has two annexes, one concerning currency matching rules and the other information for policy-holders.[36]

Possible Effects

The proposed directive is likely to be trade liberalizing. It provides for a "single passport" for life insurance and will likely give consumers access to a much wider range of products at more competitive prices. The European life insurance sector generates about $150 billion in annual premiums and is the most dynamic part of the European insurance sector. Especially in the southern tier of EC member states (Spain, Portugal, Italy), the sector is expected to continue to grow at rates exceeding 10 percent annually. This is because discretionary income has increased, EC membership has provided perceptions of increased political and monetary stability, and state-provided services (e.g., health, pensions) have been perceived to be inadequate.

For U.S. insurance companies that conduct business in the EC or that contemplate doing so, the proposed directive is expected to permit one EC subsidiary to make cross-border sales of insurance products anywhere in the Community. Moreover, companies will be regulated by only one EC national insurance authority—their EC home-state domicile. Both provisions may permit companies greater management and financial flexibility, provide enhanced opportunities for economies of scale, and produce savings in establishment and administrative costs.

[36] EC Commission. INFO 92 electronic data base, Jan. 13, 1992, #60469.

The proposed directive is unlikely to emerge from parliamentary consideration and achieve an EC Council of Ministers common position prior to mid-1992. Following those steps, national parliaments have 2 years to enact the proposal into law. The proposal, therefore, cannot take effect earlier than mid-1994. Temporary derogations to parts of the directive will likely be granted to some EC member states, delaying the directive's uniform implementation throughout the EC until perhaps the year 2000.

Legal Challenge to EC Life Insurance Trade Liberalization

The sale of life insurance in recent decades has often become primarily a long-term savings mechanism for consumers (e.g., annuities), rather than a way to mitigate the effects of a premature death. The advantages of life insurance purchases over other saving alternatives often have to do with tax advantages offered to insurance consumers by governments; this is true in some EC countries and in many other nations.

Two important European Court of Justice (ECJ) decisions in regard to life insurance and taxation potentially may have serious adverse consequences for the trade liberalizing effects for life insurance, other financial services sectors, and possibly, for other EC 1992 directives. On January 28, 1992, the ECJ, ruling against the EC Commission, found that Belgium could retain its legal provisions that grant tax relief to Belgian consumers who buy life insurance from Belgian companies.[37] No tax relief is available on policies bought from non-Belgian companies.[38] The Court's reason for its decision apparently is based on a broad view that Belgium (and by inference, all EC member states) has the right to maintain the "coherence" of its tax system in ways it deems best.

EC taxation questions are highly complex and politically sensitive. Many EC member states see them as central, for example, to the concept of sovereignty. Sovereignty questions, in turn, guide the evolving debate on EC member states' powers versus the prerogatives of a central political authority. The Community is only in the earliest days of the discussion of taxation matters. ECJ rulings can shape this discussion in major ways. At the time of the writing of this report, the EC Commission was studying the Court's decisions and had not yet made a public comment. The court decisions do, however,

[37] Case C–204/90, *Bachmann v. Belgium*; and Case C–300/90, *EC Commission v. Belgium*.

[38] A caveat mitigating the effects of the ruling may be a Belgian law proviso that, if no tax is paid at the time of the sale of a life insurance policy, then it is collected at the time the benefit of the insurance policy is payable. Since tax has to be paid eventually, it remains unresolved as to whether tax relief at the time of sale give Belgian insurance companies an advantage. However, life insurance policies (and annuities) are generally contracted for several decades. The opportunities for likely tax–rule changes affecting insurance policies between the long period of a policy's sale and maturation would appear to make the tax relief at the time of sale a significant likely benefit; taxation rule changes that affect consumers adversely are rarely made retroactive.

complicate further the creation of a completely common market in EC life insurance, and perhaps affect other parts of the EC 1992 trade liberalization program. At minimum, for example, at least in cases concerned with alleged discriminatory tax treatment of cross-border life insurance sales, the Commission, rather than EC member state tax departments, apparently will have to carry the burden of proof in attempting to modify or eliminate such tax provisions. The cases may also extend the number of years it will take to resolve such questions. If so, important aspects of trade liberalization within the Community are likely to be delayed correspondingly.

Paradoxically, these European Court decisions may assist the rapid enactment of the proposed Third Life Insurance Directive. Those who feared the effects of the proposed directive on trade liberalization and market competition, including some EC member state insurance regulators and businesses and some in the European Parliament and national parliaments, may now consider that the directive's provisions can be counteracted largely by restrictive tax regimes and may drop their opposition to the directive's enactment.

Implementation

The incorporation of promulgated EC 1992 directives into national legislation by EC member states has a mixed record.[39] The initial problem has been the relative slowness with which the complex financial services directives have been proposed and adopted by the EC Commission and Council. The Third Life[40] Insurance Directive, for example, has not yet been adopted (no common position reached) by the EC Council of Ministers, and there has been no agreement on the key Investment Services Directive[41] for the EC securities industry. Since EC member states have 2 years to enact national legislation after a directive is adopted by the EC Council, it appears that these core financial directives will not take effect until well after the January 1, 1993, deadline. Additionally, several of the promulgated directives permit derogations by member states for lengthy periods. The proposed Third Nonlife Insurance Directive, for example, permits some member states until January 1, 1999, to comply fully with the directive.

More generally, member states have not incorporated many finalized banking and insurance sector directives into their national legislation as quickly as expected.[42] Knowledgeable EC industry sources, however, believe that timely incorporation will actually benefit the EC member states. If they fail to implement the directives, some EC nations conceivably could find their financial services industries threatening to move their headquarters to other EC member states to take advantage of the liberalized trading regime. Considerable progress in incorporating EC directives into national legislation is thus expected during 1992.[43] For the securities sector, however, the lack of progress in reaching agreement on a single-market directive creating a common passport for the industry concerns some observers. It is possible that the securities sector will begin the EC integration exercise at some disadvantage compared with banks and insurance companies unless rapid progress is made in this area. On the other hand, member states that utilize a universal banking system might benefit from continued delays in reaching agreement on a core securities directive.[44]

More widely, the EC Commission and financial services firms in several EC nations assume that, if a given EC member state does not meet its 2-year deadline on a promulgated directive, then firms in that country may proceed as if legislation were in place. That is, the directive will take effect, even if no national legislation has been passed.[45]

[39] See EC Commission, *Sixth Report of the Commission to the Council and the European Parliament Concerning the Implementation of the White Paper on the Completion of the Internal Market*, COM (91) 237, June 19, 1991, pp. 19–20.

[40] COM (91) 57, *OJ* No. C 99 (Apr. 16, 1991).

[41] First proposed in January 1989 (*OJ* No. C 43); amended proposal made in February 1990 (*OJ* No. C 42).

[42] As of December 19, 1991, for example, the official EC Commission implementation figures for EC Council directives cite a 37.5-percent adoption rate for banking and an 80-percent rate for insurance. For the securities sector, the report notes that the slow progress with respect to the Investment Services Directive has slowed the implementation of follow-on directives. See EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market,* Brussels, SEC (92) 2491, Dec. 19, 1991.

[43] Banking and insurance executives in Europe, interview by USITC staff, Jan. 1992.

[44] Financial firms in Europe, interview by USITC staff, Sept. 1991. Universal banking systems are those wherein banking and securities (and sometimes some forms of insurance services) are provided by the same financial institution. Universal banking is found in Germany, Switzerland, the Benelux countries, and, to a lesser extent, in the United Kingdom.

[45] EC Commission officials and European financial service sector executives, interview by USITC staff, Jan. 1992.

CHAPTER 8
CUSTOMS CONTROLS

CONTENTS

CHAPTER 8
CUSTOMS CONTROLS

Developments Covered in Previous Reports

Background

As a fundamental aspect of the integration program, the EC Commission aims to abolish internal frontiers, thereby permitting the free movement of goods and people among the member states. The high degree of technical and statistical complexity associated with the elimination of customs procedures has been only a minor obstacle. A greater obstacle has emerged from the need to find alternatives to border formalities in order to implement noncustoms policies.

In the past many noncustoms Community and member-state measures have been implemented through border checks and associated documentation. Taxes are collected; immigration and residency laws are enforced; goods are checked to ensure compliance with phytosanitary, licensing, safety, and labelling requirements; national security interests are protected; and trade and financial data are recorded. Until substantive issues on these intra-EC matters are resolved, customs directives setting forth procedural and enforcement criteria for internal trade cannot be completed. In addition, certain measures specific to individual member states, such as quotas, must either be abolished or replaced by EC-wide measures.

Thus, elimination of internal customs formalities requires acceptable alternatives to border formalities that permit adequate achievement of the member-state governments' noncustoms policy objectives. These alternatives must provide some assurance to the member states that integration will not severely impair their fiscal and security interests. As the deadline for the EC Commission's integration program approaches, progress on substantive directives on noncustoms issues permits corresponding advances on customs-related directives.

The Schengen Agreement, under which goods and nationals of the signatories already possess the right to substantially free internal movement, has provided valuable practical and legal experience for achieving Community-wide integration. This agreement has effectively evolved into a prototype for free movement in the integrated EC market. It is the successor to the customs union treaty of 1958 signed by Belgium, Luxembourg, and the Netherlands and currently has eight members: the Benelux countries, France, Germany, Italy, Spain, and Portugal.

Measures Adopted

The first step toward EC integration was the replacement of the more than 150 documents[1] required by member-state customs authorities with the Single Administrative Document (SAD) for member-state trade. (The SAD form itself is due to be abolished at the beginning of 1993, except for some shipments between Spain and Portugal and the rest of the EC, as discussed later in this chapter.) Other Community measures that are effectively superseding the SAD make it unnecessary to document border crossings of goods moving between member states. Member states decided to exert regulatory customs control only at the EC's external boundaries, and only on goods not originating in the member states or EC-originating goods that have left the commerce of the EC.[2] Accordingly, other measures already adopted have dealt with such matters as the arrangements for intra-EC movements of goods temporarily sent from one member state to another,[3] and the security to be given to ensure payment of a customs debt.[4]

Similar changes that shift control from internal to external boundaries are taking place with respect to the movement of persons. For example, external controls are replacing internal border checks of passports and residency documents. The objective has been to ensure that both non-EC citizens, after being admitted at an external frontier point or airport, and EC nationals will be able to move among member states without intervention or pause. Moreover, each member state is gradually being required to recognize educational, vocational, and professional qualifications obtained in other member states and to afford credential-holders equal opportunity to work or carry on their professions outside their member state of nationality. Over the longer term, these qualifications are to be harmonized and underlying training curricula standardized, so that an EC national having professional or other credentials will be able to use them outside his own member state.

Member states will maintain many existing laws pertaining to immigration and residence to have some control over the cost of social benefits and the growth of national populations, but these measures will generally be directed at non-EC nationals. Other matters of regulation, such as visa duration and qualifications and requests of non-EC nationals for

[1] *Europe 1992 Progress Report*, Buraff Publications (1991), p. 7.

[2] Because of the physical separation of Greece from the rest of the EC, for example, goods in transport between the two have been subject to some formalities that would not apply after integration. Such goods would not be treated differently from other internally traded goods if appropriately safeguarded (shipped under customs seal). Imports and exports would be affected by these EC changes.

[3] Council Regulation 1292/89 of May 3, 1989, *OJ* No. L 130 (May 12, 1929), p. 1, discussed in first followup report in this study, U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, p. 7-5.

[4] Council Regulation 4046/89 of Dec. 21, 1989, *OJ* No. L 388 (Dec. 30, 1989), p. 24, discussed in first followup report at p. 7-5.

asylum,[5] are being harmonized to enable such nonnationals, once admitted, to move freely to other member states. Similarly, member-state measures that have law enforcement implications, such as narcotic drug and firearm measures, are being aligned to enforce a common set of standards and penalties. These changes, once believed to be impossible because of policy disputes and concerns about sovereignty, are required by the free circulation of goods that will arise from the elimination of internal boundaries.

Possible Effects

The potential benefits to business and private interests of free movement of goods are obvious: movement among the EC member states will become as easy and rapid as movement among states in the United States, with accompanying cost savings. Producers of goods, and eventually providers of services as well, will be able to operate and sell throughout the EC without disadvantage relative to competitive producers in other member states. These benefits will extend not only to EC firms but also to foreign firms established in any member state and to foreign firms wishing to move goods through the EC from one port of entry or from a distribution base in a single member state. It is therefore anticipated that U.S. businesses will benefit from increased trade opportunities and greater flexibility in locating production and distribution facilities in the EC.

With respect to the movement of persons in the EC, it seems clear that measures for mutual recognition of qualifications would not only widen employment opportunities, but would help firms operating in the EC to fill job vacancies with the most qualified persons. However, expanded opportunity will intensify competition in some fields. Persons seeking a particular type of job will be compared with both nationals of the member state in question and applicants from the other member states—and potentially those from European Free Trade Association (EFTA) countries as well. Taking into account this factor of competition, as well as the need to relocate the unemployed (particularly the young) to fill available posts, EC institutions and member-state government programs have established data bases for job vacancies throughout the EC. The goal is to provide training and administrative support to those seeking work in other member states. These measures will help all firms located in the Community, including U.S. firms, by making available a larger pool of potential employees. Nonetheless, foreign nationals will still need to qualify in 1 member state before enjoying the wider freedom to move to the other 11 member states and use the credentials so acquired.

[5] The number of asylum requests has been increasing dramatically in the last 5 years, especially in Germany, France, the United Kingdom, and Denmark. See discussion in *European Report*, Oct. 12, 1991, Internal Market, p. 4. The effort to keep families together and to minimize chances that persons are actually subject to or threatened with persecution (including religious persecution) is of significant concern.

Developments During 1991

Free Movement of Goods

Background

Customs authorities at the border are the only government officials who can ensure the application of many regulatory and legislative measures to imported goods and obtain compliance—often by banning ineligible shipments. Customs personnel are called upon to enforce a wide variety of health standards, tax measures, emission controls, currency controls, labeling rules (including marks of origin and controlled appellations), and other provisions of law. However, because these substantive issues remain unresolved, internal boundary customs posts and procedures may not be abolished, even by 1993, and the adoption of some customs-related directives will be delayed.[6] As earlier EC 1992 reports have suggested, the solution to these issues would permit adoption of all outstanding customs proposals. In addition, some matters relating to export controls,[7] protections pertaining to stolen works of art, duty-free shops,[8] excises, and other areas have not been resolved and must be dealt with by the end of 1992 to achieve Community objectives fully after the abolition of internal controls.

Measures Adopted and Proposed

The following paragraphs briefly discuss selected directives adopted and proposals issued during 1991. These measures relate to the internal market and are therefore included in or are tangential to the White Paper.

Single Administrative Document

Council Regulation (EEC) No. 717/91 of March 21, 1991, provides for the elimination of the use of the SAD as of January 1, 1993, in internal EC trade, except for transactions on dutiable goods shipped to or from Spain or Portugal.[9] This new regulation in large part repeals earlier regulations creating the SAD and

[6] See chapters on standards, public procurement, and taxation elsewhere in this report.

[7] See *Sixth Report of the Commission to the Council and the European Parliament*, COM (91) 237 final (June 19, 1991), p. 13. Exports of sensitive goods, technology, military goods, and national treasures must be cooperatively monitored by the member states and the EC Commission once internal frontier controls are terminated.

[8] Duty-free shops are to be phased out over a period of years, reportedly to end at the close of 1997, to allow industry adjustment. See *European Report*, Oct. 12, 1991, Business Brief, p. 8. The Netherlands and Germany would phase out the shops by the end of 1996, but the United Kingdom has advocated a phaseout period as long as 15 years.

[9] *OJ* No. L 78 (Mar. 26, 1991), p. 1. See *Opinion of the Economic and Social Committee on the proposed Council Regulation* (*OJ* No. C 214 of Aug. 29, 1990, p. 11) at *OJ* No. C 60 (Mar. 8, 1991), p. 1.

controlling its use. The measure includes regulatory procedures to ensure that importers required to use the SAD complete the form fully and accurately, and it explains the remaining transactions where the SAD form will still be required. This regulation presumes that, in the absence of special circumstances or programs, internal trade will flow without documentation but still under supervision of the SAD Committee, which can take action to remedy problems arising over time.

Temporary Importation of Means of Transport

On July 25, 1991, the EC Commission issued a regulation setting forth provisions to implement an earlier Council regulation on the temporary importation of means of transport (vehicles temporarily brought into the customs territory of the EC to ship goods to an EC destination).[10] The overall objective of the regulation is to set forth simplified, uniform criteria for boundary crossings of such vehicles, to minimize delays, and to enable other regulations concerning the goods being shipped to work effectively. In the preamble to the regulation, the EC Commission indicated that customs documentation should not be demanded at border checkpoints unless there is "a serious risk of non-compliance with the obligation to re-export a means of transport." The EC Commission also indicated that a separate procedure was needed for pallets (low, portable platforms on which goods are placed for storage or transportation).

Article 2 of the regulation states that non-EC vehicles must undergo customs procedures when crossing the first external boundary, after which the vehicles can move freely across internal borders. If a customs official carrying out a check at an internal frontier sees a serious risk that the vehicle will not be exported, he is authorized under article 3 to demand appropriate documentation and "request a guarantee" (usually a bond). Other provisions deal more specifically with vehicles transporting goods over roads for private or business use (including rented vehicles), vehicles brought temporarily into the EC by persons preparing to take up residence outside it, and draft animals and related carts. Rail and air transport and vessels used on the sea or on inland waterways are also controlled. These articles of the regulation generally contain exemptions for limited private uses within time periods established by individual member-state customs officers.

Pallets covered by international conventions on containers must be adequately identified and described in customs documents and can be in the EC under these temporary customs procedures for no longer than 12 months. The importers of these pallets must first obtain authorization from member-state customs officials and must satisfy any other requests for information from customs authorities. Other pallets not under treaty coverage can remain in the EC only for 6 months. Repair parts and spare parts are likewise allowed temporary entry under the terms applicable to the pertinent vehicles.

The regulation also requires that vehicles entered for private use cannot be used for business purposes in the EC, and that vehicles not entered for private use cannot be used in internal traffic, rehired, lent, or otherwise be employed in the EC. Whereas the regulation entered into legal force on January 1, 1992, it takes effect in the member states as of January 1, 1993.

Exit Formalities at Internal Customs Posts

A December 11, 1991, Council regulation[11] would effectively end as of January 1, 1992, all internal border formalities for goods covered by customs carnets under international conventions and goods covered by NATO form 302 when these goods are in transit between member states. All these goods are shipped under special customs seal, minimizing chances of tampering with or changing them during shipment. Previously adopted measures dealing with exit formalities will become unnecessary when all frontier posts are abolished as of January 1, 1993. In the case of the NATO shipments, which may contain goods of differing origins and only generally described, the EC will be treated as a single territory, to facilitate free movement of these special shipments where no tampering or shipment through third countries occurs.[12] A member state where problems arise will be responsible for dealing with any such difficulties and for levying appropriate charges or duties.

Movement of Goods for Temporary Use in One or More Member States

A Council regulation of March 21, 1991, amending prior EC law, made minor changes in the treatment of works of art and certain carpet samples, to allow them to move temporarily into other member states under an exemption from turnover taxes.[13] The regulation became effective on March 29, 1991.

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[10] Regulation (EEC) No. 2249/91, *Laying Down Provisions for the Implementation of Council Regulation (EEC) No. 1855/89 for the Temporary Importation of Means of Transport*, *OJ* No. L 204 (July 27, 1991), p. 31. The Council regulation is set forth at *OJ* No. L 186 (June 30, 1989), p. 8.

[11] No. 3648/91, *Laying Down the Methods of Using Form 302 and Repealing Regulation (EEC) No. 3690/86 Concerning the Abolition, Within the Framework of the TIR Convention, of Customs Formalities on Exit From a Member State at a Frontier Between Two Member States and Regulation (EEC) No. 4283/88 on the Abolition of Certain Exit Formalities at Internal Community Frontiers—Introduction of Common Border Posts*, *OJ* No. L 348 (Dec. 17, 1991), p. 1. The proposal, COM (91) 146 final, had appeared at *OJ* No. C 143 (June 1, 1991), p. 11.

[12] See also *Opinion [of the Economic and Social Committee] on the Proposal For a Council Regulation (EEC) Repealing Regulations (EEC) No. 3690/86 . . . and 4283/88 . . .* *OJ* No. C 269 (Oct. 14, 1991), p. 23.

[13] Reg. (EEC) No. 718/91, *Amending Regulation (EEC) No. 3/84 [OJ No. L 2 (Jan. 4, 1984), p. 1] Introducing Arrangements for Movement Within the Community of Goods Sent from One Member State for Temporary Use in One or More Other Member States*, *OJ* No. L 78 (Mar. 26, 1991), p. 4.

Goods Eligible for Processing Under Customs Control Prior to Free Circulation

The EC Commission adopted a regulation on December 18, 1991, to enumerate those goods that can be processed under customs supervision before being placed under arrangements for free circulation through the EC.[14] Effective January 1, 1992, the regulation lists in its annex 13 broad categories of goods for which supervised processing is allowed and specifies exactly which processes may be undertaken. Goods that are in any of the listed annex categories or are covered by the regulation can be processed into samples or put up in sets, reduced to waste or scrap or destroyed, denatured, disassembled for the recovery of parts or components, processed to remove damaged parts or to correct damage, or handled in customs warehouses or free zones. The remaining products included in the annex are agricultural commodities, and the tariff classifications applicable to these commodities before and after processing are set forth to assist importers in ascertaining whether individual shipments are eligible.

Training of Customs Officials

To ensure the highest level of uniformity in the application of customs formalities of all types, the EC Commission proposed a vocational training program for customs officials of the member states, entitled the Matthaeus program. After appropriate consultations with the European Parliament and other EC officials, the Council adopted a decision on June 20, 1991,[15] to formalize and fund the program.

The preamble notes that "the establishment of the internal market necessitates a new definition of the role of Community customs officials" in order to "focus on the uniform application of customs legislation at the Community's external borders[.]" The Council recognized the potential problem in this shift from internal to external controls—namely, "that the abolition of internal borders does not give rise to distortions in competition, deflection of trade or increased risk of fraud[.]" The risk is exacerbated by the inability of each member state to influence the actions and rulings of the others' customs officers.

After a successful pilot program, it was possible to focus on areas that would be most helpful in achieving the above goal. For example, it became clear that customs officials of each member state need to become more familiar with the legal regimes of the others and of the EC, and, if possible, to have some fluency in several languages used in other member states. In addition, the report on the pilot program indicated that certain legal issues, primarily those pertaining to civil liability and professional secrecy, had to be dealt with immediately and at the Community level.

The new program is structured to include exchanges of customs staff, training seminars conducted by experienced officials, and access to EC-sponsored vocational and language training. With respect to civil liability, customs officials on exchanges will be treated as belonging to the host administration. Member states and the EC Commission are encouraged to set up training in "the less widely-spoken official languages of the Community" and to share the expenses of training. A committee of member-state representatives will assist the EC Commission in overseeing program operation. The EC Commission must file an annual report on the success to date of the training program with the European Parliament and the Council. No expiration date is set for the program, which entered into effect on January 1, 1991. The decision adopting the Matthaeus program is accompanied by annexes setting forth broad criteria for each area of program activity, one of which is the creation of a system of common vocational training in each member state's customs school.

Movement of Goods Among Member States

Council Directive 91/342/EEC of June 20, 1991,[16] modifies previously adopted measures that were designed to reduce the number and length of delays at internal borders for carriers transporting goods between member states.[17] The new directive would simplify and standardize all border formalities. Its drafting committee wanted to implement changes in the Community transit procedure that would allow shippers to invoke customs procedures at the point of departure or at a destination in another member state. If this program is to work well, it is widely asserted that border checks need to be minimized or ended. In addition, it was deemed desirable to extend business hours at inspection facilities.

This directive defines "inspection" to include both physical and visual checks of the means of transport, or the goods, or both, allowing confirmation that documents match the goods as to characteristics, origin, value, quantity, condition, and other features.

[14] Regulation No. 3717/91, *Drawing Up the List of Goods which may Benefit from the Arrangements Permitting Goods to be Processed Under Customs Control Before Being Put into Free Circulation*, *OJ* No. L 351 (Dec. 20, 1991), p. 23. An earlier Council regulation, No. 720/91 of Mar. 21, 1991, *OJ* No. L 78 (Mar. 26, 1991), p. 9, amended a 1983 measure in order to simplify the process of changing the list of goods eligible for the procedure. The arrangements apply to individual operations or shipments.

[15] Council Dec. 91/341/EEC, *On the Adoption of a Programme of Community Action on the Subject of the Vocational Training of Customs Officials*, *OJ* No. L 187 (July 13, 1991), p. 41. Common position of the Council, C3-0184/91—SYN 315; decision of the European Parliament, *OJ* No. C 183 (July 15, 1991), p. 140.

[16] *Amending Directive 83/643/EEC on the Facilitation of Physical Inspections and Administrative Formalities in respect of the Carriage of Goods between Member States*, *OJ* No. L 187 (July 13, 1991), p. 47. See also common position of the Council, C3-0185/91—SYN 284; decision of the European Parliament, *OJ* No. C 183 (July 15, 1991), p. 140.

[17] One of these earlier measures provided for "spot-check" inspections, a phrase that was interpreted to refer only to physical inspections. Directive 83/643/EEC, *OJ* No. L 359 (Dec. 22, 1983), p. 8.

Article 2 requires the member states to adopt measures to minimize delays, to ensure that most inspections will take place at the point of export or departure, and to do most inspections by quick visual checks. The sample base for conducting spot-checks (which may include physical or visual inspections) is to rely upon all merchandise moving through a customs post, not on the quantity in a single shipment or consignment. Frontier crossings are to be kept open 24 hours per day for goods under the EC transit procedure, and for other shipments at least 10 straight hours on weekdays and 6 on Saturdays, unless traffic is prohibited (e.g., to halt epidemics) or there is a holiday. Specific standards for goods transported by air and for transshipments are also included. The member states were directed to implement these provisions by September 1, 1991.

Other Measures

In a December 17, 1991 regulation, effective as of July 1, 1991, the EC Commission made some modifications in prior law to ensure the free movement of goods between Spain and Portugal and the rest of the EC during the remainder of the transition period following their accession to the EC.[18] The regulation clarified the treatment to be applied to shipments to and from the Canary Islands, the use of specified customs forms, the handling of goods in duty-free zones, and the provisions for processing some agricultural products.

A proposed Council regulation[19] would apply to the "intra-Community carriage of goods by road for hire or reward" by motor vehicle, trailer, semitrailer, or combination vehicle. It allows for restraint-free transport of goods by transport operations that have quota-free Community authorizations and that are established in a member state which authorizes the firm to transport goods by road, if such operations have a Community hauler's authorization. The quota-free authorization is a document good for 6 years that would replace all other licenses for international transport operations. The various qualifying criteria are set forth along with withdrawal authority for EC officials to terminate the licenses before their date of expiration. The measure, if adopted, would become effective on January 1, 1993.

Another proposal would amend the yet-to-be-adopted common customs code, to clarify certain areas of member-state authority and to take into account recent measures on the release of goods for free circulation, payment of customs debt, tariff classification information, and Community transit.[20] Also, after a December 13, 1990, decision of the EEC-EFTA Joint Committee on Common Transit,[21] the Council issued an implementing regulation on March 18, 1991.[22] The objective of these two instruments is to require documentation of shipments only at the external frontier of the EC or, at presentation to EC customs officers, of goods moved through third countries. They also permit commercial documents such as invoices to establish EC origin for goods and set forth the obligations of railway and road-rail transport operators.

Last, a Council regulation of November 7, 1991, effective November 19, 1991, formalized the Intrastat network for the compilation and sharing of trade data in a uniform format.[23]

Implementation

The Legal Regime

The EC's work toward truly free movement began with the Treaty of Rome, but has not yet come to fruition. Article 9 of the treaty provides that "[t]he Community shall be based upon a customs union which shall cover all trade in goods . . .[and] shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States." Customs duties and export charges are prohibited on internal trade. Other provisions of the Treaty of Rome define the term "free circulation," prohibit internal quantitative restrictions and barriers to the free movement of goods, and set up the common customs tariff. Article 11 requires the member states to adopt "all appropriate measures" to carry out these obligations as to customs duties. Transitional measures (including the staged removal of duties and gradual implementation of other obligations), first for the early years of the customs union and later with each succeeding enlargement of the Community, have helped protected national industries to adjust to competition from other member states.

[18] Regulation (EEC) No. 3716/91, *Amending Regulation (EEC) No. 409/86 on Methods of Administrative Cooperation to Safeguard, During the Transitional Period, the Free Movement of Goods Between the Community as Constituted on 31 December 1985 on the One Hand and Spain and Portugal on the Other and Between those Two New Member States*, *OJ* No. L 351 (Dec. 20, 1991), p. 21.

[19] COM (91) 293 final, *On Access to the Market for the Carriage of Goods by Road in the European Community to or from the Territory of a Member State or Passing Across the Territory of One or More Member States*, *OJ* No. C 238 (Sept. 13, 1991), p. 2.

[20] COM (91) 98 *OJ* No. C 97 (April 13, 1991), p. 11. See discussion of the draft code in U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Second Followup Report* (investigation 332-267), USITC publication 2318, Sept. 1990), pp. 7-4 to 7-7. Also, see the Opinion of the Economic and Social Committee (91/C 60/03), *OJ* No. C 60 (Mar. 8, 1991), p. 5, favoring the code as a legal breakthrough but urging caution and questioning the intent of many of its articles.

[21] *OJ* No. L 75 (Mar. 21, 1991), p. 2, amending two appendixes on the applicable convention on a common transit procedure and simplifying documentation effective Mar. 1, 1991.

[22] Reg. (EEC) No. 664/91, *OJ* No. L 75 (Mar. 21, 1991), p. 1.

[23] *On the Statistics Relating to the Trading of Goods Between Member States*, *OJ* No. L 316 (Nov. 16, 1991), p. 1. See chapter 1 of this report.

Despite this language and many regulations, some dating to the 1960s and having direct legal force in each member state, interpretative disputes have often arisen as to how completely a particular member state has accomplished the treaty goals. The European Court of Justice (ECJ) and other Community institutions have been called upon repeatedly to interpret or clarify applicable law, and impediments to truly free movement have been widely criticized—providing a major impetus to the integration program.

In a specific instance of importance to U.S. firms, Council Regulation (EEC) 1715/90 of June 20, 1990,[24] and an implementing measure, Commission Regulation (EEC) No. 3796/90 of December 21, 1990,[25] established for the first time an EC procedure enabling importers to obtain tariff classifications for goods. Member states must communicate to the EC Commission (for dissemination to the other member states) the binding tariff classification so issued. However, with regard to the application of these measures by the member states and the degree of assistance they may afford to third-country importers, one reviewer has stated—

> *These Regulations constitute substantial progress towards a uniform interpretation of the Common Customs Tariff, but they do not simplify the difficulties which inhere in the process of classification itself. . . . It is impossible to forecast detailed rules tailored to [technological] innovation without losing the flexibility necessary for an appropriate classification. . . . [I]t is important to have framework rules that offer sufficient legal certainty to producers and traders to at least provide basic guidelines . . . without impairing the realization of a Single European Market. . . .*
>
> *Customs law and practice will continue not to be susceptible to any full harmonization while, somewhat paradoxically, being the very domain in Community law where harmonization should be complete. Thus, despite the myriad of harmonization measures being brought under the umbrella of the "1992" programme, the process of customs classification in the Community continues to remain—at least for the present—a rather inexact science.*[26]

Thus, integration and the common customs measures being put into place may not be a panacea for all problems faced by third-country firms.

Despite some difficulties, the EC Commission has generally indicated that implementation of measures on the free movement of goods has not posed significant difficulties. Because of the Schengen Agreement, many member states have abolished frontier controls at their common borders; of the remaining member states, differing formalities are still in place but may be expected to be eliminated.

Selected Member-State Measures[27]

This section provides brief discussions of some member-state legislation pertaining to the free movement of goods, as a general matter rather than one related solely to the integration process.[28] In part, this focus was chosen because a large proportion of the integration-related customs measures are regulations, which are directly incorporated into the legal regimes of the member states without legislation. In addition, it is useful to examine whether integration alone will actually achieve free movement within the EC. For a more general discussion on the implementation of White Paper directives, see chapter 3 of this report.

Greece

As an EC member since the beginning of 1981, this civil-code-based country relies on code, custom, EC, and treaty law, but it has no binding court precedents on the movement of goods. Its import-export laws are very complex and include both elaborate border formalities and carefully planned currency controls pertaining to goods in trade. Prices included in invoices are required to be "genuine," with any excess over market prices heavily taxed under Law 936/1979. All imports from third countries (non-EC member states) must have prior approval from a commercial bank and the Ministry of Commerce; export transactions over US$10,000 are likewise subject to regulation. Formerly, all imports were held by customs authorities until 100 percent of their value was posted in drachmas with a commercial bank. As a part of the 1992 process, however, this requirement was dropped.[29]

Legislation to implement EC directives making integration-related changes is being adopted, so that currently Greece is less frequently described as having a poor record in this area than earlier was the case. Law 1676/1986 and its amendments have implemented

[24] *OJ* No. L 160 (June 26, 1990), p. 1, as discussed in U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2318, Sept. 1990.

[25] *OJ* No. L 365 (Dec. 27, 1990), p. 1.

[26] Vander Schueren, "Customs Classification: One of the Cornerstones of the Single European Market, but One Which Cannot Be Exhaustively Regulated," *Common Market Law Rev.*, vol. 28 Winter, 1991), p. 855 et seq.

[27] The following brief discussions are derived from *Doing Business in Europe*, Commerce Clearing House (CCH), 1990.

[28] It is extremely difficult, and may not assist an interested third-country government or firm, to separate issues pertaining to free movement in general from those related only to so-called White Paper directives. Under the Treaty of Rome, the EC Commission may take action wherever any member-state rule does or might hinder trade, regardless of the origin of a pertinent EC measure. *Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law: 1990*, COM (91) 321 (Oct. 16, 1991), p. 11. This section indicates examples of member-state measures that may facilitate or hinder the achievement of real integration, to achieve the goals of the Treaty of Rome.

[29] Circular of the Bank of Greece No. 537/1988.

aspects of the EC inward processing relief system, and Law 1402/1983, as amended, began to give effect to the outward processing relief scheme. Administrative simplification was reportedly furthered by Joint Decision No. E6-7900/1979, amended by E4/678/1982 and E6/1913/1987, but detailed information on these matters is unavailable.

Ireland

Ireland reportedly has maintained several measures affecting the free movement of goods that may be revised as a result of integration. Largely under laws on the control of imports dating from 1934 to 1964, the country maintains its own customs and excise tariff based upon the Common Customs Tariff for third-country imports. Quantitative restrictions in limited areas, primarily fisheries and agriculture, have applied to imports from both member states and third countries. Licenses are still needed for some products and countries, and EC firms can obtain the documents in their own member states. Similarly, exports of some goods, especially in sensitive industrial sectors, are regulated. However, the Irish Constitution makes EC law supreme in Ireland, facilitating its invocation (reliance thereon by private parties) in domestic and trade transactions as appropriate.

United Kingdom

Since the start of 1988, the SAD has served as an automatic import license for member-state suppliers, although individual licenses are still required of other importers (as are export declarations). For EC firms, the Community transit documents show the origin of the goods concerned; other shippers must establish the origin of each consignment. Domestic legislation has been adopted to implement EC directives on inward and outward processing duty relief, temporary importations, increased travellers' allowances, and driving licenses, among other measures.[30]

Spain and Portugal

For both countries, previous transitional customs and trade measures that pertained to their accession to the EC have allowed these new members to bar free movement even of some EC-origin products. Moreover, these countries have been allowed to continue these measures for adjustment purposes. The transitional measures are scheduled to end at the close of 1992, at which time, both countries are obligated to afford free movement to goods and persons of other member states on the same terms as do the other 10 EC members. In liberalizing even more than would be required by the accession agreements, Spain plans to allow immediate free movement of capital as well, and Portugal adopted an "anti-red-tape" program for customs procedures on March 1, 1988. The two countries are also progressing on the implementation of integration-related measures.

[30] These changes have not all been smoothly made. For example, in the first action overriding an act of the United Kingdom prior to final judgment, the ECJ on Oct. 10, 1989, said the Merchant Shipping Act of 1988 conflicted with provisions of the Treaty of Rome and related law. *R v. Secretary of State for Transport, ex parte Factortame Ltd.* (not yet reported, summarized in recent developments section of above-cited CCH compilation).

Possible Effects

Within the EC

Many documents, including prior reports in this study, have emphasized the benefits and cost savings that will flow from the elimination of internal customs posts and formalities to both EC and foreign firms. Some reviewers have indicated that foreign firms established in the EC by 1993 may, because of efficiencies and proximity, benefit somewhat more than third-country firms. If the EC-EFTA agreement to form a European Economic Area comes to full fruition, location in EFTA countries would also confer the same level of benefits available within the EC. As the deadline for integration approaches, it is also necessary to consider post-1992 changes that will result—such as higher unemployment in the customs broker-forwarder industry.[31]

In The United States

EC integration will likely require some adjustments in U.S. customs measures. For example, U.S. trade officials must decide if the EC will be treated as a single "country" for purposes of marking and other customs laws and determinations of origin.[32] Also, because all goods will be able to circulate freely in the EC, U.S. policymakers must determine how to administer existing country-specific measures, apply import bans relating to the spread of diseases, monitor sanitary conditions in food-processing and meatpacking plants, and ensure accurate trade data. With no documentation at EC borders, it may become harder, at least initially, to conduct some investigations, such as those pertaining to fraud, currency laundering, transshipments, and contraband. In addition, firearms exports to any member state might need to be evaluated with a view toward their eventual possible use by terrorists in member states other than the country of importation.

Free Movement of Persons

Background

As indicated in the opening summary to this chapter, the idea of free movement for all persons dates

[31] In addition, some kinds of jobs will largely disappear. The 85,000 customs brokers in 9 EC member states were expected to strike for 2 days in January to protest the "virtual disappearance of their protection," facing an unsympathetic EC Commission reaction (citing the brokers' knowledge since 1986 that their jobs were likely to be lost). See *International Trade Reporter,* vol. 9 (Jan. 22, 1992), p. 160, and see discussion on free movement of people, below.

[32] The Tariff Act of 1930 does not appear to permit a "made in the EC" marking.

back to the earliest work on the Treaty of Rome. However, as originally guaranteed, the right to free movement was restricted to workers and to those providing services. Preparing for the single market made it clear that many far-reaching changes would be necessary to make free movement a reality. Moreover, immediate adjustment efforts dealing with the potential influx of new residents must begin by January 1, 1993, in the earlier-acceding member states (other than Luxembourg, which was allowed to continue discriminatory measures relating to the accession of Spain and Portugal through the close of 1995), as workers from Spain and Portugal achieve the full right to free movement already enjoyed by citizens of the ten prior member countries. Much of the work in the area of free movement of people still depends on completion of measures on taxation and other substantive areas, as well as resolution of deep political concerns. The abolition of internal frontier checks in the integration program will necessitate the end to constraints on the movement of all people within the member states—family members and servants of workers, retired persons, people seeking employment, resident aliens, and third-country nationals. If all EC nationals and related persons are to be allowed the right of travel and residence, they must have an opportunity for employment to avoid overwhelming the social welfare programs and infrastructure of particular member states. Harmonizing social programs will make concentrations of newcomers in countries now having higher benefits less likely after integration.

Reportedly, member states have almost abandoned the idea that social security schemes can be harmonized in the next few years, although the EC Commission continues to suggest that this effort move forward. The EC Commission stated, "In the context of the completion of the internal market, differences in levels of social security must not hinder the mobility of people, and competition between the various systems must not worsen the social situation." How to promote social integration and guarantee a decent minimum living standard throughout the EC is a major problem.[33]

Although free movement does not present serious difficulties for many work categories, except to the extent that there may be more competition for posts, it requires considerable attention with regard to professionals and others holding special credentials. Differing standards may be adopted as a response, in part, to the small number of posts or maximum number of professionals who can be self-supporting in an area. If these standards are harmonized, or if mutual recognition results in the effective elimination of the protection from competition that these standards offer to local job seekers, some credential-holders may not have an easy time securing local positions and might need to look elsewhere. In addition, certification of professionals may be difficult where curricula, legal regimes, and professional disciplines differ among the member states, especially if only a small market for a category of professionals exists in an area. Also, eventual harmonization of standards can protect ordinary citizens who might hire professionals from other member states. This program is very complex, and has generated both disputes and concern, thus prompting a reliance on the principle of mutual recognition of qualifications and credentials.

The related topics of immigration and asylum laws,[34] cooperation in handling criminal matters,[35] and harmonization of social benefits are likewise the subject of considerable effort. Further, workplace safety, the general regulation of working conditions, and qualifications for people involved in transport are being addressed due to the growing ability of EC nationals and other people to move freely in the Community. Last, it is anticipated that, upon implementation of the new European Economic Area agreement between the EC and EFTA countries, free movement will eventually be afforded to the 32.5 million citizens of EFTA countries as well as their EC counterparts.[36] An agreement is already negotiated, effective July 1, 1991, between the EC and Switzerland to reduce customs border formalities. There are, nevertheless, some continuing disputes about immigration, free movement of people, and transport.[37]

Measures Adopted and Proposed

Background

Two major areas, the right of residence and the mutual recognition of diplomas, were the subject of recent Council decisions. Other actions relating to full free movement of people will likely occur as long-standing issues are resolved. The expansion of membership in the Schengen Agreement, mentioned

[33] See *European Report*, June 29, 1991, Internal Market, p. 3, and chapters on the social dimension in various reports in this study.

[34] In the movement toward political union, future Communitywide immigration policies have been under discussion but have generally been opposed by the United Kingdom as extending too much control to the Community's institutions.

[35] See common position adopted by the Council on Nov. 4, 1991, with respect to the EC Commission's proposal, *OJ* No. C 235 (Sept. 1, 1987), p. 8, and *OJ* No. C 299 (Nov. 28, 1989), p. 6. The Council expressed its view that cross-border transport of firearms ought to be prohibited, unless an acceptable prior notification procedure for member-state governments is adopted (and with the exception of hunters and target shooters). Control would be based on grants of a "European firearms pass" and information-sharing arrangements, with categories of weapons receiving differing levels of control.

[36] This abolition of constraints on movement between the EC and EFTA countries will affect a very significant quantity of shipments of goods as well as people. One report estimates that the EC and EFTA countries account for 45 percent or more of total world trade. *EC-U.S. Business Report*, C & M International, Ltd. (Nov. 1, 1991), pp. 13-14.

[37] See *European Report*, June 28, 1991, External Relations, p. 2.

earlier in this chapter, means that a large number of EC member states already have removed most physical controls, at least among themselves, and are well on the way to free movement. Implementation of the convention on asylum will result in additional intergovernmental cooperation on member-state policies and their eventual alignment. Last, ministerial-level work on immigration and agreement to develop cooperative employment schemes and monitoring systems have not only resulted in intra-EC progress but also in the involvement of officials from Eastern Europe and Canada (with a view toward developing expanded recognition procedures).

Professional and Vocational Qualifications

Efforts toward facilitating free movement for many vocational and professional fields proceed on different schedules and levels. The analysis commonly conducted by EC institutions begins with the identification of new job categories to be reviewed, then establishes comparable job classes, titles, or specialties and their areas of work or authority in each member state. Depending upon the differences ascertained for training, credentials, experience, and responsibilities for a particular category, the next step is usually the negotiation of mutual recognition for credentials held by EC nationals. These prior steps are often so sufficiently complicated that the harmonization of regulatory criteria and training courses is left for a later (even post-1992) date. Areas of work and employment not covered by job-specific directives fall under general directives, depending on the length and nature of training involved. Those job-specific directives or regulations dealing with a narrow job category in specific terms have facilitated free movement for persons concerned because of their clarity and the inclusion of comparable country-specific job titles.

Progress in this broad EC-level program has varied over time and from field to field. The medical and legal professions, architects, and accountants raised difficult training and disciplinary issues during the pertinent review processes, and further work is still needed. Other job areas—namely, professional sports players,[38] engineers,[39] technical flight staff in civil aviation,[40] and service and technical personnel of various types[41]—have likewise been discussed or covered by Community measures.[42] In addition, progress has been faster in addressing professional fields having longer training and experience requirements (over 3 years) than in the areas of work having shorter training programs (those relying more on subsequent apprenticeship and experience, perhaps tending to induce a worker to stay in the position or member state in which he initially qualified). The latest information available indicates that serious disputes still remain concerning the proposed directive on the mutual recognition of credentials based on training programs of less than 3 years' duration. The difficulties involve wide variances among member states in the type and length of some training programs and in the type and title of the credentials awarded, as well as whether they are issued by an academic or a vocational institution or board.

As indicated above, another broad aspect of ongoing effort has involved the coordination of publicly-sponsored training programs and employment opportunities, both present and future, throughout the Community. Communitywide data bases have been established to help coordinate the project and to compile training and other criteria imposed by the member states. Considerable funds are being expended on joint business-academic research aimed at achieving advances in technology and products (robotics, for example) and at training workers capable of handling the jobs of the future.[43] In most cases, recent EC actions have involved extensions of the duration of training and exchange programs, minor changes to clarify qualifications, and fiscal allocations to carry out these programs. A few programs have experienced or will likely see some changes to help apply them in countries of the former Eastern bloc.[44] Other

[38] See *Written Question* No. 3013/90 of Jan. 18, 1991, *OJ* No. C 227 (Aug. 31, 1991), p. 8, including issues relating to transfers between teams.

[39] Covered by provisions of the general directive on completion of professional education and training of at least 3 years' duration, according to *Joint Answer to Written Questions* No. 2662/90 of Nov. 23, 1990 and 2806/90 of Dec. 13, 1990 (*OJ* No. C 115 (Apr. 29, 1991), p. 20). The answer said that there might in future be a separate directive for engineers.

[40] A draft Council directive on mutual recognition of licenses was approved in October 1991. See the transport chapter of this report.

[41] Hotel and catering staff, motor vehicle repairmen, builders and construction workers, electricians,

41—Continued

agriculture/horticultural/forestry workers, textile/garment workers, and many others. The EC Commission has also done considerable work on behalf of migrant workers, to help them categorize and describe their skills and so obtain work more easily.

[42] Prior to the White Paper, many vocational categories were covered by EC measures; these categories, including such jobs as dog grooming, often involved fewer differences in member-state regulation and could thus be handled fairly quickly. Other positions, such as beautician, were subjected to somewhat greater review because of sanitary and health concerns.

[43] See, for example, this year's "Notice of call of applications for the Comett II Programme," on education and training for technology, *OJ* No. C 238 (Sept. 13, 1991), p. 7; funding for Petra II, *European Report*, June 29, 1991, Internal Market, p. 1. Establishment of programs such as EUROFORM, a transnational network of vocational training, has likewise continued.

[44] See, for example, discussion in *European Report*, June 29, 1991, Business Brief, p. 2 and following, concerning the EUREKA program. Participation by the United States, Canada, Japan, and other developed partners in these cooperative programs may be undertaken, although many European interests reject that idea as unadvisable from the perspective of future competitiveness.

programs funded by the Community are aimed at promoting specific industries, travel and tourism, automotive and consumer product safety, university student exchanges, and occupational followup monitoring.

Free Movement For Workers

On September 12, 1991, the EC Commission presented its proposal for a Council Regulation to achieve "the principle of non-discrimination between Community workers . . .[with] all nationals of the Member States of the same priority in the labour market as enjoyed by national workers of each Member State" (quoting the preamble).[45] An electronic network showing job vacancies in all member states has been set up to assist workers and to enable them to file applications for potential positions. The network is designed to show the posting of announcements for fields where shortages of a member state's own workers occur and those where other member-state nationals are being sought, applications of persons seeking particular sorts of jobs elsewhere, and information about persons who might be interested in relocating if the right job were available. All employment services are required to give equal treatment to all member-state nationals. The program will be overseen by the EC Commission, which did not propose an effective date for the measure.

The Single Market and its Implications for Women in the EC

On January 25, 1991, the European Parliament adopted a resolution[46] recognizing the work of many public and private bodies engaged in studying and promoting women's rights and employment opportunities in the EC, in light of the new mobility due to integration. The Parliament called for government institutions at all levels to draft all laws and documents with equal treatment for women as a goal. The entire labor market is to be made open to women, even if quotas and other measures prove necessary to accomplish this objective. All work, whether in or outside the home, should be valued equally, according to the Parliament, and women facing employment problems due to the single market must be assisted. The document deals with other varied objectives, including increased mobility, education, and training; efforts to open isolated areas; improving the general quality of life; helping minorities; reducing consumer prices; and aiding in women's exercise of their political rights.

[45] COM (91) 316 final, *Changing Part II of Regulation (EEC) No. 1612/68 on Freedom of Movement for Workers Within the Community*, *OJ* No. C 254 (Sept. 28, 1991), p. 9. The measure being amended appeared at *OJ* No. L 257 (Oct. 19, 1968), p. 2.

[46] *OJ* No. C 48 (Feb. 25, 1991), p. 222. See this report's chapter on the social dimension of integration and corresponding chapter in prior reports in this study.

Free Movement and Border Procedures

The European Parliament adopted a *Resolution on the Harmonization of Policies on Entry to the Territories of the EC Member States With a View to the Free Movement of Persons (Article 8a of the Treaty of Rome) and the Drawing Up of an Intergovernmental Convention among the 12 Member States of the EC.*[47] This document is intended to emphasize the balancing of all interests—such as the national security concerns of member states against the growing cooperation of their governments at the Community level—which must constantly be undertaken to achieve fully the goals of the Treaty of Rome and the single market. It points to the success of the Schengen Agreement showing how free movement across internal borders can be achieved without impeding security interests, and asks for continuing coordination of member-state activities and policies in areas of immigration, visa control, and related areas. As to the so-called external borders convention—an intergovernmental effort outside the Community sphere (though with EC Commission participation)[48]—the Parliament asks that its objectives and standards be framed with a view toward protecting fundamental freedoms of all persons, thus avoiding a "fortress" mentality. The document seeks added involvement from all EC institutions, and in particular for consultations with the Parliament and national parliaments. Further, the document emphasizes existing international obligations of the EC on asylum, the treatment of refugees, airport procedures, and other matters as well as overriding concerns for human rights. The resolution was forwarded to EC bodies, United Nations organs and officials, and Amnesty International.[49]

Implementation

Background

The degree to which measures (many of them directives) pertaining to the free movement of persons have been incorporated in national law varies

[47] Joint resolution of Feb. 22, 1991, *Resolution on the Harmonization of Policies on Entry to the Territories of the EC Member States With a View to the Free Movement of Persons (Article 8a of the Treaty of Rome) and the Drawing Up of an Intergovernmental Convention among the 12 Member States of the EC*, *OJ* No. C 72 (Mar. 18, 1991), p. 213.

[48] The convention will provide for mutual recognition of visas granted by member states and free movement of "legal" immigrants, as well as for protection of data collected about third-country nationals entering the EC.

[49] See several *Written Questions* addressed by Mr. Yves Galland to the EC Commission on matters relating to asylum and refugee status, free movement, and external frontier procedures. The EC Commission, in its joint answer, indicated that the convention approach to implementation of a common policy seemed more likely to be successful by Jan. 1, 1993, than EC legislation, because of possible jurisdictional disputes. It indicated its desire for a "pragmatic line," pointing out that work in all of these areas is ongoing, and referred to the common visa application form (in use as of Jan. 1, 1991) and the new asylum convention. *OJ* No. C 141 (May 30, 1991), pp. 4-7.

considerably.[50] Approximately two-thirds of the EC measures relating to free movement of self-employed persons have been transposed, or incorporated, into member-state law, for example.[51] Also, by June 1991, five member states (Denmark, Germany, France, Ireland, and the United Kingdom) had completely or partly transposed the directive on recognition of diplomas for completing professional education and training of at least 3 years' duration, and the other seven had notified the EC Commission of draft measures to do so.[52] In the nonregulated professions, 75 professions in 6 sectors were already covered by measures establishing comparability of qualifications, and all 19 sectors/groups are expected to be covered by the end of 1992.[53] The member states are also beginning to notify the EC Commission of measures adopted to inform their citizens of new programs for training and vacancies.

Infringement proceedings have been initiated by the EC Commission for member-state noncompliance with existing obligations.[54] For example, proceedings were initiated against France, Italy, and Spain for not implementing an ECJ ruling on the mutual recognition of diplomas.[55] The resulting decision was issued on Oct. 15, 1987, in Case 222/86, *Unectef v. Heylens,* to the effect that member states can require a national of another member state to get further training only to the extent he does not possess some portion of the background required of nationals of the host.[56] However, this authority essentially ends, according to the court, where directives require mutual recognition for a specified profession or vocation, and member-state law must be changed accordingly.

Much of the EC Commission's effort to ensure correct implementation by member states relies on individual complaints that the right to free movement or establishment is being abridged.[57] Forty to fifty discrimination complaints relating to the mutual recognition of qualifications are investigated each year.

[50] See *Completing the Internal Market: An Area Without Internal Frontiers*, COM (90) 552 (Nov. 23, 1990), a progress report from the EC Commission, pp. 9-11.

[51] See *Europe 1992 Progress Report*, Buraff Publications (1991), p. 10.

[52] See *Sixth Report of the Commission,* p. 19.

[53] Ibid.

[54] Several member states, including Italy, Ireland, Belgium, and Luxembourg, have been criticized for falling short of Community norms in the implementation of directives on mutual recognition and free movement of persons. Spain, Italy, Ireland, and the United Kingdom were cited as failing to implement a 1990 directive on imports of personal property of individuals. Proceedings concerning nonimplementation of directives on medical training and independent commercial agents were initiated against several member states.

[55] See *Eighth Annual Report to the European Parliament on Commission Monitoring of Community Law*, cited above, p. 37. Both White Paper and earlier directives set forth obligations on this subject.

[56] [1987] European Court Report 4097.

[57] See *European Report* of Aug. 3, 1991 (internal market).

Selected Member-State Measures[58]

Belgium

Belgium maintains elaborate and tight regulations on labor relations and an extensive social security system.[59] Belgium has numerous bilateral treaties on the coverage of nonnationals working or living in Belgium. Third-country nationals work under work permits and professional cards (which may take a year or more to obtain). EC nationals are afforded the right of entry under Community measures, and Belgians residing in other member states are covered by social security programs as if living at home for the first 12 to 24 months of their stays abroad. Many EC measures concerning free movement and the recognition of qualifications have been transposed into local law.

France

Non-EC nationals are granted work permits generally only for positions having salaries exceeding an amount equal to 1300 times the minimum wage (unless individuals are covered by historical preference programs). France has been the subject of ECJ infringement rulings for failing to allow EC nationals, even those who held French credentials, to work in France under conditions of national treatment. France was successful against arguments of discrimination against EC nationals trying to obtain a right of residence in overseas countries and territories, where the latter did not intend to work or provide services in France and where the applicants' member states did not afford a right of residence to persons from the territories.[60]

United Kingdom

Workers in the United Kingdom receive legal protections and rights from statutes, common law, and EC measures; and EC nationals applying for work permits generally are preferred over third-country nationals. The 1976 Race Relations Act also bars discrimination based upon national origin in specified areas; Northern Ireland also maintains laws banning discrimination based on political or religious views. On April 17, 1991, the United Kingdom acted to transpose the directive on the recognition of professional qualifications (Council Directive 89/48/EEC).

Others[61]

The differing degree of member-state implementation of EC law is notable. Greece was found

[58] Unless otherwise noted, material comes from CCH International's compilation *Doing Business in Europe.*

[59] Currently, paid leave is granted by law for 10 holidays and many personal matters. Each employee pays 12.07 percent of his pay (as of 1990) into the social security system, and employers pay from 34.14 to 40 percent of pay.

[60] See discussion in *Eighth Annual Report*, p. 38. Case C-263/88, *Commission v. France,* and Cases C-100/89 and C-101/89.

[61] See *Eighth Annual Report*, p. 39-48.

to have violated EC law by requiring Greek nationality as a condition of opening private schools or of practicing the professions of engineers, surveyors, and architects. Germany and France were found to have discriminated against nonnationals who were the victims of violence, and Germany was found to have done so in granting welfare benefits; the offending measures have since been changed. Italy was cited for limiting the occupations of guide, journalist, and pharmacist to Italian nationals.[62] Denmark, Italy, Germany, the Netherlands,[63] Greece, Spain, and Portugal were the target of allegations of obstruction of the right of residence. Many other cases were brought, for infringement of the right to practice various medical professions and architecture, against Belgium, Germany, Italy, Spain, and Luxembourg. Last, notification of possible violations have been issued by the EC Commission to several member states on nationality requirements in many other fields, including teaching and public service corporations.[64]

Possible Effects

The activities and measures in this substantive area will benefit EC nationals and holders of EC-member-state credentials or qualifications. In addition, as discussed in earlier reports in this study, firms established in the EC will be afforded a wider pool of job applicants and greater flexibility in hiring and transfers. While of little direct benefit to U.S. citizens unless they travel to the EC (because of simplification of visa and entry procedures), these measures are of note due to the high degree of cooperation achieved by the governments and the economic benefits they confer to EC firms. Moreover, to the extent that training and vocational programs make EC firms and workers more competitive in the world market, the United States and other countries will need to make adjustments and exert additional efforts to be successful in the EC and world markets. Firms operating in the EC may eventually be compelled to hire more women and to make operational changes to implement social and labor-oriented measures.

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[62] Italy was not cited for barring an Italian national holding an Italian driving license from driving a car licensed in France by his wife. See *Written Question* No. 674/91 of Apr. 16, 1991, *OJ* No. C 323 (Dec. 13, 1991), p. 9.

[63] For requiring even EC nationals to obtain residence permits within 8 days that are good for only 3 months, with a 1-year renewal if work is found.

[64] See *European Report*, Oct. 2, 1991, Internal Market, p. 3, as to the latter case. See also *Written Questions* Nos. 829/91 and 830/91 of May 3, 1991, *OJ* No. C 227 (Aug. 31, 1991), p. 35, concerning Germany's loss of an ECJ action on the denial of a residence permit.

CHAPTER 9
TRANSPORT

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EC initiatives pertaining to the 1992 transport services program have two major objectives. The first objective is the creation of a unified transport market among the EC member states. This step encompasses such measures as eliminating border controls, streamlining customs documentation requirements, and harmonizing technical and safety standards. The second objective is economic liberalization. This step entails removing barriers to entry and limiting government involvement in route and price decisions. EC transport initiatives generally focus on a particular sector—*air transport* (including both passenger and freight), *surface transport* (including trucks, passenger buses, barges, combined motor-rail and motor-barge services, and to a limited extent railroads), or *ocean transport* (carriage of goods in ocean vessels).

Developments Covered in the Previous Reports

In its 1985 White Paper, the EC Commission identified its major goal for the air-transport sector to be increasing competition. To achieve this goal, the White Paper advocated measures to change the system for the establishment and approval of tariffs and to limit the rights of government bodies to restrict capacity and access to the market.[1] The EC took initial steps to relax economic regulation in 1987 by restricting the scope of capacity-sharing arrangements between airlines that were then in effect on most passenger routes between points in different EC member states. A second deregulation package became effective in 1990 that limited the power of individual member states to veto intra-EC passenger air fares and that further restricted the scope of capacity-sharing arrangements. The EC Council in 1990 additionally adopted an initiative that permitted EC-based carriers greater flexibility in route and price decisions for air-cargo services.

In surface transport the White Paper described two priorities: (1) eliminating frontier checks in carriage by road and (2) easing capacity and entry restrictions pertaining to motor transport.[2] To help achieve the first objective, the EC has eliminated the requirement that persons engaged in EC transit operations submit (or "lodge") a transit advice note to the customs office at the border of each member state through which a shipment is transported. To help achieve the second objective, the EC Council has increased the maximum number of authorizations each member state may grant to its trucking companies for Community transport. The EC seeks to eliminate capacity restrictions entirely by January 1, 1993.

[1] EC Commission, *Completing the Internal Market: White Paper from the Commission of the European Communities to the European Council* ("White Paper"), June 1985, pp. 29-30.

[2] White Paper, pp. 29-30.

The principal objectives of the White Paper in the ocean-transport sector have been to permit the freedom to offer ocean-transport services between member states and to set rules of competition.[3] The EC has adopted measures addressing the application of EC competition law to ocean transport and ensuring the right of citizens of one member state to provide maritime-transport services among other member states. It has yet to address comprehensively the right of EC-member-state-flag vessels to engage in cabotage within another member state.

Developments During 1991

Overview

EC Commission proposals for regulations concerning routes and fares were the chief initiatives issued during 1991 to promote White Paper objectives in the air-transport sector. The proposals in this so-called "third liberalization package" would restrict the ability of member states to disapprove new fares proposed by carriers for air-passenger transport within the EC. They also would accord to EC-based carriers, with some exceptions, full and free access to intra-Community air routes. EC bodies also issued a number of initiatives expanding or proposing to expand the EC Commission's powers to regulate anti-competitive activities in air-passenger transport.

Several initiatives in 1991 in the surface-transport sector addressed the White Paper objective of relaxed entry and capacity restrictions. The EC Commission proposed that motor freight carriers be free from quantitative restrictions and that they have the freedom to operate throughout the Community. The EC Commission's proposal specifically would permit any EC motor freight carrier to engage in cabotage operations—that is, to carry goods between two points in a single member state other than the one in which it is licensed. In a separate action, the EC Council issued a directive permitting inland waterway operators to engage in cabotage operations.

No initiatives, however, concerned bus transport. In its June 1991 report concerning implementation of White Paper objectives, the EC Commission noted that the area of bus transport has been dormant for "many years" and it "deplored" the EC Council's inability to reach agreement in this area.[4] Press reports indicated, however, that the EC Council had reached a tentative agreement on a regulation that would relax regulation of intercity bus routes and fares at its December 1991 meeting.[5]

[3] White Paper, p. 30.

[4] EC Commission, *Sixth Report of the Commission to the Council and the European Parliament Concerning Implementation of the White Paper on the Completion of the Internal Market*, COM (91) 237 (June 19, 1991), p. 20.

[5] "Transport Council: Compromise on Speed Restrictions and Coach Services," *European Report*, No. 1730 (Dec. 17, 1991), Internal Market, pp. 7-8.

No initiatives in the area of ocean transport pertained to the White Paper objectives. Proposals to permit cabotage in ocean transport (which have been pending since 1986) and to create a "European"-flag ship registry have provoked continued disagreement within both the EC Council and member states and have not been adopted in final form.[6]

The EC also reached agreements in 1991 with European Free Trade Assocation (EFTA) countries concerning numerous transport-services issues. A number of specific provisions of the 1991 European Economic Area (EEA) agreement addressed motor transport. One well-publicized provision, which requires Austria to adjust the number of permits it grants to EC motor carriers, will have the practical effect of increasing Greek transit rights through that country. Another increases EC trucking companies' transit rights through Switzerland.[7] The EEA agreement also contains a general provision making a number of specific EC transport initiatives applicable to EFTA.[8] Additionally, in 1991 the EC Commission reached a tentative agreement with EFTA members Sweden and Norway that would make currently effective single-market initiatives in the air-transport sector (most notably the first and second liberalization packages) applicable to those two countries. The agreement, which requires approval by the EC Council to become effective, would also make future EC air-transport-sector legislation on issues such as airport slot allocation, cabotage, and technical harmonization applicable to Norway and Sweden.[9]

The Air-Transport Sector

Significant Developments

The EC Commission has consistently advocated economic deregulation as an integral step in achieving a unified air-transport market. Thus the EC Commission has placed priority on promulgation of measures under which "[Member] States will progressively abandon interventionist practices" and that "guarantee . . . that airlines cannot prevent their competitors from exploiting the opportunities created by liberalization."[10] Accordingly, the principal initiatives in air transport during 1991 include (1) the "third liberalization package," which seeks severely to restrict member states' ability to engage in economic regulation, and (2) amendments to the rules of competition. Other initiatives concerned border controls and harmonization of standards.

Third Liberalization Package for Air-Transport Services

The EC Commission's "third liberalization package" consists of two proposals for EC Council regulations. The first proposal concerns the fares and rates that carriers may charge for air-transport services within the EC. The second proposal concerns access to air routes within the Community.

Rates and Services

Under the proposal on fares and rates,[11] a new passenger air fare between points in different member states would become effective if there is no "double disapproval"—that is, unless both of the involved member states disapprove the fare. Moreover, member states are authorized to disapprove new fares only if such fares are predatory, not reasonably related to the applicant carrier's long-term fully allocated costs, or so excessively high that they disadvantage consumers.

The proposal would exempt certain "limited competition" services from the double disapproval requirements. "Limited competition" services are defined as those that carriers are required to undertake by member states pursuant to public service obligations, those where there are significant barriers to entry, or those served by one carrier or by two carriers under a joint-operation agreement on which fewer than 30,000 seats are offered annually. For these services, any single member state concerned may request that the EC Commission review the fare.

Under the proposal, as under current practice, only carriers based in the EC are guaranteed the right to introduce lower fares. Non-EC carriers with traffic rights between points in the EC will be permitted to match only changes in normal economy or equivalent air fares unless an agreement between the EC and the country from which the carrier is based provides otherwise.

The current proposal is not the EC Commission's first attempt to make air fares generally subject to double disapproval. The EC Commission's 1989 proposal for the second deregulation package would

[6] "Maritime Transport: Shipping Consortia to be Exempt from Rules of Competition," *European Report*, No. 1730 (Dec. 17, 1991), Internal Market, pp. 14-15; Janet Porter, "EC Weighs Scrapping Secondary Registries," *Journal of Commerce*, Nov. 13, 1991, p. 1A; "Maritime Cabotage: Tensions Ease on the North-South Front," *European Report*, No. 1695 (July 20, 1991), Internal Market, p. 3; "Cabotage: Agreement on Inland Waterways, Hold-Up on Sea Transport," *European Report*, No. 1687 (June 22, 1991), Internal Market, p. 9.

[7] "The European Economic Area: Toward a Single Market of 19 Countries," *European Report*, No. 1715 (Oct. 26, 1991), Supplement, pp. 4-5; EC Parliament Vice-President David Martin, speaking notes for U.S. tour, Nov. 1991.

[8] EC Commission, "Draft Outline EEA Agreement," ch. 6. At the time this report was prepared, the EC Commission had not yet released a list of specific transport directives that would be applicable to the EFTA countries.

[9] "Trade and Cooperation EC-EFTA," *European Update*, sec. 5.3 (Jan. 16, 1992), from WESTLAW EURUPDATE database.

[10] EC Commission, *Sixth Report*, p. 20.

[11] *Proposal for a Council Regulation (EEC) on Fares and Rates for Air Services*, COM (91) 275, *Official Journal of the European Communities* (*OJ*) No. C 258/15 (Oct. 4, 1991).

have made all new fares subject to double disapproval.[12] The package adopted by the EC Council, however, limited double disapproval only to those fares that satisfied specific criteria concerning levels and restrictions.[13]

Significant opposition exists to the further deregulation of fares contemplated by the EC Commission in its third liberalization package. The Association of European Airlines, as well as individual EC airlines such as Air France, have strongly criticized the fare provisions of the third liberalization package as inimical to the interests of EC airlines.[14]

Access to Intra-Community Air Routes

The principal provision of the EC Commission's proposal on access to intra-Community air routes[15] would grant all EC-based air carriers traffic rights between any two airports in the Community, effective January 1, 1993. In other words, the proposal would accord carriers full cabotage rights within the EC.

The proposal does, however, provide two principal exceptions to its general rule according carriers free and voluntary access to intra-Community air routes. First, member states may require carriers to provide "regional air services." These are defined as routes (1) for which fewer than 30,000 seats are offered annually and (2) that are not between the 20 largest EC airports. Second, a member state may restrict competition on certain new regional services operated with aircraft of fewer than 80 seats.

The proposal also would eliminate all capacity restrictions, except for the regional services exempted from the free-entry provisions. The EC Commission, however, would retain the ability to impose capacity restrictions at the request of a member state if a carrier licensed by that state has incurred "serious financial damage" because of the elimination of restrictions.

This proposal marks the EC Commission's third attempt to relax or eliminate cabotage restrictions in passenger air transport. Neither of the previous two proposals, which were more limited in scope, has been adopted by the EC Council.[16] Several member states, especially France, are expected to oppose the EC Commission's current cabotage proposal.[17] At its December 1991 meeting, the EC Council indicated that it would not accept the portion of the proposal granting full cabotage rights effective January 1993 but would phase in such rights over a transitional period.[18]

Amendments to the Rules Of Competition

Two initiatives during 1991 addressed Regulation (EEC) No. 3975/87, which applies the anticompetition provisions of the Treaty of Rome to air-transport undertakings. In the first initiative, the EC Council promulgated regulations that grant the EC Commission the authority to temporarily enjoin anticompetitive activities in air transport.[19] Under the regulation, the EC Commission may enjoin for a 6-month period (which may be extended for 3 additional months) practices that "clear prima facie evidence" indicates "have the object or effect of directly jeopardizing an air service."[20] The second initiative is a proposal for a regulation extending the scope of Regulation 3975/87, which currently concerns only air transport between points in different states, to encompass all air transport within the EC.[21]

The EC Commission additionally proposed an amendment to Regulation (EEC) No. 3976/87, which authorizes the EC Commission to grant "block" exemptions from the anticompetition provisions of the Treaty of Rome for any agreements involving air transport between member states concerning scheduled air-service capacity restrictions, consultations on

[12] See U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Second Followup Report* (investigation No. 332-267), USITC publication 2318, Sept. 1990, pp. 8-8 to 8-9.

[13] A description of these criteria is found in U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991, p. 8-4.

[14] Bruce Bernard, "EC Airlines in Dogfight with Panel over Policy," *Journal of Commerce*, July 9, 1991, p. 1A; "Aviation: AEA Shoots Down Lower Air Fares," *European Report*, No. 1691 (July 6, 1991), Internal Market, pp. 8-9.

[15] *Proposal for a Council Regulation (EEC) on Access for Air Carriers to Intra-Community Air Routes*, COM (91) 275, *OJ* No. C 258/10 (July 25, 1991).

[16] For a discussion of the previous proposals, see USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 8-9.

[17] "Transport: Is France Opposed to Uncontrolled Liberalisation," *European Report*, No. 1728 (Dec. 11, 1991), Internal Market, p. 4; "Air Transport: France Condemns Third Deregulation Package," *European Report*, No. 1707 (Sept. 26, 1991), Internal Market, pp. 9-10. Spain, Italy, and Greece are also anticipated to be unreceptive to the cabotage proposal. USITC staff interview with U.S. Department of Transportation, Office of International Aviation staff, Feb. 1992.

[18] "Air Transport: Liberalisation Will Take Place Gradually Between Now and 1993," *European Report*, No. 1730 (Dec. 17, 1991), Internal Market, p. 6.

[19] *Council Regulation (EEC) No. 1284/91 of 14 May 1991 Amending Regulation (EEC) No. 3975/87 Laying Down the Procedure for the Applications of the Rules on Competition to Undertakings in the Air Transport Sector*, *OJ* No. L 122/2 (May 17, 1991).

[20] The standard for obtaining temporary relief and the maximum duration of such relief adopted by the Council in the final regulation differ slightly from the comparable provisions that appeared in the EC Commission's proposal. The proposal is discussed in USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 8-7 to 8-8.

[21] *Proposal for a Council Regulation (EEC) Amending Regulation (EEC) No. 3975/87 Laying Down the Procedures for the Application of the Rules on Competition to Undertakings in the Air Transport Sector*, COM (91) 272, *OJ* No. C 225/9 (Aug. 30, 1991).

common preparation of proposals on tariffs and fares, airport slot allocation, airport security, purchase and operation of computer reservations systems, and handling of passengers, mail, freight, and baggage. The proposal would extend indefinitely the EC Commission's authority to grant block exemptions, currently scheduled to expire on January 31, 1992. It would also extend the scope of the regulation to encompass all air transport between Community airports.[22]

Border Controls

The EC Council approved regulations proposed by the EC Commission to exempt from border controls baggage of passengers traveling on airplane flights or ocean voyages between points within the EC.[23] The proposed regulations were described in the third followup report.[24]

Harmonization of Standards

Licensing

The EC Commission issued a proposal for a regulation that would establish uniform standards for the licensing of air carriers within the EC.[25] The proposal, which was issued contemporaneously with the third-phase deregulation package, would require any entity that carries passengers, mail, or cargo within the EC by air to possess both an air operator's certificate (AOC) and an operating license and certificate issued by a member state pursuant to the uniform standards. To obtain an AOC, an operator must demonstrate to the licensing authority "adequacy" as to management organization, training programs, maintenance operations, and ground handling facilities.

Operating licenses would generally be available only to entities whose principal line of business is air transport. These entities must hold an AOC, be headquartered within the EC, and be majority-owned-and-controlled by EC member states or nationals of such states. The proposal would permit the EC to waive the restriction pertaining to EC ownership and control pursuant to bilateral or multilateral agreements with third countries. Additionally, holders of operating licenses would be required to meet specified capital and financial requirements.

[22] *Proposal for a Council Regulation (EEC) Amending Regulation (EEC) No. 3976/87 on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements and Concerted Practices in the Air Transport Sector,* COM (91) 272, *OJ* No. C 225/10 (Aug. 30, 1991).

[23] *Council Regulation (EEC) No. 3925/91 of 19 December 1991 Concerning the Abolition of Controls and Formalities Applicable to the Cabin and Checked Baggage of Persons Taking an Intra-Community Flight and the Baggage of Persons Making an Intra-Community Air Crossing, OJ* No. L 374 (Dec. 31, 1991).

[24] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 8-7.

[25] *Proposal for a Council Regulation (EEC) on Licensing of Air Carriers*, COM (91) 275, *OJ* No. C 258/2 (Oct. 4, 1991).

Technical Standards

The EC Council adopted two initiatives harmonizing technical standards. The first initiative is a regulation requiring that each member state adopt the aircraft safety and maintenance codes of the Joint Aviation Authorities (JAA), and accept as meeting its own safety codes aircraft and aircraft parts that another member state has certified as satisfying JAA requirements.[26] The EC Commission proposal which served as the basis for the regulation was described in detail in the third followup report.[27]

The second initiative is a directive requiring member states to accept licenses of pilots, flight navigators, and flight engineers issued by other member states applying "equivalent" licensing standards.[28] Member states also are required to accept pilot's licenses issued by other member states that conform to the standards of the Chicago Convention on International Civil Aviation. The directive provides the EC Commission with authority to determine the equivalence of member states' licensing standards. The directive mandates that member states adopt implementing legislation before June 1, 1992.

Aircraft Noise

The EC Commission proposed a directive that would harmonize noise emission standards applicable to civil subsonic aircraft operating at EC airports.[29] The standards would be applicable to all aircraft operating at EC airports and not merely aircraft licensed by member states.

The proposal would require that such aircraft meet specified noise standards set forth in the Convention on International Civil Aviation. The standards would not apply to certain small commuter aircraft or to aircraft used by Sudanese and Ugandan airlines. The proposal would provide member states with limited authority to grant temporary exemptions from the standards in cases of hardship.

Possible Effects on U.S. Industry

Recent Initiatives

The recent EC initiative perceived to have the greatest potential effect on U.S. industry is the EC Commission's proposal concerning harmonization of air carrier licensing standards. The proposal contains wording that suggests that the operating license

[26] *Council Regulation (EEC) No. 3922/91 of 16 December 1991 on the Harmonization of Technical Rules and Administrative Procedures in the Field of Civil Aviation, OJ* No. L 373 (Dec. 31, 1991).

[27] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 8-6 to 8-7.

[28] *Council Directive of 16 December 1991 on Mutual Acceptance of Personnel Licenses for the Exercise of Functions in Civil Aviation, OJ* No. L 373/21 (Dec. 31, 1991).

[29] *Proposal for a Council Directive on the Limitation of the Operation of Chapter 2 Aeroplanes*, COM (90) 445, *OJ* No. C 111 (Apr. 26, 1991).

necessary for carriers offering intra-EC air transport would be available to non-EC-based carriers only pursuant to a bilateral or multilateral agreement between a third country (such as the United States) and the EC. Nevertheless, neither industry nor U.S. Department of Transportation (DOT) officials believe that this wording will affect U.S. carriers' current "fifth-freedom" traffic rights between points within different member states.[30] Industry officials do, however, note that the licensing proposal indicates that a carrier with up to 49-percent non-EC ownership could still be licensed as an EC-based "Community carrier." This would allow greater U.S. investment in EC air carriers than is permitted under current law. The industry officials therefore perceive the proposal to be a positive development.[31] DOT, by contrast, is concerned that the "Community carrier" concept raises complicated questions concerning the identity of EC carriers entitled to provide service to the United States pursuant to existing air-transport agreements between the United States and individual EC member states.[32]

Another recent initiative with potential impact on U.S. industry is the EC Commission's proposal concerning slot allocation at EC airports, which was discussed in the third followup report.[33] DOT is concerned that the EC Commission's proposal does not require member states to make slots available to meet international obligations pursuant to bilaterals with the United States, and therefore may deprive U.S. carriers of access to congested airports.[34]

Long-Range Effects

The effects of EC actions creating a unified air-transport market cannot be known merely by measuring the likely impact of individual initiatives. The creation of a unified market, in and of itself, is likely to have a number of long-range effects on air transport between the United States and Europe.

Many of these long-range effects concern the manner in which the U.S. Government obtains traffic rights for U.S. airlines between the United States and points in the EC. Currently, traffic rights are granted pursuant to bilateral agreements which the U.S. Government enters with individual member states. Many observers perceive that, with creation of a unified transport market, the United States ultimately will negotiate air traffic rights with the EC itself instead of the individual member states. Government and industry witnesses who testified at a March 1991 Congressional hearing concerning U.S. international aviation policy uniformly agreed that the United States ultimately would negotiate air-traffic agreements on an EC-wide basis. There was little consensus, however, when such negotiations would be practical or desirable.[35]

Additionally, EC Transport Minister Karel Van Miert has repeatedly advocated that member states grant the EC Commission authority to negotiate air-traffic agreements, especially with the United States, on a Communitywide basis. Mr. Van Miert's conception of the objectives of such discussions, however, differs markedly from those of U.S. industry officials. Mr. Van Miert has stated that he would seek to obtain for European carriers the right to carry traffic between U.S. cities, in exchange for U.S. carriers being able to retain the "fifth-freedom" rights that they currently enjoy within the EC.[36] U.S. industry officials, by contrast, contend that the U.S. Government should not be required to renegotiate U.S. carriers' existing rights. The U.S. industry officials indicate that U.S.-EC air traffic negotiations are desirable only if they can serve to expand U.S. carriers' access to EC markets.[37]

The U.S. Government actually did engage in preliminary discussions concerning an EC-wide air-transport agreement during 1991. In May and September 1991, DOT, along with the U.S. Departments of State and Commerce, held informal, nonbinding, preliminary discussions with the EC Commission's Transport Directorate to explore the

[30] "Fifth-freedom" traffic rights are those involving carriage of passengers or cargo from one foreign country (i.e., a country other than the one in which the aircraft is registered) to another.

[31] USITC staff interview with Air Transportation Association staff, Jan. 1992.

[32] USITC staff interview with U.S. Department of Transportation, Office of International Aviation staff, Feb. 1992.

[33] USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 8-5.

[34] USITC staff interview with U.S. Department of Transportation, Office of International Aviation staff, Feb. 1992.

[35] Assistant Secretary of Transportation for Policy and International Affairs Jeffrey N. Shane testified that air-traffic negotiations would "ultimately" be conducted on an EC-wide basis, but he said he could not predict how quickly such negotiations would be likely to occur. He also said that DOT's current policy was to continue to focus on bilateral negotiations. *Review of U.S. International Aviation Policy and Bilateral Agreements: Hearings Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 102d Cong., 1st sess. 18-19 (Mar. 19, 1991). Daniel M. Kaspar, an international transportation consultant, agreed that U.S.-EC air-transport negotiations were inevitable and suggested that the U.S. Government attempt to initiate such negotiations as quickly as possible. *Ibid.*, pp. 198-99 (Mar. 21, 1991). James Landry, senior vice president and general counsel of the Air Transportation Association of America, also agreed that eventual U.S.-EC air traffic negotiations were ultimately likely, but he suggested that steps to initiate such negotiations were premature until the EC completed unification of the air transport market. *Ibid.*, p. 359.

[36] *Eurofocus*, Oct. 14, 1991; Keith M. Rockwell, "EC Nations Urged to Relinquish Control of U.S. Aviation Talks," *Journal of Commerce*, Apr. 3, 1991, p. 5B.

[37] *Review of U.S. International Aviation Policy*, pp. 359-60 (testimony of James E. Landry, Air Traffic Association).

possibility of an agreement to liberalize air-cargo operations between the United States and the EC. No formal proposals were exchanged at the discussions, and the U.S. officials indicated that the U.S. Government had not yet made a policy determination that negotiations with the EC for a cargo agreement were appropriate. A principal concern of the U.S. officials was the EC Commission's negotiating authority, inasmuch as the EC Commission currently does not possess a mandate from the EC Council to negotiate a cargo agreement.[38] U.S. officials currently believe that EC member states desire to complete the unified internal EC market before granting the EC Commission negotiating authority.[39]

Additionally, a number of provisions of a March 1991 amendment of the air-services agreement between the United States and the United Kingdom arguably indicate possible effects that a unified EC air-transport market may have on air traffic between the United States and EC member states. One provision of the agreement grants British airlines the right to provide nonstop services between the United States and six EC countries other than the United Kingdom.[40] Such "seventh freedom" rights, which will become operative only if the other EC countries that are involved give consent, are nearly unprecedented in air-services agreements.[41] A second provision permits a British airline to own up to 50 percent of a non-British airline without compromising that airline's ability to provide service to the United States under an air services agreement between the United States and its home country.[42] The chairman of the House Aviation Subcommittee remarked at the March 1991 hearings that these provisions appeared to both be an effect and a likely cause of increased unification of the EC air-transport industry.[43]

The Surface-Transport Sector

Significant Developments

Most of the significant initiatives issued during 1991 concerning transport services for road, rail, and inland waterways addressed economic regulation of such services. Foremost among these were initiatives that permitted cabotage in inland waterway transport and proposed eliminating cabotage restrictions in road transport. Other initiatives addressed such matters as border controls and development of Community railways.

Economic Regulation

Cabotage Restrictions in Road Transport

The EC Commission proposed issuance of a regulation that would permit road haulage companies established within one member state the authority to operate services "on a temporary basis" solely within another member state without having to establish a registered office in that state.[44] The proposal, if adopted, would eliminate the current quota system that restricts road haulage companies' ability to provide such cabotage operations.

Under the proposal, which would become effective January 1, 1993, only those carriers authorized to operate international road haulage operations would be able to engage in cabotage operations. Additionally, member states would be permitted to continue to regulate, to the extent not preempted by EC actions, the weight and dimension of road vehicles, carriage of dangerous or perishable goods, traffic laws, and driving and rest time for drivers. Member states must regulate nonresident carriers on the same basis as resident carriers, however.

The proposal contains a "transitional" provision that would permit member states to retain limits on cabotage operations under certain circumstances between 1993 and 1995. Moreover, the EC Commission would retain permanent authority to impose temporary safeguard measures, such as restrictions on cabotage operations, when the lack of cabotage restrictions creates an excess supply of haulage services that "poses a serious threat to the financial stability and survival of a significant number of road-haulage undertakings." In a separate action, the EC Commission increased the existing cabotage quotas for individual member states by 10 percent for 1991-92.[45]

Cabotage Restrictions in Inland Waterway Transport

The EC Council issued a regulation permitting inland waterway carriers to transport goods or passengers between two points in a member state in which they are not established, effective January 1, 1993.[46] The regulation specifies that the vessels used to provide such services must be owned by EC-based

[38] Memorandum from DOT to U.S. industry and government officials concerning U.S.-EC cargo liberalization talks, Nov. 18, 1991.

[39] USITC staff interview with Department of Transportation, Office of International Aviation staff, Feb. 1992.

[40] Memorandum of Consultations concerning U.S.-U.K. Air Services Agreement ("Memorandum of Consultations"), attachment 2, part I, par. 12 (Mar. 11, 1991).

[41] John Newhouse, "Air Wars," *The New Yorker*, Aug. 15, 1991, p. 56 . See also *Review of U.S. International Aviation Policy*, p. 50 (testimony of Mr. Shane) (calling "seventh-freedom" right granted to British airlines a "new concept.").

[42] Memorandum of Consultations, attachment 2, pt. II, par. 1.

[43] *Review of U.S. International Aviation Policy*, pp. 48, 50 (remarks of Congressman Oberstar).

[44] *Proposal for a Council Regulation (EEC) Laying Down the Definitive System Under Which Non-resident Carriers May Operate Domestic Road Haulage Services Within a Member State*, COM (91) 377, *OJ* No. L 317 (Dec. 7, 1991).

[45] *Commission Decision of 10 April 1991 on the Increase for 1991/92 in the Community Cabotage Quota for National Road Haulage Services Performed by Non-resident Carriers*, *OJ* No. L 102 (Apr. 23, 1991).

[46] *Council Regulation (EEC) No. 3921/91 of 17 December 1991, Laying Down the Conditions Under Which Non-Resident Carriers May Transport Goods or Passengers by Inland Waterway Within a Member State*, *OJ* No. L 373 (Dec. 31, 1991).

persons or companies. Additionally, the carrier is required to observe the laws and regulations of the member state in which it is operating.

Public Service Obligations

The EC Council issued a regulation authorizing member states to enter contracts imposing "public service" obligations on rail, road, and inland waterway carriers.[47] Such contracts may govern the frequency, capacity, quality, and fares of such services.

Other Initiatives

Development of Community Railways

The EC Council issued a directive on the development of Community railways, the principal purpose of which is to encourage the establishment of international joint railway services among member states.[48] The final directive contains a number of substantive changes from the EC Commission's proposal, which was discussed in the second followup report.[49] The principal change is that the final directive indicates that private undertakings, and not merely the existing member-state-owned railroads, may operate international joint railway services. The final directive, however, deletes a provision in the proposal that would have accorded railroads owned by nonmember states the right to enter such joint-service undertakings.

Border Controls

A regulation issued by the EC Council designated the EC as a single territory for purposes of two international conventions concerning carriage of goods under carnets.[50] The regulation eliminates the need for border checks between member states with respect to such shipments.

Possible Effects

Although the ostensible objective of deregulatory initiatives such as the removal of cabotage restrictions on road transport would appear to be to reduce freight costs by increasing competition, decreasing motor freight costs is not a goal of the EC Commission. EC Transport Minister Van Miert has publicly stated that he desires to *increase* the cost of moving goods by truck, principally by means of tax increases directed at motor carriers. Mr. Van Miert has stated that the purpose of such increases is to encourage shippers to use rail, inland water, or intermodal transportation, which he regards as environmentally more desirable.[51]

Finally, none of the proposed initiatives concerning surface transportation deals with third-country issues. Although some U.S. companies, particularly courier and express services, have established motor carriage services within the EC, they have not been set up simply as extensions of the U.S. operations. (This fact distinguishes such companies from the U.S. airlines operating in Europe.) Instead, these operations were set up by acquiring existing EC-based motor carriers with international operating authority and function as EC-based companies.[52]

Implementation

The major initiatives promoting White Paper objectives relating to transport services have generally been promulgated as regulations.[53] Under EC law, regulations are self-implementing and do not require formal adoption by individual member states.[54] Consequently, issues pertaining to member-state implementation of EC actions do not arise with great frequency in the field of transport services. The principal implementation difficulties concerning transport services initiatives that the EC Commission identified in its most recent annual report to the

[47] *Council Regulation (EEC) No. 1893/91 of 20 June 1991 Amending Regulation (EEC) No 1191/69 on Action by Member States Concerning the Obligations Inherent in the Concept of a Public Service in Transport by Rail, Road and Inland Waterway, OJ* No. L 169 (June 29, 1991).

[48] *Council Directive of 29 July 1991 on the Development of Community Railways*, 91/440/EEC, *OJ* No. L 237/25 (Aug. 24, 1991).

[49] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 8-11 to 8-12.

[50] *Council Regulation (EEC) No 719/91 of 21 March 1991 on the Use in the Community of TIR Carnets and ATA Carnets as Transit Documents, OJ* No L 78 (Mar. 26, 1991); see also *Commission Regulation (EEC) No 1593/91 of 12 June 1991 Providing for the Implementation of Council Regulation (EEC) No 719/91 on the Use in the Community of TIR Carnets and ATA Carnets as Transit Documents, OJ*

50—*Continued*

No L 148/11 (June 13, 1991). A carnet is an international customs document. Shipments covered by a carnet are permitted free passage across national boundaries.

[51] Keith M. Rockwell, *EC Officials Vow to Shift Freight Onto Railroads, Journal of Commerce,* November 1, 1991, p. 1A; Richard Tomkins, "Brussels Seeks Charge Increase for Road Freight," *Financial Times*, Oct. 31, 1991, p. 16.

[52] USITC staff interviews with United Parcel Service and Federal Express Corp. officials, Dec. 1991; Mark B. Solomon, "EC's Push Toward Free Cargo Trade Spurs Hope, Anxiety in U.S. Officials," *Journal of Commerce,* June 4, 1991, p. 5B.

[53] See generally EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC 91 (2491) final, Dec. 19, 1991, p. 11 ("All the measures [relating to White Paper objectives concerning transport services] have been adopted by means of regulation.") Prominent examples include the second liberalization package for air passenger services, the provisions concerning air cargo services, provisions concerning anticompetitive activities in air transport, and provisions relaxing quantitative restrictions and economic regulation of motor freight carriers. These are discussed in USITC, *Effects of EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 8-4 to 8-8. Additionally, the EC Commission's third air transport deregulation proposal and its proposal concerning cabotage in the trucking market discussed above have been issued as regulations.

[54] See generally U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989, p. 1-18.

European Parliament involve non-White-Paper-related directives harmonizing licensing standards for motor freight carriers.[55]

[55] EC Commission, *Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law*, COM (91) 321, Oct. 16, 1991, pp. 71-72.

CHAPTER 10
COMPETITION POLICY AND COMPANY LAW

CONTENTS

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COMPETITION POLICY AND COMPANY LAW

An official of the EC Commission recently described the competition law system in the European Community as "complete." The adoption of the Merger Regulation[1] in 1989 was the last major step in establishing the framework for an EC-wide merger policy; the substantive law will continue to evolve. In addition, recognition of the global effects of merger policy has prompted the EC Commission to negotiate agreements with the United States and the European Free Trade Association (EFTA) countries. The EC Commission's efforts at harmonizing company laws have met with less success. Negotiations continue, however, on most of the unadopted company law directives.

Developments Covered in the Previous Reports

Competition Policy

Passage of the Merger Regulation in December 1989 gave the EC Commission the authority to review and approve, prohibit, or modify mergers with a "Community dimension." In September 1990, the EC Commission issued both the implementing regulations setting forth notification procedures and the actual Notification Form CO.[2] This form is similar to but requires more information than the notification form required under the U.S. Hart-Scott-Rodino Act.

The EC Commission also issued two notices explaining the Regulation's jurisdiction over peripheral issues. The "Notice on Joint Ventures"[3] attempted, with limited success, to distinguish between "concentrative joint ventures," which are reviewable under the Merger Regulation, and "cooperative joint ventures," which are reviewable under articles 85 and 86 of the Treaty of Rome. The "Notice on Ancillary Restrictions"[4] describes what types of arrangements are "directly related" to a merger for the purpose of determining whether or not they will be evaluated in conjunction with the merger.

[1] *Council Regulation No. 4964 on the Control of Concentrations Between Undertakings, Official Journal of the European Communities* (*OJ*) No. L 395, (Dec. 30, 1989), p. 1, (hereinafter "Merger Regulation").

[2] *Commission Regulation (EEC) No. 2367/90 of 25 July 1990 on the Notifications, Time Limits and Hearings Provided for in Council Regulation (EEC) No. 4064/89 on the Control of Concentrations Between Undertakings, OJ* No. L 219, (Aug. 14, 1990), p. 5.

[3] *Commission Notice Regarding the Concentrative and Cooperative Operations Under Council Regulation (EEC) No. 4069/89 of 21 December, 1989 on the Control of Concentrations Between Undertaking, OJ* No. C 203, (Aug. 14, 1990), p. 10.

[4] *Commission Notice Regarding Restrictions Ancillary to Concentrations, OJ* No. C 203, (Aug. 14, 1990), p. 5.

Company Law

In an effort to standardize business practices in the European Community, the EC Commission has proposed a number of company law directives intended to harmonize the laws under which companies function. Directives covering issues such as accounting practices, disclosure requirements, and formation of different business enterprises have been adopted by the EC Council. Other proposed measures, such as those creating a European Company, eliminating barriers to takeovers, regulating cross-border mergers, and governing the creation of public limited companies, remain in the negotiation stage. Of those measures, the Thirteenth Company Law Directive on Takeovers and the European Company Statute are the two directives that have generated the most interest, although significant differences remain among member-state positions.

Developments During 1991

Competition Policy

Recent Developments

In the more than 16 months during which the Merger Regulation has been in effect, Directorate-General IV's (DG-IV's)[5] exercise of power under the Merger Regulation has generated relatively little controversy. In fact, the regulation of mergers in the European Community has progressed smoothly and efficiently,[6] generally meeting all the deadlines many thought would be difficult. Since the entry into force of the Merger Regulation in September 1990, over 70 mergers have been notified to the EC Commission. Of those, the EC Commission cleared the vast majority within the required 30 days, concluding that they either did not fall within the scope of the regulation or did not raise serious doubts as to their compatibility with the common market.[7] As of February 1992, the EC Commission had initiated second-stage investigations into five mergers under article 6(1)(c) of the Merger Regulation to determine whether such mergers would create or strengthen a dominant position that would impede effective competition in the common market.[8] To date, only a single merger has been rejected by the

[5] Directorate-Generale IV (DG-IV) is the directorate responsible for competition, within which is found the Merger Task Force, with the specific responsibility of gathering information on notified mergers and advising the EC Commission on mergers.

[6] U.S. antitrust attorney, telephone conversation with USITC staff, Brussels, Feb. 13, 1992; U.S. antitrust attorney, telephone conversation with USITC staff, Washington, DC, Feb. 27, 1992.

[7] Merger Regulation, art. 6(1)(a) and (b); Dietrich Kleeman, "EC and U.S. Competition Law and Policy," address at the Fordham Corporate Law Institute, Oct. 1991 (hereinafter "Kleeman address").

[8] Professor Valentine Korah, "European Community Competition Law and Practice; Joint Ventures: Collaborative or Concentrative?" address to the American Bar Association Section on International Law and Practice, Feb. 27, 1992.

EC Commission as incompatible with the common market.

In addition, the EC Commission recently referred a proposed merger to the local authorities for the first time[9] under article 9 of the Merger Regulation.[10] On February 12, 1992, the EC Commission announced that it was referring a proposed merger between the Steetley Group and the Tarmac Group to merger officials in the United Kingdom because the EC Commission found that the relevant market was the United Kingdom and that the merger would not affect trade among member states.[11] The frequency of such referrals in the future is uncertain, however. One practitioner has opined that similar referrals will likely continue to be rare because the relevant market is rarely defined by national boundaries. Others have predicted an increase in notified mergers as a result of the lowering of the thresholds[12] and adoption of the EC-EFTA Agreement (see below).[13] EC Commission officials assert that requests for referrals will continue to be evaluated on a case-by-case basis.[14]

As noted in the first followup report, possible extraterritorial application of the Merger Regulation engendered some concern.[15] A few large mergers[16] involving only non-EC firms have been notified to the EC Commission, including those between NCR and AT&T, MCA and Matsushita, Delta and Pan Am, and BankAmerica and Security Pacific. All of these mergers were approved by the EC Commission, thus avoiding jurisdictional conflicts with U.S. antitrust authorities. In addition, a joint venture between Dresser Industries and Ingersoll Rand to combine their global industrial pump operations was recently approved by the EC Commission.

Of all the mergers notified to the EC Commission, only one has been vetoed. On October 2, 1991, the EC Commission issued its decision to block the purchase of De Haviland of Canada (owned by Boeing of the United States) by a consortium, Avions Transports Regional (ATR), composed of Aerospatiale SNI of France and Alenia S.p.A. of Italy. The EC Commission rejected the merger on the grounds that the proposal would have created an "unassailable dominant position in the world market for turbo-prop aircraft."[17] The EC Commission's review of the De Haviland merger was seen by many as a test case, determining whether the EC Commission would apply competition criteria or look to broader industrial policy and political considerations. The stated grounds for the rejection of the deal "sends a very strong signal that [Commissioner for Competition Sir Leon] Brittan and a more antitrust-oriented competition continues to prevail."[18]

The decision to block the De Haviland deal prompted criticisms and suggestions on how to change the procedure. Criticisms on the decision itself focused on the definition of the relevant product market.[19] On the broader policy level, the French Transportation Minister suggested that the EC Commission should give more weight to industrial policy considerations.[20] Likewise, soon after the De Haviland decision, EC Internal Market Commissioner Martin Bangemann proposed that DG-IV officials consult with the EC Commission's industrial policy departments and consider broader industrial policy concerns in their decisions.[21]

The EC Commission recently rejected this proposal despite support from the European Parliament.[22] In a February 5, 1992, meeting, the EC Commission

[9] Germany had previously requested referrals under this provision in two cases, both of which were refused. Bureau of National Affairs, Inc. (BNA), *Antitrust & Trade Regulation Report*, vol. 62, No. 1553, (Feb. 20, 1992), p. 236.

[10] Under this article, the EC Commission may refer jurisdiction over a merger to the national merger authorities if a "distinct market" exists within the member state. U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, p. 9-5.

[11] BNA, *Antitrust & Trade Regulation Report*, vol. 62, No. 1553, (Feb. 20, 1992), p. 236.

[12] Under article 3(1) of the Merger Regulation, the thresholds defining the jurisdiction of the EC Commission will be reviewed within 4 years of the adoption of the Merger Regulation. It is expected that the thresholds will be lowered, increasing the scope of the regulation. USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 9-4.

[13] BNA, *Antitrust & Trade Regulation Report*, vol. 62, No. 1553, (Feb. 20, 1992), p. 236.

[14] Buraff Publications, *EuroWatch*, vol. 3, No. 22, (Feb. 24. 1992), p. 5.

[15] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 9-6.

[16] For the purposes of this chapter, a merger includes any concentration as defined in art. 3 of the Merger Regulation.

[17] *EC-US Business Report*, vol. 3, No 1. (Nov. 1, 1991), p. 10. The EC Commission defined the relevant product market as limited to turboprop aircraft with between 20 and 70 seats and the geographic market as the world market. The EC Commission concluded that the proposed merger would have given ATR 50 percent of the world market and 67 percent of the EC market and that in light of forecasted slow market growth the merger would force some competitors out of the world market while discouraging entry of new competitors. BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1535 (Oct. 3, 1991) pp. 408-409; *Europe 1992, Law & Strategy*, vol. 2, No. 10 (Oct. 1991), p. 1; Kleeman address.

[18] BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1535 (Oct. 3, 1991), p. 408.

[19] BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1536 (Oct. 10, 1991), p. 434; *EC-US Business Report*, vol 3, No. 11 (Nov. 1, 1991), pp. 10-11.

[20] BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1536 (Oct. 10, 1991), p. 434.

[21] *EC-US Business Report*, vol. 3, No. 11 (Nov. 1, 1991), pp. 10-11. According to a former Canadian deputy trade minister and chief multilateral trade negotiator, rejection of the proposed merger demonstrated the need for a supranational competition agency to evaluate mergers with cross-border consequences. BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1536 (Oct. 10, 1991) p. 434.

[22] Ibid.

extended the existing internal rules and delegation of authority to initiate review under article (6)(1)(c) to DG-IV and the competition commissioner. Taking into consideration Internal Market Commissioner Bangemann's concerns, the February 5 decision included a provision instructing Competition Commissioner Brittan to inform but not consult the other Commissioners when an investigation under this article is initiated as to the incompatibility of the merger with the common market.[23]

The balance between strict competition criteria and industrial policy considerations has been an issue since the adoption of the Merger Regulation. Although rejection of the De Haviland deal suggests a victory for the proponents of competition criteria, the possibility of future decisions based on political and industrial policy concerns cannot be entirely ruled out. The De Haviland deal did not raise concerns about the need for a "European champion" to compete against U.S. and Japanese industrial giants, because there was no Japanese turbo-prop airplane industry and the single U.S. producer was leaving the market. One EC competition attorney noted that politics and industrial policy may play a larger role in future mergers involving large U.S. and Japanese players.[24]

A second development in the area of competition policy stems from the increased awareness of the transnational impact of many mergers and of merger control. Negotiations between the European Community and the United States to increase cooperation in antitrust matters concluded on September 23, 1991, when the U.S. Department of Justice and the Federal Trade Commission signed a formal agreement with the EC Commission to promote cooperation in the enforcement of each jurisdiction's antitrust laws.[25] The agreement provides for—

1. Notification of and consultation concerning mergers in one party's jurisdiction that have an impact in the other's,[26]
2. Exchanges of information as allowed by law,[27]
3. Cooperation and coordination in the enforcement of each party's competition laws,[28]
4. Cooperation in preventing behavior that has anticompetitive effects in the territory of the other party ("positive comity"),[29] and
5. Consideration of the other party's interests in enforcement proceedings.[30]

The agreement does not, however, change domestic law.

One notable aspect of this agreement is the EC Commission's acceptence of the principle of "positive comity." Under this provision, the competition authority of one party may request its counterpart to commence proceedings against firms whose activities have anticompetitive effects in the requestor's jurisdiction and to consider the requestor's interests in any enforcement action.[31] In addition, the agreement differs from other bilateral agreements in its depth and in its focus on encouraging cooperation rather than just on enhancing extraterritorial enforcement of U.S. antitrust laws.[32] France, however, filed suit in the European Court of Justice (ECJ) on December 16, 1991, charging that the EC Commission exceeded its authority by signing the agreement prior to consultations with the Council of Ministers and the European Parliament as required under article 228 of the Treaty of Rome.[33] The French are concerned that such an agreement might give the United States increased influence over EC competition policy.[34]

The increased importance of competition policy is also evidenced by the inclusion of competition policy enforcement within the agreement between the European Community and EFTA to establish the European Economic Area (EEA).[35] As originally proposed, a prominent feature of the EEA Agreement was the creation of a supranational body, similar to the EC Commission's DG-IV, with jurisdiction over competition matters in EFTA countries and with appeals to a newly created EEA court. The new EFTA body would apply competition rules within EFTA corresponding to articles 85 and 86 of the Treaty of Rome as well as the principles of the Merger Regulation. Application and enforcement of EC competition law within the Community remained unchanged.[36]

Shortly after the EC and EFTA foreign ministers agreed on a text, the ECJ objected to the EEA Agreement as incompatible with the Treaty of Rome, ruling that the establishment of a parallel legal system under the EEA Agreement undermined the legal independence of the ECJ and raised the problem of

[23] BNA, *Antitrust & Trade Regulation Report*, vol. 62, No. 1551 (Feb. 6, 1992), p. 157; *European Report*, No. 1742 (Feb. 8, 1992), Business Brief, p. 10.

[24] U.S. antitrust attorney, telephone conversation with USITC staff, Brussels, Feb. 13, 1992.

[25] Agreement Between the Government of the United States of America and the Commission of the European Community Regarding the Application of Their Competition Laws (hereinafter agreement).

[26] Ibid., art. II.

[27] Ibid., art. III.

[28] Ibid., art. IV.

[29] Ibid., art. V.

[30] Ibid., art. VI.

[31] U.S. antitrust attorney, telephone conversation with USITC staff, Washington, DC, Feb. 27, 1992; Buraff Publications, *1992: The External Impact of European Unification*, vol 3, No. 3 (Oct. 4, 1991), pp. 3-4; *European Report*, No. 1734 (Jan. 11, 1992), Business Brief, p. 4.

[32] Leader Pubications, *Europe 1992, Law & Strategy*, vol. 3, No. 1 (Jan. 1992), p. 6.

[33] BNA, *Antitrust & Trade Regulation Report*, vol. 62, No. 1548 (Jan. 16, 1992), p. 45.

[34] *European Report*, No. 1734 (Jan. 11, 1992), Business Brief, p. 4.

[35] A general overview of the EC/EFTA agreement can be found in chapter 1 of this report.

[36] BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1540 (Nov. 7, 1991), p. 588.

inconsistent rulings from the two legal systems.[37] A revised agreement, resubmitted to the ECJ in February 1992, omits plans for a separate EEA court and recognizes the ECJ as the dominant court throughout the EEA, on competition law as well as other subjects. On April 11, the ECJ found the revised treaty compatible with the Treaty of Rome, opening the way for signing the treaty in early May.[38] The revised agreement continues to call for increased cooperation, both at the investigation and enforcement stages.[39] Whereas substantive competition laws throughout the European Community and the EFTA countries remain unchanged by this agreement, the EC Commission has increased authority to block mergers that create or strengthen a dominant position within EFTA.[40]

The final development of note is the application of competition law to state-held monopolies. In March 1991, the ECJ upheld the EC Commission's use of article 90 of the Treaty of Rome to eliminate the telephone equipment monopolies held by the national Telecommunications Administrations (TAs).[41] The TAs must now separate their regulatory and commercial functions and open the markets to competition from other manufacturers of end-terminal telecommunication equipment such as telephones and telephone exchanges. Building on this victory, Competition Commissioner Brittan has turned his attention to monopolies held by certain member states in utilities, such as energy and electricity, with the intent of forcing access to national gas and electricity grids.[42]

Possible Effects

The efficiency and speed with which the EC Commission has vetted notified mergers demonstrate a significant level of success for DG-IV. The ability of DG-IV to meet these deadlines benefits not only U.S. businesses, but all businesses seeking approval of business ventures. Furthermore, the recent EC Commission decision to continue DG-IV's jurisdiction over competition matters is likely to benefit U.S. companies, because competition criteria will continue to be the primary guideposts for merger control. Reliance on industrial policy in deciding mergers could possibly lead to discrimination against non-EC companies in favor of creating "European champions" or keeping control within the EC.

The U.S.-EC antitrust agreement, as well as the EC-EFTA proposal, may encourage harmonization of international rules and also lead to increased enforcement.[43] However, because the U.S.-EC agreement should not be seen as an allocation of jurisdiction, the possibility of overlapping jurisdiction remains. In addition, there is concern that the provisions governing the sharing of information between the European Community and the United States may lead to disclosure of sensitive business information.

The ECJ's ruling upholding the EC Commission's use of article 90 to open the telecommunications network is likely to lead to an opening not only of the equipment market, but of the market for telecommunication services as well. This change, however, may not have a significant impact, as U.S. firms already produce telecommunications equipment for the European market. In addition, although U.S. firms already provide some enhanced services (e.g., data transmission, electronic mail, audiotext services) in the EC, the U.S. industry would like additional access to the local telecommunications networks to provide all the enhanced services currently available to U.S. companies in the United States.

Company Law

Recent Developments

There has been minimal progress in the area of company law in the past year. Opposition to the Fifth Company Law Directive[44] appears focused on the "one share-one vote" rule, under which shareholders would receive voting rights proportionate to their holdings in the company. The proportional voting scheme comports with provisions in other proposed directives to limit defenses to company takeovers. No final agreement was reached on the voting issue, and the proposed directive will proceed to a third reading in the Parliament without a decision on the issue.[45] Passage of this directive in the near future is unlikely in light of the minimal interest shown by the United Kingdom.

Progress on the proposal for a Thirteenth Company Law Directive on takeovers (13th Directive)[46] similarly has been stalled. The 13th Directive harmonizes member-state laws concerning takeover bids. This proposed directive obliges an offeror to make an offer

[37] *Business Law Europe*, vol. 2/92 (Jan. 2. 1992), p. 6.

[38] Buratt Publications, *Eurowatch*, vol. 4, No. 2 (Apr. 20, 1992), p. 1.

[39] BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1540 (Nov. 7, 1991), p. 588.

[40] Ibid.

[41] France v. Commission (C202/88, 3/19/91); U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989, pp. 9-20 to 9-23.

[42] Buraff Publications, *1992: The External Impact of European Unification*, vol. 3, No. 11 (Sept. 6, 1991), p. 1. For additional information on monopolies in the energy sector, see chapter 6 of this report. For a general discussion of competition in telecommunications, see "The European Commission's Progress Toward a New Approach for Competition in Telecommunications," *International Lawyer*, vol. 26, No. 1, (spring 1992), p. 111.

[43] Ibid.

[44] *Amended Proposal for a Fifth Directive Founded on Article 54(3)(g) of the EEC Treaty Concerning the Structure of Public Limited Companies and the Power and Obligations of Their Organs*, COM (83) 185, *OJ* No. C 240 (Sept. 9, 1983), p. 3.

[45] European Report, *No. 1673 (May 1, 1991), Business Brief*, p. 1.

[46] *Amended Proposal for a Thirteenth Council Directive on Company Law, Concerning Takeover and Other General Bids*, *OJ* No. C 240 (Sept. 27, 1990), p. 7 (hereinafter 13th Directive).

for all outstanding shares when it acquires a threshold percentage of shares and includes limitations on defensive actions that supervisory boards can take against takeover attempts. The essential philosophical disagreement centers on the extent to which barriers to takeovers should be lowered. The United Kingdom leads the proponents of maximum liberalization of takeovers, whereas Germany, France, and the Netherlands want to maintain their present systems, which accord great power to the boards of directors and large shareholders.[47]

Experts from member states have been able to reach agreement on some aspects of the 13th Directive; namely, that the directive should specify (1) when the obligation to make a bid arises, (2) that the obligation arises when certain criteria to be defined by the member states are met, and (3) that an offer for all shares must be made when a person acquires a third of the target company's shares. Areas of disagreement among the member states, however, remain. Some member states do not entirely support one-third as the level which triggers an obigatory general bid. Many delegations disagree with the initial proposal that an offer must be made for 100 percent of the target company's shares, preferring instead a requirement that the offeror target acquisition of at least 50 percent of the shares and at least 66 percent of the voting shares when making a compulsory bid, yet even those figures remain a matter of disagreement among the member states. Lastly, the Economic and Financial Ministers responsible for this directive agreed to limit the power of the board of directors of the target company during the period of the offer.[48]

In light of the general lack of support for the 13th Directive[49] and the significant differences in national regimes, the directive is not likely to be adopted in its current form or before the end of the year.[50]

The final issue of interest in the area of company law is the European Company (or Societas Europea (SE)) Statute based on a regulation[51] and a directive.[52] The SE was reintroduced as part of the Internal Market Program to establish a legally cognizable corporate structure throughout the European Community subject primarily to EC law rather than national law.[53] In May 1991, the EC Commission issued amendments to the draft directive reflecting agreement on a number of issues.[54] For instance, the amendments require that the model for worker participation be chosen and approved at the general meeting before the formation of the SE. When management and employees cannot agree on a model for worker participation, a standard model established under the law of the member state in which the SE has its registered office shall apply.[55] Power to remove a member of the supervisory board was added, and the grounds on which a candidate for the supervisory board can be challenged are specified.[56] Under the amended proposal, the obligation to report to representatives of the employees clearly is assigned to the management board, replacing the more ambiguous provision providing for the right of the employee representatives to receive such a report.[57] Lastly, the provisions under which the employee representatives are elected were amended to ensure greater fairness.[58]

Ministers in charge of the internal market met again in November 1991 and reached a significant agreement as to the four ways in which an SE can be formed: through a merger, creation of a holding company, establishment of a joint subsidiary, or conversion of a national company.[59] Creation of an SE by converting from a national company represents a significant change from earlier drafts.[60] Although no breakthrough on the most contentious issue of worker participation was achieved, adoption of the regulation and directive for creating an SE appears to be a high priority for both the current Portuguese presidency of the EC Council and Internal Market Commissioner Bangemann.[61]

Possible Effects

As indicated in earlier USITC reports, the company law directives will have little impact on U.S. businesses which lack a corporate presence in the European Community. The impact on European subsidiaries of U.S. companies will be equivalent to that on other European companies, regardless of parentage. To the extent that laws are harmonized, thereby diminishing or eliminating the need to know 12 different legal systems, all the company law directives will facilitate doing business in the European Community.

[47] *European Report*, No. 1734 (Jan. 11, 1992), Business Brief, p. a.

[48] *European Report*, No. 1666 (Apr. 6, 1991), Business Brief, p. 6; Buraff Publications, *1992: The External Impact of European Unification*, vol. 3, No. 20 (Jan. 27, 1992), p. 3.

[49] Indeed, British business has recommended abandoning the 13th Directive altogether. Buraff Publications, *1992: The External Impact of European Unification*, vol. 3, No. 11, (Sept. 6, 1991) p. 9; BNA, *Antitrust & Trade Regulation Report*, vol. 61, No. 1524 (July 11, 1991), p. 63.

[50] Buraff Publications, *1992: The External Impact of European Unification*, vol. 3, No. 20 (Jan. 27, 1991), p. 3.

[51] *Proposal for a Council Regulation on the Statute for the European Company, OJ* No. C 263 (Oct. 16, 1989), p. 41.

[52] *Proposal for a Council Directive Complementing the Statute for a European Company With Regard to the Involvement of Employees in the European Company, OJ* No. C 263 (Oct. 16, 1989), p. 69.

[53] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 9-9 to 9-16.

[54] *Amended Proposal for a Council Directive Complementing the Statute for a European Company With Regard to the Involvement of Employees in the European Company, OJ* C 138 (May 29, 1991), p. 10.

[55] Ibid., art. 6(8).

[56] Ibid., art. 4.

[57] Ibid., art. 5(2).

[58] Ibid., art. 7.

[59] *European Report*, No. 1719 (Nov. 91, 1991), Business Brief, p. 3.

[60] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 9-9 to 9-12.

[61] *European Report*, No. 1734 (Jan. 11, 1992), Business Brief, pp. a-b.

Implementation

Of those company law directives discussed in previous USITC reports, only two have been adopted by the Council. The regulation creating the European Economic Interest Grouping[62] was adopted by the Council in July 1985 and required implementation by the member states by January 1, 1989.[63] Every member state except Greece has made the requisite changes to its domestic laws.[64] Although implementation of the Eleventh Company Law Directive[65] concerning disclosure requirements for branches was to be completed by January 1, 1992, by December 1991 only Spain had made the required changes to its domestic law.[66]

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[62] *Council Regulation on the European Economic Interest Grouping, OJ* No. L 199 (July 15, 1985), p. 1. USITC, *Effects of EC Integration,* USITC publication 2204, July 1989, pp. 9-23 to 9-24.

[63] Although the EEIG regulation is a regulation and not a directive, the regulation requires certain changes to the national legal systems and hence provided for an implementation date.

[64] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market,* SEC (91) 2491, Dec. 19, 1991, p. 12 and annex I.

[65] *Eleventh Council Directive Concerning Disclosure Requirements in Respect of Branches Opened in a Member State by Certain Types of Company Governed by the Law of Another State, OJ* No. L 395 (Dec. 21, 1989), p. 36.

[66] EC Commission, *Implementation Report,* p. 12.

CHAPTER 11
TAXATION

CONTENTS

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TAXATION

Introduction

EC tax initiatives have been directed at harmonizing the areas of member-state tax systems considered the most likely to give rise to economic distortions when frontier controls are abolished after 1992. Progress has been slower and more difficult than in other areas of the 1992 program because of the revenue and social implications that changes in tax rates can have. The 1985 White Paper that set forth the 1992 program recognized that harmonization, particularly with respect to indirect taxation, would pose "severe problems" for some member states.[1] Member-state sensitivity to tax changes is reflected in the fact that, under the Single European Act, EC actions involving taxation continue to require unanimous approval.

The recent principal focus of efforts related to taxation has been in four areas, all related to implementation of the 1992 program:

1. Approximation of indirect taxes (value-added taxes (VAT) and excise taxes);
2. Liberalization of restrictions on personal travelers in preparation for the abolition of such restrictions after 1992;
3. Elimination of double taxation of certain intracompany transfers of companies with multistate operations; and
4. Measures to minimize tax evasion resulting from the liberalization of capital movements.

Amended article 99 of the Treaty of Rome requires harmonization of indirect taxes, and the 1985 White Paper identified harmonization of indirect taxes as being necessary if frontier controls are to be removed and goods and services and people are to move freely among member states. The goal of the White Paper is "approximation" of rates, that is, to bring rates and systems sufficiently close so that trade is not distorted or diverted and competition is not affected when fiscal frontiers are removed.[2] Complete harmonization "is not essential."[3] At present, commercial traffic moving from one member state to another is treated in the same way as imports and exports with third countries: VAT and excise taxes are rebated at the border of the exporting member state and reimposed at the prevailing rate on entry into the importing member state. Border formalities result in delay in the movement of goods, considerable paperwork, and add an estimated 1.5 percent to the cost of goods. The White Paper also called for the adoption and implementation of three tax-related intracompany transfer directives dating back to 1969 and 1976. In addition, the White Paper called for the liberalization of capital movements for the purpose of, among other things, "promoting the optimum allocation of European savings."[4] Such liberalization raised the possibility of tax evasion when savers became freer to move their savings beyond the jurisdiction of their local tax authorities.

Neither the Treaty of Rome nor the White Paper calls for the harmonization of direct taxes (such as personal and corporate income taxes). However, now that substantial progress has been made in meeting the goals of the 1992 program, greater attention is being given to differences in direct tax systems, particularly corporate tax systems.

The agreement to create a European Economic Area, reached in October 1991 between the EC and the seven European Free Trade Association (EFTA) countries, does not require that EC directives providing for the harmonization of indirect taxes be applied to EFTA countries.[5]

Developments Covered in the Previous Reports

By yearend 1990, considerable progress had been made towards reaching agreement on tax issues related to the 1992 program. Much of this progress was made in 1990. In December 1990, political agreement was reached with respect to an interim regime for VAT and a definitive regime for excise taxes. Also, in December 1990, a compromise was reached on a liberalization of travelers' allowances (with derogations for Ireland and Denmark) in preparation for their elimination by the end of 1992. In July 1990, the three intracompany transfer measures identified in the White Paper were adopted by the EC Council. However, by yearend 1990, little progress had been made on the directive proposed by the EC Commission in February 1989, several months prior to the liberalization of capital markets, providing for a minimum withholding tax on savings interest. The lack of progress was partly because some had anticipated a shift of funds to evade taxation, and this shift did not occur.

In November 1990, the EC Commission formally proposed two new company tax directives relating to foreign losses and to withholding taxes on interest and royalty payments of transnational companies. In December 1990, a committee of tax experts was

[1] EC Commission, *Completing the Internal Market: White Paper From the Commission to the European Council*, June 1985, par. 14.

[2] Ibid., par. 185. The White Paper noted differences between sales tax rates in neighboring States in the United States and suggested that differences in VAT and excise rates of up to 5 percent between neighboring EC member states could be accommodated without undue adverse effects.

[3] Ibid., par. 184.

[4] Ibid., par. 127.

[5] See, e.g., D. Martin, "The European Economic Area and Its Implications for: The European Community; the European Free Trade Association; Eastern Europe; and the World," speaking notes for U.S. speaking tour, Nov. 11-14, 1991, p. 3. Martin is a member of the European Parliament for the Lothians and Vice President of the European Parliament.

formally established to report back in early 1992 on the further need to harmonize member-state company tax systems.

The political agreement reached in December 1990 on an interim VAT regime and a definitive excise tax regime was the last major decision that had to be reached on VAT and excise taxes in preparation for the removal of fiscal frontiers after 1992, although the details of the regimes and actual rates were still not wholly resolved. The December agreement was achieved only after considerable debate and compromise. In August 1987, the EC Commission had issued a comprehensive fiscal package comprising seven proposed directives relating to VAT and excise taxes and a working paper containing proposals for a VAT clearing mechanism.[6] The package called for each member state to establish two VAT rates—a "reduced" rate for food and certain other necessities and a "standard" rate for all other items within respective rate bands of 4 to 9 percent and 14 to 20 percent. The package also provided for a clearinghouse mechanism to adjust member-state revenues, on the assumption that VAT would continue to be paid in the member state where the value was added but would be owed to the state in which the product was consumed. The package would also have set specific excise duty rates for alcohol, tobacco, and petroleum products.

However, member states raised a number of concerns about various aspects of the package. Denmark and Ireland, which would have been required to reduce their rates, expressed concern about potential loss of revenues. Luxembourg, which would have had to raise its standard rate, expressed concern about potential loss of visitors, many of whom come to Luxembourg to shop. The United Kingdom expressed concern about having to impose VAT on food and children's clothing, which it currently zero-rates. Several member states criticized the clearing mechanism as being too complicated, and several reportedly were concerned that some member states would not accurately report VAT revenues raised. The excise tax proposals were criticized particularly by southern member states, which would have been required to impose an excise tax on wine and increase excise taxes on certain locally produced tobacco products, actions likely to be unpopular with local consumers and producers of such products.

The agreement that emerged by yearend 1990 for both VAT and excise duties encompassed many of the approaches outlined in the August 1987 package, but with more flexibility on VAT and excise duty rates and an interim system for VAT collection. With respect to VAT, agreement had been reached on five basic points:

1. Member states should agree to compulsory VAT rate bands for reduced and lower rates by December 31, 1991;
2. Member states should not diverge further from their current standard rates, and any changes should be towards the proposed 14- to 20-percent standard rate band;
3. The lower rates presently operating will remain at their present levels until December 1991;
4. Member states that presently apply a zero rate will be able to retain it, but no new introduction of zero rating will be permitted; and
5. After 1992, the new VAT system will follow, at least for an interim period, the simplified destination principle (advocated by the Economic and Financial Council of Ministers (ECOFIN), as opposed to the simplified country-of-origin system proposed by the EC Commission[7] in May 1989).

Under the interim system, VAT will continue to be paid in the country of destination, but the "chargeable event" will become the acquisition of the goods by the importer at the place of destination rather than at the border. To guard against fraud (since goods will be traded across borders free of VAT), exporting firms will be required to file quarterly reports with their national tax authorities, providing the VAT identification number of each customer and the total value of trade with each customer for the quarter. Member-state tax authorities would make such information available by computer to other member-state tax authorities for verification purposes. However, before the agreement can become effective, the Community will need to amend the sixth VAT Directive[8] to provide a new definition of "chargeable event" and issue a regulation providing for the sharing of information among tax authorities.

In its program for 1991, the EC Commission identified adoption of the final details of the interim VAT system and establishment of a definitive VAT system as priority items for ECOFIN action in 1991.[9] The EC Commission indicated that it favored

[6] The package consisted of nine documents: a Global Communication summarizing the package, seven proposed directives related to VAT and excise taxes, and a working paper on a proposed VAT clearing mechanism. For an overview, see EC Commission, *Completion of the Internal Market: Approximation of Indirect Tax Rates and Harmonization of Indirect Tax Structure*, Global Communication from the Commission, COM (87) 320, Aug. 5, 1987.

[7] Under the system advocated by the EC Commission, VAT on goods traded within the Community would continue to be paid in the country of origin at the rate applicable there, but importers would be able to claim it back in the importing country in the manner as on goods purchased domestically. A clearinghouse mechanism would compensate the various national treasuries for any imbalances, since the tax is ultimately owed to the treasury of the consuming country. Such a system, it was argued, would make fraud difficult because the goods would be traded with the VAT already paid. However, several member states considered the EC Commission's proposed system to be too complicated, and ECOFIN instead proposed a system under which goods would be circulated throughout the Community without being taxed and VAT would be collected in the country where the goods are consumed.

[8] *OJ No. L 145 (June 13, 1977), p. 1.*

[9] *Program of the Commission for 1991*, Jan. 1991, p. 3.

replacement of the transitional system by 1997 with a permanent system similar to that proposed in 1987, under which VAT would be paid in the country of origin, with adjustments to be made at a national level through a clearing mechanism (since the VAT on a particular good or service is ultimately owed to the member state in which it is consumed).[10] In its program for the first half of 1991, the Luxembourg presidency set the following goals:

1. Agreement on special VAT regimes for cross-border trade in new cars, mail order goods, institutional nontaxable persons (i.e., exempted by law) and exempt taxable persons (such as banks and insurance companies) by the end of February 1991;

2. Agreement on the legal text of a directive on a transitional system by the end of March 1991; and

3. Agreement on the duration of a transitional system by the end of June 1991.[11]

It had previously been agreed at the December 1989 ECOFIN meeting that agreement was to be reached on VAT rates, including the products to be subject to reduced rates, by the end of December 1991.

With respect to excise taxes, under the definitive system agreed to in December 1990, products will be traded among member states free of duty through a unified system of authorized warehouses, regulated by the member states, in much the same manner as they are currently traded within member states.[12] Excise taxes will be paid in the destination country and will become chargeable when the goods are released from a bonded warehouse for consumption.[13] The new system is to take effect January 1, 1993.[14] Special documents will be required to accompany the goods, the content and form of which would be harmonized, and warehouse operators will be required to notify tax authorities of all shipments received and sent.[15] Provision is to be made for national tax authorities to exchange information.

With respect to travelers' allowances, the compromise reached in December 1990 provided for an increase, in mid-1991, of slightly over 50 percent in the value of goods that a traveler can enter tax free (from ECU 390 to ECU 600), and increases of about one-third in the limits for tobacco products, alcoholic spirits and drinks, wine, perfume and toilet water, and coffee and tea extracts. Denmark and Ireland were given 1-year derogations. The compromise increase was far less than the quadrupling of the duty-free VAT allowance and tripling of the duty-free tobacco and alcohol allowance proposed by the EC Commission in July 1989.[16]

With respect to taxation of savings interest, the EC Commission in January 1989 issued a proposed directive providing for the establishment of a minimum 15-percent withholding tax on interest income to discourage savers from transferring funds from their home country to another country for the purpose of evading taxes.[17] The measure was strongly opposed by the United Kingdom, Luxembourg, and West Germany. Efforts by Belgium in May 1990 to reopen the matter were also opposed. Broad agreement was reached in late 1989 at ECOFIN meetings on methods to reinforce measures on cooperation among national tax authorities in the case of suspected tax evasion, but Luxembourg, which has become a major EC financial center, opposed and blocked the proposals out of concern that they would abrogate bank-secrecy commitments and encourage the shift of funds to other financial centers, such as Switzerland. However, the large, tax-related speculative capital movements that some feared would occur when capital movements were liberalized towards mid-1989 did not happen.

With regard to company taxation, the three intracompany transfer measures identified in the White Paper were adopted by the EC Council in July 1990 after a compromise was reached with Germany over levels of withholding tax to be applied to profits distributed between a parent and a subsidiary.[18] Member states were required to implement the three directives by January 1, 1992. In late November 1990, the EC Commission issued two proposed directives relating to taxation of companies operating in two or more member states.[19] The first would abolish withholding tax for transfers of interest and royalty payments between parent firms and their subsidiaries

[10] Explanatory Memorandum to COM (90) 182, pp. 5-6.
[11] European Report, *No. 1648* (Jan. 30, 1991), sec. II, p. 1.
[12] COM (90) 431, art. 6-7; see also *European Report*, No. 1615 (Sept. 22, 1990), sec. II, p. 7.
[13] COM (90) 431, art. 4.
[14] Ibid., art. 21.
[15] Ibid., arts. 12-13.

[16] *Proposal for a Council Directive Amending Directive 69/169/EEC to Increase in Real Terms the Tax Paid Allowances in Intra Community Travel*, COM (89) 331, *OJ* No. C 245 (Sept. 26, 1989), p. 5.
[17] COM (89) 60.
[18] The three measures, (1) Council Directive 90/434/EEC of July 23, 1990, on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states, (2) Council Directive 90/435/EEC of July 23, 1990, on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states, and (3) a convention, document 90/436/EEC, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, are published in *OJ* No. L 225 (Aug. 20, 1990), p. 1.
[19] *Proposal for a Council Directive on a Common System of Taxation Applicable to Interest and Royalty Payments Made Between Parent Companies and Subsidiaries in Different Member States*, COM (90) 571, *OJ* No. C 53 (Feb. 28, 1991), p. 26; and *Proposal for a Council Directive Concerning Arrangements for the Taking Into Account by Enterprises of the Losses of Their Permanent Establishments Situated in Other Member States*, COM (90) 595, *OJ* No. C 53 (Feb. 28, 1991), p. 30.

and would parallel the directive abolishing the withholding tax on parent-subsidiary dividends adopted in July 1990. The second would permit parent companies in one member state to write off losses of permanent establishments and subsidiaries in another member state in the same manner that a parent firm presently can write off such losses when the establishment or subsidiary is in the same member state. The writeoff would provide the same tax advantages to member-state-organized companies as is to be available to European companies under the draft regulation on the European Company Statute. It would be available to all forms of companies, including partnerships. Member states would have the option of extending the writeoff to permanent establishments and subsidiaries outside the EC.[20]

Developments During 1991

Introduction

During 1991, further progress was made with respect to harmonization of VAT and excise duties and liberalization of travelers' allowances, but little progress was made on the two company taxation directives proposed in 1990 or the proposed directive on taxation of savings interest. The Ruding report on company taxation was issued in March 1992. With respect to VAT, in June 1991, political agreement was reached on VAT rates, and in December 1991, ECOFIN formally adopted a directive providing for a transitional VAT system to function between January 1993 and January 1997.[21] In January 1992, a regulation was adopted providing for cooperation between member-state tax authorities on VAT to avoid possible tax evasion. With respect to excise duties, political agreement was reached on most excise duty rates in June and agreement was reached on the remaining rates in the fall. In December, political agreement was reached by ECOFIN with respect to a directive on a system of excise duties, and the directive was formally adopted at a Council meeting in late February 1992. Travelers' allowances were liberalized effective July 1, 1991, but with derogations for Denmark and Ireland through yearend 1991, which in December were further liberalized and extended through yearend 1992.

Value-Added Tax

As noted, unanimous political agreement on VAT rates was reached at the ECOFIN meeting in June 1991. However, no directive establishing legally binding rates will be forthcoming, because the United Kingdom opposed making the rates legally binding. (As noted above, the Single European Act requires that decisions on taxation be unanimous.) Under the political agreement, as of January 1, 1993, the standard VAT rate will be a minimum of 15 percent, and member states may also apply one or two reduced rates of 5 percent or more on certain listed goods and services. However, special exemptions are provided for member states expected to have problems in conforming to the new structure.

The political agreement was reached only after extensive debate. In general, the United Kingdom opposed efforts to reach agreement on harmonization, expressing the view that approximation of rates should be left to market forces.[22] Germany, Greece, Spain, Italy, the Netherlands, and Portugal generally supported establishment of a band system similar to that proposed by the EC Commission in 1987, whereas Belgium, Denmark, and Ireland favored establishment of a minimum standard rate. Also, member states supporting rate bands disagreed over the width of the bands, and there was disagreement concerning whether there should be one or two reduced rates or none at all.[23]

Thus, what emerged was a rate structure similar to, but more flexible than, that proposed by the EC Commission in August 1987. In general, member states will be required beginning January 1, 1993, to maintain a standard rate of at least 15 percent (versus a standard rate of 14 to 19 percent proposed by the EC Commission in 1987). This rate structure will require Spain, which presently applies a standard rate of 13 percent, to raise its rate and will require other member states to eliminate any higher "luxury" rates. However, it avoids the problem of requiring Ireland and Denmark, which currently apply standard rates of 21 and 25 percent, respectively, to reduce their current standard rates and incur revenue loss. The agreement permits member states applying a reduced rate of 5 percent or more for goods and services not on the reduced-rate list to continue to apply a reduced rate during the transition period, provided that the reduced rate is not more than 3 points below the minimum standard rate.[24] An exception was also provided for Portugal and for certain goods and services currently subject to reduced rates in some member states but subject to standard rates in most member states (housing, catering, and childrens' shoes and clothing).

Member states may, at their option, apply one or two reduced rates on a list of 18 categories of essential goods and services agreed to in March 1991 (versus the one reduced rate of 4 to 9 percent proposed by the EC Commission in 1987). The list, which is longer than that proposed in 1987, includes most human and animal food products, pharmaceutical products,

[20] EC Commission information memo P-92, Nov. 28, 1990, "Commission Adopts Two New Proposals on Direct Taxation of Companies Designed to Abolish Certain Forms of Double Taxation."

[21] *Council Directive 91/680/EEC of 16 December 1991 Supplementing the Common System of Value Added Tax and Amending Directive 77/388/EEC With a View to the Abolition of Fiscal Frontier, OJ* No. 376 (Dec 31, 1991), p. 1.

[22] See, e.g., *European Report*, No. 1689 (June 29, 1991), sec. II, p. 6.

[23] See, e.g., *European Report*, No. 1656 (Feb. 23, 1991), sec. II, p. 4.

[24] This latter provision applies in particular to Portugal and also to countries that applied a reduced rate as of January 1, 1991, to certain goods and services, such as housing, catering, and children's shoes and clothing.

medical and dental devices and services, books and newspapers, admission tickets to certain sporting and entertainment events, intra-Community transport of persons, and hotel stays. The list may be added to by the European Parliament. Member states that applied lower reduced rates (including zero rates) on certain goods and services as of January 1, 1991, are permitted to retain such rates during the transitional period. The exceptions take into account many of the problems posed by the original EC Commission proposal, which, among other things, would have required the United Kingdom and Ireland to impose VAT on food (which both currently zero-rate).

It was agreed that a definitive system for the collection of VAT should be agreed to by the end of 1995, with the system to become effective by January 1, 1997. However, it was also agreed that the transitional system should be extended if the Council is unable to reach agreement in time. The definitive system is to provide for taxation of goods and services in the country of origin (the current practice) rather than in the country in which the goods or services are used (as will be the case during the transitional period after fiscal frontiers are removed). The EC Commission, and Germany in particular, favor the country-of-origin approach, and Germany favored making the deadline for switching legally binding; the United Kingdom has favored making the transitional system the eventual permanent system.[25]

In late January 1992, ECOFIN approved a regulation providing for administrative cooperation between member-state tax authorities on VAT as a means to guard against possible tax evasion after fiscal frontiers are removed beginning January 1, 1993.[26] The regulation, which had been under discussion for some time, establishes a data processing and telematics network linking the tax authorities of the 12 member states. It requires tax authorities to provide assistance and information, some automatically, with respect to VAT registration numbers of purchasers and sellers and information on the value of their transactions.[27] In response to European industry and German concerns, the regulation was streamlined and contains safeguards for protecting the confidentiality of taxpayer information.[28] Germany had sought a directive instead of a regulation, believing that a directive would provide greater flexibility in the application of national legislation.[29]

[25] See, e.g., *European Report*, No. 1720 (Nov. 13, 1991), sec. II, p. 5.

[26] *Council Regulation (EEC) No. 218/92 of 27 January 1992 on Administrative Cooperation in the Field of Indirect Taxation (VAT)*, *OJ* No. L 24 (Feb. 1, 1992), p. 1.

[27] Ibid. See also EC Commission press release No. IP(92)-51 (Jan. 28, 1992).

[28] For example, concerns raised by UNICE (Union of Industrial and Employers' Confederations of Europe). See, e.g., *European Report*, No. 1705 (Sept. 21, 1991), sec. III, p. 3; *European Report*, No. 1710 (Oct. 9, 1991), sec. II, p. 4; and *European Report*, No. 1720 (Nov. 13, 1991), sec. II, p. 6.

[29] *European Report*, No. 1710 (Oct. 9, 1991), sec. II, p. 4.

Excise Duties

Agreement was reached at the June 1991 EC Council meeting on minimum excise duty rates for all subject goods except kerosene, wine and certain alcoholic beverages, and certain tobacco products. The agreement was unanimous and it was agreed that the minimum rates ultimately agreed to should be legally binding (unlike in the case of VAT rates, where the United Kingdom opposed and therefore blocked a legally binding rate structure). Agreement has not yet been reached on excise duty rates for the remaining products.

In December, ECOFIN reached a unanimous political agreement on a directive setting out a definitive system for the collection of excise duties.[30] The EC Commission issued a revised proposed directive in January 1992 reflecting the agreement,[31] which was adopted with minor changes in late February 1992.[32] The system agreed to involves movement of goods subject to excise duties through a system of bonded warehouses and is similar to the system proposed by the EC Commission in December 1990. Still to be agreed to by January 1, 1993, are directives on the structure of the excise duties and rates. According to EC Taxation Commissioner Scrivener, the structures directive is likely to be adopted in April and the rates directive in June.[33]

In early March 1992, the EC Commission issued a proposed directive providing for reduced excise duties on certain biofuels, such as ethanol, methanol, and certain vegetable oils made from agricultural raw materials.[34] The proposed directive would set a ceiling on such excises at 10 percent of the excise rate imposed on the fossil fuel equivalent (e.g., diesel or unleaded gasoline). The biofuels are considered to burn more cleanly than conventional fossil fuels and would provide new uses for surplus farm products.[35]

Travelers' Allowances

As had been agreed to at the December 1990 ECOFIN meeting, duty-free allowances for travelers between EC member states were liberalized effective July 1, 1991, but with derogations for Denmark and Ireland.[36] This liberalization was the first of such

[30] See, e.g., *European Report*, No. 1730 (Dec. 17, 1991), sec. II, p. 8.

[31] Amendment to the Proposal for a Council Directive on the General Arrangements for Products Subject to Excise Duty and on the Holding and Movement of Such Products, COM (92) 6, *OJ* No. C 45 (Feb. 20, 1992), p. 10.

[32] *Council Directive 92/12/EEC of 25 February 1992 on the General Arrangements for Products Subject to Excise Duty and on the Holding, Movement and Monitoring of Such Products*, *OJ* No. L 76 (Mar. 23, 1992), p. 1.

[33] As reported in *European Report*, No. 1743 (Feb. 12, 1992), sec. II, p. 6.

[34] *Proposal for a Council Directive on Excise Duties on Motor Fuels From Agricultural Sources*, COM (92) 36, *OJ* No. C 73 (Mar. 24, 1992), p. 6.

[35] Ibid.

[36] Amendment of Directive 69/169 Increasing Tax Paid Allowances in Intra-Community Travel and Derogation to Denmark and Ireland.

allowances since 1969. All limitations on travelers' allowances are scheduled to be removed effective January 1, 1993, when frontier controls are to be eliminated. In November 1991, the EC Commission issued a proposed directive modifying and extending through the end of 1992 the derogation for Denmark and Ireland.[37] The proposed directive sought to raise the level of duty-free allowances and, in the case of Denmark, to shorten the period that a traveler was required to remain outside the member state to qualify for the allowance.[38] The proposed directive was adopted by the Council in December.[39]

Corporate Taxation

Little progress was made during the year on the two directives proposed by the EC Commission in late 1990 that relate to foreign losses of companies engaging in transnational activities and abolition of withholding taxes on interest and royalty payments within groups of companies. As of early 1992, the draft directive on foreign losses had not been discussed by EC ministers, and the draft directive on withholding taxes was being opposed by the United Kingdom, Portugal, and Greece.[40]

The Ruding Committee, chaired by former Dutch Finance Minister Onno Ruding, issued its report, "Conclusions and Recommendations of the Committee of Independent Experts on Company Taxation," in mid-March 1992. The Committee's mandate, which had been set out in a letter from EC Tax Commissioner Scrivener dated October 25, 1990, was to evaluate the need for greater harmonization of business taxation within the EC. In carrying out its work, the Committee considered three questions: (1) whether differences in taxation among member states cause major distortions in the internal market, particularly with respect to investment decisions and competition; (2) whether any such distortions are likely to be eliminated through the interplay of market forces and tax competition between member states, or whether action at the Community level is required; and (3) what specific measures are required at the Community level to remove or mitigate such distortions?[41]

[37] Proposal for a Council Directive Amending Directive 69/169/EEC to Extend and Modify the Exceptions Granted to Denmark and to Ireland Relating to the Rules Governing Travellers' Allowances on Imports, COM (91) 464, *OJ* No. C 333 (Dec. 24, 1991), p. 5.

[38] Ibid.

[39] *Council Directive 91/673/EEC of 19 December 1991 Amending Directive 69/169/EEC to Extend and Modify the Exceptions Granted to Denmark and Ireland Relating to Travellers' Allowances, OJ* No. L 373 (Dec. 31, 1991), p. 33.

[40] The United Kingdom found existing bilateral agreements to sufficiently address the problems addressed by the proposed directive, and Portugal and Greece were opposed to having to abolish withholding taxes at the source, which account for a substantial portion of their tax revenues. See *European Report*, No. 1739 (Jan. 29, 1992), sec. II, pp. 8-9.

[41] EC Commission, *Conclusions and Recommendations of the Committee of Independent Experts on Company Taxation*, 1992, p. 9.

The report identified as the principal tax-related sources of bias against inward and outward direct investment (1) withholding taxes levied by source countries on cross-border dividend payments between related companies; (2) differences among member states in the methods of providing relief for double taxation cross-border income flows; (3) differences in corporation tax rates between countries; and (4) the discriminatory effect of unrelieved imputation taxes related to distributions by parent companies from profits earned abroad.[42] The Committee found that there had been some convergence of tax regimes over the prior decade, but that wide differences remained.[43] It concluded that it was unlikely that these differences would be reduced significantly through independent action by member states and that action at the Community level would therefore be needed.[44]

The Committee recommended that action at the Community level be concentrated on the following priorities:

1. Removing those discriminatory and distortionary features of countries' tax arrangements that impede cross-border business investment and shareholding;
2. Setting a minimum level for the statutory corporation tax rate and common rules for minimum tax base, so as to limit excessive tax competition between member states intended to attract mobile investment or taxable profits of multinational firms, either of which tend to erode the tax base in the Community as a whole; and
3. Encouraging the maximum transparency of any tax incentives granted by member states to promote investment.[45]

The Committee made a number of recommendations, which it proposed be implemented in three phases. For phase I, which would be implemented by the end of 1994, it recommended, among other things, adoption of the two company tax directives proposed in late 1990 as well as ratification of the Arbitration Convention. For phase II, which would be implemented during the second phase of economic and monetary union, it proposed, among other things, that all member states adopt a minimum corporation tax rate of 30 percent and a maximum rate of 40 percent, and that member states set minimum standards for the tax base for such items as depreciation. For phase III, which would be concurrent with full economic and monetary union, it proposed adoption of a common corporation tax system.[46]

Taxation of Savings Interest

There were no significant developments with respect to the EC Commission's February 1989 proposals for a minimum withholding tax on savings

[42] Ibid., p. 10.

[43] Ibid., pp. 10-11.

[44] Ibid., p. 11.

[45] Ibid., pp. 27-28.

[46] Ibid., pp. 28-44.

interest and for strengthening cooperation between tax administrations. Nor were there any with respect to the political agreement reached in December 1989 by 11 members of ECOFIN regarding cooperation between tax authorities of member states.

Possible Effects

The U.S. International Trade Commission is unaware of any allegations by U.S. business interests that any of the tax measures discussed above are likely to discriminate against U.S. business interests. As indicated in previous reports, if anything, the tax changes are considered likely to benefit firms, including U.S.-based firms, operating or planning to operate in more than one EC member state. However, multinational cigarette producers, including several U.S. producers, have expressed concern that the elimination of border controls coupled with large tax-related price differences between several adjacent member states (particularly between Denmark and Germany and Germany and Luxembourg) may encourage smuggling and, in turn, lead to a repeat of the recent Italian anti-smuggling action imposing a one-month ban on the sale in Italy of Philip Morris' "Marlboro" brand cigarettes.[47]

[47] *European Report*, No. 1742 (Feb. 8, 1992), sec. II, pp. 4-7.

Implementation

By mid-December 1991, only limited progress had been made in implementing the three intracompany transfer measures: two directives and a convention—adopted by the Council in July 1990. As of mid-December, the parent-subsidiaries directive had been transposed[48] into national law only in Luxembourg, Ireland, and Belgium, and the mergers directive was expected to be transposed only in some member states by yearend 1991.[49] Both directives were supposed to have been transposed into national law in all member states by January 1, 1992. As of mid-December, no member states had as yet ratified the convention on the elimination of certain double taxation, although ratification procedures had begun in the majority of them.[50] No deadline has been set for ratification. The directives on travelers' duty allowances are applied in all of the member states even if some of them have not taken the transposition measures.[51]

[48] Transposition is the process by which an EC member state complies with an EC directive by passing a national law or rule that achieves the result sought by the directive.

[49] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC (91) 2491 (Dec. 19, 1991), p. 12.

[50] Ibid.

[51] Ibid., p. 6.

CHAPTER 12
RESIDUAL QUANTITATIVE RESTRICTIONS

CONTENTS

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RESIDUAL QUANTITATIVE RESTRICTIONS

The elimination of intraborder controls in the EC's effort to create a single internal market will pressure the EC to eliminate existing or residual national quantitative restrictions (QRs) or transform them into EC-wide quotas or other protective measures, particularly in sensitive areas. Although any new EC-wide quotas would likely be directed at imports from Asia (autos and textiles) and the Caribbean (bananas) rather than at imports from the United States, new EC-wide barriers could intensify trade-diversionary effects and increase the competition facing U.S. exporters or U.S. subsidiaries in certain member-state markets.

Developments Covered in the Previous Reports

Background and Anticipated Changes

EC member states impose numerous QRs in the form of quotas or gray-area measures such as voluntary restraint agreements on a large variety of products originating primarily in Eastern Europe and Asia. Many of these QRs were established by member states before they joined the EC and were grandfathered in when the countries joined the EC. Others are linked to agreements concluded by the Commission of the European Communities (EC Commission), such as the Multifiber Arrangement and the Generalized System of Preferences.[1] Effective enforcement of national QRs is currently safeguarded by article 115 of the Treaty of Rome.

Because the EC intends to remove all border controls among the member states by 1992, national QRs will not be permitted in the integrated single market. Therefore, the EC has indicated that it plans to eliminate all member-state QRs and article 115 by the end of 1992. However, the EC Commission has not issued any regulations or directives addressing QRs. The options facing the EC appear to be threefold: first, to unilaterally abandon existing national quotas; second, to transform existing national restrictions into EC-wide quotas; and third, to replace current national QRs with other EC measures, such as increased reliance on antidumping statutes, subsidization of sensitive industries, and higher tariffs.

With the exception of automobiles, at the end of 1990, the EC Commission had not yet identified those sectors currently with member-state QRs that would be subject to an EC-wide quota.[2] Efforts are still under way to identify sensitive sectors and the impact of the elimination of article 115. EC Commission officials have acknowledged that certain struggling industries will need some form of protection from imports after national restrictions are lifted.

The EC is seeking to establish a uniform internal market for automobiles. Under article 115, certain EC countries—France, Italy, Spain, Portugal, and the United Kingdom—maintain quotas on imports of Japanese motor vehicles. An agreement between the EC and Japan was reached in July 1991 that would replace the quantitative restrictions on motor vehicles in effect in the five member states with an EC-wide limitation on imports of Japanese motor vehicles and with new limits on Japanese imports in each of the five member states.

The EC has also been attempting to replace member-state quotas on bananas with a common regime. The EC Commission has been debating whether to adopt a tariff-based approach or to continue to rely on quotas to ensure preference for developing countries or nondollar banana suppliers.[3]

The EC has negotiated bilateral trade and economic cooperation agreements with Central and Eastern European countries and the U.S.S.R. that call for the elimination of member-state QRs imposed on exports from these countries. The EC and Japan continue to consult regularly over the removal of national QRs directed at Japan.

Possible Effects

The first report[4] identified three sensitive sectors—automobiles, footwear, and textiles and apparel—that could be subject to EC-wide QRs after 1992. EC-wide quotas on these products would probably be directed at Far Eastern rather than U.S. products. Nonetheless, U.S. producers could be indirectly affected by this course of action. In footwear and textiles and apparel, a shift to EC-wide quotas could cause affected suppliers to redirect shipments to markets where they have the greatest competitive advantage but that had been previously limited by a member-state QR, thereby increasing competition for U.S. exports in these markets. EC-wide QRs in footwear could also cause trade diversion to the United States. However, to date the EC has not addressed quotas on these products.

[1] See U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States—First Follow-Up Report* (investigation No. 332–267), USITC publication 2268, Mar. 1990, p. 1–13.

[2] EC Commission, *Abolition of Frontier Controls*, Communication from the Commission to the Council and the Parliament, COM (91) 549, Dec. 18, 1991, annex B.

[3] Dollar-banana exporters are large bananas producers located in Ecuador, Costa Rica, Colombia, Honduras and Panama. Nondollars banana suppliers are smaller producers located in countries that are former African, Caribbean, and Pacific (ACP) colonies of EC members.

[4] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332–267), USITC publication 2204, July 1989.

A 1991 Communication from the Commission identified three sectors—autos, motorcycles,[5] and bananas—for which quantitative restrictions will continue to exist at least until December 31, 1992.[6] Background information and a discussion of the possible effects of the removal of restrictions in these sectors follows.

Developments During 1991

Automobiles

During 1991, the U.S. Government continued to monitor EC efforts to replace member-state quotas (France, Italy, Spain, Portugal, and the United Kingdom) with an EC-wide voluntary restraint arrangement.[7] There is particular concern within the EC auto industry and member-state governments over the effect of Japanese competition on the industry after 1992. The Japanese-company market share in the EC increased to 12.3 percent in 1991, compared with 11.7 percent in 1990. The major issues that have arisen with regard to completion of the EC internal market for automobiles are the treatment of motor vehicles produced by Japanese transplants in the EC, particularly in the United Kingdom, and the imposition of domestic-content requirements by the EC that might affect exports from the United States. In general, U.S. auto producers are expected to benefit from the elimination of member-state quotas and the subsequent protection afforded by an EC-wide restraint on Japanese auto imports. However, if Japanese producers continue to shift production to the EC or if the EC institutes local-content requirements on Japanese automobiles, U.S. automakers could be affected.

Background

The EC auto market is dominated by six automobile companies, which collectively account for approximately 75 percent of the market. These companies and their approximate 1991 EC market shares are Volkswagen (17 percent), Fiat (13 percent), General Motors (12 percent), Peugeot (12 percent), Ford (12 percent), and Renault (10 percent). Other companies competing in the EC each hold less than a 4-percent share of the market. In 1991, companies that were heavily involved in production and marketing in Germany experienced increases in overall sales and market share. Of the major automakers in the EC only Fiat and Peugeot suffered sales declines and a loss of market share. Both firms are highly dependent on their home markets (Italy and France, respectively), and they may have difficulties maintaining their home-market share and expanding into other EC markets after 1992.[8] The lower 1991 sales results for Fiat and Peugeot may indicate that their lack of a strong pan-European presence is already hurting their competitive position as the industry prepares for the post-1992 market. General Motors (GM) and Ford, both U.S.-owned companies with extensive EC operations, experienced significant increases in their market shares and sales volumes in 1991.[9] GM and Ford supply the EC market primarily from their EC assembly plants. Chrysler, the only other U.S.-owned automaker, has very limited production in the EC.[10]

In 1991, EC auto sales totaled 12.6 million vehicles, representing an increase of 1.6 percent from 1990 sales[11] and continuing a trend of uninterrupted sales growth that began during the mid-1980s. The overall sales figure reflects a sales boom in Germany (the largest market in the region) and obscures sales declines in most other EC countries. In 1991, German sales increased by 28 percent, to 4.2 million vehicles. When East Germany was incorporated into West Germany, sales increased dramatically. Eastern Germans' pent-up demand for automobiles caused an increase in both new and used auto sales in eastern Germany. The thriving used-vehicle market in eastern Germany generated increased used-car prices throughout Germany, making it more attractive for auto purchasers in western Germany to opt for new rather than used vehicles.[12]

Sales in most other EC markets declined substantially in 1991. Excluding German sales, EC sales declined by about 8.2 percent. In Italy, France, the United Kingdom, and Spain, EC's four largest markets after Germany, declines ranged from over 20 percent in the United Kingdom to less than 1 percent in Italy.[13] During the second half of 1991, German sales began falling and sales in other countries remained weak.

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[5] Italy, Spain, and Portugal currently maintain restrictions on motorcycles. Although there have been no proposals regarding the lifting of these member-state restrictions, theoretically they should be discontinued by the end of 1992 when article 115 is eliminated. However, it is possible that the EC Commission could decide to allow some form of restrictions other than quantitative ones to replace article 115.

[6] EC Commission, *Abolition of Frontier Controls*, p. 4.

[7] For more information, see USITC, *The Effects of Greater Economic Integration Within the European Community on the United States Second—Followup Report*, (investigation No. 332–267), USITC publication 2318, Sept. 1990, pp. 20–5 to 20–14.

[7] For more background information see USITC, *Effects of EC Integration—Second Followup*, USITC publication 2318, Sept. 1990, p. 12.

[8] "West European Car Sales at Record in 1991," *Financial Times*, Jan. 21, 1992, p. 2.

[9] Chrysler produces a limited number of minivans in Austria in a joint venture with Steyr-Daimler-Puch and owns Lamborghini, an Italian firm that produces several hundred high-performance automobiles annually.

[10] *Automotive News*, Feb. 3, 1992, p. 19, and *Wards Automotive International*, Feb. 1991, p. 3.

[11] Eastern German sales totaled about 730,000 vehicles in 1991, or about 18 percent of total German sales. Calculated from data in "European New Car Sales Declined 3.6 Percent in 1991, Reflecting General Slowdown," *Wall Street Journal*, Jan. 31, 1992, p. B4B.

[12] "West European Car Sales at Record in 1991," p. 2.

[13] Ibid., p. 2; Neil Fullick, "European New Car Sales Declined 3.6 Percent in 1991, Reflecting General Slowdown," p. B4B, and Kevin Done, "World Sales to Exceed 40m by 1995," *Financial Times*, Sept. 18, 1990, p. viii.

The majority of Japanese auto investments in the EC have been made in the United Kingdom. Toyota, Nissan, and Honda, Japan's three largest automakers, have built or are in the process of building auto plants in the United Kingdom. Several other Japanese companies are involved in other types of automotive investments in the EC, primarily in the form of joint ventures with EC producers. By 1995, all Japanese automakers except Subaru are anticipated to have some form of EC production, although at a significantly lower level than Toyota, Nissan, and Honda.[14]

Developments

On July 26, 1991, the EC Commission approved an outline agreement regarding the EC's imports of Japanese cars. On July 31, the EC Commissioner for External Relations Frans Andriessen and Japan's Minister for International Trade and Industry Eiichi Nakao transmitted written statements to the GATT outlining their commitments under the new agreement.[15] Under the agreement, France, Italy, the United Kingdom, Spain, and Portugal will abolish their quantitative restrictions on imports of Japanese cars by December 31, 1992. In return, Japan will limit its auto exports to the EC to 1.23 million vehicles annually (the same as the current level) during a 7-year period. During the 7-year transition period, imports of Japanese vehicles will be permitted to rise to 150,000 units in France, 138,000 units in Italy, 79,000 units in Spain, 23,000 units in Portugal, and 190,000 units in the United Kingdom.[16] Many European auto companies have opposed abolishing national quotas on Japanese auto imports. Peugeot, Renault, and Fiat in particular have argued for Community-wide quotas.

The 1.23 million-unit ceiling is based on an estimated market in the EC of 15.1 million vehicles in 1999. Japan is expected to increase its market share accounted for by imported vehicles and transplant production in the EC market from 10 percent to 16.1 percent through the end of the agreement in 1999.[17] However, there are uncertainties associated with forecasting total EC sales and conditions of the EC auto industry nearly 9 years into the future.[18] The two countries will hold biannual consultations to review the agreement and to address any unexpected circumstances such as if Japanese imports exceed expected levels. If auto sales decline significantly, there could be political pressures to revise the agreement, particularly if the Japanese market share increases and EC producers are facing financial difficulties.

Following the announcement of the agreement, differing interpretations on the issue of Japanese transplants in the EC emerged.[19] EC producers claimed that an understanding was reached during the negotiations that Japan's auto producers would produce only 1.2 million automobiles annually in the EC by 1999 (in addition to the 1.23 million in Japanese exports). However, the Japanese denied that the agreement will restrict their production in the EC and claimed that they are not bound by an annual limit of 1.2 million automobiles.[20] Contrary to EC auto industry representatives, the EC Commissioners involved with the negotiations agreed with this interpretation and stated publicly that no limits were placed on Japanese auto production in the EC.[21]

Some industry observers now believe that the EC and Japan will have to confront an unexpectedly large increase in production from Japanese-owned plants in the EC. Initially, the 1.2 million-vehicle limit on Japanese production in the EC was not considered to be a severe constraint on Japanese firms, because it seemed unlikely that Japanese firms would produce much more than 1.2 million vehicles in the EC by the year 2000. In January 1992, however, Nissan announced that it would increase production at its Sunderland, England, auto assembly plant to 300,000 units annually by 1993, representing an increase of one-third over the original projection when the plant was first announced in the early 1980s.[22] This development is reportedly raising fears among many EC automakers that production at Japanese assembly plants will reach closer to 2 million vehicles rather than the 1.2 million vehicles anticipated by the EC by the year 2000.[23] Nissan's announcement is also significant

[14] "Japanese to Produce Almost 2 Million Vehicles a Year in Europe," *Japan Automotive News*, Aug. 1, 1991, p. 11.

[15] "Statement by Mr. Nakao, Minister of International Trade and Industry", Tokyo, July 31, 1991, and "Statement by Mr. Andriessen, Vice-President of the EC Commission, concerning the results of conversations between the EC Commission and Japan on motor vehicles," July 31, 1991.

[16] Ibid.

[17] Ibid.

[18] In early August, the EC Commission reportedly transmitted to member states documentation on the results of the auto agreement with Japan including two explanatory statements by the Commission. One of the statements

[18]—*Continued*

stipulated that if the market forecast differs from the forecast of 15.1 million vehicles by 1991, one-third of the difference between this number and the actual number will be given to European manufactures if it is positive and if not, three-fourths of the reduction in sales will be borne by Japanese producers. "Cars: EEC-Japan Deal in Retrospect," *European Report*, No. 1700, (Sept. 4, 1991), Internal Market, p. 4.

[19] Steven Greenhouse, "Issues Linger in Europe's Japan Auto Pact," *New York Times*, Aug. 12, 1991, p. D1.

[20] On September 11, the head of the Japan Auto Manufacturers' Association announced that vehicles from Japanese transplants in the European Community would not count against Japan's quota. "Car Crash Looms for EC and Japan," *EC-U.S. Business Report*, C&M International Ltd., (Oct. 1, 1991), pp. 10-11.

[21] Bruce Barnard, "EC Commission Faces Sniping at Japan Car Export Accord," *Journal of Commerce*, Sept. 24, 1991.

[22] John Griffiths, "Nissan to Boost UK Factory's Output by a Third," *Financial Times*, Jan. 17, 1992, p. 1.

[23] John Griffiths, "Nissan Flexes More of Its Muscle," *Financial Times*, Jan. 17, 1992, p. 17. Even before Nissan's announcement, one Japanese trade publication was projecting Japanese-owned auto production in the EC to be 1.8 million vehicles by 1999. "Japan to Produce Almost 2 Million Vehicles a Year in Europe," *Japan Automotive News*, Aug. 1, 1991.

in that it demonstrates increasing EC consumer acceptance of Japanese automobiles.[24] Whereas Nissan has the largest Japanese-brand market share in the EC (about 3.2 percent) and leads other Japanese firms in production in the region, Toyota and Honda have plans to produce their own vehicles in the EC by late 1992. Both Toyota and Honda are highly competitive in world markets, and their production could exceed current projections if they follow Nissan's aggressive production effort.[25]

Possible Effects

Both U.S. auto exporters and U.S. automakers with production facilities in the EC could benefit from the dismantling of member-state quotas and the subsequent protection afforded by an EC-wide restraint on Japanese auto imports. U.S. auto producers and their EC subsidiaries may experience increased marketing opportunities in the EC. In the short term, U.S. firms are well positioned to meet competition from EC automakers. However, if Japanese producers continue to shift more production facilities to the EC and to increase their sales, the U.S.-owned automakers may face a loss of market share in the long term.

In addition, if the EC institutes local-content requirements on automobiles, Japanese-owned automakers in the United States could face barriers in exporting to the EC. Although there is currently no official local-content level required, 60-percent EC content has been used as a guideline in previous EC disputes.[26] There have been proposals to institute higher local-content levels of 80 or 90 percent. U.S. producers could be affected since their vehicles include Japanese parts and many of these firms have production arrangements with Japanese firms.[27] Some product lines of U.S.-owned automakers such as the Ford Probe and Ford Explorer are produced in Japanese transplants in the United States and are experiencing increased sales in the EC.[28]

[24] For example, Nissan recently replaced its British-built Bluebird with the firm's British-built Primera. The Primera is a more sophisticated vehicle that outsold the Bluebird in its last year of production by a ratio of 3 to 1.

[25] In fact, Honda has stated publicly that its production will exceed expectations during the initial stages of production.

[26] For background information, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 11–10.

[27] An explanatory statement issued by the EC Commission in August reportedly stated that it would follow the U.S. lead in deciding the origin of a vehicle, i.e., it would classify imports from Japanese transplants in the United States as U.S. vehicles if the U.S. Customs Service did so. "Cars: EEC-Japan Deal in Retrospect," *European Report*, No. 1700 (Sept. 4, 1991), Internal Market, p. 4.

[28] For further information, see USITC, "Residual Quantitative Restrictions," ch. 11 in *EC Integration—Second Followup*, USITC publication 2318, Sept. 1990, pp. 11–3 to 11–4.

Bananas

Background

EC member countries have adopted different types of policies towards imports of bananas. Spain, Greece, Portugal, France, the United Kingdom, and Italy maintain some type of import quota on bananas. Belgium, the Netherlands, Luxembourg, Denmark, and Ireland do not have quantitative restrictions but have discriminatory tariffs on imports of bananas from countries other than EC overseas territories or African, Caribbean, and Pacific (ACP) countries. Germany has no quantitative restrictions and imports bananas duty free.[29]

The EC Commission has been in the process of drawing up guidelines on import arrangements for bananas subject to compliance with GATT and the Lomé Convention (Lomé IV)[30] obligations for 3 years.[31] The European Community has indicated that traditional suppliers in the EC and ACP countries will probably not be able to fulfill increasing demands, so there is room for increased imports into the Community.[32] However, the EC wants to protect its suppliers in the French and Dutch overseas territories and in the ACP countries whose economies are heavily dependent on banana exports.[33] Lomé IV states that, "In respect of its banana exports to the Community markets, no ACP state shall be placed as regards access to its traditional markets and its advantages in those markets, in a less favorable situation than in the past or at present."[34]

One of the major issues that has arisen regarding liberalization of the EC's banana market is assured access for small producers in the Eastern Caribbean[35] who compete with the larger so-called "dollar banana" producers in Ecuador, Costa Rica, Colombia, Honduras, and Panama. The Eastern Caribbean producers are reportedly concerned that these major low-cost banana exporters, which already have a 50-percent share of the EC market, will be able to capture an even larger share under new guidelines. EC producers are reportedly concerned that liberalization of the market will benefit major U.S. multi-

[29] U.S. Department of Agriculture, Economic Research Service, *EC 1992 Implications for World Food and Agricultural Trade*, (AGES 9133), p. 228.

[30] Lomé IV is the fourth aid and trade agreement signed by the EC and ACP countries since 1975. Lomé IV entered into effect in 1990 for a 10-year period.

[31] "Bananas: Latin American Exporters on the Offensive," *European Report*, No. 1719, (Nov. 9, 1991), External Relations, pp. 3–4.

[32] Ibid.

[33] "Bananas: Commission Asks Americans for Transitional Period," *European Report*, No. 1703, (Sept. 14, 1991), External Relations, p. 6.

[34] Fourth ACP-EEC Convention, protocol 5 on bananas, art. 1.

[35] The Eastern Caribbean banana states include Dominica, Saint Lucia, St. Vincent and the Grenadines, and Grenada. Other producers, aside from dollar producers, include Guatemala, Nicaragua, Venezuela, the Dominican Republic, Jamaica, Martinique, and Guadeloupe.

nationals operating in Latin America and have demanded some level of protection.[36] A 1991 EC study concluded that although demand in the EC for bananas would increase after 1992, EC producers would likely become more competitive and displace imports from Caribbean producers. The report estimated that approximately 5 percent of current LDC trade with the EC would be affected.[37]

Developments

In July 1991, the EC Commission extended article 115 arrangements for 1 year, authorizing member states to continue import restrictions on bananas.[38] At the end of 1991, the EC was continuing to discuss options for liberalizing the banana regime and Caribbean countries were continuing to seek assurances that the preferential access to certain member-state markets for bananas would continue after 1992. According to a schedule adopted by the EC Commission on December 18, 1991, a proposal for liberalization of the banana market would be put forth in January 1992, sent to the Parliament in June 1992, and put before the Council in September 1992. However, as of mid-February 1992, the banana proposal had not been transmitted to the Commissioners.[39]

Textiles

It is anticipated that the EC's member-state quotas contained in bilateral agreements negotiated between the EC and textile-exporting countries under the Multifibre Arrangement (MFA) will be replaced with a system of EC-wide quotas.[40] However, no action was taken towards changing the EC's textile and apparel quota system during 1991. In May, a Council decision authorized the EC Commission to negotiate the renewals of its existing bilateral textile agreements for 1 year.[41]

By the end of 1991, the EC had renewed all 25 of its bilateral agreements under the MFA.[42] The EC has stated that extension of MFA bilateral agreements should be done on a rollover basis (existing terms) to bridge the gap between the expiration of current agreements and the implementation of a new GATT agreement on textiles.[43] On July 31, 1991, the Textile Committee of the GATT approved an extension of the MFA until the end of 1992.[44] The extension covers all provisions of the existing bilateral agreements including export quotas, growth rates, and flexibility provisions. On November 25, the Council of Ministers agreed to the extension of the MFA until the end of 1992.[45]

Hungary, Poland, and Czechoslovakia will receive improved treatment for their textile exports to the EC under the association agreements signed in December 1991, as discussed below.[46]

Ongoing EC Actions That Address QRs

Generalized System of Preferences

The EC's GSP scheme contains tariff-rate quotas—some of them nationally based—that effectively place quantitative limits on duty-free access of sensitive items that compete with EC products. The scheme provides for more favorable preferences for those countries appearing on the United Nations list of least developed countries, including exemptions from quantitative limitations. The EC Commission is opting for a gradual process of adjustment of the GSP to ensure that the least developed and poorest developing countries will not be penalized as national quotas are replaced by Community quotas.[47] On December 3, 1991, the Council extended the 1991 GSP scheme to 1992. The Council decided to extend GSP because it was unlikely that the review of the GSP system that

[36] "Bananas: Latin American Exporters on the Offensive," pp. 3–4.

[37] U.S. Department of State Telegram, Apr. 29, 1991, London, message reference No. 08020.

[38] "Bananas: Commission Extends French and Italian Import Restrictions," *European Report*, No. 1692 (July 10, 1991), Internal Market, p. 9. At the Maastricht Summit in December, some revisions were made to article 115, eliminating wording that was no longer appropriate. Article 115 is expected to fall into disuse once barriers are eliminated among EC countries. "Single Market: The Fate of Article 115 in the Post–1992 Era," *European Report*, No. 1732, Internal Market, Jan. 4, 1992.

[39] EC Commission, *Abolition of Frontier Controls*, Communication from the Commission to the Council and the Parliament, COM (91) 549, Dec. 18, 1991, annex B and U.S. Mission to the EC, informal communication with USITC staff, Feb. 19, 1992.

[40] For background information see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 11–13 to 11–15.

[41] "Trade Relations EC-Central and Eastern Europe," *European Update*, West Publishing Co., 1991 WL 11715 (D.R.T.), Dec. 20, 1991, par. 3.5.4.1.

[42] "Textiles: EEC Concludes Negotiations to Extend Bilateral Agreements," European Report, No. 1737 (Jan. 22, 1992), External Relations, p. 1.

[43] The EC has approved annual renewals of its MFA program. "Textiles: Negotiations Continue," *European Report*, No. 1725, (Nov. 30, 1991), External Relations, p. 9, and EC Commission, "EC Close to Completing Negotiations for Extension of Bilateral Textile Agreements," press release, IP (91) 1071, Nov. 29, 1991.

[44] A Council Decision of September 21 approved the July decision by the Textiles Committee. *Proposal for a Council Decision on the Provisional Application of Agreements Between the European Economic Community and Certain Third Countries on International Trade in Textiles*, COM (91) 453, Nov. 18, 1991.

[45] A proposal that third-country textile exports to the EC be increased as a result of growing demand in Germany due to unification was also put forth by the EC Commission in November 1991. "Trade Relations EC-Central and Eastern Europe," p. 30.

[46] Ibid.

[47] See U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States—Third Followup Report* (investigation No. 332–267), USITC publication 2368, Mar. 1991, p. 1–34.

began in 1990 would be completed by January 1, 1992.[48] The EC Commission also added the three Baltic countries and Albania to the list of GSP beneficiaries and lifted the GSP suspension for South Korea.

Association Agreements

On December 16, 1991, the EC signed association agreements with Czechoslovakia, Hungary, and Poland ending over 1 year of negotiations.[49] The association agreements, also called Europe agreements, must still be ratified by individual member parliaments and the European Parliament.[50] Interim agreements incorporating the trade provisions of the association agreements will be concluded during a 10-year transition period. Although the agreements do not contain explicit provisions guaranteeing EC membership, the preamble to the agreements states that "the ultimate aim of [the three Central and Eastern European countries] is accession to the EC."[51]

The negotiations leading up to the accord were marked by disagreements on several sectoral issues including textiles, steel, and certain agricultural products. In October 1991, the negotiations broke down because the three Central and Eastern European (CEE) countries did not believe they were being given sufficient access to the EC's markets in these three areas.[52] Compromises were eventually reached on these issues.

The agreements include provisions covering agriculture, textiles, coal, transport, labor, financial cooperation, and political cooperation. For agricultural products, there will be a consolidation of GSP preferences for each of the countries, quantitative restrictions on imports will be abolished, and there will be 20-percent annual reductions of customs duties and levies from 1995 through 1999. In addition, a safeguard clause was included in the agreement in the event that imports of products from one country cause serious market disturbances in the market of another country.[53] For textiles, the agreement calls for the elimination of customs duties and quantitative restrictions by December 31, 1997, in six equal annual reductions. Following the transition period, free trade in textiles would exist. Restrictions on coal imports will be eliminated by the end of 1995.[54]

Implementation of the EC agreements generally will be based on a principle of asymmetry (except for agriculture). Thus, tariff and quota reductions by the EC are planned to go into effect during the first 5 years of the agreement and the CEE countries will make comparable concessions during the second 5 years. Analysts do not predict a major increase in exports from the three CEE countries to the EC, in part because CEE products may have difficulties competing in the EC's high-tech, service-oriented market.[55] The CEE countries claim that the agreements provide only slightly more access than was already provided under the GSP program. The likely impact on U.S. industries is uncertain. However, the agreements could eventually have some impact on reexports from Eastern Europe to U.S. subsidiaries with investments in the EC. Some U.S. subsidiaries are expected to take advantage of trade concessions rendered to the three CEE countries by establishing parts manufacturing facilities in the CEE to supply their assembly plants in the EC and elsewhere in Europe.[56]

The EC also initiated preliminary talks with Bulgaria, Romania,[57] Albania, and the Baltic nations of Latvia, Lithuania,[58] and Estonia with the intention of eventually signing association agreements.[59] The agreements are expected to result in the liberalization or elimination of quota restrictions applied on EC imports from these countries.[60] The agreements are expected to encourage investments in the three

[48] Council Regulation 3587/91 extending into 1992 the application of Regulations (EEC) 3831/90, 3832/90, and 3835/90 applying generalized tariff preferences for 1991 in respect of certain products originating in developing countries.

[49] "EEC/Eastern Europe: Europe Enters New Era With Association Accords," *European Report*, No. 1730 (Dec. 17, 1991), External Relations, p. 2.

[50] *Europe 1992: A Practical Guide for American Business*, U.S. Chamber of Commerce, The International Division, 1991, pp. 56–57, and Jan B. de Weydenthal, "Czechoslovakia, Hungary and Poland Gain Associate Membership in the EC," *RFE/RL Research Report*, vol. 1, No. 6 (Feb. 7, 1992), pp. 24–25.

[51] De Weydenthal, p. 24, and "Focus Eastern Europe: The EC's Association Agreement With Poland, Czechoslovakia and Hungary," Deutsche Bank Research, Jan. 1992, p. 1.

[52] "3 Ex-East Bloc National Forge Ties With EC," *Los Angeles Times*, Nov. 23, 1991, p. A1.

[53] "Trade Relations EC-Central and Eastern Europe," pp. 11 and 12, and *Europe Agreement*, arts. 18–22, EC/Hungary, Apr. 11, 1991, rev. 6, pp. 8 and 9.

[54] De Weydenthal, p. 24, and "Trade Relations EC-Central and Eastern Europe," p. 12.

[55] U.S. International Trade Commission, "Czechoslovakia, Hungary, and Poland Increase Economic Cooperation, Contemplate Free Trade," *International Economic Review*, Feb. 1992, pp. 13–14.

[56] Brookings Institution visiting scholar, telephone conversation with USITC staff, Feb. 7, 1992.

[57] "3 Ex-East Bloc Nations Forge Ties With EC," *Los Angeles Times*, Nov. 23, 1991, p. A1.

[58] On February 1, the EC and the Republic of Lithuania signed a first general trade and economic cooperation agreement that provides for the removal of certain quantitative restrictions on EC imports of Lithuanian products. EC Commission, "EC Commission and Lithuania Initial a Trade and Cooperation Agreement," press release, IP (92) 75, Feb. 3, 1992.

[59] First-generation agreements covering trade and economic cooperation were signed in 1990. "Eastern Europe: 1992, Another Year of Change," *European Report*, No. 1733, (Jan. 8, 1992), External Relations, pp. 3 and 4.

[60] "EEC/East Europe: "Wider Market Access for Albania and Baltic States," *European Report*, No. 1726 (Dec. 4, 1991), External Relations, pp. 2–3.

countries, help to increase their export earnings, and move them further along towards becoming market economies.[61]

EC-Japan Discussions

The EC and Japan continued to hold discussions to improve their bilateral and economic trade relations. In March 1991, the EC and Japan held informal consultations on quantitative restrictions. Although no schedule of future meetings was set, it was expected that such discussions would continue during 1992. In July 1991, the EC and Japan signed the EEC/Japan declaration that called for consultations on many political and economic issues, including trade (some quantitative restrictions), investment, the environment, science and technology, security and foreign affairs.[62] The EC and Japan agreed to hold annual summits and semiannual consultations on these issues. An EC/Japan task force was established and met for the first time on November 6 to discuss areas where EC-Japan cooperation could be expanded.

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[61] "EC Signs Pacts With Poland, Czechoslovakia and Hungary," *Journal of Commerce*, Nov. 25, 1991, p. A.

[62] "EEC/Japan: Task Force Meeting," *European Report*, No. 1719, (Nov. 9, 1991), External Relations, p. 10; Bruce Barnard, "EC, Japan Reach Accord Amid Trade Tensions," *Journal of Commerce*, July 19, 1991, and "Japan, EC Aim at Greater Cooperation," *Japan Economic Institute*, No. 28B, July 26, 1991, pp. 3–5.

CHAPTER 13
INTELLECTUAL PROPERTY

CONTENTS

CHAPTER 13
INTELLECTUAL PROPERTY

Intellectual property rights in the EC are important to U.S. business interests, particularly for firms selling high-technology products that require significant development expenses and investments. With the advent of the 1992 program, the EC is establishing EC-wide regimes or partial harmonizations of national law on intellectual property.

Developments Covered in the Previous Reports

Background and Anticipated Changes

Semiconductor Mask Works

Council Directive 87/54 directs EC member states to enact laws for the protection of semiconductor topographies (mask works) conforming to minimum standards in the directive. Most member states have complied or are complying with this directive. The EC Commission has, however, commenced formal complaint proceedings against Greece under article 169 of the Treaty of Rome for the failure to implement the Mask Works Directive in a timely manner.

The EC Council issued two decisions (90/510/EEC and 90/511/EEC, both dated October 9, 1990)[1] adopting EC Commission proposals extending protection under the mask works directive for natural and legal persons of third countries past the then-current November 7, 1990, deadline. Such protection would be permanent or temporary, depending on whether the third country offers permanent or interim protection to natural and legal persons of the EC. The EC Commission supplemented these Council decisions with a decision of its own on October 26, 1990 (90/541/EEC).[2]

Trademarks

Most member states have well-developed and generally similar trademark laws and have sought harmonization by creating an EC trademark regime parallel to the existing national regimes and by seeking partial harmonization among national regimes. Council Directive 89/104 is not a full-scale harmonization but is intended to approximate member-state laws on trademarks acquired by registration. Proposed Regulation (84)470 would establish an EC-wide regime for trademarks with enforcement in the national courts. Proposed Regulation (85)844 would implement the Regulation on the Community Trade Mark. Proposed Regulation (86)731 would set rules of procedure for the Board of Appeals.

Copyright

Most of the member states have well-developed copyright laws. Green Paper (88)172 is a consultative document discussing piracy, home copying of sound and audiovisual works, distribution and rental rights for sound and video recordings, computer programs, data bases, and external aspects of copyright protection. It contains suggested courses of action that may be formally proposed and implemented by the EC or member states. In the computer software area, a directive was proposed (88/816) that would require member states to conform existing laws or to enact new laws to treat computer programs as literary works under their national copyright laws. The directive would also set certain minimum standards and rights. The European Parliament gave its approval to the proposed directive but called for several amendments. On October 18, 1990, the EC Commission proposed an amended software directive (90/509).[3] On December 13, 1990, the EC Council arrived at a common position.[4]

Also in the copyright area, on December 13, 1990, the EC Commission proposed a Council directive on harmonizing rental and lending rights (90/586).[5] This proposed directive would require EC member states to provide a right to authorize or prohibit the rental and lending of originals and copies of copyright and certain other works. This right would pertain to authors, performing artists, phonogram producers, and producers of the first fixations of cinematographic works. The proposed directive would also provide for protection in the field of rights related to copyright.

On December 11, 1990, the EC Commission also proposed a Council decision (90/582)[6] that would require all member states to adhere to the Berne Convention on Literary and Artistic Works and the Rome Convention, dealing with neighboring rights (rights bordering on copyright). According to the

[1] *First Council Decision of 9 October 1990 on the Extension of the Legal Protection of Topographies of Semiconductor Products to Persons From Certain Countries and Territories, Official Journal of the European Communities, OJ* No. L 285/29 (Oct. 17, 1990) and *Second Council Decision of 9 October 1990 on the Extension of the Legal Protection of Topographies of Semiconductor Products to Persons From Certain Countries and Territories, OJ* No. L 285/31 (Oct. 17, 1990).

[2] *Commission Decision of 26 October 1990 in Accordance With Council Decision 90/511/EEC Determining the Countries to the Companies or Other Legal Persons of Which Legal Protection of Topographies of Semiconductor Products Is Extended, OJ* No. L 307/21 (Nov. 7, 1990).

[3] *Amended Proposal for a Council Directive on the Legal Protection of Computer Programs, OJ* No. C 320/22 (Dec. 20, 1990).

[4] See notice in *OJ* No. C 71/1 (Jan. 25, 1991).

[5] *Proposal for a Council Directive on Rental Right, Lending Right, and on Certain Rights related to Copyright, OJ* No. C 53/35 (Feb. 28, 1991).

[6] *Proposal for a Council Decision Concerning the Accession of the Member States to the Berne Convention for Protection of Literary and Artistic Works, as Revised by the Paris Act of 24 July 1971, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 26 October 1961, OJ* No. C 24/5 (Jan. 31, 1991).

EC Commission, this decision will lead to a common base of harmonization that will ease the construction of a "Community edifice" for copyright and neighboring rights. It would also contribute to the fight against piracy.

Patents

Although most member states have well–developed patent laws, the patent protection of biotechnological inventions is a major new issue. Proposed Directive 88/496 would achieve partial harmonization of the patent laws of the member states with respect to biotechnological inventions. It provides, among other things, that an invention cannot be considered unpatentable simply because it is composed of living matter.

Proposed Regulation (90)101 would create a Communitywide system for obtaining a "supplementary protection certificate" to extend, for a limited time, the term of certain patents for medicinal products granted by the member states under their national laws or patents granted under the European Patent Convention for those products, when the marketing of those products has been delayed because of marketing authorization requirements.

Plant Variety Protection

On September 6, 1990, the EC Commission proposed a Council regulation on the creation of a Communitywide system for obtaining protection for plant varieties ((90)347)).[7]

Such rights would be granted on application to and review by a Community Plant Variety Office (CPVO), for which elaborate procedural and administrative provisions are set out. Varieties would be protected if they are distinct, homogeneous, stable, and new and if a variety denomination exists for them. Subject to certain limitations, the rights granted entitle the holder to exclude others from reproducing or propagating the variety or from offering, selling, using, or importing the variety without the authorization of the rightholder. The term of the Community plant variety right would be 30 years from the end of the calendar year following grant or, in the case of varieties of vine and tree species, 50 years. Infringement actions would be brought in the national courts of the member states.

Possible Effects

Semiconductor Mask Works

Directive 87/54 should provide increased market opportunities in the EC for U.S. semiconductor firms. The United States has more than $2 billion invested in semiconductor operations in the EC, and U.S. firms account for more than 40 percent of the European market, through local production and exports combined. Protection provided by the directive should facilitate both U.S. investment and, to a lesser extent, exports. Strong U.S. protection makes trade diversion to the United States unlikely, but competition in some third–country markets may increase as a result of trade diverted from the EC.

Trademarks

The creation and administration of an EC trademark will simplify the acquisition of trademark protection by non–EC suppliers, in addition to enhancing the average protection—and presumably enforcement—EC–wide. Similarly, the approximation of the trademark laws of member states can be expected to enhance protection and somewhat simplify acquisition by ensuring that registration and protection are handled similarly by all the member states. U.S. firms own a disproportionately large share of internationally well–known trademarks and should benefit accordingly. The effect of an adequately enforced EC trademark would be to protect and encourage U.S. investment. However, the overall benefit is expected to be moderate at best, because trademark protection is already very good in the EC as a whole and U.S. losses due to violations of trademark rights in the EC are on the low end of the scale internationally.

Copyright

The harmonization and strengthening of the member states' copyright laws is expected to reduce piracy within the EC and increase the market for legitimate products regardless of origin. As such, both U.S. exports and U.S. investment in the EC would benefit to a great degree. As a general matter, the treatment of computer programs as literary works under national copyright law, as provided in the proposed computer software directive, is expected to have a beneficial effect for U.S. exports and U.S. investment in the EC, since it would put software protection on a sound, unified basis and would be expected to reduce piracy.

Patents

Proposed Directive 88/496 will probably liberalize trade by creating greater opportunities for U.S. producers of biotechnological products to enter the EC market. Greater patent protection would not only stimulate research and development in this industry, it would also reduce the risks associated with introducing biotechnological products into a new market. U.S. industries most likely to benefit are agriculture and chemicals. The proposed directive will probably benefit U.S. investment by creating opportunities for scale economies in research and development, thus allowing firms to more easily expand across member–state borders.

Proposed Regulation (90)101 will increase the period of exclusivity for patents qualifying for the "supplemental protection certificate," and thus will increase the period during which the firm holding the patent may recover its investment in the product. The

[7] *Proposal for a Council Regulation (EEC) on Community Plant Variety Rights, OJ* No. C 244/1 (Sept. 28, 1990).

regulation would thus encourage research and development. These benefits would apply to U.S. firms operating in the EC.

Plant Variety Protection

Proposed Regulation (90)347 is likely to have a small but beneficial effect on U.S. exports of seed and plants and on U.S. investment in the EC. Most EC member states already largely protect the intellectual property rights of U.S. seed companies; nine of the twelve EC countries are currently members of the International Union for the Protection of New Varieties of Plants (UPOV Convention), as is the United States.[8] There have been few trade complaints about infringement of U.S. seed rights within EC member states in recent years. This proposed regulation should ease the legal process within the EC to obtain plant protection, and thereby may benefit U.S. exporters and U.S. companies operating within the EC.

Developments During 1991

Semiconductor Mask Works

On December 12, 1991, the EC Commission issued its Decision 92/20/EEC amending its Decision 90/541/EEC of October 26, 1990, referred to above, which added Finland to the list of countries whose companies and other legal persons may benefit from the protection to be accorded under Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products (semiconductor mask works).[9]

Trademarks

The proposed Council Regulation on the Community Trademark is before the Council for a common position. The proposed Council Regulation, which would implement the Community trademark regulation, is currently being examined by the Council, as are the proposed Council Regulations on Community Trademark Fees and rules of procedure for the Boards of Appeal of the proposed Community Trademark Office.

With regard to the adopted Council directive on harmonization of the trademark laws of the member states, the Council adopted a decision on December 19, 1991, that would postpone the date by which the member states must implement the directive from December 28, 1991, to December 31, 1992.[10]

[8] Greece, Portugal, and Luxembourg are not members of UPOV.

[9] *Commission Decision of 12 December 1991 Amending Decision 90/541/EEC Determining the Countries to the Companies or Other Legal Persons of Which Legal Protection of Topographies of Semiconductor Products Is Extended, OJ* No. L 9/22 (Jan. 15, 1992).

[10] *Council Decision of 19 December 1991 Postponing the Date on Which the National Provisions Applying Directive 89/104/EEC to Approximate the Laws of the Member States Relating to Trade Marks Are To Be Put Into Effect, OJ* No. L 6/35 (Jan. 11, 1992).

Patents

On December 19, 1991, the EC Internal Market Council adopted a common position on the proposed Council regulation that would establish a supplementary protection certificate for patents on medicinal products.[11] This common position amends the original EC Commission proposal[12] primarily in that it would add up to 5 years to the term of a qualifying patent, would provide for a maximum of 15 years effective protection from the date of the first marketing authorization for the involved product, and would be retroactive to January 1, 1985. The original EC Commission proposal would have added up to 10 years to the term of a qualifying patent, would have provided for a maximum of 16 years of effective protection, and would have been retroactive to January 1, 1984. The common position must yet be formally adopted and then sent to the European Parliament for a second reading.

The proposed Council Directive on harmonization of patent law for biotechnology inventions is before the European Parliament for its opinion (first reading). Because it would explicitly provide for the patentability of living organisms, it has been the subject of much discussion and debate.[13]

The proposed Community Patent Convention is to be the subject of a conference for which preparations are expected to begin in the near future.[14]

Plant Variety Protection

The proposed Council regulation that would establish a Communitywide regime on plant variety protection is before the Parliament for its opinion (first reading).

Industrial Designs

In June 1991, the EC Commission released its "Green Paper on the Legal Protection of Industrial Design." This is a consultative document that includes a draft of a proposal for a regulation on a Communitywide industrial design regime and a draft of a proposal for a directive for harmonizing the industrial design laws of the member states. The Community design would be based mainly on registration and would have a term of 5 years, renewable for subsequent 5–year terms, up to 25 years.[15] There would also be a

[11] EC Council, General Secretariat press release 10393/91 (presse 249-G), p. 2.

[12] The EC Commission's original proposal was discussed in a previous report in this series: U.S. International Trade Commission, *The Effects of Greater Economic Integration within the European Community on the United States: Second Followup Report* (investigation No. 332-267), USITC publication 2318, Sept. 1990, pp. 12-4 to 12-5.

[13] EC Commission officials, interview by USITC staff, Brussels, Dec. 11, 1991.

[14] EC Council, General Secretariat press release 10393/91 (presse 249-G).

[15] EC Commission officials, interview by USITC staff, Brussels, Dec. 10, 1991.

lesser form of protection, known as an unregistered Community design, which would have a term of 3 years. The draft proposal for a directive on national harmonization is an attempt to achieve harmonization in accordance with the anticipated Community design. No official proposal from the EC Commission has yet emerged from the consultations on this Green Paper, and it is unclear when such proposals might be issued.

Copyright

On May 14, 1991, the EC Council adopted as a Council directive the common position[16] it had taken on the proposed amended computer software directive (90/509).[17] The European Parliament had no objection to the common position. The member states are currently in the process of implementing this directive.[18]

On July 22, 1991, the EC Commission proposed a Council directive on the coordination of certain rules concerning copyright and neighboring rights applicable to satellite broadcasting and cable retransmission (91/276). This proposal is discussed further below.

As noted in the previous report, the EC Commission proposed a Council decision that would require member-state adherence to the Berne and Rome Conventions on December 11, 1990 (90/582) and also proposed a Council directive on rental right, lending right, and certain rights related to copyright on December 13, 1990 (90/586). These proposals were not discussed in detail in the last report but are discussed below.

Early in 1992, the EC Commission proposed Council directives on the harmonization of legal protection for data bases and on the harmonization of the term of copyright protection.[19] They will be discussed in the next report.

[16] *Common Position Adopted by the Council on 13 December 1990 With a View to the Adoption of a Directive on the Legal Protection of Computer Programs,* 10652/1/90 + ADD, *OJ* No. C 17/2 (Jan. 25, 1991).

[17] *Council Directive of 14 May 1991 on the Legal Protection of Computer Programs, OJ* No. L 122/42 (May 17, 1991). The amended proposed directive was discussed in USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368 (Mar. 1991), pp. 12-4 to 12-5. The original proposed directive was discussed in USITC, *The Effects of Greater Economic Integration within the European Community on the United States: First Follow-Up Report,* (investigation No. 332-267), USITC publication 2268, Mar. 1990, pp. 12-4 to 12-7.

[18] EC Commission officials, interview by USITC staff, Brussels, Dec. 10, 1991.

[19] EC Commission press releases, Jan. 29, 1992 (data bases) and Feb. 5, 1992 (copyright term).

Rental and Lending Rights

Background

As part of their national copyright law, nearly all the member states provide authors with some form of an exclusive right to authorize that a work or copies thereof be made available to the public. This right is frequently referred to as the distribution right. In many of the member states, this right is exhausted by the first authorized sale of the copyrighted work or copy. Thus, after that point, the author has no control over the further distribution of that work, whether by sale, lending, or rental. Because of the ease of copying some works in certain types of media, however, the absence of a further right of the author to control the rental or lending of the work is regarded as lowering the authors' legitimate expectation of return. Some member states therefore do provide for a lending or rental right for certain types of works. However, there are differences in the laws of the member states, and some member states have no provisions on this point at all.

Anticipated Changes

Proposed Directive 90/586[20] would require member states to provide authors with the right to authorize or prohibit the rental or lending of originals and copies of copyrighted works. It would also require the member states to provide a similar rental or lending right to performing artists with respect to fixations of their performances, to phonogram producers with respect to their phonograms, and to the producers of the first fixations of cinematographic works and moving images with respect to their visual recordings and their recordings using both visual images and sound. The rental and lending right so established does not apply to buildings or works of applied art and does not affect any provision of the May 14, 1991, Council directive on computer programs referred to above.

As defined in the proposed directive, the rental or lending right may be assigned, but a distinction is drawn between the assignment of that right and the right of the assignor to receive remuneration for the exercise of that right by the assignee or someone authorized by the assignee. This right to remuneration may not be assigned. This provision is primarily directed to the situation in which authors or performing artists assign their rental and lending right to producers of sound recordings, cinematographic works, and audiovisual works. The result of the provision is that assignor rightholders (e.g., the authors and performing artists) are always entitled to receive a share of the proceeds obtained by exercise of the rental or lending right they may have assigned or licensed.

[20] *Proposal for a Council Directive on Rental Right, Lending Right, and on Certain Rights Related to Copyright, OJ* No. C 53/35 (Feb. 28, 1991).

Member states may derogate from the lending right (as opposed to the rental right) with respect to copyrighted works, provided that at least authors of the works concerned receive an equitable remuneration through administering bodies for such lending and providing that such derogations comply with Community law, especially article 7 of the Treaty of Rome concerning discrimination on the basis of nationality.

In addition to the creation of the rental and lending right itself, the proposed directive would establish certain protections in the field of rights related to copyright. These protections are frequently known as neighboring rights. Articles 5 to 7 of the proposed directive would create a fixation right, reproduction right, and distribution right with respect to certain types of subject matter.

Thus, article 5 would require member states to provide performing artists with the right to authorize or prohibit the fixation of their performances. It would also require the member states to provide broadcasting organizations with the right to authorize or prohibit the fixation of their broadcasts. Most member states already provide these rights.

Article 6 would require that member states provide the right to authorize or prohibit the reproduction of certain works as follows:

Concerned party	*Work*
Performing artists	Fixations of their performances.
Phonogram producers	Phonograms.
Producers of first fixations of cinematographic works or moving images	Visual recordings and visual and sound recordings.
Broadcasting organizations	Fixations of their broadcasts.

Article 7(1) would require that member states provide performing artists, phonogram producers, and producers of certain audiovisual works with an exclusive right to make their respective subject matter available to the public by sale or otherwise. Performing artists would be granted this exclusive right with respect to fixations of their performances. Phonogram producers would be granted the right with respect to their phonograms. Producers of the first fixations of cinematographic works and moving images would obtain the right with respect to their visual recordings and also their visual and sound recordings. The distribution right to be granted refers to making the subject matter available to the public "for an unlimited period of time." This wording is to distinguish the distribution right provided for in the proposed directive from the rental and lending right, also provided for in the proposed directive.

Article 7(2) enshrines the judicially created notion of Communitywide exhaustion to limit the distribution right of article 7(1). It provides that, if subject matter of article 7(1) has been put in circulation within the Community by the right owner or with the owner's consent e.g., by the owner placing it on sale in one of the member states, the distribution right of article 7(1) may not be used by the owner to prohibit the importation of that subject matter into another member state.

As a general limitation on the neighboring rights to be provided by the member states in accordance with articles 5 to 7, member states may, under article 8(1), limit those rights with respect to (1) private use, (2) use of short excerpts in connection with news reports, (3) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, and (4) use solely for the purposes of teaching or academic research. Regardless of article 8(1), however, member states may provide the same kind of limitations for neighboring rights as they provide with respect to copyright for literary and artistic works. Compulsory licenses if any, however, must be compatible with the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Article 9 provides that the duration of any authors' rights to be established by implementation of the directive shall be at least that provided by the Berne Convention. Article 10 provides that the duration of any neighboring rights to be established by implementation of the directive shall be at least that provided by the Rome Convention.

The proposed directive has been given its first reading before the European Parliament, which approved it subject to certain amendments. The EC Commission accepted some of these amendments. The text of the amended Commission proposal is not yet available.

Possible Effects

The extent to which uniformity of copyright protection regarding the sale, lending, or rental of an author's rights will affect direct U.S. exports to the EC is unclear, since the share of exported printed matter that is subject to copyright is unknown. However, the United States and most of the EC members already are signatories or comply with international copyright protection under the Berne Convention regarding an author's right to control his copyrighted work or copy. The increased incidence of piracy is of international concern, and in this regard all efforts to eliminate piracy are in the best interests of the world community.

EC members have their own national rules regarding the extent of protection for sale, lending, or rental, and some have individual copyright agreements with trading partners such as the United States. The harmonization of copyright protection within the EC would affect these agreements to the extent that they differ from the directive, constitute a restriction of trade between member countries, or both. However, the EC directive would provide authors with more

specific protection of rights in terms of compensation for use of their works and would thus result in greater expectations of monetary return.

U.S. Industry Response

The U.S. printing and publishing industry has not expressed any major objections to the proposal for a Council directive on rental right, lending right, and on certain rights related to copyright.

The International Intellectual Property Alliance (IIPA), a leading organization representing a significant segment of the copyright industry in the United States, is concerned with protection against piracy. The EC directive increasing copyright protection would insure protection for U.S. rights within the EC.

Satellite Broadcasting and Cable Retransmission

Background

Although the EC Council adopted a comprehensive (and controversial) directive on television broadcasting within the Community (89/552/EEC, October 3, 1989),[21] that directive did not contain any provisions relating to copyright. Differences and uncertainties in the copyright laws of the member states are regarded as an obstacle to the objectives of that directive, especially the free circulation of programs within the Community.

Anticipated Changes

Proposed Directive 91/276 would require the member states (1) to provide certain rights to authors, performers, and broadcasting organizations with respect to broadcasting of programs by satellite and (2) to provide that national law on copyright and neighboring rights is observed with respect to cable retransmissions and that such retransmissions take place on the basis of agreements between the rightholders and cable operators. These two objectives are related but are the subject of separate chapters in the proposed directive and are discussed separately below.

With regard to satellite broadcasting, article 2 of the proposed directive would require member states to provide the author of copyrighted works with the right to authorize or to prohibit the communication of those works to the public by satellite. Article 1(a) defines "satellite" to include both broadcasting and communications satellites. Article 1(b) defines "communication to the public by satellite" as the act of making a single decision on the content and the transmission by satellite of program-carrying signals by the broadcaster. This act is deemed to take place in the member state where the broadcaster makes such a decision. This means that the only law that would apply to the broadcast of a television or radio program by satellite would be that of the member state in which this act takes place.

Article 3(1) would require member states to provide that the broadcasting right in article 2 could be acquired from the author only by agreement. This requirement limits the applicability of national law, since it would preclude the use of statutory license provisions that might otherwise be available under national law. The agreement primarily envisioned is one between a collecting society and a broadcasting organization. In some member states, such agreements are extended to include rightholders not represented by the collecting society. The proposed directive provides that if this is the situation with respect to a particular member state as of July 31, 1991, this extension shall continue until December 31, 1997. However, this grandfather provision would not apply to cinematographic works.

Articles 4 to 6 of the proposed directive would attempt to achieve some harmonization among the member states with respect to the level of protection for performers, producers of phonograms, and broadcasting organizations to deter satellite broadcasters from operating in the member state that granted the most limited protection to these rightholders.

Article 4 of the proposed directive would require the member states to provide performers with certain rights. Thus, performers would be given the right to authorize or prohibit (1) the communication to the public by satellite of their performance, (2) the fixation of their unfixed performances, and (3) the reproduction of a fixation of their performance. Article 5 provides that where a phonogram or copy thereof is used directly for a communication to the public by satellite, a single equitable remuneration will be paid to the performer, producer, or both.

Under article 6, broadcasting organizations would have the right to authorize or prohibit (1) the simultaneous retransmission of their broadcasts by satellite, (2) the fixation of their broadcasts, and (3) the reproduction of fixations of their broadcasts.

Article 7(1) provides that member states may limit the rights under articles 4 to 6 only as to private use, use of short excerpts in news reports, ephemeral fixation by a broadcasting organization using its own facilities and for its own broadcasts, and teaching or scientific research. However, member states may, regardless of article 7(1), limit such rights to the same extent their national legislation provides with respect to literary and artistic works. However, any compulsory license provisions must be compatible with the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

With regard to cable retransmission, article 10(1) would require the member states to ensure that when programs from other member states are retransmitted by cable in their territory, the applicable copyright and neighboring rights are observed. Article 10(1) would

[21] *Council Directive of 3 October 1989 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities*, *OJ* No. L 298/23, (Oct. 17, 1989).

also require that such retransmission take place on the basis of agreements between copyright owners, holders of neighboring rights, and cable operators. Despite the insistence on contractual arrangements for cable retransmission, article 10(2) would permit those statutory license systems in effect in the member states as of July 31, 1991, to remain in effect until December 31, 1997.

Under article 11(1), copyright owners and the holders of neighboring rights may exercise their right to authorize or prohibit the cable transmission of a broadcast only through a collecting society. Under article 11(2), rightholders who have not transferred the management of their rights to such a collecting society would be limited to claims against such society, and then only for the amount they would have received had they transferred management of their rights to that society. This provision would not apply to rights exercised by broadcasting organizations in respect of their own transmissions.

The proposed directive encourages general contracts covering the cable retransmission of one or more broadcasts by one or more cable operators. Under article 13, a party seeking the conclusion of a general contract would be obliged to submit collective proposals for an agreement. When parties are unable to conclude an agreement regarding authorization of the cable retransmission of a broadcast, impartial mediation services must be ensured by the member states. Parties may not improperly prevent negotiations.

The proposed directive specifically provides that it does not supplant or alter Community competition rules and leaves the regulation of collecting societies to the member states (articles 16 to 17).

The proposed directive is before the Parliament and the Economic and Social Committee for their opinions.

Possible Effects

This proposed directive should increase the protection afforded copyright owners. The proposed directive specifies that regulation of the activities of collecting societies shall be a matter for the member states. Inconsistencies among the activities of collecting societies of the member states could cause some difficulty in negotiations for the copyrightholders.

It is estimated that U.S. producers of television programming earned revenues of $1.5 billion to $1.7 billion from television programming exported to the EC for each of the past several years. According to industry sources, revenues from the EC account for 55 to 60 percent of all foreign revenues for the U.S. industry, and foreign revenues in turn account for 40 percent of total U.S. industry revenues. The United States is the major foreign supplier of television programming to the EC. It is therefore unlikely that there will be any significant diversion of trade in television programming to the United States. The major members of the U.S. industry are integral members of the European entertainment programming community. It is unlikely that this proposed directive, if adopted, would have a significant effect on U.S. investment in the EC.[22]

U.S. Industry Response

The U.S. industry was generally supportive of the proposed directive. However, the industry felt that there were areas in the directive that needed further clarification before the industry could determine whether a response was necessary.

Accession to Berne and Rome Conventions

Background

The Berne Convention for the Protection of Literary and Artistic Works (Paris Revision) is the foremost multilateral treaty in the world on copyright. Likewise, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, also known as the Rome Convention, is the foremost multilateral treaty in the world on so–called neighboring rights. Not all of the member states belong to both conventions.

Anticipated Changes

Proposed Council Decision 90/582 would have required the member states to ratify or accede to and comply with both the Berne Convention and the Rome Convention by December 31, 1992. The proposed decision was given its first reading in the European Parliament, which approved it subject to certain amendments. The EC Commission accepted all of these amendments. However, at its December 1991 meeting, the EC Council rejected this proposal, sending the matter back to the EC Commission. The EC Commission has prepared a new proposal on this subject. It will be discussed in the next report.

Possible Effects

Had it been adopted, the EC proposal to require EC member states to ratify or comply with the Berne Convention by December 31, 1992, would have further strengthened international copyright protection. This result would have been favorable to U.S. interests. The United States is already a signatory to the Berne Convention, the world's principal copyright convention, since March 1, 1989.

The share of copyrighted printed matter exported to the EC is not available; however, U.S. exports of printed matter to the EC were valued at $600 billion in 1991, or approximately 20 percent of all U.S. exports of printed matter. Shipments of books and periodicals (primarily subject to copyright) accounted for the bulk of these exports.

[22] The 1989 Broadcast Directive is another matter. It is discussed in U.S. International Trade Commission, *The Effects of Greater Economic Integration Within European Community on the United States: First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, pp. 6-112 to 6-114.

Although the strengthening of copyright protection within the EC countries could improve the flow of printed products into this region, U.S. publishers are concerned that removal of trade barriers within the EC could disrupt the industry practice of licensing book rights on a country–by–country basis.

U.S. Industry Response

The U.S. printing and publishing industry did not express any serious objections to the EC proposal concerning accession of the member states to the Berne Convention for the protection of literary and artistic works. The harmonization of copyright treatment within the EC would have increased protection to outside parties for their copyright concerns.

Implementation

Semiconductor Mask Works

The deadline for implementation of Council Directive 87/54/EEC on semiconductor mask works was November 7, 1987. All the member states have implemented or are implementing the directive. The EC Commission has commenced an action against Greece in the European Court of Justice under article 169 of the Treaty of Rome, contending that the presidential decree implementing the directive in Greek law has not yet been brought into force.[23]

[23] European Court of Justice Case C-374/90. See 91/C 26/09, *OJ* No. C 26/13 (Feb. 2, 1991).

Trademarks

On December 19, 1991, the EC Council adopted a decision extending the time for member states to implement Council Directive 89/104/EEC on trademark harmonization from December 28, 1991, to December 31, 1992.[24] Nevertheless, Denmark, Spain, and France have already implemented the directive.

Copyright

The deadline for implementation of Council Directive 91/250/EEC on the protection of computer software is January 1, 1993. Some member states already have legislation or case law or both that complies with many, if not all, of the provisions of the directive.

European Economic Area

Article 65 of the Draft Outline European Economic Area (EEA) Agreement provides that protocols 28 and 29 and annex XVII thereof contain specific provisions and arrangements concerning intellectual, industrial, and commercial property. These provisions, unless otherwise specified, shall apply to all products and services. More specific text is not available at this time.

[24] *Council Decision of 19 December 1991 Postponing the Date on Which the National Provisions Applying Directive 89/104/EEC to Approximate the Laws of the Member States Relating to Trade Marks Are To Be Put Into Effect, OJ* No. L 6/35 (Jan. 1, 1992).

CHAPTER 14
THE SOCIAL DIMENSION

CONTENTS

CHAPTER 14
THE SOCIAL DIMENSION

The "social dimension" of EC 1992 refers to the efforts to harmonize different EC member-state policies on labor markets, industrial relations systems, occupational safety and health regulations, social welfare, and social security systems. Although the White Paper did not call for legislative action in this area, this area has received increasing attention as integration progresses.

Developments Covered in the Previous Reports

In 1989, the EC Commission focused its efforts in the social dimension area on drafting a Charter of Fundamental Social Rights (the Social Charter). Written in the form of a "solemn proclamation" rather than a binding legal document, the Social Charter lays down general tenets for 12 basic workers' rights, including freedom of movement; employment and remuneration; improvement of living and working conditions; social security; freedom of association and collective bargaining; vocational training; equal treatment and opportunities for men and women; worker information, consultation, and participation; worker health and safety protection; a minimum employment age of 15; rights for elderly persons; and rights for disabled persons. Eleven member states—all except the United Kingdom—approved the Social Charter.

With the Council's adoption of the Social Charter, the EC Commission presented an action program for implementation of the charter. The action program proposed 47 new initiatives in the social dimension area.

In the worker safety and health area, the EC Council adopted in 1989 a Framework directive (89/391) and three specific directives falling thereunder. The three specific directives addressed minimum worker safety and health conditions, work equipment, and personal protective equipment. In 1990, the EC Council adopted five more individual worker safety and health directives, addressing the handling of heavy loads, requirements for visual display units (VDUs), protection from exposure to carcinogens, worker exposure to biological agents, and exposure of temporary workers to radiation. In 1990, the EC Commission also proposed several new directives governing worker safety and health, including proposed directives addressing the protection of pregnant women in the workplace; protection of workers at temporary or mobile worksites; and medical assistance for workers at sea. All of these directives were proposed under the authority of the worker safety and health provision of EEC Treaty 118A, and therefore can be adopted by a qualified majority of Council members.[1]

In June 1990, the EC Commission presented a package of three proposed directives addressing atypical work. In combination, these directives address working conditions (e.g., training), pay and other benefits, and safety and health for temporary and part-time workers. In July 1990, the EC Commission proposed a directive on the organization of working time that sets requirements for night work and shift work. In December 1990, the EC Commission presented a controversial proposal for a directive on worker information and consultation, calling for the establishment of a European Works Council (EWC) in every company with at least 1,000 employees within the European Community and with establishments employing at least 100 employees in 2 or more member states. Also in late 1990, the EC Commission proposed a directive requiring written work contracts or the equivalent.

Since 1985, there has been an ongoing social dialogue between management (represented by the employer's European-level organization, the Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Center of Public Enterprises (CEEP)) and labor (represented by the European Trade Unions Confederation (ETUC)). To date, these discussions have produced nonbinding "joint options" that are presented and discussed with employers and workers in each member state.

Developments During 1991

The Maastricht Agreement

At the Maastricht Summit in December 1991, all member states with the exception of the United Kingdom agreed to form their own "European Social Community." Under the agreement, the new Treaty of European Union would only contain the original social chapter of the Treaty of Rome, which mainly covers health and safety and free movement of workers.[2] By a separate but legally binding protocol, the 11 other member states agreed that qualified majority voting would apply to measures concerning worker health and safety measures, working conditions, information and consultation of workers, equality between men and women in labor matters, and the integration of excluded people into the labor market. Unanimous voting will be maintained in the areas of social security and social protection of workers, employment contract matters, employee representation and collective employee interests, working conditions for non-EC nationals, and financial contributions for promoting employment and job creation.

[1] See U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, p. 18-4.

[2] Ibid.

The Maastricht agreement has potentially significant implications for social legislation and for investment concerns. Drafting and adoption of several directives in the social dimension area have been held up due to British opposition. With the United Kingdom's decision to opt out of the social dimension, quicker passage of these measures would be likely. In addition, the passage of legislation implementing these directives by all member states except the United Kingdom could make the United Kingdom more attractive to foreign investors.

However, the legal directorate of the EC Commission has questioned the legality of the social dimension protocol.[3] It currently is unclear whether the EC Commission will take action to challenge the legality of the protocol, but it is possible the EC Commission will challenge the protocol in the European Court of Justice.

Measures Adopted

In October 1991, the Council adopted a directive requiring written work contracts or the equivalent.[4] The directive requires some written proof of a working relationship for all employees working more than 8 hours a week for a total duration exceeding 1 month. The document can be in the form of an actual contract as prescribed by national or local laws, or it can refer to a particular collective bargaining agreement that will be applied. The employer must give the employee a written document with information on the parties' identities, the workplace, the type and category of work, the duration of the employment relationship and the terms for termination, the wages and payment procedures, and any applicable collective bargaining agreement. Expatriate employees are entitled to additional information, such as the duration of the employment abroad and the currency to be used for wage payment. The draft proposal would have required that employers provide workers with the pertinent information within 1 month of the onset of employment. In the directive as adopted, this period is extended to 2 months. The directive must be implemented by June 30, 1993.

The EC Council also recently adopted the directive on the minimum health and safety requirements for workers at temporary or mobile work sites.[5] The final directive contains some minor changes from the draft directive.

[3] U.S. Department of Labor official, conversation with USITC staff, Mar. 20, 1992.

[4] *Council Directive 91/533/EEC on an Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship*, *OJ* No. L 288 (Oct. 18, 1991), p. 32.

[5] COM (91) 117, *OJ* C 112 (Apr. 27, 1991), p. 4 (amended proposal).

Update on Other Measures Addressed in Previous Reports

Worker Information and Consultation

In September 1991, the EC Commission presented a revised proposal of the directive on the establishment of an EWC for the purposes of worker information and consultation.[6] The revised proposal incorporates suggestions made by the European Parliament and seeks to remedy some areas of deep concern voiced by industry representatives.

The revised proposal continues to call for the establishment of an EWC in every "Community-scale undertaking or group of undertakings." The original proposal defined a "Community-scale undertaking" as a company with at least 1,000 employees within the European Community and with establishments employing at least 100 employees in 2 or more member states. The revised version clarifies that the second part of the definition means that the company must employ 100 employees in each of at least 2 member states. Another revision provides that the workforce size thresholds are to be based on the number of employees normally employed during the previous 2 years.

Incorporated into an annex to the revised draft is a list of management proposals addressing the effect of relocation, mergers, reduction in size or closure of companies, and the introduction of new technologies. The revised proposal continues to oblige management to provide the EWC with information concerning, among others items, the structural, economic, and financial situation of the group; forecasts for employment; and new investment prospects, unless the member state's implementing legislative provisions allow companies to withhold information, which, if disclosed, would substantially damage the company's interest. The revised proposal gives some specific examples of what types of disclosure would meet this test. Even as revised, however, the disclosure provisions could be problematic for U.S. companies. The U.S. Industry Coordinating Group (USICG) has noted that these provisions may create confidentiality problems in light of both the Securities and Exchange Commission (SEC) regulations on disclosure of business information and Federal Trade Commission (FTC) rules on certain major business transactions.[7] For example, the SEC regulations provide that divulgence of information to one group requires general disclosure.

How the directive will be based remains a controversial matter. The latest version of the proposal bases the directive on article 100 of the Treaty of Rome, which requires unanimous agreement. In light of the United Kingdom's opposition to the measure,

[6] *OJ* No. C 336 (Dec. 31, 1991), p.11.

[7] See The Brock Group, "The Social Dimension of Europe's Single Market: Need American Business Worry?" (Oct. 1991).

unanimous agreement is unlikely. Industry representatives had hoped that the proposal would be changed from a directive to a nonbinding recommendation.[8]

Other Measures

In April 1991, the EC Commission presented a revised proposal for a directive on the organization of working time, which is aimed at regulating working hours based on health and safety concerns.[9] As revised, the directive provides for a minimum daily rest period of 12 consecutive hours instead of 11 hours and a minimum period of 4 weeks' annual paid vacation. The revised directive specifies groups of workers who would be exempt from the directive's provisions, including security guards, hospital workers, media employees, and employees in transport fields. U.S. industry representatives have pointed out that the exemption provisions are still unclear as to how they would be agreed upon and as to whether some types of employees would be exempt, e.g., newspaper workers.[10] These representatives believe the directive, if passed, would be troublesome to small firms and to larger companies in certain sectors.

In November 1991, the Social Affairs Council reached a common position on the proposed directive governing the protection of pregnant women at work. Italy and the United Kingdom abstained from the vote.[11] The common position states that (1) member states must ban dismissals of pregnant women that are motivated by the fact that the worker is pregnant and (2) employers must justify any dismissal of pregnant women. All 12 member states agreed on a political declaration annexed to the directive, guaranteeing "adequate" remuneration for pregnant women during their 14-week maternity leave. Average remuneration during pregnancy in the EC amounts to 75 percent of wages, which the Council adopted as a target for member states.

At present, there is a wide range of maternity pay and leave arrangements among member states.[12] EC industry representatives, whose views on this directive would apply with equal force to U.S. companies operating in the EC, believe it would be advantageous to have a common rule.[13] They are concerned, however, that the benefits proposed are more generous, and the protections more restrictive, than those of several member states, where the directive is likely to add to the employer's costs.[14] In addition, the proposed directive leaves it up to the individual member states to decide whether individual companies or the state should pay the costs of maternity pay. Thus, industry representatives expect a battle in several countries over the allocation of these costs.[15]

In June 1991, the Commission presented its draft proposal for the protection of workers' rights in subcontracting situations.[16] The stated purpose of the intended directive is to ensure that workers performing work in a member state, other than that in which their employing company is located, are subject to the same core terms and conditions of employment that companies located in that host member state would be required to apply to their workers. The proposed directive lists a number of such employment terms that are to be addressed, including working days and hours; minimum paid holidays; minimum wages and overtime; conditions under which workers are hired through temporary agencies; workplace safety and health; protective measures for pregnant women and children; sexual equality; and freedom from racial discrimination. The rules are to be legislated by each member state as a potential host country, through statutes, administrative provisions, or binding collective bargaining conventions.

New Initiatives

Collective Redundancies

The term "collective redundancies" refers to company actions requiring layoffs or reductions in the workforce. Under a 1975 EC directive governing collective redundancies, an employer must send a written explanation to workers' representatives and consult with them prior to making a redundancy.[17]

With the increase in cross-border restructuring of companies resulting from the creation of the single market, the EC Commission expects a growing number of redundancies that may not be adequately covered by the 1975 directive.[18] In this regard, the EC Commission is concerned that the existing EC requirements do not require employers to consult with employees about layoff decisions when such decisions are made outside the country in which the workers are employed. To address these concerns, the EC Commission, in September 1991, put forth a proposal to amend the 1975 directive.[19]

Under the proposed amendment, the consultation procedures set out in the existing directive would apply whether the layoff decision was made at a local or headquarters level, regardless of the location of the headquarters. Any collective redundancy would be declared null and void if it were made without

[8] U.S. Department of Labor official, conversation with USITC staff, Oct. 29, 1991.
[9] *OJ* No. C 124 (May 14, 1991), p. 8.
[10] Brock Group report.
[11] *European Update*, West Publishing Co., 1991 WL 11753 (D.R.T.), Feb. 1992, p. 49.
[12] Brock Group report.
[13] Ibid., p. 4.
[14] Ibid.
[15] Ibid.
[16] *Proposal for a Council Directive Concerning the Posting of Workers in the Framework of the Provision of Services*, *OJ* No. C 225 (Aug. 30, 1991), p. 6.
[17] Directive 75/129/EEC, *OJ* No. L 48.
[18] *European Report*, West Publishing Co., 1991 WL 11753 (D.R.T.), Feb. 1992, p. 69.
[19] *OJ* No. C 310 (Nov. 30, 1991), p. 5.

consultation and negotiation with workers in the member state where the affected workers are based.

The proposed directive is based on article 100 of the Treaty of Rome, which requires unanimity. If adopted, member states do not have to transpose all the requirements of the directive directly into national legislation, but they may instead ensure that the requirements are included in collective bargaining agreements applying to workers in that member state.

As presently proposed, the amended directive would likely have extraterritorial effects. Decisions made at the U.S. headquarters of U.S.-owned firms operating in the EC would be subject to the mandatory consultation and negotiation procedures of the directive. U.S. industry representatives have continually, and often effectively, voiced objection to proposed EC labor relations measures that have extraterritorial effect, and undoubtedly will do so with respect to this proposal.

Worker Safety and Health

In September 1991, the EC Commission proposed a regulation establishing a European Agency for Safety and Health at Work.[20] The agency would provide information and expertise in health and safety at work, assist the EC Commission in implementing appropriate action programmes, and organize training for employers, workers, and workers' representatives.

In addition, the EC Commission proposed several new substantive directives governing worker safety and health. A proposed directive for the implementation of minimum health and safety requirements for workers in the extractive industries sets forth requirements for workplaces engaged in mineral exploration and exploitation.[21] The proposal was issued in response to accidents such as the one that occurred at the Piper Alpha platform in July 1988,[22] and addresses working methods, equipment requirements, and provision of sanitary and rest facilities.

Other proposed safety and health directives presented in 1991 concern the minimum requirements for the provision of safety and health signs at work[23] and the protection of workers on board fishing vessels.[24]

In January 1992, the EC Commission presented a draft proposal for the minimum safety and health protection of young people at work.[25] The directive would apply to all people under 18 years, but it would not extend to certain service activities such as babysitting or irregular work in the context of a family business. The proposal bans exposure of young people to harmful chemical and physical agents and high-risk industrial processes. In addition, the draft proposal sets limitations on working hours and night work for young people. If adopted, the directive is not likely to have a great impact, because most member states already impose restrictions compatible with those contained in the draft.[26]

Implementation

Because of the late entry of the social dimension measures into the formal EC 1992 integration process, the implementation date for most directives adopted under the Social Charter action program has not yet been reached. Thus, it is difficult to assess the extent of member-state compliance. It should be noted that, for some of the directives adopted or proposed under the social dimension action program, many of the member states have preexisting legislation in place meeting the requirements of the directives. For example, eight member states—Germany, Greece, Italy, France, Luxembourg, the Netherlands, Portugal, and Spain—have already adopted provisions meeting the requirements of the collective redundancies amendments.[27] For other directives, however, the opposite is true. For example, Luxembourg is the only country that will not have to amend its national legislation to comply with the parameters of the proposed directive concerning the protection of pregnant women at work.[28]

With regard to implementation of employment and social policy directives predating the social dimension action program, the transposition rate[29] at the end of 1990 was 82 percent.[30] Italy and the Netherlands had the poorest records.[31]

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[20] *OJ* No. C 271 (Oct. 16, 1991), p. 3.

[21] COM (90) 663, *OJ* No. C 32 (Feb. 7, 1991), p. 7; COM (91)493 *OJ* No. C 46 (Feb. 20, 1992), p. 50 (amended proposal).

[22] *European Report*, West Publishing Co., 1991 WL 11753 (D.R.T.), Feb. 1992, p. 50.

[23] *OJ* No. C 53 (Feb. 28, 1991), p. 46; *OJ* No. C 279 (Oct. 26 1991), p. 13 (amended proposal); common position reached, Nov. 1991.

[24] COM (91) 466 (Nov. 1991) (10th individual directive within framework directive 89/391/EEC).

[25] *European Report*, West Publishing Co., 1991 WL 11753 (D.R.T.), Feb. 1992, p. 51.

[26] Ibid., p. 53.

[27] *European Report*, West Publishing Co., 1991 WL 11753 (D.R.T.), Feb. 1992, p. 69.

[28] Ibid., p. 48

[29] Transposition is the process by which an EC member state complies with an EC directive by passing a national law or rule that achieves the result sought by the directive.

[30] *Eighth Annual Report to the European Parliament on Commission Monitoring of Community Law*, COM (91) 321, *OJ* No. C 338, p. 33 (Dec. 31, 1991).

[31] Ibid.

PART III
EC INTEGRATION AND COMMITMENTS IN THE URUGUAY ROUND AND OECD

CONTENTS

PART III
EC INTEGRATION AND COMMITMENTS IN THE URUGUAY ROUND AND OECD

Developments Covered in Previous Reports

In September 1986, the 108 participants in the Uruguay Round of multilateral trade negotiations set out a threefold objective to liberalize world trade in the Ministerial Declaration inaugurating the Round. Their aim was (1) to halt and reverse trade protectionism and remove trade distortions; (2) to preserve and advance the principles underlying the open trading system of the General Agreement on Tariffs and Trade (GATT), the organization overseeing the Round; and (3) to develop a more open multilateral trading system—all in order to promote greater economic growth and development.[1]

In February 1986, the EC single market program also embarked upon a goal of trade liberalization and is proceeding within the context of existing Community obligations in the GATT and other international fora. These commitments already govern EC interaction with its trading partners, including mechanisms by which to resolve problems that may arise from the EC 1992 program. They may expand in the future with conclusion of the Uruguay Round, where GATT Contracting Parties are negotiating to improve and expand multilateral disciplines in such areas as agriculture, government procurement, agricultural and industrial standards, intellectual property rights, and services.

Previous reports have examined the overlap between the EC single market program and the Uruguay Round negotiations to identify areas of potential conflict, as well as of mutual support, between EC aims to dismantle trade barriers in the single market and similar U.S. aims in the Round. If successful, the Uruguay Round should yield stronger guarantees for fair treatment and market access in the EC for U.S. exporters and investors.

Because the internal market initiative affects a wide array of economic activity, past volumes of this report have also addressed certain EC commitments that were required for the creation of a single market but fall outside of the trade sphere of the Uruguay Round of multilateral trade negotiations held under GATT auspices. For example, EC commitments to the instruments of economic liberalization in the Organization for Economic Cooperation and Development (OECD) have been examined for their compatibility with EC 1992 objectives.[2]

[1] GATT, *Ministerial Declaration on the Uruguay Round*, MIN.DEC, Sept. 20, 1986.

Developments During 1991

Overview

The EC single internal market and the Uruguay Round initiatives are prone to overlap on a number of subjects, given similar goals of economic liberalization. However, to what degree these two efforts will reinforce one another or conflict when adopted in their entirety will not be known until both are finally agreed upon and implemented. Originally scheduled to conclude in December 1990, the Uruguay Round negotiations have continued with technical-level talks through 1991, to be followed by political-level negotiations that were still ongoing as of spring 1992. With 25 proposals still outstanding as of mid-February 1992,[3] the EC single market initiative appears likely to overshoot its present deadline of December 31, 1992, as well.

During 1991, there were several developments in areas addressed by both the EC 1992 program and the Uruguay Round. In government procurement negotiations associated with the Round, progress was made toward expanding existing multilateral disciplines to the fields of energy, services, and telecommunications—all subjects of EC internal market legislation. In bilateral and multilateral talks on standards, progress was made by strengthening internationally agreed rules on standards development and conformity assessment procedures that could help defuse frictions over differences in how the EC and other countries currently develop these rules.[4] Concerning intellectual property rights, the EC single market program appears to be strengthening EC authority over member-state practices in this field, underpinning an active EC role in the Uruguay Round and largely supporting similar U.S. aims in the Round regarding intellectual property.

[2] See U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989, and followup reports. Previous volumes treated topics such as trade compensation and dispute settlement separately as GATT issues distinct from the Uruguay Round, whereas, now, they have become increasingly bound up with the results of the Round. In addition, previous issues have addressed possible conflicts between the EC single market and such other EC commitments as to friendship, commerce, and navigation treaties (FCNs); international human rights treaties; the EC "broadcast directive"; bilateral memoranda of understanding (MOUs); and the EC approach to certification and testing. The EC broadcast directive is also addressed in this report as a case study in chapter 3, and the EC global approach to standards, certification, and testing is treated in chapter 5.

[3] EC Commission, "Présentation par le président Jacques Delors du programme de travail de 1992 et du paquet Delors II devant le parlement européen," press release, SPEECH/92/12, Feb. 12, 1992.

[4] Nonetheless, the United States and the EC remain divided over several key issues, preventing final agreement on these aspects of the negotiations.

Government Procurement

GATT Government Procurement Code

Background

While not formally part of the Uruguay Round, negotiations covering government procurement continue in tandem with the Round and overlap considerably with government procurement negotiations taking place as part of the completion of the EC single internal market. The Agreement on Government Procurement, or Government Procurement Code, was originally negotiated as part of the 1973-79 Tokyo Round of multilateral trade talks and entered into force January 1, 1981, along with a number of other "codes" that apply only to those signatories who accept the stricter disciplines embodied in these codes. As of December 1991, the 12 signatories of the Agreement on Government Procurement include Austria, Canada, Finland, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland, and the United States, as well as the EC, which signed on behalf of 9 member states: Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.[5]

The code established for the first time an international framework of rights and obligations concerning the trade aspects of government procurement.[6] Its purpose is to increase international competition in procurement of goods by central government entities[7] through increased transparency in the laws, regulations, procedures, and practices concerned with central government procurement and to ensure that these rules neither protect domestic products or suppliers from international competition nor discriminate against foreign suppliers or products.[8] The agreement also contains detailed rules covering invitations and awards of tenders for government procurement contracts.[9]

While important for providing disciplines not in effect previously, the original code was nonetheless incomplete. For one, it covered contracts for goods[10] but not for services. For another, government procurement for supplies in the energy, telecommunications, and transportation sectors was excluded from the code because EC negotiators during the Tokyo Round did not have jurisdiction over the utility procurement procedures of its member states.[11]

In view of the incomplete nature of the original code, negotiators included a provision[12] to resume negotiations within 3 years to improve code procedures and expand its coverage. Negotiations resumed in 1984, and a revised agreement went into effect February 14, 1988, incorporating a "Protocol of Amendments" to the code.[13] With the 1988 revision, the agreement now covers government procurement contracts for goods valued at a minimum of 130,000 Special Drawing Rights (SDR)[14] (as opposed to the SDR 150,000 "threshold" value applied to contracts in 1981)[15] and also applies now to leasing contracts.[16]

Status of Procurement Code Negotiations

Negotiations continue with several aims: (1) to extend the code to remaining government bodies, including central government agencies not yet covered, subcentral government agencies, and certain public utilities; (2) to expand the code to the procurement of services, including construction contracts;[17] (3) to improve the current procedural provisions;[18] and (4) to consider how to treat the "nationalization" and "privatization" of entities previously covered under the Agreement on Government Procurement.[19] A particular goal of the United States is to extend the code to cover the previously "excluded sectors" encompassing European publicly operated utilities, especially the telecommunications and electrical utilities.[20]

By 1991, key signatories had reached agreement in principle (1) to extend the code to cover as much

[5] GATT, "Report (1991) of the Committee on Government Procurement," L/6940, Dec. 27, 1991, and United States Trade Representative, *The Agreement on Government Procurement: Participation of State and Local Governments*, brochure (Sept. 1991), p. 6.

[6] Ibid., p. 2.

[7] Ibid., p. 3.

[8] GATT, *GATT Activities 1990*, Geneva, June 1991, p. 118.

[9] Ibid.

[10] The Government Procurement Code covers purchasing contracts for goods, for which it uses the term "supplies." The code does not cover contracts for "works," the term for procurement contracts involving construction, for example, of public roads or buildings, and it does not cover services, a primary aim of the current negotiations.

[11] Information provided by U.S. Department of Commerce, International Trade Administration, Office of Multilateral Affairs, Nov. 1988.

[12] Under art. IX:6(b) of the code.

[13] GATT, *Agreement on Government Procurement-revised text*, 1988, Geneva, 1988, p. 3.

[14] Special Drawings Rights are a monetary unit of account calculated by the International Monetary Fund based upon a basket of currencies. The value of the SDR in terms of the U.S. dollar is determined as the sum of the dollar values based on market exchange rates, of specified quantities of the Deutsche mark, French franc, Japanese yen, British pound, and the U.S. dollar. In Dec. 1991, SDR 130,000 was equivalent to US$176,000.

[15] GATT, *Agreement on Government Procurement-revised text, 1988*, Geneva, 1988.

[16] U.S. House of Representatives, Committee on Ways and Means, *Overview and Compilation of U.S. Trade Statutes*, 1991 ed., WMCP:102-5, Mar. 25, 1991, p. 123.

[17] United States Trade Representative, *The Agreement on Government Procurement: Participation of State and Local Governments*, brochure (Sept. 1991), p. 13.

[18] Louis J. Murphy, Director, Office of Multilateral Affairs, U.S. Department of Commerce, "The Uruguay Round Trade Negotiations and the States: A Speech to the National Conference of State Legislatures," Dec. 12, 1991.

[19] GATT, *GATT Activities 1990*, Geneva, 1991, p. 120.

[20] Murphy, "The Uruguay Round Trade Negotiations and the States."

remaining central government procurement as possible; (2) to expand the code to cover services contracts, including construction contracts; and (3) to include as much subcentral[21] government procurement as possible, encompassing municipal and regional procurement as well.[22]

Signatories have also reached provisional agreement on several procedural improvements in the text of the code. These were agreed to in the run-up to the originally scheduled conclusion of the Uruguay Round talks in December 1990. One improvement is to better discipline "offset" practices.[23] Another is to establish a local bid protest system, similar to those in effect for U.S. Government and a number of State government procurement systems, whereby a signatory can challenge procurement contract awards.[24] However, negotiations to help expand membership, for instance to include developing countries, have so far proven inconclusive.[25]

The remaining hurdle to final agreement in the negotiations on the Government Procurement Code involves coverage issues of (1) subcentral government procurement and (2) procurement in the telecommunications field.[26]

State Government Procurement

European negotiators, with those from the European Community foremost, have been quite interested in expanding the code to cover subcentral procurement, for instance, by the U.S. States.[27] The EC has offered to cover 100 percent of its central and subcentral procurement above the current code threshold, challenging other participants to respond.[28] A number of signatories have indicated their willingness to include subcentral procurement on a reciprocal basis.[29]

[21] Governments below the first level of government; for example, U.S. State governments follow the Federal Government level.

[22] USTR, *The Agreement on Government Procurement: Participation of State and Local Governments*, p. 13.

[23] Practices that require bidders to offer concessions that provide additional economic benefits to the domestic economy of the country awarding the procurement contract.

[24] USTR, *The Agreement on Government Procurement: Participation of State and Local Governments*, p. 13.

[25] Information provided by U.S. Department of Commerce, International Trade Administration, Office of Multilateral Affairs, Oct. 1990.

[26] GATT, "Draft Agreement on Government Procurement-Chairman's paper on his own Responsibility without Prejudice to Negotiator's Positions," Committee on Government Procurement, GPR/64, Dec. 20, 1991. In addition to telecommunications, the chairman also cites the heavy electrical equipment and urban transport sectors as examples of utilities subject to government regulation whose coverage must be resolved. See also Murphy, "The Uruguay Round Trade Negotiations and the States."

[27] Ibid.

[28] USTR, *The Agreement on Government Procurement: Participation of State and Local Governments*, p. 13.

[29] Ibid.

The United States has responded that it would offer to cover central government procurement not currently covered under the code, as well as a significant portion of procurement that was volunteered by its States.[30] The United States has also made clear that such coverage of U.S. State procurement depends firmly on the inclusion of European utilities under the code.[31] Moreover, U.S. negotiators have advised other participants that coverage of subcentral procurement under the code would not mean the end of all preferences to U.S. suppliers, nor would it mean that States would follow Federal procurement procedures. They point out that as other code signatories continue to maintain what are no doubt considered "vital exceptions," so may subcentral governments require similar exceptions, such as the "Buy American" preferences presently in effect at the Federal and some State government levels.[32]

Of specific concern to EC negotiators are the "Buy American" provisions in the United States that grant price preferences to goods meeting U.S. local-content definitions[33] and, particularly, State and local measures that are often stricter than Federal ones.[34] According to the EC, there are at least 40 Buy American provisions at the Federal level, a minimum of 37 at the State level, and many more at the local government level.[35] The EC has found that Buy American programs grant price preferences from 6 percent to 50 percent for products with a minimum 50-percent domestic content.[36] Moreover, local preferences were scheduled to rise to 60 percent by October 1, 1991.[37]

Buy American restrictions are often applied to procurement in the transportation sector, where the price preference in the mass transit and highway construction sector is 25 percent rather than the standard 6 percent.[38] Buy American restrictions apply to other sectors as well, including paper for currency, securities, and passports; hand and measuring tools; and procurement by the National Science Foundation, the Voice of America Program, and the Small Business Administration.[39]

[30] Ibid.

[31] Murphy, "The Uruguay Round Trade Negotiations and the States."

[32] Ibid.

[33] GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10, Mar. 18, 1991, p. 94.

[34] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.4.

[35] GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10, Mar. 18, 1991, p. 94.

[36] Ibid.

[37] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.4.

[38] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.4. For actual legislation, see the "Buy American Act," U.S. Code 1982, Title 41, sec. 10a *et seq.*

[39] Ibid. Procurement in these sectors, however, is unlikely to have a significant impact on U.S.-EC trade, in contrast to that in the transportation sector.

Buy American programs at the state and local level are increasingly important, in the EC view, because of the diminished opportunities for Federal procurement due to Federal budgetary constraints.[40] In this regard, the EC notes, State and local procurement represents 70 percent of total U.S. public procurement.[41]

Telecommunications Procurement

Negotiations to improve the GATT Agreement on Government Procurement have also highlighted a salient distinction between the telecommunications sector of the United States and that of other participants, most notably the European Community. A principal aim of the talks is to expand code coverage to sectors excluded from the original code negotiations, encompassing primarily national utilities in the energy, transportation, and telecommunications fields.

Differences arise in the discussions over telecommunications. Some participants continue to have government-owned or -affiliated telecommunications monopolies, such as the European Post, Telephone, and Telegraph (PTT) agencies or Telecommunications Administrations (TA). By contrast, a private-sector monopoly serviced the United States until the deregulation of U.S. telecommunications markets and the breakup of American Telephone and Telegraph (AT&T) in the 1980s, followed by a number of private firms that presently provide telecommunications services and equipment.[42] Nonetheless, the EC has indicated its belief that regulations and other factors can still lead to a de facto monopoly market position by private U.S. firms in the telecommunications field.[43]

In the past, both the United States and the EC have raised complaints about the other's procedures and practices concerning telecommunication procurement, approval, testing and certification, and standards for new products or methods.[44] The United States has also disputed EC provisions for value-added services in telecommunications.[45] In the current negotiations, the United States has pressed for an expansion of the code's coverage to the PTTs to open market access to firms other than to national suppliers. This would allow U.S. firms access to EC markets on the same basis as that which European firms have in the United States.[46] National suppliers still dominate member-state procurement in the EC. For its part, the EC still finds entry into the U.S. telecommunications market difficult, where technical problems, lack of compatibility, long established markets, indirect discrimination, and "Buy American" policies still exist.[47]

EC Internal Market Procurement[48]

Background

Liberalization of government procurement markets is also a major EC internal market effort. EC procurement directives now cover all public contracts: supplies, works, and services by central (national), regional, and local government authorities. The EC rules have been extended under the Utilities Directive to cover entities—including private sector ones under certain conditions—operating in the four utility areas of energy, telecommunications, transport, and water, which comprise the "excluded sectors" previously left out of procurement negotiations. These sectors were omitted in the initial negotiation of the GATT Government Procurement Code because the EC Commission lacked jurisdiction over member states in this area at the time—jurisdiction it is now gaining through its internal market program.

The Utilities Directive has given the EC Commission new jurisdiction over member states to seek nondiscriminatory, competitive access to procurement contracts in the excluded sectors of non-EC countries under the GATT Government Procurement Code.[49] EC officials stress Community willingness to open markets for procurement to third-country suppliers if agreements for comparable access to third-country markets can be negotiated.[50]

EC Procurement Preference and "Reciprocity"

One hurdle remaining in the discussions with EC negotiators over access for third-country suppliers to Community procurement markets is an EC provision in the Utilities Directive stipulating certain local content requirements applicable to contracts not covered by the GATT Government Procurement Code.[51] Under this directive, the procuring entities covered would include EC member state PTT monopolies, water companies, rail transport companies, airports, maritime ports, gas and electric utilities, and gas and oil explorers.[52]

[40] GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10, Mar. 18, 1991, p. 95.
[41] Ibid.
[42] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.5.1.
[43] GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10, Mar. 18, 1991, p. 103.
[44] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.5.
[45] Ibid.
[46] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.5.1.
[47] Ibid.
[48] See also the chapter on public procurement in this report and previous reports for further information.
[49] EC Commission, "III. Distortions at Company Level, B. Government Procurement," *Uruguay Round*, (C1/AB/DOC/GOVERN 18.7), July 30, 1991; and U.S. Government Task Force on the EC Internal Market; and *EC 1992: An Assessment of Economic Policy Issues Raised by the European Community's Single Market Program*, May 1990, p. 19.
[50] Ibid., p. 20.
[51] "Public Procurement," *European Update*, West Publishing Co., 1990 WL 259688 (D.R.T.), WestLaw, Dec. 13, 1991, par. 6.1.6.
[52] U.S. Government Task Force on the EC Internal Market, *EC 1992: An Assessment of Economic Policy Issues Raised by the European Community's Single Market Program*, May 1990, p. 19.

However, while the directive accords nondiscriminatory treatment to suppliers of EC products, it permits procuring agencies to reject a non-EC product, defined in the directive as a product that derives more than 50 percent of its value from outside the EC. Moreover, the directive requires procuring agencies to grant preference to EC products if they fall within a 3-percent price margin,[53] unless a lower technical or operational quality would result.[54]

Although it has adopted both the original 1980 GATT Procurement Code and its 1988 revision, the EC has interpreted these rules narrowly and put forth additional rules based on a notion of "reciprocity."[55] Local-content provisions in the Utilities Directive that discriminate against non-EC suppliers will only be lifted in exchange for "reciprocal treatment" of EC suppliers in those non-EC markets. Thus, the economic benefits resulting from liberalization of Community procurement markets will not be spread automatically to non-EC countries, but will be limited solely to those non-member countries that have some form of negotiated agreement in place, bilateral or multilateral, to ensure their access to these benefits deriving from the single market.

The EC has sought to gain this reciprocal treatment for its member states through multilateral means by offering in the GATT Procurement Code to open its public procurement market to non-EC suppliers in exchange for the same access in their markets.[56] The EC proposal to open its public procurement market to non-EC suppliers on a multilateral basis could circumvent possible difficulties arising from extending, on the one hand, access to the EC's excluded sectors to some countries while, on the other hand, attempting to restrict access to others until a "reciprocal treatment" agreement is established.

The EC offer would add a bid protest procedure as well as extend current code rules that apply open tendering and nondiscrimination to central government procurement to also cover State, regional, and local government procurement.[57] The EC proposal would extend code procedures to cover public and private firms tendering for contracts in the energy, telecommunications, transport, and water sectors.[58]

Currently, negotiations under way to expand the code are blocked over the differences between public- and private-dominated procurement in the telecommunications sector, as outlined above. However, should U.S. and EC negotiators resolve the issue of comparable access to one another's telecommunications sectors, the possibility for bilateral conflict over the denial of full access for non-EC products until "reciprocal" access rights are established could be averted by extending such access to code signatories in the context of the GATT Procurement Code.

[53] Ibid.
[54] "Public Procurement," *European Update*, West Publishing Co., 1990 WL 259688 (D.R.T.), WestLaw, Dec. 13, 1991, par. 6.1.6.
[55] "Public Procurement," *European Update*, West Publishing Co., 1990 WL 259688 (D.R.T.), Dec. 13, 1991, par. 8.2.
[56] Ibid.
[57] Ibid.
[58] Ibid.

Standards[59]

GATT Code on Technical Barriers to Trade

Background

The Agreement on Technical Barriers to Trade, known as the Standards Code, was concluded under the Tokyo Round of multilateral trade negotiations as a means to ensure that procedures and systems relating to standards, testing, and certification of products do not lead to arbitrary or unjustified trade barriers in the name of product safety or performance.[60] To accomplish this, the code sets out obligations (1) to provide imported goods with the same treatment as domestic goods with similar standards; (2) to use procedures for notifying, developing, or amending mandatory standards in a transparent manner so as not to discriminate against imported products; and (3) to adopt international standards when appropriate.[61]

Status of Standards Code Negotiations

Provisional agreement among participants in the Uruguay Round negotiations to revise the Standards Code was announced in October 1990.[62] The draft text (1) expands disciplines on procedures for product testing, including conformity assessment procedures and procedures involving processes and production methods (PPMs); (2) improves the transparency of standards formulation by regional standards groups, such as the European organizations CEN and CENELEC; and (3) improves the transparency of national technical regulations being adopted.[63]

State and Local Standards

The issue remaining in the Standards Code negotiations is the applicability of the code's obligations to governments.[64] The choice is between (1) making central government notification mandatory for trade-related technical standards required by local governments and (2) allowing central governments a "best endeavors" approach that would permit them to "take such reasonable measures as may be available to

[59] See also chapter on "Standards, Testing, and Certification" in this report and previous reports for further information.
[60] GATT, *GATT Activities 1990*, Geneva, June 1991, p. 120.
[61] Information provided by U.S. Department of Commerce, International Trade Administration, Office of Multilateral Affairs, Nov. 1988.
[62] GATT, *News of the Uruguay Round*, NUR42, Oct. 24, 1990.
[63] Murphy, "The Uruguay Round Trade Negotiations and the States."
[64] Ibid.

them to ensure their territories comply" with the provisions in the revised code, but not obligate them to do so.[65]

In negotiations over extending coverage beyond the code's central-government obligation, the EC has pressed for coverage of U.S. State and local governments while the United States has sought to include such regional standards bodies as CEN and CENELEC (see section below) that are beyond central government obligation in Europe. Concerning coverage of U.S. State and local governments under the code, U.S. negotiators have argued against imposing the code's obligations on these subcentral governments because no clear need for the requirements has been demonstrated to justify the additional administrative burden they would place on these subcentral authorities.[66] The United States has offered for the Federal Government to notify state regulations that significantly affect international trade[67] as a compromise to address the concerns of participants such as the EC that coverage of standards measures would not be balanced without including those beyond the central level.

Code of Good Practice

Initial U.S. efforts to gain access to the standards development process in the European standards bodies led to discussions on this issue in the Standards Code negotiations and later formulation of a code of good practice to address this concern. The code would require advance notification of standards development activity that could affect international trade and would also require that interested parties be provided opportunities to comment on draft standards. Regional and other private bodies that develop standards would be encouraged to abide voluntarily by the code of good practice. However, as written,[68] the code rejects the "best efforts" approach supported by the United States, instead requiring that State- and local-level technical standards be notified as part of the revised Standards Code if they affect international trade.

Although the code may encourage European standardization efforts to be more transparent, the United States has been alone[69] in opposing the current text in favor of a voluntary code of good practice to be developed in the International Standards Organization (ISO) and the International Electrotechnical Committee (IEC), nongovernmental bodies with broad private-sector participation. U.S. opposition is fueled by the concern of what private-sector standards developers see as the prescriptive nature of the code of good practice and the regulatory role of government over their activities that it could imply.

Standards Development in the European Community

An essential element to expanding the EC internal market is to ensure that technical standards for products do not impede the flow of traded goods, just as the GATT Standards Code seeks the same unrestricted flow of goods at a broader multilateral level among code signatories. To achieve this goal, the EC Commission first set about to harmonize requirements among member states through mandatory standards set by Commission directives for products for which an EC-wide standard was feasible.[70]

EC "New Approach" For Standards Development

The growing number of complicated cases where standards could not be harmonized directly by EC Commission legislation led in 1985 to the "new approach" for harmonizing intra-EC standards, whereby the Commission would set out only certain essential elements to be included under national member-state standards.[71]

European Standards Bodies

The EC Commission relies on several nongovernmental standards bodies in Europe to develop technical standards consistent with the essential requirements, standards that provide in turn a preferred means of demonstrating conformity with Commission legislation.[72] These entities include (1) CEN for technical standards generally; (2) CENELEC for electrotechnical standards; and (3) ETSI for telecommunications standards.[73] As regional European entities, however, their membership is restricted to European standards bodies[74] and excludes non-European representation.[75]

Testing and Certification

The EC also restricts the acceptance of test data and certification of conformity with technical standards from bodies outside the EC.[76] Under the EC system,

[65] GATT, *Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, MTN.TNC/W/35/Rev.1, Dec. 3, 1990, p. 44.

[66] Murphy, "The Uruguay Round Trade Negotiations and the States," p. 24.

[67] Ibid., p. 25.

[68] GATT, "Code of Good Practice for the Preparation, Adoption and Application of Standards", *Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, MTN.TNC/W/FA, Dec. 20, 1991, p. G-22.

[69] Deputy United States Trade Representative Julius L. Katz, letter to Barbara Boykin, chairman, Industry Functional Advisory Committee on Standards, Oct. 1, 1991.

[70] U.S. Government Task Force on the EC Internal Market, *EC 1992: An Assessment of Economic Policy Issues Raised by the European Community's Single Market Program*, May 1990, p. 11.

[71] Ibid.

[72] Ibid.

[73] Ibid.

[74] Ibid.

[75] The 7 member states of the European Free Trade Association (EFTA) are included as well as the 12 EC member states.

[76] U.S. Department of Commerce, "EC Testing and Certification Procedures under the Internal Market Program," Nov. 1, 1991, pp. 6-7.

required tests and certificates can only be performed by centers within the Community designated by the member states.[77] The EC has indicated that an exception would be made for non-EC entities that operate under a mutual recognition agreement negotiated between the EC and the entities' government or if the body is acting in a subcontracting capacity to an EC-designated entity.[78]

EC Standards "Reciprocity"

Mutual Recognition Agreements

The EC has said that the conclusion of mutual recognition agreements[79] will be conditioned on the provision of broadly equivalent opportunities for EC suppliers to participate in the foreign country's certification systems for the products in question, aiming to ensure similar market access opportunities for the same good in one another's markets.[80] The EC Commission has, on numerous occasions, put forward the general principal of overall reciprocity,[81] which underpins these agreements. Although it does not require identical legislation or "balanced" trade, EC reciprocity does stress retaining negotiating leverage so as not to extend unilaterally "the benefit of its own [EC] liberalization process" to non-EC countries without comparable liberalization.[82]

Some countries have notified EC standards practices to the GATT as technical trade barriers,[83] although the GATT did not consider notification to be by itself proof of barriers to trade.[84] Nonetheless, participants in the GATT Standards Code discussions consider the broad, more open language of the revised agreement on such subjects as conformity testing or reciprocity via mutual recognition agreements to be a successful counter to- the narrower, more explicitly constraining interpretations advanced by the EC during negotiations.

U.S.-EC Standards Discussions

The United States began discussions with the EC in 1989 to ensure that the EC's standards process was open to U.S. companies, with the most recent talks taking place on June 20 to 21, 1991, in Washington, DC. The United States seeks the same access for U.S. firms as EC companies have to the EC standards development process.[85]

At the meeting it was agreed that testing and quality assessment bodies in the United States will be allowed to perform the needed evaluations of U.S. products once the Community's single market program goes into effect, subject to certain conditions.[86] The United States and the EC also agreed to begin preparatory talks for mutual recognition agreements soon. Such agreements would allow not only U.S. test results to be used in the EC when the 1992 program becomes effective but also for EC participation in the U.S. certification process.[87]

Some U.S. manufacturers feel disadvantaged by their exclusion from the European standards bodies,[88] and are also concerned that the EC harmonization effort stresses EC standardization at the expense of international standards.[89] The United States has urged that the EC direct the European standards bodies to permit non-EC experts to participate in EC standards development, a view endorsed by the international standards bodies.[90] As a consequence, the European standards bodies have sought to improve international cooperation.[91]

The EC recognizes the challenge of achieving full adoption of its standards program by the single market deadline set at the end of 1992.[92] Greater convergence of the EC standards process with the international

[77] Ibid.

[78] Ibid.

[79] Three principles were established by the EC Council for concluding mutual recognition agreements concerning standards: (1) the competence of the third-country bodies must be on a par with the EC bodies; (2) recognition is confined to the bodies' activities designated in the agreement; and (3) a balanced situation concerning the ensuing advantages in matters of conformity assessment should be established for the products in question should the EC wish recognition of its own bodies. See GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10A, Mar. 18, 1991, pp. 93-94.

[80] Saunders, "EC Testing and Certification Procedures," p. 28.

[81] GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10A, Mar. 18, 1991, p. 11.

[82] Ibid., citing EC Commission, *Europe - World Partner, Questions and Answers*, Oct. 19, 1988.

[83] Such as restricted membership in its standards-setting bodies, costly procedures for testing and certification, refusal to accept foreign test data, or overspecified standards.

[84] GATT, *Trade Policy Review Mechanism: The European Communities*, C/RM/G/10A, Mar. 18, 1991, p. 94. The GATT Trade Policy Review Mechanism (TPRM) report on the European Communities indicates that the institutional context may account for some of the concerns underlying these notifications, with public ownership in many European countries inducing greater mandatory standardization than where private sector activities predominate, such as the telecommunications sector in the United States.

[85] U.S. Department of Commerce, "Secretary Mosbacher Reports to Business on EC 1992 and the Outlook for Europe," *Business America*, Feb. 25, 1991, p. 3.

[86] U.S. Department of Commerce, International Trade Administration, Single Internal Market Information Service, *Europe Now - A Report*, Sept. 1991, p. 1.

[87] Ibid.

[88] Stephen Cooney, *EC-92 - New Issues and New Developments*, National Association of Manufacturers, Apr. 1991, p. 25.

[89] Ibid., p. 5.

[90] Cooney, *EC-92 - New Issues and New Developments*, p. 26.

[91] CEN, for example, is preparing a description of its entire technical program, and the American National Standards Institute (ANSI) has opened an office in Brussels with access to both the EC Commission and CEN/CENELEC. See Cooney, *EC-92 - New Issues and New Developments*, p. 27.

[92] Commissioner Bangemann said in January 1991 that some "850 European standards must be adopted between now and 1 January 1993—which is roughly one a day." See Cooney, *EC-92 - New Issues and New Developments*, p. 24.

process for the development of technical standards could result from additional streamlining of EC standardization policy.[93] Such convergence would effectively provide greater access for the broader membership of the international bodies in the development of European standards and could help alleviate U.S. concerns about access to European standards decisionmaking. Coupled with independent efforts by the ISO and IEC to develop their own code of good practice, the convergence could defuse the present conflict over the code of good practice currently incorporated in the draft text of the GATT Standards Code.

Intellectual Property

GATT Negotiations on Intellectual Property Rights

The United States has been working closely with the European Community during the Uruguay Round negotiations to negotiate improved rules for intellectual property protection.[94] Both appear to share a common perspective in their approach to establishing this protection, given the strong enforcement provisions set out in the initial EC proposal in April 1990.[95] Subsequent proposals in the Round followed along the lines of this EC proposal for intellectual property rights[96] and, by the time the Uruguay Round negotiating group on trade-related intellectual property rights (TRIPs) put forward its draft agreement to ministers at the Brussels ministerial meeting in December 1990, that draft contained language addressing the issues of major importance to the United States, in particular, standards of protection and enforcement provisions.[97]

In 1991, two further meetings of the TRIPs negotiating group took place following the Brussels ministerial meeting.[98] Negotiators agreed that progress at the technical level in the TRIPs negotiations was as complete as was possible before the December 1991 deadline set by the GATT Director-General Arthur Dunkel.[99] The issues left by the negotiators to be resolved at the political level included (1) whether patent protection under the draft agreement should extend to all goods; (2) what disciplines will be placed on compulsory licensing of dependent patents; (3) whether "neighboring rights" (those of sound recording producers, broadcasters, and performers) will be included under the agreement; and (4) the nature of obligations under the agreement concerning appellations of origin, the denominations used to identify the geographical origin of wines and other processed foods.[100] Other topics at issue, as 1991 drew to a close, encompassed what is considered patentable; government use of patents; the definition of public communication for copyright purposes; and test data exclusivity.[101]

While working together with the EC toward establishing greater protection for intellectual property rights in the Uruguay Round,[102] the United States has nonetheless closely monitored the development of an EC-wide intellectual property regime.[103] Until an Uruguay Round agreement or an EC-wide regime comes into force, the United States remains concerned in general over the weak and variable legislation and enforcement of intellectual property provisions by some EC member states and, in particular, about inadequate Community protection for copyrighted products, which has resulted in videocassette and compact-disk piracy.[104]

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[93] Such as proposed in the Commission's Green Paper on standards policy from October 1990.

[94] USTR, *1991 National Trade Estimate Report on Foreign Trade Barriers*, Mar. 29, 1991, p. 74.

[95] The EC proposal included that (1) GATT Contracting Parties should provide effective and adequate protection of intellectual property rights to reduce trade distortions and barriers, (2) protection of intellectual property rights should not create new barriers, and (3) domestic laws should provide this protection. See GATT, *News of the Uruguay Round*, NUR35, Apr. 19, 1990, pp. 12-14.

[96] GATT, *News of the Uruguay Round*, NUR35, Apr. 19, 1990, pp. 8-10; and U.S. Government Task Force on the EC Internal Market, *EC 1992: An Assessment of Economic Policy Issues Raised by the European Community's Single Market Program*, May 1990, p. 27.

[97] Office of the President of the United States, *Report to the Congress on the Extension of Fast Track Procedures*, Mar. 1, 1991, annex, p. 45.

[98] Louis J. Murphy, "Negotiators Are at Work in Geneva to Conclude the Uruguay Round," *Business America*, Dec. 28, 1991.

[99] Director-General Dunkel released on Dec. 20, 1991, a draft final act (the so-called "Dunkel text") that set out for the first time a comprehensive text of all Uruguay Round negotiations, including trade-related intellectual property rights. The Dunkel text sets new or higher standards for protection of the intellectual property rights embodied in patents, copyrights, trademarks, trade secrets, and in semiconductor chips, as well as enforcement of these standards both within countries and at their borders. It would protect patents for 20 years from filing, limit compulsory licensing, and provide protection for product and process patents for products such as pharmaceuticals. The text would provide copyright protection to sound recordings for 50 years, give computer software the same protection as that given to a "literary work," and extend exclusive rental rights to each. Developing countries would have a 10-year transition period before they must comply with the text's patent and copyright provisions.

[100] Murphy, "Negotiators Are at Work," p. 7.

[101] Information provided by U.S. Department of Commerce, International Trade Administration, Office of Multilateral Affairs, Nov. 1991.

[102] Elements of the EC single market proposal on intellectual property have been advanced in the Uruguay Round negotiations, largely to the satisfaction of the United States. However, the United States and the EC are not in full agreement over issues related to neighboring rights and to appellations of origin. See chapter on "Standards, Testing, and Certification" in this report and previous reports for further information on an EC initiative on geographical designations of origin in 1991.

[103] USITC, *1991 National Trade Estimate Report on Foreign Trade Barriers*, Mar. 29, 1991, p. 74.

[104] "EC-US/Canada Sector Disputes," *European Update*, West Publishing Co., 1991 WL 11670 (D.R.T.), Nov. 28, 1991, par. 3.3.

Development of EC-Wide Rules on Intellectual Property[105]

The formation of the single internal market has provided the EC Commission with an opportunity to establish its competence over the patchwork of member-state rules on intellectual property[106] by establishing Communitywide rules. These rules cover intellectual property rights concerning (1) trademarks, (2) patents, and (3) copyrights, the latter often focusing on "design protection," such as biotechnology inventions, computer programs, and integrated circuits.[107]

Enforcement of intellectual property rights within the Community, however, rests with the member states and their national legislation.[108] Consequently, the EC Commission has concentrated on preventing trade restrictions or discrimination against imported goods caused by national legislation concerning intellectual property.

The removal of trade barriers against goods entitled to this protection is effected at the Community level both through border enforcement by customs authorities against infringements of patented, copyrighted, or trademarked products, as well as through internal enforcement in domestic markets by national enforcement agencies.[109] In the Uruguay Round, negotiations on TRIPs appear to support EC efforts to expand protection of intellectual property rights within the framework of the single market initiative.[110]

However, progress toward a Communitywide regime for protection of intellectual property rights remain incomplete.[111] The EC Commission itself notes that the only instrument concerning intellectual property to be fully transposed or implemented by all member states at the end of 1991 was the directive on the protection of integrated circuits,[112] although the Commission continues to press the Council and member states to finalize and implement Commission proposals. Efforts by the EC Commission to advance its single market program concerning intellectual property rights are currently focused on three key proposals that await adoption concerning (1) Community trademark law, (2) Community patent law, and (3) biotechnological invention and new plant varieties protection.[113]

EC Commitments to the OECD Codes of Liberalization

Background

Following its predecessor, the Organization for European Economic Cooperation (OEEC),[114] the Organization for Economic Cooperation and Development (OECD) came into being in 1960 with three basic aims: (1) to achieve the highest sustainable economic growth and employment among its member countries,[115] consonant with financial stability; (2) to contribute to sound economic expansion in both member and non-member countries; and (3) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.[116]

The OECD provides a forum where the world's 24 industrialized member countries, the decided majority of which are in Europe, meet to discuss the gamut of international macroeconomic and other policy issues and problems in order to find common ground for solutions that will advance economic growth and well-being as set out in the organization's basic aims. In this capacity, the OECD administers several instruments of liberalization that provide guidelines for coordination of member-country economic policy, in particular, policy related to capital movements, invisible operations, and international investment.

In 1961, the OECD Council[117] announced a binding decision that established the OECD Code of Liberalization of Capital Movements and Code of Liberalization of Current Invisible Operations. These codes have provided the framework within which OECD member governments work to reduce restrictions on capital flows and international service-sector activities.[118] The OECD Committee on

[105] See also the chapter on "Intellectual Property" in this report and previous reports for further information.

[106] U.S. Government Task Force on the EC Internal Market, *EC 1992: An Assessment of Economic Policy Issues Raised by the European Community's Single Market Program*, May 1990, p. 27.

[107] U.S. Department of State, "European Communities - Completing the Single Internal Market: Implications for the Uruguay Round of Trade Negotiations," app. H, Sept. 13, 1988, p. 9.

[108] Ibid.

[109] "Intellectual Property," *European Update*, West Publishing Co., 1991 WL 16683 (D.R.T.), July 18, 1991, par. 1.5.

[110] U.S. Dept. of State, "European Communities - Completing the Single Internal Market," p. 9.

[111] U.S. Chamber of Commerce, *Europe 1992 - A Practical Guide for American Business*, Nov. 1991, p. 36.

[112] EC Commission, *Report of the Commission to the Council and the European Parliament on the Implementation of Measures for Completing the Internal Market*, SEC(91) 2491, Dec. 19, 1991, p. 12.

[113] EC Commission, *Completing the Internal Market: An Area Without Internal Frontiers - Progress Report Required by Article 8b of the Treaty*, COM(90) 552, Nov. 23, 1990, p. 14.

[114] Created in 1948 with the purpose of rebuilding and restructuring the economies of Europe after World War II with the help of U.S. Marshall plan aid.

[115] Member countries include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, with Yugoslavia a special status country affiliate.

[116] OECD, *OCDE OECD*, Sept. 1985, p. 4. The three basic aims are taken from article 1 of the OECD Convention.

[117] The body composed of representatives of all member countries under the leadership of the OECD Secretary-General.

[118] OECD, *OCDE OECD*, Sept. 1985, p. 8.

Capital Movements monitors member capital restrictions and recommends their liberalization or removal.[119]

In 1976, the OECD Council set out a Declaration on International Investment and Multinational Enterprises that provides guidelines for international investment practices by multinational firms. Member governments consulted business and trade union advisory bodies with the aim of improving the foreign investment climate so that multinational firms might avoid or minimize difficulties that arise from their investment operations and thereby contribute to social as well as economic progress in their host country. The OECD Committee on International Investment and Multinational Enterprises monitors the Declaration's guidelines, which encompass (1) a code of good practice for multinational firms operating abroad, (2) the national treatment of multinational firms abroad, and (3) incentives and disincentives for international investment.[120]

OECD Codes and GATT Services Talks

In the early 1980s, the OECD hosted numerous discussions among the industrialized countries of the potential issues concerning trade in services[121] for which no multilateral disciplines in the GATT existed. As the services sector has grown rapidly as a component of the world economy, the OECD has completed extensive work focused on services—financial services in particular.[122] A current concern among some OECD members that arises out of this work on financial services is the possibility that ongoing financial liberalization efforts undertaken through the Codes of Liberalization in the OECD might be slowed if signatories to these codes await parallel liberalization of financial services in the Uruguay Round talks[123] to set up a General Agreement on Trade in Services (GATS).[124]

This concern appears to have materialized already with OECD efforts to liberalize the audiovisual and telecommunications sectors.[125] The United States is wary that OECD efforts concerning the financial sector may be even more sensitive to this "chilling" effect.[126] The United States, for example, has found the OECD codes to be an effective tool to influence financial directives drawn up as part of the EC single market effort. With the possibility of augmenting this influence through extension of the OECD Codes to other sectors, the United States has suggested that the Uruguay Round services negotiations should actively take the OECD Codes of Liberalization into account in some way[127] to ensure the continued liberalization effort undertaken in these codes.[128]

Another facet of this concern involves the implications of granting unconditional Most-Favored-Nation (MFN) treatment for financial services under the GATS. In the past, OECD countries have liberalized their financial sectors among themselves solely for their own benefit, unilaterally conceding any residual benefits to non-OECD members without seeking concessions in return. However, the creation of a GATS framework in the Uruguay Round may lead some OECD members to now withhold further financial liberalization in exchange for reciprocal concessions from non-OECD governments.[129] This issue remained unresolved at the end of 1991 as participants in the Uruguay Round services talks continued to negotiate schedules of national commitments as part of the overall framework on services and its annexes including movement of

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[119] USITC, *Operation of the Trade Agreements Program, 39th Report, 1987*, USITC publication 2095, July 1988, p. 3-4.

[120] USITC, *Operation of the Trade Agreements Program, 36th Report, 1984*, USITC publication 1725, July 1985, p. 80. In 1984, the member-country governments worked out a decision in the OECD forum to control transfrontier movements of hazardous waste. OECD policy guidance on other issues is also found in the Privacy and Transborder Data Flow Guidelines, the Standardization Schemes and Codes, and the Export Credits Arrangement. See USITC, *Operation of the Trade Agreements Program, 35th Report, 1983*, p. 113.

[121] Office of the President of the United States, *Report to the Congress on the Extension of Fast Track Procedures*, Mar. 1, 1991, annex, p. 52.

[122] Ibid.

[123] The reason that the draft of the General Agreement on Trade in Services presented at the Brussels ministerial meeting in December 1990 did not cover financial services is that agreement on content and scope was lacking. The United States and the EC supported the general approach of a proposal tabled at the meeting by Canada, Japan, Sweden, and Switzerland that has become the basis for further negotiation. The proposal would allow countries to retain autonomy over their monetary policy, to impose exchange controls, and to limit government retaliation for a dispute

[123]—*Continued*
involving financial services to that sector. The EC took the position that participants should adopt a standstill agreement concerning exchange controls and that financial service liberalization should be on a "reciprocity" basis. See "Banking and Financial Services," *European Update*, West Publishing Co., 1991 WL 11696 (D.R.T.), Jan. 16, 1992, par. 8.4, and Office of the President of the United States, *Report to the Congress on the Extension of Fast Track Procedures*, Mar. 1, 1991, annex, p. 57.

[124] U.S. Department of State Telegram, "OECD: Relationship between the GATT Negotiations on Trade in Services and the OECD Codes," Sept. 14, 1991, Paris, message reference No. 27208, par. 2.

[125] Ibid., par. 9.

[126] Ibid., par. 9.

[127] Ibid., par. 10.

[128] In a June 1990 discussion of the compatibility of the OECD Codes with a Uruguay Round GATS, the EC sought to avoid a two-speed effort at services liberalization, in which liberalization in the OECD moved faster than through a GATS. The EC emphasized the need to ensure sufficient developing-country participation in a GATS, if need be by specific development-oriented provisions as inducement. One inference drawn by the United States from this position of avoiding faster liberalization in the OECD Codes was a weakening of EC interest in preserving future OECD liberalization efforts following the Uruguay Round. U.S. Department of State Telegram, "OECD: Second Tripartite Group Studies Compatibility of OECD Instruments of Liberalization With Uruguay Round Services Negotiations," June 22, 1990, Paris, message reference No. 18861, par. 23.

[129] Ibid., par. 8.

personnel, financial services, telecommunications, and air transport.

Remaining considerations about extending the benefits but not the disciplines of the OECD codes to nonmember countries[130] through unconditional MFN treatment of financial services are that, not only might nonsignatories undergo financial failures or bad experiences because of undisciplined regulation of their financial markets, but that the confidence in the efficacy of the codes among current signatories might be undermined as well.[131]

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[130] Such as developing countries with insufficiently developed financial sectors or regulations governing the sector.

[131] U.S. Department of State Telegram, "OECD: Relationship Between the GATT Negotiations on Trade in Services and the OECD Codes," Sept. 14, 1991, Paris, message reference No. 27208, par. 8.

APPENDIX A
REQUEST LETTER

Congress of the United States

Washington, DC 20515

October 11, 1988

The Honorable Anne Brunsdale
Acting Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Madam Chairman:

A development of major international importance and of increasing interest to the House Committee on Ways and Means and the Senate Committee on Finance is the economic integration of the European Community (EC) into a single market, scheduled to be in place by the end of 1992. The form and content of the policies, laws, and directives removing economic barriers and restrictions and harmonizing practices among the EC member states may have a significant impact on U.S. trade and investment and on U.S. business activities within Europe, overall and in particular sectors. The process of creating a single market may also affect progress and results in the ongoing Uruguay Round of GATT multilateral trade negotiations.

In order to provide a basic understanding of these developments, their significance, and possible effects, on behalf of the Committees we are requesting that the U.S. International Trade Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States.

The Commission's report should focus on the following aspects of the proposed single market, in particular:

1. The anticipated changes in laws, regulations, policies, and practices of the EC and individual member states that may affect U.S. exports to the EC and U.S. investment and business operating conditions in Europe, such as changes in customs requirements and procedures, government procurement practices, investment policies, services directives, and tax systems. The analysis should include consideration of the relationship and differences between policies and principles, such as sectoral reciprocity, proposed for the EC single market and current EC or

member state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

2. The likely impact of such changes on major sectors of U.S. exports to the EC, such as agricultural trade and telecommunications.

3. An assessment of whether particular elements of the single market may be trade liberalizing or trade discriminatory with respect to third countries, particularly the United States.

4. The relationship and possible impact of the single market exercise on the Uruguay Round of GATT multilateral trade negotiations.

We understand that the European Community intends to accomplish its goal of a unified market through the adoption of some 286 Internal Market Directives, which currently are in various stages of preparation, and that a text is not yet available to the public for approximately one-fourth of the proposed directives.

Given the great diversity of topics which these directives address, and the fact that the remaining directives will become available on a piecemeal basis, the Commission should provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with follow-up reports as necessary to complete the investigation as soon as possible thereafter. Shortly after receipt of this letter, Commission staff should consult with staffs of our Committees to agree on the topics to be covered in the initial report.

In preparing these reports, the Commission should seek views and input from the private sector. The Commission should also cooperate with and utilize existing information available from U.S. Government agencies to the fullest extent possible.

Sincerely yours,

Lloyd Bentsen
Chairman
Committee on Finance

Dan Rostenkowski
Chairman
Committee on Ways and Means

APPENDIX B
FEDERAL REGISTER NOTICES

LTFV imports of generic cephalexin capsules from Canada. Accordingly, effective October 27, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-423 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 4, 1988 (53 FR 44676). The conference was held in Washington, DC, on November 16, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 1988. The views of the Commission are contained in USITC Publication 2143 (December 1988), entitled "Generic Cephalexin Capsules from Canada: Determination of the Commission in Investigation No. 731-TA-423 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29293 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 13, 1988 of a request from the Committee on Ways and Means of the United States House of Representatives and the Committee on Finance of the United States Senate, the Commission instituted investigation No. 332-267 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States. The Committee requested that the Commission investigation focus in particular on the following:

1. The anticipated changes in laws, regulations, policies, and practices of the EC and individual member states that may affect U.S. exports to the EC and U.S. investment and business operating conditions in Europe, such as changes in customs requirements and procedures, government procurement practices, investment policies, service directives, and tax systems. The Committees requested that the analysis include consideration of the relationship and differences between policies and principles, such as sectoral reciprocity, proposed for the EC single market and current EC or member state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

2. The likely impact of such changes on major sectors of U.S. exports to the EC, such as agricultural trade and telecommunications.

3. An assessment of whether particular elements of the single market may be trade liberalizing or trade discriminatory with respect to third countries, particularly the United States.

4. The relationship and possible impact of the single market exercise on the Uruguay Round of GATT multilateral trade negotiations.

The Committees requested that the Commission provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with follow up reports as necessary.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the investigation contact either Mr. John J. Gersic at 202-252-1342, or Mr. David R. Konkel at 202-252-1451.

For information on legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 11, 1989, and continuing as required on April 12, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5:00 p.m., March 28, 1989. Post-hearing briefs may be submitted no later than April 26, 1989.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 26, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

By order of the Commission.

Issued: December 15, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29291 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-279]

Certain Plastic Light Duty Screw Anchors; Commission Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Mitchell W. Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53(h) and 210.58(a) of the Commission's Interim

§ 207.22 of the Commission's rules (19 CFR § 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 8, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written submissions. Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 20, 1989. In addition, any person who has not entered an appearance as a party to the investigation, may submit a written statement of information pertinent to the subject of the investigation on or before November 20, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than November 24, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 15, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-22212 Filed 9-19-89; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Scheduling of followup reports.

SUMMARY: Following receipt on October 13, 1988, of a request from the Committee on Ways and Means of the United States House of Representatives and the Committee on Finance of the United States Senate, the Commission instituted investigation No. 332-267 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States. The Committees requested that the Commission provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with followup reports as necessary to complete the investigation. Notice of institution of the investigation and scheduling of a hearing was published in the **Federal Register** of December 21, 1988 (53 DR 51328).

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989; copies of the report "The Effects of Greater Economic Integration within the European Community on the United States" (Investigation 332-267, USITC Publication 2204, July 1989) may be obtained by calling 202-252-1809 or from the Office of the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

Followup reports will be issued approximately every 6 months. Each will summarize the previous report and EC single market directives that become available after the cutoff date of the previous report. The followup reports will have a format similar to the original report.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For further information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the second report should be received by the close of business on November 30, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: September 13, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-22210 Filed 9-19-89; 8:45 am]

BILLING CODE 7020-02-M

New Steel Rails From Canada (Final); Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is threatened with

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)), as amended, 53 FR 33041 (Aug. 29, 1988)).

[2] Chairman Brunsdale, Vice Chairman Cass, and Commissioner Lodwick dissenting.

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid existing rights including but not limited to any right-of-way, easement, or lease of record.

(3) Mineral estates will be transferred with the surface on both the non-Federal and Federal lands.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Salmon District Office of the Bureau of Land Management, Highway 93 South, Salmon, Idaho 83467.

For a period of 45 days, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the Idaho State Director, BLM, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: March 23, 1990.

Kathe Rhodes,

Acting District Manager.

[FR Doc 90-7659 Filed 4-3-90; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-438 (Final)]

Limousines from Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 29, 1990, the Commission received a letter from petitioner in the subject investigation (Southampton Coachworks, Ltd., Farmingdale, NY), withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning limousines from Canada (investigation No. 731-TA-438 (Final)) is terminated.

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 30, 1990.

[FR Doc. 90-7808 Filed 4-2-90; 9:20 am]

BILLING CODE 7020-02-1

[Investigation No. 337-TA-309]

Certain Athletic Shoes With Viewing Windows; Decision Not To Review an Initial Determination

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a motion for leave to file an amended complaint in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1116. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: (202)-252-1000. Hearing-impaired individuals are advised that infomation on this matter can be obtained by contacting the Commission's TDD terminal at (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on January 16, 1990. The notice of investigation was published in the **Federal Register** on January 23, 1990. (55 FR 2421-2). On February 9, 1990, complainant Autry Industries, Inc., filed a motion (Motion No. 309-1) for leave to file an amended complaint. On Feburary 21, 1990, respondent Reebok International Ltd. filed a repsonse in opposition to the motion, and the Commission investigative attorney filed a response indicating no opposition to the motion. On February 23, 1990, the presiding ALJ issued an ID (Order No. 3) granting complainant's motion. No petitions for review or agency comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53-210.55 (19 CFR 210.53-210.55, as amended).

Issued: March 26, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-7711 Filed 4-3-90; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing and deadline for submissions in connection with second follow-up report.

SUMMARY: The Commission has commenced work on the second of a series of follow-up reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, *The Effects of Greater Economic Integration Within the European Community on the United States*. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in follow-up reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The second follow-up report will follow a format similar to that of the earlier reports. However, the second follow-up report will contain, in addition, new chapters on R & D and technology and an analysis of the impact of EC integration efforts on three U.S. industries—automobile, telecommunications, and chemicals/pharmaceuticals. Persons having an interest in these areas or industries in particular, or any of the matters covered by the reports, may be interested in participating in the Commission's June 21, 1990, public hearing and/or in making written submissions in accord with the procedures set forth below.

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989. The first follow-up report was sent to the Committees on Friday, March 30, 1990. Copies of either the initial report, *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation 332-267, USITC Publication 2204, July 1989) or the first follow-up report (Investigation 332-267, USITC Publication 2268, March 1990) may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The second follow-up report will be sent to the Committees on September 28, 1990.

EFFECTIVE DATE: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on June 21, 1990. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5 p.m., June 7, 1990. Post-hearing briefs may be submitted no later than July 5, 1990.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the second follow-up report should be received by the close of business on July 6, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing inpaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: March 28, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-7709 Filed 4-3-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Modified Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Modified Consent Decree in *United States* v. *City of New Bedford* has been lodged with the United States District Court for the District of Massachusetts. The modified consent decree addresses alleged violations by the City of New Bedford, MA of the 1987 Consent Decree.

The proposed Modified Consent Decree revises various parts of the 1987 Consent Decree, including the facility's planning schedules for the secondary wastewater treatment plant and combined sewer overflow ("CSO") abatement projects. The Modified Consent Decree also requires New Bedford to pay to the United States stipulated penalties in the amount of $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of New Bedford*, D.J. Ref. 90-5-1-1-2823.

The proposed Modified Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Modified Consent Decree may also be examined at the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Modified Consent Decree may be obtained in person or by mail from the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $5.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-7655 Filed 4-3-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. The Gillette Co., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Civil Action No. 90-0053-TFH.

The Complaint of the United States, filed January 10, 1990, alleged that the acquisition by The Gillette Company ("Gillette") of the Wilkinson Sword wet shaving razor blade businesses of Eemland Management Services BV ("Eemland") outside the 12-nation European Community ("E.C.") violated section 7 of the Clayton Act, 15 U.S.C. 18. The non-E.C. businesses included the wet shaving razor blade business of

Bureau of Land Management

[WY-040-01-4111-16]

ock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: November 13, 1990, 9 a.m. until 4:30 p.m. and November 14, 1990, 8 a.m. until 12 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

November 13, 1990:

1. Tour of BLM public lands in the Green River Resource Area. Tour topics include: Coal Bed Methane Proposals; Proposed Bridger Mine Expansion; and the Natural Corrals ACEC.

November 14, 1990:

1. Introduction and opening remarks.
2. Review of minutes from last meeting.
3. Review of tour topics.
4. Minerals Program activities briefing: Coal Bed Methane Proposals; Oil and Gas Activities; and Trona Expansion including Brine Proposals.
5. Green River Resource Area Resource Management Plan update.
6. Highway 28 Farson Fence update.
7. Big Piney/LaBarge Coordinated Activity Plan update.
8. Update of Cumberland Grazing Allotment Management Plan.
9. Wild Horse Program update.
10. FY 91 Budget update.
11. Public comment period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 12 p.m. on November 14, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the preceding address by November 9, 1990. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 90-25063 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW72253]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

October 15, 1990.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72253 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 [30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW72253 effective June 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 90-25064 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL TRADE COMMISSION

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: International Trade Commission.

ACTION: Scheduling of deadline for submissions in connection with the third followup report.

SUMMARY: The Commission has commenced work on the third in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, "The effects of Greater Economic Integration Within the European Community on the United States." The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the Federal Register of December 21, 1988 (54 FR 51328), and notice of the procedure to be followed in followup reports was published in the Federal Register of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989. The first followup report was sent to the Committees on Friday, March 30, 1990, and the second followup report was sent on September 28, 1990. Copies of either the initial report "The Effects of Greater Economic Integration Within the European Community on the United States" (Investigation 332-267, USITC Publication 2204, July 1989), the first followup reports (Investigation 332-267, USITC Publication 2268, March 1990), or the second followup report (Investigation 332-267, USITC Publication 2318, September 1990) may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The third followup report will be sent to the Committees on March 29, 1991.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the third followup report should be received by the close of business on January 11, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available

for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810

Issued: October 16, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-25106 Filed 10-23-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-462 (Final)]

Benzyl Paraben From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-462 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of benzyl p-hydroxybenzoate (benzyl paraben), provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 12, 1990 and the Commission will make its final injury determination by February 5, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge, (202-252-1183), Office of Investigations, U.S International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of benzyl paraben from Japan are being sold in the United States at less than fair value within the meaning of seciton 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 29, 1990, by ChemDesign Corp., Fitchburg, MA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that the establishment of an industry in the United States was being materially retarded by reason of imports of the subject merchandise (55 FR 34626, August 23, 1990).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commisison, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addreses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompnay the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that is has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 3, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rule (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 18, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 10, 1990. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 13, 1990, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is December 13, 1990. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due December 14, 1990. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12886 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-267]

Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fourth followup report.

SUMMARY: The Commission has commenced work on the fourth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the Federal Register of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the Federal Register of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, and March 29, 1991. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The fourth followup report will be sent to the Committees on April 30, 1992.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Kim Frankena at (202) 252-1265 or Ms. Joanne Guth at 202-252-1264.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fourth followup report should be received by the close of business on December 12, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: May 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12769 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-39 (Sub-No. 16X)]

St. Louis Southwestern Railway Co.—Abandonment Exemption—In Pulaski, Lonoke, and Jefferson Counties, AR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by St. Louis Southwestern Railway Company of 35.79 miles of rail line in Pulaski, Lonoke, and Jefferson Counties, AR; subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 1, 1991. Formal expressions of intent to file an offer [1] of financial assistance with 49 CFR 1152.27(c)(2) must be filed by June 10, 1991, petitions to stay must be filed by June 14, 1991, and petitions for reconsideration must be filed by June 24, 1991. Requests for a public use condition must be filed by June 10, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 16X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: May 22, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12749 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31874]

South Dakota Railway Co.; Modified Rail Certificate

On April 26, 1991, the South Dakota Railway Company (SDRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 83.3 miles of line, between milepost 0.0, at a point known as Napa Junction, SD, and milepost 83.3, in Platte, SD, acquired by the State of South Dakota from the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW) after the line was approved for abandonment

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

APPENDIX C
LIST OF EC 1992 INITIATIVES ADDRESSED IN THIS INVESTIGATION

Key to Abbreviations and Symbols Used in Appendix

EC initiative:

Reg = Regulation (binding and directly applicable throughout the EC without any national implementing measures)

Dir = Directive (binding on member states as to the result to be achieved and requires national implementing measures)

Dec = Decision (binding on and applicable to member states or persons addressed and generally requires no national implementing measures)

Rec = Recommendation (a nonbinding request to member states or individuals)

* = Initiative listed in *Report of the Commission to the Council and the European Parliament on the implementation of measures for completing the internal market*, SEC(91)2491 final, Dec. 19, 1991. Certain non-White Paper measures are being considered because of their importance in a single EC market.

Member-state implementation:

B	=	Belgium	FR	=	France	L	=	Luxembourg
G	=	West Germany	GR	=	Greece	NL	=	Netherlands
DK	=	Denmark	IT	=	Italy	P	=	Portugal
S	=	Spain	IR	=	Ireland	UK	=	United Kingdom

I = Implementing measures notified by member state to the EC Commission.

N = Not notified as implemented under or incorporated into national law.

F = EC Commission infringement proceeding underway for failure to implement or failure to implement measure correctly.

D = Derogation (e.g., exemption from implementation deadline).

\- = National implementation measure is not required or applicable.

Note.—The implementation status of adopted initiatives was obtained mostly from the "Eighth Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law, 1990," COM(91) 321 final, Oct. 16, 1991, and Report of the Commission to the Council and the European Parliament on the implementation of measures for completing the internal market, *SEC(91)2491 final, Dec. 19, 1991. Not all adopted initiatives are listed in these reports and, thus, their status is not readily known (columns in appendix table on member-state implementation are blank). Implementation of the initiatives may not be reflected because the specified deadline for implementation has not arrived, member states may not have completed implementation processes or reported on implementation, or efforts by EC and internal institutions to achieve implementation may be ongoing.*

Table C-1.
List of EC initiatives considered in this investigation

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Public Procurement and the Internal Energy Market													
Enacted:														
88/295-Dir*	Award of public-supply contracts	F	I	I	D	I	D	F	I	I	F	I	I	Implementation 1/1/89.
89/364-Dec	Improve efficiency of electricity use													Applicable 3/4/90.
89/440-Dir*	Award of public-works contracts	I	I	I	D	I	D	F	I	F	F	D	I	Implementation 7/19/90.
89/665-Dir*	Remedies	I		I	I						I		I	Implementation 12/21/91.
90/377-Dir	Transparency of gas and electricity prices													Implementation 7/1/91.
90/531-Dir	Procurement procedures of entities in water, energy, transport, and telecommunications				D		D					D		Implementation 7/1/92.
Proposed:														
(90)207-Dir	Transit of electricity through transmission grids													
(90)220-Reg	Investment in petroleum, natural gas, and electricity													
(90)297-Dir	Remedies in the utilities sector				D		D					D		Implementation 1/1/93.
(90)306-Dir	Restriction on use of natural gas in power stations													
(90)365-Dec	Promotion of energy efficiency in the EC													
(90)372-Dir	Award of public service contracts													Implementation 7/1/93.
(90)425-Dir	Transit of natural gas through the major systems													
(91)347-Dir	Procurement procedures for utilities services				D		D					D		Implementation 7/1/93.
	Financial Sector													
Enacted:														
85/583-Dir	Collective investment undertakings	I	I	I	I	I	I	I	I	I	I	D	I	Implementation 10/1/89.
85/611-Dir*	Undertakings for collective investments	I	I	I	I	I	D	F	I	I	I	I	I	Implementation 10/1/89.
86/566-Dir	Liberalization of certain capital movements	I	I	I	D	I	D	I	I	I	I	D	I	Implementation 2/28/87.
86/635-Dir*	Accounting practices for financial institutions	F	F	I	I	I	F	F	F	F	F	I	I	Implementation 12/31/90.
87/62-Rec*	Monitoring large exposures of credit institutions	-	-	-	-	I	-	-	-	-	-	I	-	Implementation 12/31/88.
87/63-Rec*	Deposit-guarantee schemes for financial institutions	-	-	-	-	I	-	-	-	-	-	-	I	Implementation 1/1/90.
87/343-Dir*	Credit and suretyship insurance	I	I	I	I	I	I	F	I	F	I	I	I	Implementation 7/1/90.
87/344-Dir*	Legal-expenses insurance	I	I	I	I	I	I	F	I	F	I	I	I	Implementation 7/1/90.
87/345-Dir	Requirements for official stock exchange listing													Implementation 1/1/90.
87/598-Rec*	European code of conduct for electronic payment	-	-	-	-	-	-	-	-	-	-	-	-	Addressed to enterprises.
88/220-Dir	Undertakings for collective investments	N	N	I	I	I	I	N	I	I	N	I	I	Implementation 10/1/89.
88/357-Dir*	Second direct non-life insurance	I	I	I	I	I	F	F	I	F	I	I	I	Implementation 12/30/89.
88/361-Dir*	Liberalization of all capital movements	I	I	I	I	I	N	I	I	I	I	N	I	Implementation 7/1/90.
88/590-Rec	Payment systems - card holders and issuers	-	-	-	-	-	-	-	-	-	-	-	-	
88/627-Dir*	Disclosure for changes in major stock holdings	I	F	I	I	I	F	F	I	F	I	I	F	Implementation 1/1/91.
88/1969-Reg	Single facility for medium-term financial assistance													
89/117-Dir*	Annual reporting by credit and financial branches	N	N	I	I	I	N	N	N	N	N	N	N	Implementation 1/1/91.
89/298-Dir*	Requirements for public offer prospectus	I	N	I	I	N	N	N	N	I	I	I	I	Implementation 4/17/91.
89/592-Dir	Coordinates regulations on insider trading													Implementation 6/1/92.
89/646-Dir	Second banking directive													Implementation 1/1/93.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Financial Sector--Continued													
89/647-Dir*....	Solvency ratio for credit institutions.....	N	N	I	F	I	F	F	I	F	I	I	N	Implementation 1/1/91.
90/88-Dir.....	Consumer credit.....													Implementation 12/31/92.
90/109-Rec*....	Transparency of cross-border financial transactions....	-	-	-	-	-	-	-	-	-	-	-	-	
90/211-Dir*....	Mutual recognition of public offer prospectuses.....	I	I	I	N	N	N	N	N	I	I	N	I	Implementation 4/17/91.
90/232-Dir.....	Third directive on motor vehicle liability insurance...				D		D		D			D		Implementation 12/31/92.
90/348-Dir....	Third non-life insurance directive.....													
90/618-Dir.....	Motor vehicle liability insurance; non-life insurance..													Implementation 5/20/92.
90/619-Dir.....	Second life insurance - freedom to provide services....													Implementation 11/20/92.
91/188-Dir....	Own-funds of credit institutions.....													Implementation 1/1/91.
91/308-Dir.....	Money laundering implementation.....													Implementation 1/1/93.
91/675-Dir.....	Insurance Committee.....													Implementation 1/1/92.
Proposed:														
(80)854-Dir....	Insurance contracts.....													
(87)255-Dir....	Mortgage credit.....													
(88)4-Dir.....	Reorganization and winding-up of credit institutions...													
(88)805-Reg....	Guarantees of credit institutions or insurance firms...													
(89)394-Dir....	Bankruptcy regulations for insurance firms.....													
(89)474-Dir....	Accounting requirements for insurance firms.....													
(89)629-Dir....	Investment services.....													
(90)141-Dir....	Capital adequacy of investment and credit firms.....													
(90)344-Dir....	Setting up an Insurance Committee.....													
(90)451-Dir....	Consolidated supervision of credit institutions.....													
(90)567-Reg....	Securities given by credit or insurance institutions...													
(90)593-Dir....	Money laundering.....													
(90)650-Reg....	Application of article 85(3) to insurance.....													
(91)57-Dir.....	Third life assurance.....													
(91)68-Dir.....	Large exposures of credit institutions.....													
	Customs													
Free movement of goods														
Enacted:														
85/347-Dir*....	Duty-free allowance for fuel in bus tanks.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/85.
85/1900-Reg*...	Introduces EC export and import forms.....													Applicable 1/1/88.
85/1901-Reg*...	Single Administrative Document (external trade).....													Applicable 1/1/88.
86/1797-Reg*...	Abolishes certain postal fees.....				D							D		Applicable 1/1/88.
86/3690-Reg*...	Eliminates customs formalities under TIR Convention....													Applicable 7/1/87.
88/2503-Reg....	Customs warehouses.....													Applicable 1/1/92.
88/4283-Reg*...	Introduction of common border posts.....													Applicable 7/1/89.
89/526-Dec.....	International Convention on the Harmonization of Frontier Controls of Goods.....													Applicable 9/12/87.
89/604-Dir*....	Exemption for permanent imports of personal property...	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 7/1/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Customs--Continued												
Free movement of goods--Continued														
Enacted--Continued														
89/617-Dir.....	Units of measurement.....													Applicable 5/15/89.
89/1292-Reg....	Movement of goods for temporary use in another state...													Applicable 1/1/91.
89/4046-Reg....	Security to ensure payment of a customs debt.....													Applicable 7/1/90.
90/474-Reg*....	Abolishes lodgement of the transit advice note.....													Implementation 1/1/93.
90/504-Dir.....	Release of goods for free circulation.....													Applicable 6/29/90.
90/1715-Reg....	Information from customs on classification of goods....													Applicable 6/29/90.
90/1716-Reg....	Persons liable for payment of a customs debt.....													Applicable 1/1/92.
90/2561-Reg....	Customs warehouses.....													Applicable 9/26/90.
90/2684-Reg....	German unification.....													Applicable 1/1/93.
90/2726-Reg....	Community transit.....													Applicable 3/1/91.
90/2920-Reg....	Implements and simplifies EC transit procedure.....													Applicable 11/1/90.
90/3185-Reg....	Outward processing.....													Implementation 7/1/91.
91/341-Dec.....	Vocational training of customs officials (Matthaeus)...													
91/342-Dir.....	Inspection of goods carried between Member States.....													
91/456-Reg.....	Common definition of the concept of the origin of goods.....													Applicable 1/1/93.
91/664-Reg.....	EEC-EFTA common transit procedure.....													Applicable 3/29/91.
91/717-Reg.....	Single Administrative Document (internal trade).....													
91/718-Reg.....	Movement of goods within the Community.....													Applicable 1/1/92.
91/720-Reg.....	Customs control processing of goods.....													Applicable 7/1/91.
91/3648-Reg....	Introduction of common border posts.....													Applicable 1/1/92.
91/3716-Reg....	Transition safeguards for goods movement from Spain and Portugal.....													
91/3717-Reg....	Goods to be processed by customs before entering circulation.....													
Proposed:														
(85)224-Dir....	Easing of border controls on intra-EC borders.....													
(85)467-Reg....	Correct application of customs and agricultural laws...													
(86)383-Dir....	Duty-free admission of fuel in commercial vehicles.....													
(88)297-Dir....	Temporary importation of motor vehicles.....													
(89)384.....	Autonomous suspension of customs duties.....													
(90)71-Reg.....	EC customs code and temporary import arrangements.....													
(90)xx-Reg.....	Statistical classification of economic activities.....													
(90)203-Reg....	EC use of TIR and ATA carnets.....													
(90)354-Reg....	Goods sent for temporary use in other member states....													
(90)356-Dir....	Physical inspections regarding carriage of goods.....													
(90)423-Reg....	Statistics on intra-EC trade in goods.....													
(90)453-Dir....	Control of the acquisition and possession of weapons...													
(91)97-Reg.....	Community Customs Code amending (90)71.....													
(91)105-Reg....	Frontier controls of road and inland waterway transport.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Customs--Continued													
Free movement of persons														
Enacted:														
85/348-Dir.....	Exemption from turnover taxes, as amended by 88/664.....	F	I	I	I	I	I	F	I	-	I	I	I	Implementation 7/1/89.
85/368-Dec*....	Comparability of vocational training qualifications.....	-	-	-	-	-	-	-	-	-	-	-	-	
85/432-Dir*....	Coordinates provisions in the field of pharmacy.....	F	I	I	I	I	I	F	I	-	I	I	I	Implementation 10/1/87.
85/433-Dir*....	Mutual recognition of diplomas in pharmacy.....	F	I	I	I	I	D	I	I	I	I	I	I	Implementation 10/1/87.
85/434-Dec*....	Advisory committee on pharmaceutical training.....	-	-	-	-	-	-	-	-	-	-	-	-	
86/365-Dec*....	Cooperation in training in technology (COMETT).....	-	-	-	-	-	-	-	-	-	-	-	-	Report 4/11/90.
86/457-Dir*....	Training in general medical practice.....	I	I	I	I	I	I	I	I	-	I	I	I	Impl. 1/1/88-1/1/90.
86/653-Dir*....	Self-employed commercial agents.....	F	I	I	F	I	I	I	D	F	I	I	D	Implementation 1/1/90.
89/48-Dir*.....	Mutual recognition of higher education diplomas.....	F	N	I	I	N	F	F	I	F	F	I	I	Implementation 1/1/91.
89/438-Dir.....	Diplomas for goods haulage/road passenger operators.....													Implementation 1/1/90.
89/594-Dir.....	Mutual recognition of diplomas in medicine.....													Implementation by 5/8/91.
89/595-Dir.....	Mutual recognition of diplomas for nurses.....													Implementation by 10/13/91.
89/601-Rec.....	Training of health personnel in the matter of cancer.....													Action program launched.
89/657-Dec.....	Vocational training/technological change (Eurotecnet).....	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 1/1/91.
89/663-Dec.....	Mobility of university students (Erasmus).....	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 1/1/91.
89/684-Dir.....	Vocational training for drivers with dangerous goods.....													Applicable various dates.
89/2332-Reg....	Social security benefits (for persons moving in EC).....													Applicable various dates.
89/3427-Reg....	Social security benefits (residence of families).....													Applicable 1/15/86.
90/233-Dec.....	Trans-European mobility for university studies.....													Applicable 7/1/90.
90/267-Dec.....	Continuing vocational training (FORCE).....													Applies 1/1/91-12/31/94.
90/364-Dir.....	Right of residence.....													Implementation 6/30/92.
90/365-Dir.....	Right of residence for employees and retired persons.....													Implementation 6/30/92.
90/366-Dir.....	Right of residence for students.....													Implementation 6/30/92.
90/1360-Reg....	European Training Foundation.....													Appl. upon site choice.
91/2194-Reg....	Freedom of movement of workers from Spain and Portugal.....													
Proposed:														
(89)612-Dec....	Vocational training (Eurotecnet II).....													
(89)640-Dir....	Blood alcohol concentration for vehicle drivers.....													
(90)76-Dir.....	Increase in tax paid allowances for intra-EC travel.....													
(90)108-Reg....	Freedom of movement for workers within the EC.....													
(90)132-Dec....	Vocational training in audiovisual sector.....													
(90)335-Reg....	Social security benefits.....													
(90)389-Dir....	Recognition of professional education and training.....													
(90)535-Reg....	European Center for Development of Vocational Training.....													
(90)605-Dec....	Training of customs officials (Matthaeus Program).....													
(90)648-Dec....	Advisory committee for continuing education													
(91)316-Reg....	Freedom of movement for workers.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation												Comment
		B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	
	Social Dimension													
Enacted:														
88/364-Dir.....	Protection from certain chemicals and work activity.....													Implementation 1/1/90.
88/383-Dec.....	Information on safety, hygiene, and health at work.....													Applicable 2/24/88.
89/391-Dir.....	Improvements in safety and health of workers at work.....													Implementation 12/31/92.
89/654-Dir.....	Safety and health requirements at work.....					D								Implementation 12/31/92.
89/655-Dir.....	Use of work equipment at work.....													Implementation 12/31/92.
89/656-Dir.....	Use of personal protective equipment at work.....													Implementation 12/31/92.
90/238-Dec.....	"Europe against cancer" program for 1990-94.....													
90/269-Dir.....	Handling heavy loads and risk of back injury.....													Implementation 12/31/92.
90/270-Dir.....	Work with visual display units.....													Implementation 12/31/92.
90/326-Rec.....	European schedule of occupational diseases.....													
90/394-Dir.....	Exposure to carcinogens at work.....													Implementation 12/31/92.
90/641-Dir.....	Protection of workers from ionizing radiation.....													Implementation 12/31/93.
90/679-Dir.....	Exposure to biological agents at work.....											D		Implementation 11/28/93.
91/49-Dec.....	Community actions for the elderly.....													For 1/1/91-12/31/93 period.
91/382-Dir.....	Exposure to asbestos at work, amending 83/477.....													Implementation 1/1/93.
91/533-Dir.....	Proof of work contracts.....													Implementation 6/30/93.
Proposed:														
(89)471.....	EC charter of fundamental social rights.....													
(89)568.....	EC charter of basic social rights for workers.....													
(90)228-Dir....	Atypical work (3 separate proposals).....													
(90)272-Dir....	Improved medical treatment on board vessels.....													
(90)275-Dir....	Safety/health rules at temporary or mobile work site.....													
(90)317-Dir....	Organization of working time.....													
(90)450-Dec....	Year of Safety, Hygiene, and Health Protection.....													
(90)534-Reg....	European Foundation for the Improvement of Living and Working Conditions.....													
(90)581-Dir....	Establishes a European Works Council.....													
(90)663-Dir....	Worker safety/health rights in extractive industries.....													
(90)692-Dir....	Protection of pregnant women in the workforce.....													
(91)117-Dir....	Safety/health rules at temporary or mobile work site, amendment													
(91)228-Rec....	Social protection objectives and policies.....													
(91)493-Dir....	Worker safety/health rights in extractive industries, amendment													
(90)564-Reg....	European agency for safety and health at work.....													
(91)292-Dir....	Laws of member states on collective redundancies.....													
(91)466-Dir....	Health and safety on fishing vessels.....													
(91)230-Dir....	Protection of worker rights in subcontracting.....													
(91)383-Dir....	Minimum requirements for safety/health signs at work.....													
(91)xxx-Dec....	Maastricht summit protocol on the social dimension.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Transport													
Enacted:														
86/4055-Reg*	Maritime transport													Applicable 1/1/87.
86/4056-Reg*	Maritime transport	N	I	I	N	N	I	N	N	N	I	I	I	Applicable 7/1/87.
86/4057-Reg*	Maritime transport													Applicable 7/1/87.
86/4058-Reg*	Maritime transport													Applicable 7/1/87.
87/601-Dir	Air fares between member states	I	I	I	I	I	I	I	I	F	N	N	I	Implementation 12/31/87.
87/602-Dec	Passenger capacity rates and access to routes	F	I	I	F	F	I	I	I	F	F	F	F	Applicable 1/1/88.
87/1674-Reg*	Amends regulations regarding EC transit operations													Applicable 7/1/88.
87/3975-Reg*	Rules on competition in air transport	N	I	I	N	N	I	N	N	N	N	I	I	Applicable 1/1/88.
87/3976-Reg	Air transport, as amended by 90/2344-Reg													Applicable 1/1/88.
88/1841-Reg*	Market access for carriage of goods by road													Applicable 7/1/88.
89/463-Dir	Air service for passengers, mail, and cargo	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 11/1/89.
89/629-Dir	Noise emission from civil subsonic jet planes											D		Implementation 9/30/90.
89/684-Dir	Vocational training for certain drivers of vehicles													Implementation 1/1/95.
89/2299-Reg	Code of conduct for computerized reservation systems													Applicable 8/1/89.
89/4058-Reg	Rates for intra-EC carriage of goods by road													Applicable 1/1/90.
89/4059-Reg*	Non-resident carrier in haulage, as amended by 91/296	I	I	I	I	I	I	I	I	I	I	I	I	Applicable 7/1/90.
89/4060-Reg*	Controls in road and inland waterway transport													Applicable 7/1/90.
90/398-Dir	Vehicles hired without drivers for carriage of goods													Implementation 12/31/90.
90/449-Dec	Joint Committee on Civil Aviation													Applicable 8/1/90.
90/1053-Reg	Market access in international carriage of goods													Applicable 5/1/90.
90/2342-Reg*	Fares for scheduled air services													Applicable 11/11/90.
90/2343-Reg*	Market access and passenger capacity													Applicable 1/11/90.
90/3914-Reg	Market access in international carriage of goods													Applicable 1/1/91.
90/3915-Reg	Market access in international carriage of goods													Applicable 1/1/91.
90/3916-Reg	Measures to be taken in crisis in carriage of goods													Applicable 1/1/91.
91/11-Dec	Research and development in transport (EURET)													Applicable 2/1/91.
91/82-Reg	Ground handling services													Applicable 2/1/91.
91/83-Reg	Computer reservation system for air transport service													Applicable 2/1/91.
91/84-Reg	Passenger and cargo tariffs, airport slot allocation													Applicable 2/11/91.
91/232-Dec	Non-resident road haulage cabotage													Applicable 4/8/91.
91/294-Reg	Operation of air cargo services													Applicable 5/18/91.
91/295-Reg	Denied-boarding compensation system in air transport													Applicable 1/1/93.
91/440-Dir	Development of the Community's railways													Applicable 1/1/92.
91/670-Dir	Personnel licenses for functions in civil aviation													Applicable 1/1/93.
91/719-Reg	TIR and ATA carnets as transit documents													
91/1284-Reg*	Air transport competition													
91/1593-Reg	TIR and ATA carnets													
91/1893-Reg	Public transport by rail, road and inland waterway													
91/3921-Reg	Inland waterway cabotage													
91/3922-Reg	Harmonization of technical rules for air transport													
91/3925-Reg	Baggage controls on intra-Community air and sea service													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation												Comment
		B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	
Transport--Continued														
Proposed:														
(85)90-Reg.....	Rules applicable to maritime transport.....													
(85)610-Reg....	Nonresident carrier transporting goods or passengers.....													
(88)596-Reg....	Nonresident carrier in road passenger-transport.....													
(88)770-Reg....	International carriage of passengers by coach and bus.....													
(89)238-Reg....	Transport infrastructure and transport market in 1992.....													
(89)266-Reg....	Definition of EC shipowner.....													
(89)417-Reg....	Amends 87/3975-Reg on competition in air transport.....													
(89)417-Reg....	Application of article 85(3) to air transport.....													
(89)564-Dec....	Network of high speed trains.....													
(89)564-Dir....	Combined carriage of goods between states.....													
(90)17-Dec.....	Commercial aviation agreements with third countries.....													
(90)100-Reg....	Consultation between airports and airport users.....													
(90)167-Reg....	Amends 87/3975-Reg on competition in air transport.....													
(90)219-Reg....	Transfer of ships from one register to another.....													
(90)260-Reg....	Application of article 85(3) to shipping companies.....													
(90)445-Dir....	Aircraft noise limitations.....													
(90)532-Reg....	Organization of market for carriage of goods by road.....													
(90)652-Dec....	European system for inland goods transport markets.....													
(90)1864-Dir...	Admission to road haulage/passenger transport field.....													
(91)272-Reg....	Competition rules for air transport undertakings.....													
(91)272-Reg....	Agreements in air transport sector.....													
(91)275-Reg....	Licensing of air carriers.....													
(91)275-Reg....	Access for air carriers.....													
(91)275-Reg....	Fares and rates for air services.....													
(91)377-Reg....	Non-resident carriers and domestic road haulage services...													
Competition Policy														
Enacted:														
85/2137-Reg*...	Regulation of European Economic Interest Groups.....	I	I	I	I	I	F	I	I	I	I	I	I	Applicable 7/1/89.
88/301-Dir.....	Competition in telecommunications terminal equipment.....	N	I	N	I	N	I	I	I	I	I	I	N	Implementation by 6/30/90.
89/666-Dir.....	Disclosure requirements for branches of certain firms.....													Implementation 1/1/92.
89/4064-Reg....	Controls concentration between undertakings.....													Applicable 9/21/90.
90/388-Dir.....	Competition in markets for telecommunication services													Adopted 6/28/90.
90/604-Dir.....	Annual/consolidated accounts - exemptions.....													Implementation 1/1/93.
90/605-Dir.....	Annual and consolidated accounts.....													Implementation 1/1/93.
Proposed:														
(84)727-Dir....	Cross-border mergers of public limited companies.....													
(89)268-Reg....	Statute for a European company.....													
(90)416-Dir....	Company law on takeover and other general bids.....													
(90)629-Dir....	Structure of public limited companies (Fifth Dir).....													
(91)174-Dir....	Statue for a European company concerning employees.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Tax Systems													
Enacted:														
85/349-Dir.....	Tax relief on small consignment, amended by 88/663.....	I	I	I	I	I	I	N	I	I	I	I	I	Impl., as amended, 7/1/89.
85/362-Dir*....	VAT exemption for temporary imports of goods other than means of transport, amended by 90/237.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86. Amendment 7/1/90.
86/560-Dir*....	VAT refund to persons not established in the EC.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
88/245-Dec*....	Authorizes France to reduce duty on traditional rum.....	-	-	-	-	-	-	-	-	-	-	-	-	
88/331-Dir.....	VAT exemption on final importation of certain goods.....	I	I	I	I	I	I	F	F	I	I	I	I	Implementation 1/1/89.
89/465-Dir*....	Common VAT scheme - abolition of certain derogations.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/90.
89/683-Dec.....	Derogation for France regarding turnover taxes.....													
90/434-Dir.....	Taxation applicable to mergers, divisions, transfers.....													Implementation 1/1/92.
90/435-Dir.....	Taxation applicable to parent firms and subsidiaries.....													Implementation 1/1/92.
91/453-Dec.....	Advisory Committee on Customs and Indirect Taxation.....													
91/673-Dir.....	Exceptions for Danish and Irish travellers' import allowances													Adopted 12/31/91.
91/680-Dir.....	Common VAT scheme - abolition of fiscal frontiers.....													Adopted 12/31/91.
92/12-Dir.....	Holding, moving, monitoring of products re: excise duty....													
92/218-Reg.....	Cooperation concerning indirect taxation (VAT).....													Adopted 3/23/92.
Proposed:														
(72)225*.....	Excise duties on alcoholic drinks.....													
(79)794-Dir....	VAT/excise duty on vessels, aircraft, and trains.....													
(84)84-Dir.....	Common VAT scheme - deduction eligibility.....													
(85)150-Dir....	Indirect taxes and excise duties on alcoholic drinks.....													
(85)151-Dir....	Excise duties on fortified wine and similar products.....													
(85)319-Dir....	Tax arrangements for carryover of undertakings.....													
(86)742-Reg....	Regulates fees payable to the EC trademark office.....													
(87)139-Dir....	Abolishes indirect taxes on securities transactions.....													
(87)315-Dir....	Common VAT scheme - abolition of certain derogations.....													
(87)321-Dir....	Approximates common VAT rates.....													
(87)324-Dir....	Process for converging VAT and excise duty rates.....													
(87)524-Dir....	Common VAT scheme for small and medium-size business.....													
(88)846-Dir....	Completion of common VAT system.....													
(89)60-Dir.....	Mutual assistance on direct taxation and VAT.....													
(89)526-Dir....	Rates of excise taxes on mineral oils.....													
(90)94-Dir.....	Indirect taxes on the raising of capital.....													
(90)182-Dir....	Abolishes fiscal frontiers.....													
(90)183-Reg....	Administrative cooperation in indirect taxation.....													
(90)431-Dir....	Holding/movement of products subject to excise duties.....													
(90)432-Dir....	Taxes on alcoholic beverages and alcohol in products.....													
(90)433-Dir....	Taxes on manufactured tobacco.....													
(90)434-Dir....	Excise duties on mineral oils.....													
(90)571-Dir....	Taxation of interest and royalties btw. EC parent and subsidiary co.s													
(90)595-Dir....	Losses taken of permanent establishments in different EC states													
(90)2249-Dir...	VAT exemption on final importation of certain goods.....													
(92)36-Dir.....	Excise duties on motor fuels from agricultural sources.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Residual Quantitative Restrictions													
Enacted:														
89/3365-Reg....	Liberalization of national quantitative restrictions.....													
Proposed:														
(89)xxx-xxx....	A single EC motor-vehicle market.....													
	Intellectual Property													
Enacted:														
87/54-Dir*.....	Legal protection of semiconductor products (90/510.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 11/8/90.
89/104-Dir*....	Harmonizes laws relating to trademarks.....			I	I	I								Implementation 12/31/92.
91/250-Dir.....	Legal protection of computer programs.....													
Proposed:														
(84)470-Reg....	EC trademark regulation.....													
(85)844-Reg....	Implements trademark regulations.....													
(86)731-Reg....	Procedural rules for Boards of Appeal on EC trademark.....													
(88)172-Dir....	Green Paper on copyright and challenge of technology.....													
(88)496-Dir....	Legal protection of biotechnological inventions.....													
(90)101-Reg....	Supplementary protection certificate for medicines.....													
(90)347-Reg....	Plant variety rights.....													
(90)509-Dir....	Legal protection of computer programs.....													
(91)276-Dir....	Copyright and other rights concerning satellite broadcasts.													
(90)582-Dec....	Berne Convention.....													
(90)586-Dir....	Rental rights.....													
	Standards													
Agriculture - farm based														
Enacted:														
85/320-Dir*....	Classical swine fever and African swine fever.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/321-Dir*....	African swine fever.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/322-Dir*....	Classical swine fever and African swine fever.....	I	I	I	I	I	I	F	I	I	I	N	I	Implementation 1/1/86.
85/323-Dir*....	Health inspections of meat-production plants.....	I	N	I	I	N	N	I	I	N	N	I	N	Impl. date not yet fixed.
85/324-Dir*....	Health inspection of poultry-production plants.....	N	N	I	I	N	N	I	N	N	N	I	N	Impl. date not yet fixed.
85/325-Dir*....	Medical certification of people handling fresh meat.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/326-Dir*....	Medical certification of people handling poultry meat.....	I	I	I	I	I	I	I	I	I	I	F	I	Partial impl. 1/1/86.
85/327-Dir*....	Medical certification of people handling fresh meat.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/358-Dir*....	Testing for prohibited hormone growth promoters.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/87.
85/397-Dir*....	Production and sale of heat-treated milk.....	I	I	I	F	I	F	I	F	I	I	N	I	Partial impl. 1/1/89.
85/511-Dir*....	Control of foot-and-mouth disease.....	I	I	I	I	I	I	I	I	I	I	F	I	Partial impl. 1/1/87.
85/574-Dir*....	Organisms harmful to plants or plant products.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/87.
86/355-Dir*....	Ethylene oxide as a pesticide, as extended by 89/365.....	I	I	I	I	I	I	-	I	I	I	I	I	Implementation 7/1/87.
86/362-Dir*....	Pesticide residues on cereals.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/30/88.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Standards--Continued													
Agriculture - farm based--Continued														
Enacted--Continued														
86/363-Dir*	Pesticide residues on edible animal products	I	I	I	N	I	F	F	I	F	I	N	I	Implementation 6/30/88.
86/469-Dir*	Examination of animals and fresh meat for residues	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/88.
86/649-Dec*	African swine fever in Portugal (amended by 89/577)	-	-	-	-	-	-	-	-	-	-	I	-	Applicable 12/16/86.
86/650-Dec*	African swine fever in Spain	-	-	-	I	-	-	-	-	-	-	-	-	Applicable 12/16/86.
87/58-Dec*	Eradicating brucellosis, tuberculosis, and leukosis	-	-	-	I	-	-	-	-	-	-	I	-	
87/64-Dir	Health inspection on EC imports of bovine/swine/meat	I	I	I	I	I	I	I	I	I	I	N	I	Implementation 1/1/88.
87/153-Dir*	Guidelines to assess additives in animal nutrition	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/87.
87/230-Dec*	Eradicating classical swine fever													Applicable 7/1/87.
87/231-Dec*	Measures relating to swine fever													Applicable 12/31/87.
87/328-Dir*	Purebred animals of bovine species for breeding	I	I	I	D	I	I	I	F	I	F	I	I	Implementation 1/1/89.
87/486-Dir*	Measures to control classical swine fever	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 12/31/87.
87/487-Dir*	Render and keep EC free from classical swine fever	I	I	-	I	I	I	I	-	I	-	I	-	Implementation 9/22/87.
87/488-Dec*	Financial means for eradicating classical swine fever													Implementation 12/31/88.
87/489-Dir*	Certain measures relating to swine fever	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 12/31/88.
87/491-Dir*	Animal health problems in trade in meat products	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 1/1/88.
87/519-Dir	Pesticide residues on animal feedingstuffs													Implementation 12/31/90.
88/146-Dir*	Prohibits hormone growth promoters in livestock	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
88/288-Dir*	Health problems in trade in fresh meat	F	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/289-Dir*	Imports of bovine animals, swine, and fresh meat	F	I	I	I	I	I	F	I	I	I	I	I	Implementation 1/1/89.
88/298-Dir*	Pesticide residues on fruit, vegetables, and cereals	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/380-Dir*	Marketing of seeds and catalog of plant species	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/90.
88/407-Dir*	Frozen bovine semen (as amended by 90/120-Dir)	I	I	I	I	I	I	F	F	F	I	I	I	Implementation 1/1/90.
88/572-Dir*	Organisms harmful to plants or plant products (wood)	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/657-Dir	Health rules for minced meat and similar preparation													Implementation 1/1/92.
88/658-Dir*	Health rules for intra-EC trade in meat products	F	F	I	F	I	I	F	F	F	F	I	I	Implementation 7/1/90.
88/661-Dir*	Zootechnical standards for porcine breeding animals	F	I	I	D	I	I	I	F	I	F	D	F	Implementation 1/1/91.
89/145-Dec*	Contagious bovine pleuropneumonia in Portugal	-	-	-	-	-	-	-	-	-	-	I	-	
89/214-Rec	Inspecting fresh meat establishments	-	-	-	-	-	-	-	-	-	-	-	-	
89/227-Dir*	Health rules for imports of meat products	F	I	I	F	I	F	F	F	F	F	I	I	Implementation 6/30/90.
89/361-Dir*	Purebred breeding sheep and goats	F	I	I	I	I	I	I	F	F	F	F	F	Implementation 1/1/91.
89/366-Dir*	Marketing of seed potatoes	-	-	-	-	-	I	I	-	-	-	-	-	Implementation 3/31/89.
89/437-Dir*	Hygiene and health problems regarding egg products													Implementation 12/31/91.
89/439-Dir*	Organisms harmful to plants or plant products	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/90.
89/455-Dec*	Pilot projects for the control of rabies	I	I	I	I	I	I	I	I	I	I	I	I	
89/556-Dir*	Trade in embryos of domestic bovine animals	F	I	I	F	I	I	F	F	F	I	F	I	Implementation 1/1/91.
89/575-Dec	Inspections in third countries on seed-producing crops (amends 85/355, as do 88/322 and 89/532)													
89/[illegible]-Dir*	Application of legislation on veterinary matters	N	N	I	N	I	N	N	I	N	N	N	I	Implementation 7/1/91.
89/610-Dec	Reference methods and list of national reference labs													
89/662-Dir	Veterinary checks in intra-EC trade						D							Implementation 12/31/91.
90/113-Dir	Organisms harmful to plants and plant products													
90/168-Dir*	Organisms harmful to plants and plant products	I	I	I	I	I	F	I	I	F	I	I	I	Implementation 1/1/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - farm based--Continued														
Enacted--Continued														
90/208-Dec.....	Contagious bovine pleuropneumonia in Spain.....													
90/217-Dec*....	Eradication of African swine fever in Sardinia.....	-	-	-	-	-	-	N	-	-	-	-	-	
90/218-Dec.....	Administration of Bovine Somatotropin (BST).....													
90/242-Dec*....	Eradication of brucellosis in sheep and goats.....	-	-	-	I	I	I	N	-	-	-	I	-	
90/422-Dir.....	Enzootic bovine leukosis.....													Impl. 7/1/90 and 10/1/90.
90/423-Dir.....	Control of foot-and-mouth disease.....													Implementation 1/1/92.
90/424-Dec*....	Expenditure in the veterinary field.....													Applicable 6/26/90.
90/425-Dir.....	Veterinary and zootechnical checks in intra-EC trade.....													Adopted 6/26/90.
90/426-Dir.....	Animal health - third-country imports of horses.....													Implementation 1/1/92.
90/427-Dir*....	Zootechnical/genealogical rules for trade in horses.....	N	N	N	I	N	N	I	N	N	N	N	N	Implementation 7/1/91.
90/428-Dir*....	Trade in horses intended for competition.....	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 7/1/91.
90/429-Dir*....	Semen of porcine species animals.....													Implementation 12/31/91.
90/495-Dec*....	Eradication of infectious hemopoietic necrosis (IHN).....	N	N	I	I	I	N	N	I	N	N	I	I	Adopted 9/24/90.
90/539-Dir.....	Trade in poultry and hatching eggs.....													Implementation 1/1/92.
90/642-Dir.....	Pesticide residues for fruit and vegetables.....													Implementation 12/31/92.
90/675-Dir*....	Principles governing veterinary checks on EC imports.....													Implementation 12/31/91.
91/27-Dir.....	Organisms harmful to plants/plant products (10th Dir).....													Implementation 4/1/91.
91/52-Dec*.....	Contagious bovine pleuropneumonia in Portugal.....													Implementation 1/25/91.
91/67-Dir.....	Health conditions regarding aquaculture animals.....													Implementation 1/1/93.
91/69-Dir.....	Amends 72/462 regarding ovine and caprine animals.....													Implementation 12/31/92.
91/107-Dec.....	Derogations concerning U.S. sawn wood of conifers.....													
91/132-Dir*....	Substances in animal nutrition.....	I	N	I	N	I	I	N	N	N	I	I	I	Implementation 8/4/91.
91/245-Dec.....	Protection measures for trichinosis.....													
91/344-Dec.....	U.S. establishments approved to import fresh meat to the EC.													
91/357-Dir.....	Labelling of compound feedingstuffs for animals.....													
91/486-Dec.....	Residues of fresh meat.....													
91/487-Dec.....	Import of live animals and fresh meat from third countries..													
91/502-Dec.....	Dismantlement of MCAs on German agricultural products.....													
91/508-Dir.....	Additives in feedingstuffs.....													
91/516-Dec.....	Prohibited ingredients in compound feedingstuffs.....													
91/587-Reg.....	Trade mechanism in beef and veal.....													
91/620-Dir.....	Annexes concerning additives in feedingstuffs.....													
91/2156-Reg....	Conservation of fishery resources.....													
Proposed:														
(81)504-Dir....	Personnel responsible for inspecting meat products.....													
(82)529-Dir....	Intra-EC trade in cattle and pigs.....													
(82)883-Dir....	Pesticide residues (ethoxyquin and diphenylamine).....													
(83)655-Dir....	Fixes the weight of uncastrated male pigs.....													
(88)598-Dir....	Zootechnical and pedigree rules for purebred animals.....													
(88)836-Reg....	Trade in dogs and cats (rabies) (see 89/455-Dec).....													
(89)34-Dir.....	Standards for plant protection products.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - farm based--Continued														
Proposed--Continued														
(89)428-Reg....	Fresh fish and fish products (nematodes).....													
(89)490-Reg....	Melted animal fat, greaves, and rendering byproducts.....													
(89)492-Reg....	Products of animal origin not covered by existing law.....													
(89)500-Reg....	Animal health conditions for marketing of rodents.....													
(89)507-Reg....	Fresh poultry meat and fresh meat of reared game bird.....													
(89)509-Reg....	Pathogens in feedstuffs.....													
(89)552-Reg....	Organic agricultural products and foodstuffs.....													
(89)645-Reg....	Health conditions regarding fishery products.....													
(89)646-Dir....	Organisms harmful to plants or plant products.....													
(89)647-Dir....	Organisms harmful to plants or plant products.....													
(89)648-Reg....	Health conditions regarding mollusks.....													
(89)649-Reg....	Marketing of young plants.....													
(89)650-Reg....	Ornamental plant propagating material and plants.....													
(89)651-Dir....	Marketing of fruit plants.....													
(89)658-Reg....	Products of animal origin (other species).....													
(89)667-Reg....	Health conditions for milk products.....													
(89)668-Reg....	Health rules for fresh poultry meat.....													
(89)669-Reg....	Health rules for meat products.....													
(89)670-Dec....	Derogation regarding application of health standards.....													
(89)671-Reg....	Health rules for minced meat and meat preparations.....													
(89)672-Reg....	Health rules for heat-treated milk.....													
(89)673-Reg....	Health rules for fresh meat.....													
(90)134-Dir....	Marketing of seed potatoes (micro-propagated).....													
(90)175-Dir....	Inspection of imports of bovine, swine, and meats.....													
(90)238-Dir....	Protection of animals during transport.....													
(90)396-Dir....	Amends 88/146-Dir., substances with hormonal action.....													
(90)479-Dec....	Safeguard measures in the veterinary field.....													
(90)492-Dir....	Bovine brucellosis and enzootic bovine leukosis.....													
(90)555-Reg....	Game meat and rabbit meat.....													
(91)87-Dir.....	Plant protection products on the market.....													
(91)369-Dir....	Undesirable substances in animal feedingstuffs.....													
(91)435-Dir....	Health conditions governing import of non-EC equidae.....													
Agriculture - processed foods and kindred products														
Enacted:														
85/572-Dir*....	Plastic materials in contact with foodstuffs.....	F	F	F	F	I	I	F	I	I	I	I	F	Implementation 1/1/93.
85/573-Dir*....	Coffee and chicory extracts.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
85/585-Dir*....	Preservatives.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/86.
85/591-Dir*....	Sampling and analysis of foodstuffs.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/22/87.
86/[illegible]02-Dir*....	Emulsifiers for use in foodstuffs.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 3/26/88.
86/197-Dir*....	Labeling alcoholic content of beverages.....	I	I	I	I	I	I	I	I	I	I	F	I	Implementation 5/1/89.
88/315-Dir*....	Labeling of prices for food products.....	I	I	I	F	I	I	F	F	I	F	I	I	Implementation 6/7/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - processed foods and kindred products--Continued														
Enacted--Continued														
88/344-Dir*	Extraction solvents used in foodstuffs	N	N	I	I	I	I	N	N	N	N	N	N	Implementation 6/12/91.
88/388-Dir*	Flavorings for foodstuffs	I	I	I	I	I	I	F	F	I	I	I	I	Implementation 6/22/91.
88/389-Dec	Inventory of source materials for flavorings	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 6/21/90.
88/593-Dir*	Jams, jellies, marmalades, and chestnut puree	I	F	I	I	I	I	I	F	I	F	F	I	Implementation 1/1/91.
89/107-Dir*	Food additives	I	F	I	I	I	I	F	F	F	F	I	F	Implementation 12/28/91.
89/108-Dir*	Frozen foodstuffs	I	F	I	F	I	F	I	F	I	I	I	I	Implementation 12/28/91.
89/109-Dir*	Materials in contact with foodstuffs	F	F	I	I	F	I	F	I	I	I	I	I	Implementation 7/10/90.
89/393-Dir	Emulsifiers for use in foodstuffs													Implementation 1/1/89.
89/394-Dir*	Fruit juices and similar products	I	I	I	F	I	I	I	F	I	F	I	I	Implementation 6/14/90.
89/395-Dir*	Labeling of foodstuffs	I	F	I	F	I	I	F	I	F	F	F	I	Implementation 12/20/90.
89/396-Dir	Identifying the lot to which a foodstuff belongs													Implementation 6/20/90.
89/397-Dir*	Official control of foodstuffs	I	N	I	F	I	F	F	F	F	F	F	I	Implementation 6/20/91.
89/398-Dir*	Food for particular nutritional uses	I	F	I	F	I	I	F	F	I	N	I	N	Implementation 5/16/91.
89/622-Dir	Labeling of tobacco products													Implementation 12/31/91.
89/676-Dir	Volume of prepackaged liquids													Implementation 7/1/90.
89/1576-Reg*	Definition and description of spirit drinks	N	N	N	N	I	I	N	N	N	N	I	I	Applicable 12/15/89.
89/3773-Reg*	Transitional measures for spirituous beverages													Applicable 12/15/89.
90/44-Dir	Marketing of compound feedingstuffs													Implementation 1/22/92.
90/128-Dir*	Plastic materials in contact with foodstuffs	F	F	F	F	F	F	F	F	I	F	F	F	Implementation 12/31/90.
90/167-Dir*	Production and trade in medicated feedingstuffs	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 10/1/91.
90/214-Dir	Additives in feedingstuffs (amends 70/524, as does 88/483, 88/616, 89/23, 89/583, 90/110, and 90/206)													
90/219-Dir	Contained use of genetically modified micro-organism													Implementation 10/23/91.
90/220-Dir	Deliberate release of genetically modified organisms													Implementation 10/23/91.
90/239-Dir	Maximum tar yield of cigarettes													Implementation 11/17/91.
90/496-Dir	Nutrition labeling for foodstuffs													Implementation 4/1/92.
91/71-Dir*	Completes 88/388-Dir. on flavorings for foodstuffs	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 1/1/94.
91/238-Dir	Indications identifying foodstuff lots													
91/704-Reg	Inward processing relief arrangements													
91/1180-Reg	Definition of spirit drinks													
91/3664-Reg	Measures for aromatized wines and drinks													
Proposed:														
(81)712-Dir	Authorized preservatives in foodstuffs													
(82)626-Dir	Labeling of beer (partially adopted; see 86/197-Dir)													
(88)489-Dir	Compulsory nutrition labeling													
(89)217-Dir	Coloring matters authorized for use in foodstuffs													
(89)576-Dir	Foods and ingredients treated with ionizing radiation													
(90)147-Dir	Advertising of tobacco products													
(90)321-Dir	Undesirable substances and products in feedingstuffs													
(90)381-Dir	Sweeteners for use in foodstuffs													
(90)538-Dir	Laws on labelling of tobacco products													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - processed foods and kindred products--Continued														
Proposed--Continued														
(90)2414-Reg...	Certificates of specific character for foodstuffs													Implementation 1/1/92.
(90)2415-Reg...	Geographical indication of agricultural products													Implementation 1/1/92.
(91)03-Reg.....	Market in processed fruit and vegetable products													Implementation 3/28/91.
(91)16-Dir.....	Scientific examination of questions on food													
(91)111-Dir....	Advertising for tobacco products													Implementation 1/1/93.
(91)195-Dir....	Sweeteners for use in foodstuffs													
(91)336-Dir....	Labelling of tobacco products for oral use													
(91)374-Reg....	Health rules for production of minced meat													
Chemicals														
Enacted:														
85/467-Dir*....	Labeling of materials containing PCBs and PCTs	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/30/86.
85/xxx-Dec.....	Membership of the European Agreement on Detergents	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 12/12/85.
85/610-Dir*....	Asbestos	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/87.
86/94-Dir*.....	Minimum biodegradability of detergents	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 12/31/89.
88/183-Dir*....	Definition of fertilizer	I	I	I	I	I	I	I	I	I	F	I	I	Implementation 3/25/89.
88/320-Dir*....	Good laboratory practices; amended by 90/18-Dir	I	I	I	F	I	I	F	I	I	I	N	I	Implementation 1/1/89.
88/379-Dir*....	Dangerous preparations; amended by 89/178 and 90/492	N	N	I	N	I	I	N	N	N	N	N	N	Implementation 6/8/91.
88/667-Dir*....	Cosmetic products (amends Dir 76/768 for fourth time)	I	I	I	I	I	I	I	I	I	F	I	I	Implementation 12/31/89.
89/284-Dir*....	Calcium, magnesium, sodium and sulphur content	I	I	I	I	I	I	F	I	F	I	I	I	Implementation 4/16/90.
89/428-Dir.....	Titanium dioxide waste	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 12/31/89.
89/530-Dir*....	Trace (oligo) elements (e.g., boron, cobalt, copper)	I	I	I	I	I	I	F	I	F	I	I	I	Implementation 3/18/91.
89/542-Rec.....	Labeling of detergents and cleaning products													Adopted 10/15/89.
89/677-Dir.....	Dangerous substances and preparations													Implementation 6/20/91.
89/678-Dir.....	Dangerous substances and preparations													Implementation 12/21/89.
89/679-Dir.....	Cosmetic products (amends Dir 76/768 for fifth time)													
90/121-Dir.....	Cosmetic products (adapts annexes to Dir 76/768, 89/174)													Implementation 12/31/90.
90/207-Dir.....	Checking the composition of cosmetic products													Implementation 12/31/90.
90/517-Dir.....	Classification and packaging of dichloromethane													Implementation 12/7/91.
90/642-Dir.....	Pesticide residues on fruits and vegetables													
91/155-Dir*....	System of information for dangerous preparations	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 6/8/91.
91/157-Dir.....	Batteries and accumulators containing dangerous substances													Implementation 9/18/92.
91/173-Dir.....	Marketing of certain dangerous substances (pentachlorophenol)													Implementation 7/1/92.
91/184-Dir.....	Definitions for certain cosmetic products													
91/325-Dir.....	Laws on labelling dangerous substances													Implementation 6/8/91.
91/xxx-xxx.....	Substances specified as dangerous to the environment													Implementation 7/1/92.
91/326-Dir.....	Laws on labelling notified dangerous substances													Implementation 7/1/92.
91/338-Dir.....	Laws on marketing dangerous substances (cadmium)													Implementation 12/31/92.
91/339-Dir.....	Laws on marketing dangerous substances (halogenated bitoluenes)													Implementation 6/18/92.
91/410-Dir.....	Laws on packaging of dangerous substances													Implementation 8/1/92.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation												Comment
		B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	
	Standards--Continued													
Chemicals--Continued														
Enacted--Continued														
91/414-Dir.....	Marketing of plant protection products.....													
91/598-Dec.....	Convention on Protection of the Elbe.....													
91/632-Dir.....	Laws on labelling of dangerous substances.....													
Proposed:														
(90)456-Rec....	Standardization in chemical products and services.....													
(90)566-Dir....	Classification and packaging of dangerous substances.....													
(90)591-Reg....	Export and import of certain dangerous chemicals.....													
(90)1985-Dir...	Consolidates Dir 76/768 and amendments on cosmetics.....													
(91)7-Dir.....	Restrictions on polybromobiphenyl ethers.....													
(91)87-Dir.....	Marketing of EC-accepted plant protection products.....													
(91)468-Reg....	Export and import of certain dangerous chemicals (amends (90)591-Reg).....													
Pharmaceuticals and medical devices														
Enacted:														
87/19-Dir*.....	Approximates laws on the testing of medicine.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
87/20-Dir*.....	Testing of veterinary medicines.....	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 7/1/87.
87/21-Dir*.....	Proprietary medicines.....	I	I	I	I	I	D	I	I	I	I	I	I	Implementation 7/1/87.
87/22-Dir*.....	High-technology medicines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
87/xxx.....	Membership of the European Pharmacopeia.....	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 5/26/87.
87/176-Rec*....	Guidelines for marketing of proprietary medicines.....	-	-	-	-	-	-	-	-	-	-	-	-	
89/105-Dir*....	Price transparency of medicines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/89.
89/341-Dir.....	Approximates provisions for proprietary medicines.....													Implementation 1/1/92.
89/342-Dir.....	Immunological medicine of vaccines, toxins or serums.....													Implementation 1/1/92.
89/343-Dir.....	Radio-pharmaceuticals.....													Implementation 1/1/92.
89/381-Dir.....	Proprietary medicine and medicine of human plasma.....													Implementation 1/1/92.
90/385-Dir.....	Active implantable medical equipment.....													Implementation 1/1/92.
90/676-Dir.....	Veterinary medicines.....													Implementation 1/1/93.
90/677-Dir.....	Immunological veterinary medicines.....													Implementation 1/1/92.
90/2377-Reg....	Tolerances for residues of veterinary medicines.....													Implementation 1/1/92.
91/184-Dir.....	Laws for cosmetic products.....													Applicable 1/1/92.
91/356-Dir.....	Manufacturing practice for human medicinal products.....													
91/507-Dir.....	Laws on standards testing of medicinal products.....													Implementation 1/1/92.
Proposed:														
(89)302-Dec....	European Convention for protection of vertebrates.....													
(89)607-Dir....	Distribution, legal status, and labeling of medicine.....													
(90)72-Dir.....	Medicines and homeopathic medicines.....													
(90)72-Dir.....	Veterinary medicines and homeopathic medicines.....													
(90)101-Dir....	Supplementary protection certificate for medicines.....													
(90)212-Dir....	Advertising of medicines.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Pharmaceuticals and medical devices--Continued														
Proposed--Continued														
(90)283-Reg....	European Agency for Evaluation of Medicinal Products.....													
(90)283-Dir....	Repeals 87/22* on high-technology medicines.....													
(90)283-Dir....	Medicines.....													
(90)283-Dir....	Veterinary medicines.....													
(90)597-Dir....	Substances for illicit manufacture of narcotic drugs.....													
(91)313-Dir....	Laws on medicinal and homeopathic products.....													
(91)313-Dir....	Veterinary medicinal and homeopathic products.....													
(91)382-Reg....	European Agency for the Evaluation of Medicinal Products...													
(91)382-Dir....	Amendment on laws concerning veterinary medicinal products.													
(91)382-Dir....	Amendment on laws concerning medicinal products.....													
Motor vehicles														
Enacted:														
87/358-Dir*....	Certification procedures for vehicles and trailers.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/88.
88/76-Dir*.....	Air pollution by gases from engines of vehicles.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/88.
88/77-Dir*.....	Gaseous pollutants from diesel engines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/88.
88/194-Dir.....	Braking devices of vehicles and their trailers.....	I	I	I	I	I	F	F	I	I	I	I	I	Implementation 10/1/88.
88/195-Dir.....	Engine power of motor vehicles.....	I	I	I	I	I	F	I	I	I	I	I	I	Implementation 4/1/88.
88/218-Dir.....	Weights, dimensions for refrigerated road vehicles.....													Implementation 1/1/89.
88/321-Dir.....	Rear view mirrors of motor vehicles.....													Implementation 1/1/89.
88/366-Dir.....	Driver field of vision.....	I	I	I	I	I	F	F	I	I	I	I	I	Implementation 10/1/88.
88/436-Dir*....	Emission of particle pollutants from diesel engines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/88.
88/449-Dir.....	Road worthiness tests (see (89)6-Dir below).....													Implementation 7/27/90.
89/235-Dir*....	Sound level and exhaust systems of motorcycles.....	I	I	I	I	I	F	I	I	I	I	I	I	Implementation 10/1/89.
89/277-Dir.....	Direction indicator lamps.....	N	I	I	N	I	N	I	I	N	I	I	I	Implementation 9/30/89.
89/278-Dir.....	Installation of lighting and light-signaling devices.....	N	I	I	N	I	N	I	I	N	I	I	I	Implementation 9/30/89.
89/297-Dir*....	Side guards of certain vehicles and their trailers.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/30/89.
89/458-Dir*....	Gaseous emissions from motor vehicles below 1,400 cc.....	I	N	N	I	I	I	I	N	N	I	I	N	Implementation 1/1/90.
89/459-Dir.....	Tread depth of tires of vehicles and their trailers.....													Implementation 1/1/92.
89/460-Dir.....	Derogation for IR and UK regarding vehicle size.....	-	-	-	-	-	-	-	D	-	-	-	D	Derogation to 12/31/98.
89/461-Dir.....	Authorized dimensions for articulated vehicles.....													Implementation 1/1/91.
89/491-Dir.....	Vehicles' use of leaded or unleaded gasoline.....													Implementation 1/1/90.
89/516-Dir.....	End-outline marker lamps and front, rear, stop lamps.....	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.
89/517-Dir.....	Headlamps and incandescent electric filament lamps.....	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.
89/518-Dir.....	Rear fog lamps.....	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.
91/60-Dir.....	Maximum authorized dimensions for road trains.....													Implementation 10/1/91.
91/225-Dir.....	Motor vehicle roadworthiness tests.....													Implementation 1/1/92.
91/226-Dir.....	Motor vehicle spray-suppression systems.....													
91/328-Dir.....	Roadworthiness tests for motor vehicles.....													Implementation 7/1/93.
91/422-Dir.....	Laws on braking devices of motor vehicles.....													Implementation 10/1/91.
91/441-Dir.....	Laws against air pollution by motor vehicles.....													Implementation 1/1/92.
91/542-Dir.....	Laws against gaseous pollutants from diesel engines.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Motor vehicles--Continued														
Proposed:														
(89)6-Dir.....	Amends 88/449-Dir regarding road worthiness tests.....													
(89)653-Dir....	Masses and dimensions of vehicles of category M1.....													
(89)653-Dir....	Pneumatic tires for vehicles.....													
(89)653-Dir....	Safety glazing and glazing materials on vehicles.....													
(89)-xxx.....	A single EC motor-vehicle market.....													
(90)174-Dir....	Gaseous pollutants from diesel engines (amends 88/77-Dir)..													
(90)293-Dir....	Spray-suppression devices for vehicles and trailers.....													
(90)493-Dir....	Air pollution by emissions from vehicles.....													
(90)524-Dir....	Safety belts in vehicles of less than 3.5 tons.....													
(90)669-Reg....	Type-approval of two or three-wheel motor vehicles.....													
(91)51-Dir.....	Permissible sound level of motor vehicle exhausts.....													
(91)89-Dir.....	Laws against gaseous pollutants from diesel engines.....													
(91)230-Dir....	Masses and dimensions of motor vehicles.....													
(91)243-Dir....	Roadworthiness tests for motor vehicles (brakes).....													Implementation 10/1/92.
(91)244-Dir....	Roadworthiness tests for motor vehicles (exhausts).....													
(91)279-Dir....	Type-approval for motor vehicles.....													
(91)417-Dir....	Amendment to weights and dimensions of motor vehicles.....													
Other machinery														
Enacted:														
86/217-Dir*....	Requirements for tire-pressure gauges.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 11/30/87.
86/594-Dir*....	Labeling household appliances for noise emissions.....	-	I	I	I	I	I	-	I	I	-	I	I	Implementation 12/3/89.
86/662-Dir*....	Noise from hydraulic diggers.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/24/88.
87/402-Dir*....	Rollover protection structures, as amended by 89/681.....	I	I	I	I	I	I	N	I	I	I	N	I	Implementation 6/25/89.
87/404-Dir*....	Simple pressure vessels, as amended by 90/488.....	I	F	I	I	I	I	I	I	F	F	F	F	Implementation 7/1/90.
87/405-Dir*....	Permissible sound-power level of tower cranes.....	I	I	I	I	I	I	F	I	F	I	I	I	Implementation 6/25/89.
88/180-Dir*....	Permissible sound-power level of lawnmowers.....	I	N	N	I	N	I	I	I	I	I	I	N	Implementation 7/1/91.
88/181-Dir*....	Permissible sound-power level of lawnmowers.....	I	N	N	I	I	N	I	I	I	I	I	N	Implementation 7/1/91.
88/297-Dir*....	Type-approval of wheeled tractors.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/88.
88/465-Dir.....	Driver's seat on wheeled tractors.....	I	I	I	I	I	F	N	I	I	I	N	I	Implementation 9/10/88.
89/173-Dir*....	Certain standards for tractors.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/89.
89/240-Dir.....	Self-propelled industrial trucks.....	F	I	F	I	I	F	F	F	F	F	N	I	Implementation 1/1/89.
89/392-Dir.....	Safety requirements for machines.....													
89/680-Dir.....	Roll-over protection structures.....													Implementation 1/2/91.
89/682-Dir.....	Rear-mounted roll-over protection.....													Implementation 1/2/91.
89/686-Dir.....	Personal protective equipment.....													Implementation 1/1/93.
90/396-Dir.....	Gas appliances.....													Implementation 1/1/92.
90/486-Dir.....	Electrically operated lifts.....													Implementation 3/24/91.
90/487-Dir.....	Electrical equipment used in explosive atmospheres.....													Implementation 7/1/92.
91/368-Dir.....	Machinery safety.....													Implementation 12/31/92.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Other machinery--Continued														
Proposed:														
(89)454-Dir....	Batteries and accumulators with dangerous substances.....													
(90)368-Dir....	Efficiency requirements for new hot-water boilers.....													
(90)442-Dir....	Civil aircraft.....													
(90)3561-Dir...	Pressure equipment and safety accessories.....													
(91)235-Dir....	Labelling of energy consumption of appliances.....													
(91)4056-Dir...	Used machinery.....													
Telecommunications														
Enacted:														
86/361-Dir.....	Telecommunications terminal equipment.....	F	I	F	N	F	F	I	F	F	F	N	F	Implementation 7/26/87.
86/659-Rec.....	Integrated Services Digital Network (ISDN).....	-	-	-	-	-	-	-	-	-	-	-	-	
87/95-Dec.....	Information technology and telecommunications.....													Applicable 2/7/88.
87/371-Rec.....	Cellular digital land-based mobile communications.....													
87/372-Dir*....	Frequency bands for pan-European mobile telephones.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/25/88.
88/524-Dec*....	Development of information services market.....	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 7/26/88.
89/336-Dir*....	Electromagnetic compatibility (radio interferences).....	N	N	I	N	N	N	N	N	N	N	N	N	Implementation 1/1/92.
89/552-Dir*....	Pursuit of television broadcasting activities.....	N	N	N	N	N	N	I	N	I	N	I	I	Implementation 10/3/91.
90/387-Dir*....	Open network provisions (ONP) for leased lines.....													Implementation 1/1/91.
90/450-Dec.....	Joint Committee on Telecommunications Services.....													Applicable 8/1/90.
90/685-Dec.....	Promotes European audiovisual industry (Media).....													Applicable 1/1/91.
91/263-Dir.....	Telecommunications terminal equipment and conformity.....													Implementation 1/1/92.
91/287-Dir.....	Frequency band for digital cordless telecomm. (DECT).....													Implementation 1/1/92.
91/288-Rec.....	Introduction of digital cordless telecomm. (DECT).....													
Proposed:														
(88)588-Dec....	Advanced informatics in medicine (AIM).....													
(90)32-Rec.....	Pan-European land-based public radio paging.....													
(90)32-Dir.....	Frequency bands for land-based public radio paging.....													
(90)139-Dir....	Frequency bands for the DECT.....													
(90)263-Dir....	Terminal equipment; mutual recognition of conformity.....													
(90)314-Dir....	Protection of personal data.....													
(90)314-Dec....	Information security.....													
(90)314-Dir....	Data protection in telecommunications networks.....													
(90)426-Dec....	Standard Europe-wide emergency call number.....													
(90)570-Dec....	Programme for an information services market.....													
(90)611-Dec....	Dissemination of EC R&D program knowledge.....													
(90)677-Rec....	Digital European cordless telecommunications (DECT).....													
(91)30-Dir.....	Open network provision for leased lines.....													
(91)165-Dec....	EC international telephone access code.....													
(91)215-Dir....	Digital short-range radio (DSRR).....													
(91)242-Dir....	Standards for satellite and television broadcasting.....													Common position 2/10/92.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation												Comment
		B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	
		Standards--Continued												
Environment														
Enacted:														
86/279-Dir.....	Transfrontier shipment of hazardous waste.....	I	N	I	N	I	I	I	I	I	I	I	I	Implementation 1/1/87.
89/369-Dir.....	Pollution from new municipal waste incineration plant.....													Implementation 12/1/90.
89/427-Dir.....	Air quality limits for sulphur dioxide/particulates.....													Implementation 1/10/91.
90/313-Dir.....	Access to information on the environment.....													Implementation 12/31/92.
90/335-Dir.....	Plant protection products of active substances.....													Implementation 1/1/91.
90/415-Dir.....	Limits on discharges of dangerous substances.....													Implementation 1/31/92.
90/1210-Reg....	Establishes the European Environment Agency.....													Appl. upon site choice.
91/156-Dir.....	Amendment on waste.....													
91/594-Reg.....	Substances that deplete the ozone layer.....													
Proposed:														
(89)282-Dir....	Civil liability for damage caused by waste.....													
(89)478-Dir....	Drinking, bathing, and surface water.....													
(89)559-Dir....	Shipment of radioactive waste.....													
(89)560-Dir....	Amended proposals on waste and hazardous waste.....													
(90)85-Dir.....	Sewage sludge in agriculture - limits for chromium.....													
(90)227-Reg....	Control of environmental risks of existing substances.....													
(90)319-Dec....	Regular official statistics of the environment.....													
(90)415-Reg....	Supervision and control of shipments of waste.....													
(90)452-Dir....	Vessels carrying dangerous or polluting goods.....													
(90)522-Dir....	Municipal waste water treatment.....													
(91)28-Reg.....	Financial instrument for the environment (LIFE).....													
(91)37-Reg.....	Scheme for an Eco-label.....													
(91)220-Dir....	Air pollution by ozone.....													
Miscellaneous:														
Enacted:														
86/665-Rec.....	Standardized information in existing hotels.....	-	-	-	-	-	-	-	-	-	-	-	-	Impl. urged by 12/21/88.
86/666-Rec*....	Protection of hotels against fire.....	-	I	I	I	I	-	-	I	-	I	I	I	
88/378-Dir.....	Safety of toys.....	N	I	N	N	I	N	N	I	N	N	N	I	Implementation 1/1/90.
89/106-Dir*....	Construction products.....	N	I	I	N	N	N	N	N	N	N	N	I	Implementation 6/27/91.
90/314-Dir.....	Package travel, package holidays, and tours.....													Implementation 12/31/92.
Proposed:														
(90)35-Dir.....	Child-resistant fastenings.....													
(91)147-Dir....	Comparative and misleading advertising.....													
Generic														
Enacted:														
85/374-Dir.....	Liability for defective products.....	F	F	I	N	F	I	I	F	N	F	I	I	Implementation 7/30/88.
87/357-Dir*....	Mislabeled products that endanger health and safety.....	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 6/30/90.
88/182-Dir*....	Information on technical standards and regulations.....	I	I	I	I	I	I	N	I	N	N	N	I	Implementation 1/1/89.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Generic--Continued														
Enacted--Continued														
88/314-Dir*	Labeling of prices for nonfood products	I	I	I	F	I	I	F	F	I	F	I	I	Implementation 6/7/90.
90/352-Dec	Exchange of information on dangers of consumer goods													
90/683-Dec*	Modules for conformity assessment procedures													Applicable 12/13/90.
91/561-Rec	Standardization of notices													
Proposed:														
(90)55-Dec	Consumers' Consultative Council													
(90)259-Dir	General product safety													
(90)322-Dir	Unfair terms in consumer contracts													
(90)456	Development of European standardization													
(90)482-Dir	Liability of suppliers of services													
(91)126-Dir	Laws on electromagnetic compatibility													
(91)145-Reg	CE mark of conformity on industrial products													
(91)322-Dir	Award of public service contracts													
(91)383-Dir	Safety and/or health sign requirements													
(91)1047-Dir	Laws on units of measurement													

APPENDIX D
MEMBER-STATE IMPLEMENTING MEASURES OF SELECTED EC DIRECTIVES

D-1
Implementing measures for the Toy Safety Directive (88/378/EEC)

Member State	*Implementing Legislation*	*Citation*
Belgium	Loi du/Wet van [June 29, 1990].	*Moniteur Belge du/Belgisch Staatsblad*, July 18, 1990, p. 14184-14187.
	Arrete Royal du/Koninklijk Besluit van [Mar. 9, 1991].	*Moniteur Belge du/Belgisch*, May 14, 1991, p. 10033-10042.
Germany	Verordnung uber die Sicherheit von Spielzeug.	*Bundesgesetzblatt I*, S. 2541, Dec. 30, 1989.
	Allgemeine Verwaltungs-verordnung Sicherheigesetz.	*Bundesanzeiger 1989*, S. 5956, Dec. 30, 1989.
Denmark	Lov N.307, [May 16, 1990].	*Lovtidende A*, S. 997, May 16, 1990.
	Bekendtgorelse N.125, om sikkerhedskrav til legetoj, [Mar. 6, 1991].	*Lovtidende A*, S. 567, Mar. 6, 1991.
Spain	Not available.	*Boletin Oficial del Estado*, No. 166, July 12, 1990, p. 20085.
	Correccion de errores del Real Decreto 880/90 de [June 29, 1990].	*Boletin Oficial del Estado*, No. 224, Sept. 18, 1990, p. 27264.
Greece	Decret ministeriel 6342/863.	*Journal Officiel*, B No. 223, Mar. 27, 1989, p. 2056.
	Decret ministeriel 6813/1325, [Apr. 3, 1990].	*Journal Officiel*, B No. 218, Apr. 4, 1990.
France	Decret 89/662, [Spet. 12, 1989].	*Journal Officiel*, Sept. 15, 1989, p. 11673.
	Arrete ministeriel du [Oct. 4, 1989].	*Journal Officiel*, Oct. 14,
Italy	Not available.	*Gazzetta Ufficiale*, No. 234, Oct. 5, 1991.
Ireland	Regulations 1990.	*Statutory Instrument*, No. 34 of 1990.
Netherlands	Besluit van [May 29, 1991]. Warenwet bepaling onderzoeks-methoden kinderwaren van [May 31, 1991].	*Staatscourant*, No. 269, 1991. *Staatscourant*, No. 106, June 6, 1991.
	Warenwet regeling inzake veklaring van overensstemming voor speelgoed van [May 31, 1991].	*Staatscourant*, N.106, June 5, 1991.
Portugal	Decreto-lei 140/90, No. 99, Apr. 30, 1990.	*Diario da Republica I*, No. 99, Apr. 30, 1990.
	Portaria No. 924-A/90, [Oct. 1, 1990].	*Diario da Republica I*, No. 227, Oct. 1, 1990, p. 4058-4.
	Portaria N.924-B/90, [Oct. 1, 1990].	*Diario da Republica I*, No. 227, Oct. 1, 1990, p. 4058-5.

D-1—Continued
Implementing measures for the Toy Safety Directive (88/378/EEC)

Member State	*Implementing Legislation*	*Citation*
United Kingdom	Consumer Protection The Toys (Safety) Regulations 1989.	*Statutory Instrument*, 1989, No. 1275, July 26, 1989.

Source: "National Implementing Measures," *Eurobases*, Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.

Table D-2
Implementing measures for the Simple Pressure Vessels Directive (87/404/EEC)

Member State	*Implementing Legislation*	*Citation*
Belgium	Arrete Royal du/Koninklijk Besluit van [June 11, 1990].	*Moniteur Belge du/ Belgisch Staatsblad,* June 21, 1990, p. 12640-12649.
Denmark	Bekendtgorelse om EF-direktiv om simple trykbeholdere No. 627, [Sept. 7, 1990].	*Lovtidende A,* No. 99, Sept. 7, 1990.
Spain	Real Decreto No. 1495/1991, [Oct. 11, 1991].	*Boletin Oficial del Estado* No. 247, Oct. 15, 1991, p. 33345-33349.
	Correccion de erratas del RD, 1495/1991.	*Boletin Oficial del Estado* No. 282, Nov. 25, 1991, p. 38098.
Greece	Decision ministerielle 12479/17/414, [June 4, 1991].	*Journal Officiel,* B No. 431, June 24, 1991.
	Decision ministerielle 15233, [July 3, 1991].	*Journal Officiel,* B N.487, B N.487, July 4 1991.
France	Arrete ministeriel du [Mar. 10, 1986].	*Journal Officiel,* Mar. 20, 1986.
	Arrete ministeriel du [Dec. 14, 1989].	*Journal Officiel,* Dec. 26, 1989, p. 16226.
	Arrete ministeriel du [Dec. 14, 1989].	*Journal Officiel,* Dec. 26, 1989, p.16228.
	Arrete ministeriel du [Dec. 19, 1989].	*Journal Officiel,* Jan. 26, 1990, p. 843.
Italy	Decreto presidenziale No. 311/91.	*Gazzetta Ufficiale,* No. 233, Oct. 4, 1991, p. 4-10.
Ireland	European Community (Simple Pressure Vessels) Regulations 1991.	*Statutory Instrument,* No. 115, May 3, 1991.
United Kingdom	Simple Pressure Vessels (Safety) Regulations 1991.	*Statutory Instrument,* 1991, No. 2749, Dec. 5, 1991.

Source: "National Implementing Measures," *Eurobases,* Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.

D-3
Implementing measures for the Construction Products Directive (89/106/EEC)

Member State	*Implementing Legislation*	*Citation*
Denmark	Not available.	*Byggeog Boligstyrelsens Bekendtgorelse*, No. 480, June 6, 1991.
Germany	Not available.	Not available.
United Kingdom	The Construction. Products Regulations 1991.	*Statutory Instrument*, 1991, No. 1620, July 15, 1991.

Source: "National Implementing Measures," *Eurobases*, Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.

D-4
Implementing measures for the Lifts Directive (90/486/EEC)

Member State	*Implementing Legislation*	*Citation*
Denmark	Bekendtgorelse No. 648 af [June 19, 1986].	*Arbejdsministeriet*, 3 Kt.J No. 37223-0, June 19, 1986.
France	Arrete ministeriel du [June 30, 1989].	*Journal Officiel*, Sept. 1, 1989, p. 10990.
Germany	Bekanntmachung des BMA, [June 20, 1989].	*BAR BBL*, [Sept. 1989], S. 58.
	Bekanntmachung des BMA, [Oct. 1, 1990].	*BAR BBL*, [Nov. 1990], S. 58.
	Bekanntmachung des BMA (Berichtigung), [Oct. 1, 1990].	*BAR BBL*, [Dec. 1990], S. 35.
Ireland	European Community Electrically, Hydraulically or Oil-Electrically Regulation 1991.	*Statutory Instrument*, No. 41, Mar. 5, 1991.
Portugal	Portaria 964/91, [Sept. 20, 1991].	*Diario da Republica I*, serie B No. 217, Sept. 20, 1991, p. 4989.
Spain	Orden ministerial, [Sept. 12, 1991] por el que se modifica la Instruccio Tecnica Complementaria MIE-AEM 1 del Reglamento de Aparatos de Elevacion y Manutencion	*Boletin Oficial del Estado*, No. 223, pp. 30516-30517.
	Correccion de errores de la Orden ministerial del [Sept. 12, 1991].	*Boletin Oficial del Estado*, No. 245, Oct. 12, 1991, pp. 33130-33131.

Source: "National Implementing Measures," *Eurobases*, Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.

Table D-5
Implementing measures for the Supplies Directive (88/295/EEC)

Member State	*Implementing Legislation*	*Citation*
Belgium	Not available.	Not available.
Germany	Verwaltungsvorschrift vom [Dec. 22, 1988] zwischenzeitlich in die Vorschrift VOZ/A eingearbeitet.	*Bundesanzeiger*, No. 45a, Mar. 3, 1990.
Denmark	Statens indkobs-cirkulaere af DK [Nov. 13, 1989], Bekendtgorelse af [Dec. 7, 1990].	*Lovtidende A*, Dec. 7, 1990.
France	Decret No. 236, Apr. 17, 1989.	*Journal Officiel*, Apr. 19, 1989, p. 501.
Ireland	Circular of Nov. 23, 1988 of the Department of Finance.	Not available.
Luxembourg	(1) Circulaire, Dec. 14, 1988, (2) Circulaire, Dec. 20, 1988, No. 1197, ref. 26/88.	Not available.
United Kingdom	(1) Treasury Guidance Notes 12/88, (2) Department of Environment Circular 6/89, Feb. 28, 1989, (3) Welsh Office Circular 11/89, (4) Northern Ireland Office Minute, (5) Scottish Development Department Circular 15/89.	Not available.

Source: "National Implementing Measures," *Eurobases*, Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.

Table D-6
Implementing measures for the Works Directive (89/440/EEC)

Member State	*Implementing Legislation*	*Citation*
Belgium	Arrete Royal du/Koninklijk Besluit van [Aug. 1, 1990].	*Moniteur Belge du/Belgisch Staatsblad*, Aug. 10, 1990, p. 15620-15637.
	Arrete Royal du [Aug. 2, 1990] modifiant l'A.R. du [Nov 14, 1979] Koninklijk Besluit van [Aug. 2, 1990] tot wijziging van het K.B. van [Nov. 14, 1979].	*Moniteur Belge du/Belgisch Staatsblad*, Aug. 10, 1990, p. 15640-15641.
	Arrete Royal du/Koninklijk Besluit van [Aug. 3, 1990].	*Moniteur Belge du/Belgisch Staatsblad*, Aug. 10, 1990, p. 15642-15645.
Germany	Gesetz	*Bundesanzeiger*, No. 132a, July 9, 1990.
Denmark	Cirkulaere af [Apr. 14, 1989] (Licitationsloven), Lov N.366, June 8, 1990.	*Lovtidende A*, [Aug. 14, 1990].
	Byggeog boligstyrelsens bekendtgorelse No. 595, Aug. 14, 1990, bekendtgorelse No. 498, June 25, 1991.	*Lovtidende A*, 1991, P.1909.
France	Loi 91-3, Jan. 3, 1991.	*Journal Officiel*, Jan. 5, 1991 p. 236-238.
Italy	Decreto legislativo No. 406, Jan. 19, 1991.	*Gazzetta Ufficiale*, No. 302, Dec. 27, 1991.
	Decreto legislativo No. 406, Jan. 19, 1991.	*Supplemento Ordinario*, No. 89.
Ireland	Not available.	Not available.
United Kingdom	Not available.	Not available.

Source: "National Implementing Measures," *Eurobases*, Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.

Table D-7
Implementing measures for the Remedies Directive (89/665/EEC)

Member State	*Implementing Legislation*	*Citation*
Belgium	Not available.	Not available.
Denmark	Lov N.344, June 6, 1991.	*Industriministeriets*, J. NR 90-46-21.
Netherlands	Not available.	Not available.
Spain	Ley reguladora de la Juridiccion Contensioso-Administrativa, Dec. 27, 1956.	*Boletin Oficial del Estado*, No. 363, Dec. 28, 1956.
	Ley, Dec. 27, 1965.	*Boletin Oficial del Estado.*
	Real Decreto 923/65, Apr. 8, 1965.	*Boletin Oficial del Estado.*
	Ley de Procedimiento Administrativo, July 17, 1985 (LPA).	*Boletin Oficial del Estado*, No. 171, July 18, 1985.
United Kingdom	European Community Act 1972	Not available.
	Public Works Contracts Regulations 1991.	Not available.
	Public Supply Contracts Regulations 1991.	Not available.

Source: "National Implementing Measures," *Eurobases*, Info 92, Commission of the European Communities, Feb. 20, 1992, File No. 27901.